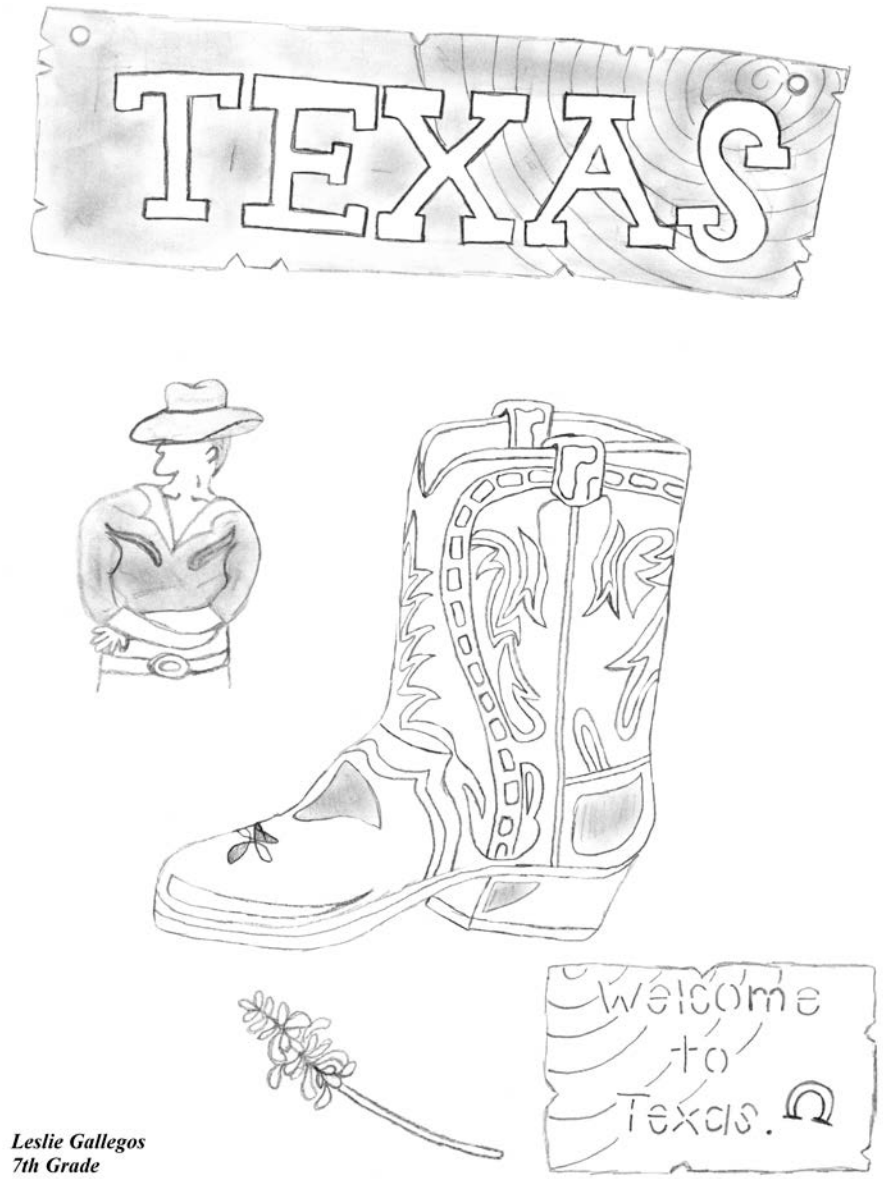
TEXAS REGISTER

Volume 39 Number 23 *June 6, 2014* *Pages 4315 – 4538*



Leslie Gallegos
7th 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*.

***Texas Register,* (ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
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IN THIS ISSUE

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.texas.gov.

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1201-GA

Requestor:

Tim F. Branaman, Ph.D.

Chair, Texas State Board of Examiners of Psychologists

333 Guadalupe, Suite 2-450

Austin, Texas 78701

Re: Whether mental health records placed in the custody of the State Board of Examiners of Psychologists by a court order are state records under chapter 441 of the Government Code (RQ-1201-GA)

Briefs requested by June 9, 2014

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

TRD-201402517
Katherine Cary
General Counsel
Office of the Attorney General
Filed: May 28, 2014

♦ ♦ ♦

Opinions

Opinion No. GA-1061

Jonathan D. Bow, J.D.

Executive Director

State Office of Risk Management

Post Office Box 13777

Austin, Texas 78711-3777

Whether state agencies, including institutions of higher education, must obtain approval from the State Office of Risk Management prior to purchasing insurance coverage (RQ-1169-GA)

S U M M A R Y

Under subsection 412.011(e) of the Labor Code, except for those excluded by chapter 412 or some other law, a state agency subject to chapter 501 of the Labor Code must have State Office of Risk Management approval to purchase property, casualty, or liability insurance.

Opinion No. GA-1062

The Honorable Richard N. Countiss

San Jacinto County District Attorney

1 State Highway 150, Room #21

Coldspring, Texas 77331-0403

Re: Salary increases for assistant auditors and administrative assistants after passage of the county budget (RQ-1170-GA)

S U M M A R Y

Section 84.021 of the Local Government Code requires a commissioners court to order the salaries of assistant county auditors, as properly certified by the district judges of the county, to be paid on the performance of services.

Section 84.021 does not require district judges to include the names of assistant auditors in the list of appointees they certify to the county commissioners court under that provision.

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

TRD-201402516
Katherine Cary
General Counsel
Office of the Attorney General
Filed: May 28, 2014

♦ ♦ ♦

Parks Johnson
8th Grade

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.509

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §§19.500 - 19.509, for a 60-day period. The text of the new sections was originally published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 553).

Filed with the Office of the Secretary of State on May 21, 2014.

TRD-201402405
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Original effective date: January 23, 2014
Expiration date: July 21, 2014
For further information, please call: (512) 463-4075

♦ ♦ ♦

Abbie Schuder
8th Grade

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

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. ADMINISTRATION
SUBCHAPTER C. COMPLAINTS AND DISPUTE RESOLUTION

1 TAC §111.33

The Texas Facilities Commission ("Commission") proposes new §111.33, concerning Alternative Dispute Resolution. Senate Bill 211, passed by the 83rd Legislature and effective June 14, 2011, added a new section to Chapter 2152 of the Texas Government Code, §2152.066. The new section directs the Commission to develop and implement alternative dispute resolution procedures. Upon researching the procedures and processes of other state agencies, the Commission has determined that the alternative dispute resolution procedures should be formally adopted by rule. The Commission further determined that the new rule should be added to Subchapter C, Complaints and Dispute Resolution, of Chapter 111, which also addresses dispute resolution procedures of the Commission.

This new rule is proposed pursuant to Texas Government Code §2152.066 (Vernon Supp. 2013) requiring the Commission to develop alternative dispute resolution procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Section by Section Summary

The Commission proposes new §111.33 relating to alternative dispute resolution procedures to provide clarification concerning the process to be followed by the Commission when undertaking alternative dispute resolution pursuant to Chapter 2009 of the Texas Government Code, the Governmental Dispute Resolution Act.

Fiscal Note

Terry Keel, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Public Benefit/Cost Note

Mr. Keel has also determined that for each year of the first five-year period the proposed rule is in effect the public benefit will be further clarification of the alternative dispute resolution process.

Mr. Keel has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rule. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code §2006.002 (Vernon 2008), are not required.

In addition, Mr. Keel has determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022 (Vernon 2008).

Request for Comments

Interested persons may submit written comments on the proposed rule to the General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to *rulescomments@tfc.state.tx.us.* For comments submitted electronically, please include "Section 111.33 Alternative Dispute Resolution" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed rule in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed new rule may be directed to Ms. Kay Molina, General Counsel, at (512) 463-7220.

Statutory Authority

The new rule is proposed pursuant to Texas Government Code §2152.066 (Vernon Supp. 2013) requiring the Commission to develop a negotiated rulemaking policy and procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the proposed rule are those set forth in Texas Government Code §2152.066 (Vernon Supp. 2013).

§111.33. Alternative Dispute Resolution.

(a) Policy. It is the Commission's policy to encourage the use of alternative dispute resolution procedures in appropriate situations.

(b) Alternative Dispute Resolution. The Commission encourages the fair and expeditious resolution of disputes through alternative dispute resolution ("ADR") procedures.

(1) ADR procedures include any procedure or combination of procedures described by Civil Practice and Remedies Code, Chapter 154. ADR procedures are intended to supplement and not limit other dispute resolution procedures available for use by the Commission.

(2) Any ADR procedure used to resolve disputes before the Commission shall conform with Government Code, Chapter 2009, and, to the extent possible, the model guidelines for the use of ADR issued by the State Office of Administrative Hearings ("SOAH").

(3) Upon receipt of notice of a dispute, the Commission's Executive Director, in consultation with the Commission's general counsel, shall determine whether use of an ADR procedure is an appropriate method for resolving the dispute.

(4) If an ADR procedure is determined to be appropriate, the Commission's Executive Director shall recommend to the claimant the use of ADR to resolve the dispute. The Commission's general counsel will collaborate with the claimant to select an appropriate procedure for dispute resolution and implement the agreed upon procedure consistent with SOAH's model guidelines.

(5) ADR for Breach of Contract Claims. Resolution of breach of certain contract claims brought by a contractor against the Commission shall conform to the requirements of Government Code, Chapter 2260. The Commission has adopted by reference the Office of the Attorney General's rules regarding the negotiation and mediation of certain contract disputes (§111.31 of this title (relating to Negotiation and Mediation of Certain Contract Disputes)).

(6) The requirements of Government Code, Chapter 2260, and the Office of the Attorney General's model rules are required prerequisites to a contractor filing suit in accordance with Civil Practices and Remedies Code, Chapter 107.

(c) The Commission's general counsel is designated as the coordinator to implement the Commission's policy under this rule, provide necessary training, and collect data concerning the effectiveness of the implemented procedures.

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 May 22, 2014.

TRD-201402420
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 463-4257

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. GENERAL ADMINISTRATION

1 TAC §201.8

The Texas Department of Information Resources (department) proposes new §201.8, Plans and Reports Required of Institutions of Higher Education, under 1 TAC Chapter 201, concerning the general administration of the department. New §201.8 will ensure the chapter more accurately reflects legislative actions and the practices of the department. The new section is necessary, in part, as the result of passage of Senate Bill 59 (83R), effective as of September 1, 2013, which added §2054.1211, Texas Government Code, concerning the general administration of the department, the basis upon which these rules were originally promulgated.

Proposed new §201.8 was developed in close consultation with the Information Technology Council for Higher Education (ITCHE) and a final draft was submitted for their review and impact assessment prior to bringing the rule to the Board. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with ITCHE in compliance with §2054.121(b), Texas Government Code. Proposed new §201.8 applies to the reports and plans in Chapter 2054, Texas Government Code, required of institutions of higher education, and has no direct impact on state agencies.

Section 2054.1211, Texas Government Code, requires the department and ITCHE to review all reports and plans under Chapter 2054, Texas Government Code. Pursuant to §2054.1211, Texas Government Code, after September 1, 2014, an institution of higher education will no longer be required to prepare or submit a plan or report generally required of a state agency under Chapter 2054, Texas Government Code, except to the extent expressly provided by a rule adopted by the department on or after September 1, 2013. Proposed new §201.8 serves to specify the reports required of institutions of higher education under Chapter 2054, Texas Government Code.

Proposed new §201.8 adds subsection (a) to specify the plans and reports required of institutions of higher education under Chapter 2054, Texas Government Code. Paragraph (1) requires institutions of higher education to submit reports pursuant to §2054.052, Texas Government Code. Paragraph (2) requires Information Resources Managers at institutions of higher education to submit training and continuing education reports pursuant to §2054.076, Texas Government Code. Paragraph (3) specifies reporting by institutions of higher education regarding vulnerability reports as set forth in §2054.077, Texas Government Code. Paragraph (4) clarifies the reporting by institutions of higher education for the Information Resources Deployment Review as set forth in §2054.0965, Texas Government Code. Paragraph (5) specifies the reporting of Information Security Plans by institutions of higher education as set forth in §2054.133, Texas Government Code. Paragraph (6) references the network configuration information that may be requested of institutions of higher education under §2054.203, Texas Government Code. Paragraph (7) references the inclusion of institutions of higher education in the department's survey of accessibility practices pursuant to §2054.464, Texas Government Code.

Subsection (b) is added to clarify the department will coordinate with ITCHE regarding the preparation and submission of such plans and reports required under Chapter 2054, Texas Government Code.

Because of the existing requirement for institutions of higher education to produce the named plans and reports, Todd Kimbriel, Chief Operations Officer, has determined that during the first five-year period following the adoption of §201.8, there will be no fiscal impact on state agencies, institutions of higher education and local governments resulting from compliance with the proposed rule.

Mr. Kimbriel has further determined that for each year of the first five years following the adoption of §201.8, there are no anticipated economic costs to persons or small businesses resulting from the compliance with such changes to the rules.

Written comments on the proposed new rule may be submitted to Chad Lersch, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to chad.ler-

sch@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

The new rule is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code and §2054.1211, Texas Government Code, which requires the department and the Information Technology Council for Higher Education to review all reports and plans under Chapter 2054, Texas Government Code.

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

§201.8. Plans and Reports Required of Institutions of Higher Education.

(a) In compliance with Government Code, §2054.1211, an institution of higher education shall prepare and submit the following plans and reports to the department:

(1) Reports as set forth in §2054.052, Texas Government Code;

(2) Information Resources Managers' training and continuing education compliance reports as set forth in §2054.076, Texas Government Code;

(3) Vulnerability reports as set forth in §2054.077, Texas Government Code;

(4) Information Resources Deployment Review as set forth in §2054.0965, Texas Government Code, subject to the reporting limitation in §51.406, Texas Education Code;

(5) Information Security Plan as set forth in §2054.133, Texas Government Code;

(6) Network configuration information as set forth in §2054.203, Texas Government Code;

(7) Accessibility Survey as set forth in §2054.464, Texas Government Code.

(b) The department will coordinate with the Information Technology Council for Higher Education regarding the preparation or submission of such plans and reports by institutions of higher education, and will provide for the use of existing data where 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 May 23, 2014.

TRD-201402433
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-4700

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CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 213, §§213.1, 213.10 - 213.21, and 213.30 - 213.41, concerning Electronic and Information Resources. The proposed changes include the addition of new definitions and the modification of some existing definitions in §213.1; requirements in §213.17 and §213.37 for EIR compliance exceptions and exemptions; requirements in §213.18 and §213.38 for commodity procurement contracts; and requirements in §213.21 and §213.41 regarding agency and institution of higher education accessibility policies and accessibility coordinator positions.

The proposed changes are limited to those provisions not directly linked to the U.S. Section 508 technical standards. The U.S. Access Board has announced that those technical standards will be significantly updated within the next year and therefore the department has decided to review only the provisions unique to Texas state agencies and institutions of higher education. Once U.S. Section 508 has been adopted, the department will consider amendments to 1 TAC Chapter 213 to maintain conformity with federal standards. The proposed rules apply to both state agencies and institutions of higher education.

In §213.1 the department proposes to add the following definitions because of new or revised content in Chapter 213: "Accessible", "Department", "Major Information Resources Project", "Section 508", and "Technical Accessibility Standards and Specifications".

The definitions of "Electronic and Information Resources (EIR)" and "Voluntary Product Accessibility Template (VPAT)" have been broadened for clarification; and definitions for "Exception" and "Exemption" have been changed to include the phrase "non-compliance" rather than "non-conformance". The department proposes deleting the definitions for "Buy Accessible Wizard", "Commercially unavailable", "Electronic and information resources accessibility standards", and "Web Accessibility Standards" that are no longer applicable for new or revised content in Chapter 213.

In addition, the department proposes abbreviating the term "electronic and information resources" as "EIR" in §§213.10 - 213.21 (for state agencies) and §§213.30 - 213.41 (for institutions of higher education) for simplicity and brevity.

In §213.17, for state agencies, and §213.37, for institutions of higher education, the department proposes adding language to include specific exception areas pursuant to §§2054.460, 2054.462 and 2054.463, Texas Government Code. The department proposes clarifying language for exceptions based on significant difficulty or expense and includes new language requiring additional supporting information for each exception. Procedures for creating and maintaining exception requests has also been clarified. The department also proposes modification to language requiring an exemption to include additional information as justification for the exemption.

In §213.18, for state agencies, and §213.38, for institutions of higher education, the proposed amendments include the elimination of the use of Buy Accessible Wizard documents as a means of communicating accessibility compliance and sets forth provisions for the department and agencies to request other evidence of a vendor's ability to produce accessible EIR products and services. The department proposes to require that a procurement policy be implemented and that an agency's contract or procurement oversight staff shall monitor the agency's procurement processes and contracts for accessibility compliance. The department has clarified to what EIR these procurement provisions apply. The department proposes a new provision requiring accessibility testing for projects which meet the criteria of a major information resource projects.

In §213.19, for state agencies, and §213.39, for institutions of higher education, the department proposes the reorganization of existing provisions and requires the executive director of each agency and the president or chancellor of each institution of higher education to ensure appropriate staff receives training necessary to meet accessibility-related rules.

In §213.20, for state agencies, and §213.40, for institutions of higher education, the proposed rule requires responses to the electronic and information resources state agency survey to be supported by agency documentation.

In §213.21, for state agencies, and §213.41, for institutions of higher education, the department proposes adding the requirement for the department to designate and maintain a person responsible for statewide accessibility initiatives. The department has made clarifications to provisions related to the publication of agency accessibility policies and plans.

The department proposes a new provision requiring agencies and institutions of higher education to provide contact and other information for the Accessibility Coordinator and to inform the department of any accessibility coordinator changes within a prescribed timeframe. The department also proposes requiring the EIR Accessibility Coordinator position to be located within the organization to ensure effectiveness. Finally, the department proposes adding a requirement for agencies and institutions of higher education to establish goals for making EIR accessible.

Todd Kimbriel, Chief Operations Officer, has determined that during the first five-year period following the adoption of amendments to Chapter 213, there will be no fiscal impact on state agencies, institutions of higher education and local governments. The elimination of unnecessary rules and clarification of terms and definitions increases the effectiveness of the rules for agencies and institutions.

Mr. Kimbriel has further determined that for each year of the first five years following the adoption of amendments to Chapter 213 there are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

The department is committed to making electronic and information resources usable by people of all abilities and disabilities. The department worked in collaboration with other government entities to develop these proposed rule changes. There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Written comments on the proposed rules may be submitted to Chad Lersch, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to chad.lersch@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §213.1

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

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

§213.1. Applicable Terms and Technologies for Electronic and Information Resources.

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

(1) Accessible--Describes an electronic and information resource that can be used in a variety of ways and (the use of which) does not depend on a single sense or the ability.

(2) [~~(1)~~] Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this chapter.

(3) [~~(2)~~] Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(4) [~~(3)~~] Assistive technology--Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(5) Department--The Department of Information Resources.

[~~(4) Buy Accessible Wizard--A Web-based application (http://www.buyaccessible.gov) that guides users through a process of gathering data and providing information about Electronic and Information Resources and §508 compliance, or other tools/resources developed by or for the Federal Government to indicate product/service compliance with the §508 standards (http://www.section508.gov).~~]

[~~(5) Commercially unavailable--An electronic or information resource for a specific function or business area that is not available in the commercial marketplace for purchase or development.~~]

(6) Electronic and information resources (EIR)--Includes information technology and any equipment or interconnected system or subsystem of equipment[~~, that is~~] used to create, convert, duplicate, or deliver [~~in the creation, conversion, duplication, or delivery of~~] data or information. EIR [~~The term electronic and information resources~~] includes[~~, but is not limited to,~~] telecommunications products (such as telephones), information kiosks and transaction machines, web [~~World Wide Web~~] sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, [~~HVAC (heating, ventilation, and air conditioning) equipment such as~~] thermostats or temperature control devices, and medical equipment that contain [~~where~~] information technology that is integral to its operation, are not information technology. If the embedded information technology has an externally available web or computer interface, that interface is considered EIR. Other terms such as, but not limited to, Information and Communications Technology (ICT), Electronic Information Technology (EIT), etc. can be considered interchangeable terms with EIR for purposes of applicability or compliance with this chapter.

[~~(7) Electronic and information resources accessibility standards--Texas accessibility standards for Electronic and Information Resources that comply with the applicable specifications contained in Subchapter B, §§213.10 - 213.16 of this chapter for state agencies and Subchapter C, §§213.30 - 213.36 of this chapter for institutions of higher education.~~]

(7) [~~(8)~~] Exception--A justified, documented non-compliance [~~non-conformance~~] with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the Executive Director of an Agency or the President or Chancellor of an Institution of Higher Education.

(8) [~~(9)~~] Exemption--A justified, documented non-compliance [~~non-conformance~~] with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the department and which is applicable statewide.

(9) [~~(10)~~] Information technology--Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers (including desktop and laptop computers), ancillary equipment, desktop software, client-server software, mainframe software, web [~~Web~~] application software and other types of software, firmware and similar procedures, services (including support services), and related resources.

(10) Major information resource project (MIRP)--Any information resources technology project that meets the criteria defined in Texas Government Code §2054.003(10).

(11) Operable controls--A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, input and output trays, card slots, keyboards, and keypads.

(12) Product--Electronic and information technology.

(13) Section 508 Standards--The standards set forth in Title 36, Part 1194 of the Code of Federal Regulations established by the federal Architectural and Transportation Barriers Compliance Board (the "Access Board") that apply to electronic and information technology developed, procured, maintained, or used by the federal government, including computer hardware and software, websites, phone systems, and copiers. The Section 508 standards were issued to implement Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) which requires access for both members of the public and federal employees to such technologies when developed, procured, maintained, or used by federal agencies.

(14) [~~(13)~~] Self Contained, Closed Products--Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar products.

(15) Technical Accessibility Standards and Specifications--Accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in Chapter 206 and/or Chapter 213 of this title.

(16) [~~(14)~~] Telecommunications--The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(17) [~~(15)~~] Training/Technical Assistance--Training [~~Accessibility training~~] and technical assistance to comply [~~or Web content providers/developers on compliance~~] with the accessibility standards.

(18) [~~(16)~~] TTY--An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

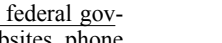
(19) [~~(17)~~] Voluntary Product Accessibility Template (VPAT)--A vendor-supplied form for a commercial Electronic and Information Resource used to document its compliance with technical accessibility standards and specifications. A link to the standardized VPAT form is available at the department's website. [~~A Web based summary to assist contracting officials and other buyers in making preliminary assessments regarding the availability of commercial Electronic and Information Resources products and services with features that support accessibility. The VPAT forms and additional information are available at http://www.section508.gov.~~]

[~~(18) Web Accessibility Standards--Texas Web accessibility standards for Web pages and Web content that comply with the applicable specifications contained in Chapter 206, Subchapter B, §206.50(a)(1) of this title for state agencies and Chapter 206, Subchapter C, §206.70(a)(1) of this title for institutions of higher education.~~]

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 May 23, 2014.

TRD-201402462
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-4700



SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

1 TAC §§213.10 - 213.21

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

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

§213.10. Software Applications and Operating Systems.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(2) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(3) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(4) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(5) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(6) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(7) Applications shall not override user selected contrast and color selections and other individual display attributes.

(8) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(9) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(10) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(11) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(12) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.11. Telecommunications Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(2) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(3) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(4) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(5) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(6) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(7) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(8) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(9) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product

(10) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(11) Products which have mechanically operated controls or keys, shall comply with the following:

(A) Controls and keys shall be tactilely discernible without activating the controls or keys.

(B) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(C) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(D) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.12. Video and Multimedia Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this

subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(2) Upon receiving a request for accommodation of a web [~~Web~~] cast of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code.

§213.13. Self Contained, Closed Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(2) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(3) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.11(11)(A) - (D) of this subchapter.

(4) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(5) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(6) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(7) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(8) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(9) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(10) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(A) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(B) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(C) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(D) Operable controls shall not be more than 24 inches behind the reference plane.

§213.14. Desktop and Portable Computers.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) All mechanically operated controls and keys shall comply with Telecommunications products in §213.11(11)(A) - (D) of this subchapter.

(2) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with Telecommunications products in §213.11(11)(A) - (D) of this subchapter.

(3) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(4) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.15. Functional Performance Criteria.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(2) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(3) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(4) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(5) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(6) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.16. Information, Documentation, and Support.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(2) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(3) Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.17. Compliance Exceptions and Exemptions.

Effective September 1, 2006, all EIR [~~electronic and information resources~~] developed, procured or changed by a state agency shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the executive director of the agency, or an exemption is granted by the department.

(1) In [~~Each state agency shall include in~~] its accessibility policy, an agency shall include standards and processes for handling exception requests for all EIR, including those subject to exceptions for a significant difficulty or expense contained in §2054.460, Texas Government Code.

(2) Exceptions for a significant difficulty or expense under §2054.460, Texas Government Code must be approved in writing by [~~An exception request shall be submitted to~~] the executive director of an agency for each EIR development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code.

(3) An approved exception for a significant difficulty or expense under §2054.460, Texas Government Code shall include the following:

(A) a date of expiration or duration of the exception;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exception including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks [~~relevant cost avoidance estimates~~]; and

(D) documentation of how the agency considered all agency resources available to the program or program component for which the product is being developed, procured, maintained, or used. [~~signature of the executive director of the agency.~~]

(4) Agencies shall maintain records of approved exceptions in accordance with the [~~exception requests according to that~~] agency's records retention schedule [~~internal accessibility policy~~].

(5) The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(6) The list of exempt EIR [~~electronic and information resources~~] will be posted under the Accessibility section of the department's website [~~Web site~~].

(7) The following information shall be provided for each exemption listed:

(A) a date of expiration or duration of the exemption;

(B) a plan for alternate means of access for persons with disabilities; [~~and~~]

(C) justification for the exemption including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and [~~relevant cost avoidance estimates.~~]

(D) written approval of the department's executive director.

(8) The department shall establish and publish a policy under the Accessibility section of its website [~~Web site~~] which defines the procedures and standards used to determine which electronic or information resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

§213.18. Procurements.

(a) The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after January 1, 2015, shall obtain and make available to state agencies: [~~The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:~~]

(1) accessibility information for products or services, where applicable, through one of the following methods:

(A) [~~(1)~~] the URL to [~~a~~] completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates [~~Template (VPAT) (Refer to the Resources web page of the Information Technology Industry Council (ITI) website for a sample VPAT)~~];

[~~(2) the URL to the product accessibility information available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov);~~]

(B) [~~(3)~~] accessible [~~an~~] electronic documents [~~document~~] that address [~~addresses~~] the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates [~~the VPAT~~]; or

(C) [~~(4)~~] the [~~The~~] URL to a web [~~Web~~] page which explains how to request [~~a~~] completed VPATs, or equivalent reporting templates, [~~VPAT~~] for any products [~~product~~] under contract;[~~.~~]

(2) evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, accessibility testing documents, and examples of prior work results.

(b) For the procurement of EIR made directly by an agency or through the department's commodity procurement contracts for which the solicitation is issued on or after January 1, 2015, the agency shall require a vendor to provide all that apply:

(1) accessibility information for the purchased products or services, where applicable, through one of the following methods:

(A) the URL to completed VPATs or equivalent reporting templates;

(B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or

(C) the URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any products under contract;

(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

(c) An agency shall implement a procurement accessibility policy, and supporting business processes and contract terms, for making procurement decisions. An agency shall monitor the procurement processes and contracts for accessibility compliance.

(d) This subchapter applies to EIR developed, procured, or materially changed by an agency, or developed, procured, or materially changed by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(e) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.

[(b) Each state agency shall include in its accessibility policy standards and processes for making agency procurement decisions pursuant to §2054.453, Texas Government Code.]

(f) [(1)] Unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Texas Government Code, and §213.17 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §213.17 of this chapter, all EIR [electronic and information resources] products developed, procured or materially changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

[(2) Agencies may develop a procurement accessibility policy for making procurement decisions. Such policy must be approved by the executive director. In the absence of an approved procurement accessibility policy, the agencies shall use either the Voluntary Product Accessibility Template (VPAT) or the Buy Accessible Wizard to assess the degree of accessibility of a given product when making procurement decisions according to the agency's accessibility policy.]

[(3) This subchapter applies to electronic and information resources developed, procured, or changed by an agency, or developed, procured, or changed by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.].

[(4) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.]

(g) [(5)] Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

(h) For projects which meet the criteria of a major information resource project (MIRP), accessibility testing shall be documented by a knowledgeable agency staff member or third party testing resource to validate compliance with §206.50 of this title and this chapter.

§213.19. Accessibility Training and Technical Assistance.

(a) The department shall provide training, training resources, and assistance [and technical assistance] regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.452, Texas Government Code.

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The department shall publish information regarding publicly available accessibility training opportunities and technical assistance.

(b) [(2)] The executive director of each agency shall [should] ensure appropriate staff receives training necessary to meet [all] accessibility-related rules.

[(3) The department shall publish on its Web site, information regarding publicly available accessibility training opportunities and technical assistance.]

§213.20. Accessibility Survey and Reporting Requirements.

(a) The department shall conduct an EIR [electronic and information resources] survey regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.464, Texas Government Code.

(b) Each state agency shall be required to complete the accessibility survey within the prescribed deadline established by the department. Survey responses shall be supported by agency documentation.

§213.21. EIR Accessibility Policy and Coordinator.

(a) The department shall designate and maintain a person responsible for statewide accessibility initiatives.

(b) [(a)] Pursuant to §206.54 of this title, each [Each] state agency shall [develop, and] publish a current [an] accessibility policy[, by June 30, 2009,] which includes the standards and specifications of this chapter.

(c) [(b)] Each state agency's accessibility policy shall require a published plan [include a plan] by which EIR [all electronic and information resources that are subject to the electronic and information resources accessibility standards] will be brought into compliance with the Technical Accessibility Standards and Specifications [specifications and standards] of this chapter. The plan will include a process for corrective actions to remediate non-compliant items.

[(c) The department shall develop and publish a standard operating procedure to manage agency non-compliance, including a process for a corrective action plan to remediate non-compliant items identified through an accessibility survey.]

(d) The head of each [~~Each~~] state agency shall designate [~~appoint~~] an EIR Accessibility Coordinator who shall be organizationally placed to develop, support and maintain their internal accessibility policy agency-wide. The state agency's designation must contain the individual's name and other information in the format prescribed by the department.

(e) A state agency shall inform the department within 30 days whenever the agency EIR Accessibility Coordinator position is vacant, or a new/replacement EIR Accessibility Coordinator is designated.

(f) An agency shall establish goals for making its EIR accessible, which includes progress measurements towards meeting those goals.

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 May 23, 2014.

TRD-201402463
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-4700

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SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§213.30 - 213.41

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

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

§213.30. Software Applications and Operating Systems.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(2) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(3) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(4) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(5) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(6) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(7) Applications shall not override user selected contrast and color selections and other individual display attributes.

(8) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(9) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(10) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(11) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(12) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.31. Telecommunications Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(2) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(3) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(4) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(5) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(6) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(7) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(8) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(9) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(10) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(11) Products which have mechanically operated controls or keys, shall comply with the following:

(A) Controls and keys shall be tactilely discernible without activating the controls or keys.

(B) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(C) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(D) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.32. Video and Multimedia Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(2) Upon receiving a request for accommodation of a web [~~Web~~] cast of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code.

§213.33. Self Contained, Closed Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(2) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(3) Where a product utilizes touch screens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.31(11)(A) - (D) of this subchapter.

(4) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(5) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(6) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(7) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(8) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(9) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(10) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(A) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(B) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(C) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(D) Operable controls shall not be more than 24 inches behind the reference plane.

§213.34. Desktop and Portable Computers.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) All mechanically operated controls and keys shall comply with Telecommunications products in §213.31(11)(A) - (D) of this subchapter.

(2) If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with Telecommunications products in §213.31(11)(A) - (D) of this subchapter.

(3) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(4) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.35. Functional Performance Criteria.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(2) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(3) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(4) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(5) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(6) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.36. Information, Documentation, and Support.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(2) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(3) Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.37. Compliance Exceptions and Exemptions.

Effective September 1, 2006, all EIR [~~electronic and information resources~~] developed, procured or changed by an institution of higher education shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the president or chancellor of an institution of higher education, or an exemption is granted by the department.

(1) In [~~Each institution of higher education shall include in~~] its accessibility policy, an institution of higher education shall include standards and processes for handling exception requests for all EIR, including those subject to exceptions for a significant difficulty or expense contained in §2054.460, Texas Government Code.

(2) Exceptions for a significant difficulty or expense under §2054.460, Texas Government Code must be approved in writing by [~~An exception request shall be submitted to~~] the president or chancellor of an institution of higher education for each EIR [~~electronic and information resources~~] development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code.

(3) An approved exception for a significant difficulty or expense under §2054.460, Texas Government Code shall include the following:

(A) a date of expiration or duration of the exception;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exception including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks [~~relevant cost avoidance estimates~~]; and

(D) documentation of how the institution of higher education considered all institution resources available to the program or program component for which the product is being developed, procured, maintained, or used.

[(D) signature of the executive director of the agency.]

(4) Institutions of higher education shall maintain records of approved exceptions in accordance with [exception requests according to] that institution of higher education's records retention schedule [internal accessibility policy].

(5) The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(6) The list of exempt EIR [electronic and information resources] will be posted under the Accessibility section of the department's website [Web site].

(7) The following information shall be provided for each exemption listed:

(A) a date of expiration or duration of the exemption;

(B) a plan for alternate means of access for persons with disabilities; [and]

(C) justification for the exemption including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and [relevant cost avoidance estimates]

(D) written approval of the department's executive director.

(8) The department shall establish and publish a policy under the Accessibility section of its website [Web site] which defines the procedures and standards used to determine which electronic or information resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

§213.38. Procurements.

(a) The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after January 1, 2015, shall obtain and make available to institutions of higher education: [The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:]

(1) accessibility information for products or services, where applicable, through one of the following methods:

(A) [(1)] the URL to [a] completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates [Template (VPAT) (Refer to the Resources web page of the Information Technology Industry Council (ITI) website for a sample VPAT)];

[(2) the URL to the product accessibility information available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov);]

(B) [(3)] accessible [an] electronic documents [document] that address [addresses] the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates [the VPAT]; or

(C) [(4)] the [The] URL to a web [Web] page which explains how to request [a] completed VPATs, or equivalent reporting templates, [VPAT] for any products [product] under contract;[.]

(2) evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, accessibility testing documents, and examples of prior work results.

(b) For the procurement of EIR made directly by an institution of higher education or through the department's commodity procurement contracts for which the solicitation is issued on or after January 1, 2015, the institution shall require a vendor to provide all that apply:

(1) accessibility information for the purchased products or services, where applicable, through one of the following methods:

(A) the URL to completed VPATs or equivalent reporting templates;

(B) an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or

(C) The URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract;

(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

(c) An institution of higher education shall implement a procurement accessibility policy, and supporting business processes and contract terms, for making procurement decisions. The institution of higher education shall monitor the procurement processes and contracts for accessibility compliance.

(d) This subchapter applies to EIR developed, procured, or materially changed by an institution of higher education, or developed, procured, or materially changed by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(e) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.

[(b) Each institution of higher education shall include in its accessibility policy standards and processes for making agency procurement decisions pursuant to §2054.453, Texas Government Code.]

(f) [(1)] Unless an exception is approved by the president or chancellor of an institution of higher education pursuant to §2054.460, Texas Government Code, and §213.37 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §213.37 of this chapter, all EIR [electronic and information resources] products developed, procured or materially changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

[(2) Institutions of higher education may develop a procurement accessibility policy for making procurement decisions. Such policy must be approved by the president or chancellor. In the absence of an approved procurement accessibility policy, institutions of higher education shall use either the Voluntary Product Accessibility Template (VPAT) or the Buy Accessible Wizard to assess the degree of accessibility of a given product when making procurement decisions according to the agency's accessibility policy.]

[(3) This subchapter applies to electronic and information resources developed, procured, or changed by an institution of higher education, or developed, procured, or changed by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.]

[(4) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.]

(g) [(5)] Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

(h) For projects which meet the following criteria, accessibility testing shall be documented by a knowledgeable institution of higher education staff member or third party testing resource to validate compliance with §206.70 of this title and this chapter any information resources technology project whose development costs exceed $1 million and that:

(1) requires one year or longer to reach operations status;

(2) involves more than one institution of higher education or state agency; or

(3) substantially alters work methods of institution of higher education or agency personnel or the delivery of services to clients.

§213.39. Accessibility Training and Technical Assistance.

(a) The department shall provide training, training resources, and assistance [and technical assistance] regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.452, Texas Government Code.

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The department shall publish information regarding publicly available accessibility training opportunities and technical assistance.

(b) [(2)] The president or chancellor of each institution of higher education shall [should] ensure appropriate staff receives training necessary to meet [all] accessibility-related rules.

[(3) The department shall publish on its Web site, information regarding publicly available accessibility training opportunities and technical assistance.]

§213.40. Accessibility Survey and Reporting Requirements.

(a) The department shall conduct an EIR [electronic and information resources] survey regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.464, Texas Government Code.

(b) Each institution of higher education shall be required to complete the accessibility survey within the prescribed deadline established by the department. Survey responses shall be supported by institution of higher education documentation.

§213.41. EIR Accessibility Policy and Coordinator.

(a) The department shall designate and maintain a person responsible for statewide accessibility initiatives.

(b) [(a)] Pursuant to §206.74 of this title, each [Each] institution of higher education shall [develop and] publish a current [an] accessibility policy[, by June 30, 2009,] which includes the standards and specifications of this chapter.

(c) [(b)] Each institution of higher education's accessibility policy shall require a published plan [include a plan] by which EIR [all electronic information resources that are subject to the electronic and information resources accessibility standards] will be brought into compliance with the Technical Accessibility Standards and Specifications [specifications and standards] of this chapter. The plan shall include a process for corrective actions to remediate non-compliant items.

[(c) The department shall develop and publish a standard operating procedure to manage institution of higher education's non-compliance, including a process for a corrective action plan to remediate non-compliant items identified through an accessibility survey.]

(d) The head of each [Each] institution of higher education shall designate [appoint] an EIR Accessibility Coordinator who shall be organizationally placed to develop, support and maintain its accessibility policy institution-wide. The institution's designation must contain the individual's name and other information in the format prescribed by the department.

(e) An institution of higher education shall inform the department within 30 days whenever the institution of higher education EIR Accessibility Coordinator position is vacant, or a new/replacement EIR Accessibility Coordinator is designated.

(f) An institution of higher education shall establish goals for making its EIR accessible, which includes progress measurements towards meeting those goals.

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 May 23, 2014.

TRD-201402464
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-4700

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.3, 38.8

The Texas Animal Health Commission (commission) proposes amendments to §38.1, concerning Definitions; §38.2, concerning General Requirements; §38.3, concerning Infected Herds; and §38.8, concerning Herd Certification Program-Breeding Bulls located in Chapter 38, which is entitled "Trichomoniasis".

The purpose of the amendments is to make changes to the Trichomoniasis testing and herd certification requirements.

Bovine Trichomoniasis (Trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus.* The organism lives in the folds of the prepuce and internal sheath in bulls, and

colonizes the vagina, cervix, uterus and oviducts of cows. It causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after prolonged sexual rest or after delivering a full term calf. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts) creating a more favorable environment for Trich.

The Trich control program is an industry driven initiative that was implemented in 2009. The concept includes an annual review by commission staff and interested stakeholder organizations of the program's rules and policies and to subsequently suggest non-binding recommendations to the commission. The Bovine Trich Working Group (TWG) met on April 17, 2014, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for possible revisions to the program.

The TWG recommended adding testing requirements for a herd of origin when a bull from the herd is sold and found to be infected with Trich. It was also recommended to require testing requirements when a bull is separated from its unit of origin, such as when a bull is found on property not owned by the owner or caretaker of the bull, and that bull is found to be infected with Trich. Section 38.2 is amended to include the TWG recommendations. Under the proposal, as applicable, a herd of origin, unit of origin and units where a separated positive bull is located will be placed under a hold order and officially tested for Trich. A unit will be determined epidemiologically by the commission.

The TWG also recommended allowing the commission to evaluate the effectiveness of a herd control plan for infected herds and allow the commission to continue or disapprove the herd plan based on the progress or lack of progress made with the infected herd. Section 38.3 is amended to include this recommendation.

The last recommendation from the TWG was to require herds enrolled in the Trich Herd Certification Program to have perimeter fences that are adequate to prevent the ingress or egress of cattle. Section 38.8 is amended to include the recommended fencing requirement.

In addition to the recommendations made by the TWG, changes are proposed to §38.1, entitled "Definitions" to ensure the Trich control program rules are more consistent with standard practices and federal traceability requirements. Section 38.1(17) is amended to remove "official Trich tags issued by the animal health official of the state of origin of imported bulls" as a form of official identification. Section 38.1(18) is also amended to clarify that for an "official trichomoniasis test" the test document is valid for 60 days provided the bull is isolated from female cattle at all times. Section 38.1(25) is amended to add the same clarification that a certification by the breeder of a "virgin bull" is valid for 60 days provided the bull is isolated from female cattle at all times.

FISCAL NOTE

Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on cattle breeders or raisers. The purpose of the rules is to determine whether or not an infected animal exists in a herd or unit. If an undisclosed Trich positive bull is discovered in a herd, then the infected bull will spread the disease and infect other animals in the herd or unit. Also, if these undisclosed animals are infected and sold they will spread the disease to other herds and animals. The purpose of the rules is to control and prevent the spread of the disease which protects the Texas cattle industry. For these reasons, the commission has determined that there is not an adverse impact on these cattle raisers and breeders and there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure the testing and health status of exposed or affected cattle in a herd or unit, which protects the livestock industry in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

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

or livestock industry through insect infestation or through a communicable or noncommunicable disease.

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

Pursuant to §161.061, entitled "Quarantines", if the commission determines that a disease listed in §161.041 or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of: (1) any article or animal that the commission designates to be a carrier of a disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited; and (2) an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

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

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

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

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

§38.1. Definitions.

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

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

(2) Affected Herd--Any herd in which any cattle have been classified as *Tritrichomonas foetus* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus Bos) and bison (genus Bison).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the commission [~~Commission~~] to collect Trichomoniasis samples for official Trichomoniasis testing and to perform any other official function under the Trichomoniasis program.

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

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered incapable of intromission at a facility recognized by the commission [~~TAHC~~].

(8) Exposed Cattle--Cattle that are part of an affected herd or cattle that have been in contact with Trichomoniasis infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd Test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected.

(14) Movement Permit--Authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

(15) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the commission [~~Commission~~] to restrict the movement of livestock or exotic livestock.

(16) Negative--Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis.

(17) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the commission [~~Commission~~] and/or Administrator of APHIS that provides unique identification for each animal. Official identification includes [~~included~~] USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, and official breed registry individual animal

brands[~~, and official Trich tags issued by the animal health official of the state of origin of imported bulls~~].

(18) Official Trichomoniasis test--A test for bovine Trichomoniasis, approved by the commission [~~Commission~~], applied and reported by TVMDL or any other laboratory approved [~~classified~~] as an official laboratory by the commission [~~Commission~~]. The test document is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

(19) Official Laboratory Pooled Trichomoniasis test samples--Up to five samples individually collected by a veterinarian and packaged and submitted to an official laboratory which can then pool the samples.

(20) Positive--Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis.

(21) Quarantine--A written commission [~~Commission~~] document or a verbal order followed by a written order restricting movement of animals because of the existence of or exposure to Trichomoniasis. The commission [~~Commission~~] may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission [~~Commission~~] may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of Trichomoniasis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(22) Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupting or erupted permanent incisor teeth (or older), which are being sold, leased, gifted or exchanged in the state of Texas for breeding purposes.

(23) Trichomoniasis--A venereal disease of cattle caused by the organism *Tritrichomonas foetus*.

(24) TVMDL--The official laboratory for testing is the Texas A&M Veterinary Medical Diagnostic Laboratory.

(25) Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are not more than 24 months of age as determined by the presence of the two permanent central incisors in wear or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle. The certification by the breeder is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

§38.2. General Requirements.

(a) Test Requirements.[~~:~~] All Texas origin bulls sold, leased, gifted, exchanged or otherwise changing [~~change~~] possession for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status; or

(2) If from a herd of unknown status (a herd that has not had a whole herd test), be tested negative on three consecutive culture tests conducted not less than seven days apart or one RT-PCR test conducted within 60 days of sale or movement, be held separate from all female cattle since the test sample was collected, and be accompanied by a Trichomoniasis [~~Trich~~] test record showing the negative test results.

(b) Identification of Bulls.[~~:~~] All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be officially identified [~~by an official identification device or method~~] at the time the initial test sample is collected. [~~Official identification includes: Official Alpha-numerical USDA metal ear tags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands.~~] That official identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test.[~~:~~] The owner of any bull which tests positive for Trichomoniasis may request in writing, within five days of the positive test, that the commission [~~Commission~~] allow a confirmatory test be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls.[~~:~~] Bulls presented for sale without a breeder's certification of virgin status or a Trichomoniasis [~~Trich~~] test record showing negative test results may:

(1) Be sold for movement only directly to slaughter; or

(2) Be sold for movement to an approved feedlot and then moved to slaughter or transported back to a livestock market under permit, issued by commission [~~Commission~~] personnel, to be sold in accordance with this chapter; or

(3) Be sold and moved under a Hold Order to such place as specified by the commission [~~Commission~~] for testing to change status from a slaughter bull. Such bulls shall be officially individually identified with a permanent form of identification prior to movement, move to the designated location on a movement permit, and be held in isolation from female cattle at the designated location where the bull shall undergo three consecutive culture tests at least seven days apart or one RT-PCR test. If the results of any test are positive, all bulls in the herd of origin of the positive bull shall be placed under hold order and tested as provided by subsection (e) of this section. The positive [~~the~~] bull shall be classified as infected and be permitted for movement only directly to slaughter or to a livestock market for sale directly to slaughter; or

(4) Be sold and moved to another physical location under permit issued by commission [~~Commission~~] personnel, and then to a livestock market or location to be resold within seven days from the date of issuance. The bull cannot be commingled with female cattle during the seven days.

(e) Herd of Origin or Unit Testing.

(1) All bulls that are part of a herd of origin from which a bull is sold in accordance with subsection (d)(3) of this section and is found to be infected with Trichomoniasis shall be placed under hold order and officially tested for Trichomoniasis.

(2) All bulls that are part of a unit of origin, as epidemiologically determined by the commission, from which a bull becomes separated and that bull is found to be positive for Trichomoniasis shall be placed under a hold order and officially tested for Trichomoniasis. All bulls that are part of the unit on which the separated positive bull was located, as epidemiologically determined by the commission, shall

also be placed under hold order and officially tested for Trichomoniasis.

(3) Officially tested, as used in this subsection, requires at a minimum three official culture tests conducted not less than seven days apart, or one official RT-PCR test. If the results of any test that are required by this subsection are positive, the herd shall be tested as provided by §38.3 of this chapter (relating to Infected Herds).

§38.3. Infected Herds.

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the commission [~~Commission~~]. Breeding bulls which have been disclosed as reactors may be retested provided: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the TVMDL [~~Texas Veterinary Medical Diagnostic Laboratory (TVMDL)~~] for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are retested, they must have two negative tests by RT-PCR [~~PCR~~] to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a movement permit authorized by the commission [~~Commission~~] from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the commission [~~Commission~~].

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d) of this section. All bulls remaining in the herd from which an infected bull(s) has been identified must [~~would have to~~] be tested two more times by culture or one more time by RT-PCR test. Any bull positive on the second or third test shall [~~would~~] be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests shall [~~would~~] be classified as negative and could be released for breeding.

(d) Breeding bulls that are part of a quarantined herd or a herd that is under a hold order and that test negative to the first official Trichomoniasis test may be maintained with the herd if the owner or caretaker of the bulls develops a Trichomoniasis herd control plan with a certified veterinarian. The Trichomoniasis herd control plan shall require all breeding bulls to be tested annually with an official Trichomoniasis test and include other best management practices to control, eliminate and prevent the spread Trichomoniasis. The Trichomoniasis herd control plan, unless otherwise approved or disapproved by the commission, expires three years from the date the plan is signed by the herd owner or caretaker and the authorized veterinarian. Breeding bulls that are part of a Trichomoniasis herd control plan that expires or that is disapproved must be tested for Trichomoniasis as required by subsection (c) of this section.

[~~(d) A quarantined herd with breeding bulls that tested negative on the initial test may be maintained with the herd if they develop a Trichomoniasis herd control plan, with the herd owner and their private veterinarian, that will address herd management practices to address this disease and have all breeding bulls tested annually. This will only be authorized for a maximum of three years, then all exposed bulls shall be tested in accordance with this section.~~]

(e) When Trichomoniasis is diagnosed in female cattle or fetal tissue, [~~then~~] all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this section.

§38.8. Herd Certification Program--Breeding Bulls.

Enrollment Requirements. Herd owners who enroll in the Trichomoniasis Herd Certification Program shall sign a herd agreement with the commission and maintain the herd in accordance with the herd agreement and following conditions:

(1) [~~(a)~~] All [~~The owner of all~~] non-virgin breeding bulls shall [~~sign an agreement with the Commission and~~] be tested annually for T. foetus for [~~the~~] three [~~(3)~~] consecutive years as required by the herd agreement [~~following the adoption of this rule~~].

(2) [~~(b)~~] During the three [~~(3)~~] year inception period, all non-virgin breeding bulls that are sold [~~with changes of ownership~~], leased, gifted, exchanged [~~rented~~] or otherwise change possession shall be tested for T. foetus within 30 days prior to such change in possession. The test must [~~will~~] be completed and test results known prior to the time a bull(s) is physically transferred to the receiving premises or herd.

(3) [~~(c)~~] Negative T. foetus bulls will be identified with [~~the~~] official identification.

(4) [~~(d)~~] All slaughter bulls removed from the herd must [~~will~~] be tested for T. foetus. The test may be performed at a slaughter facility if prior arrangement with a certified veterinarian and an appropriate agreement with the slaughter facility management is made.

(5) [~~(e)~~] Bovine females added to a certified herd shall not originate from a known T. foetus infected herd. Female herd additions must originate from a certified T. foetus free herd or qualify in one of the following categories:

(A) [~~(1)~~] calf at side and no exposure to other than known negative T. foetus bulls;

(B) [~~(2)~~] checked by an accredited veterinarian, at least 120 days pregnant and so recorded;

(C) [~~(3)~~] virgin; or

(D) [~~(4)~~] heifers exposed as virgins only to known negative T. foetus infected bulls and not yet 120 days pregnant.

(6) [~~(f)~~] Records must be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by a designated [~~designed~~] accredited veterinarian or state animal health official.

(7) [~~(g)~~] All non-virgin [~~non virgin~~] bulls shall be tested for T. foetus every two [~~(2)~~] years after the initial three year inception period [~~thereafter~~] to maintain certification status.

(8) Herd premises must have perimeter fencing adequate to prevent ingress or egress of cattle.

(9) All bulls originating from a Trichomoniasis Certified Free Herd that is maintained in accordance with this section and the herd agreement are exempt from the testing requirement found in §38.2 of this chapter (relating to General 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 May 21, 2014.

TRD-201402389
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 719-0724

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CHAPTER 39. SCABIES

4 TAC §§39.1 - 39.10

(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 Animal Health Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Animal Health Commission (commission) proposes the repeal of Chapter 39, §§39.1 - 39.10, concerning Scabies.

Elsewhere in this issue of the *Texas Register,* the commission proposes new Chapter 39, which is entitled "Scabies and Mange Mites", and replaces the repealed chapter in its entirety.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rules will be that the proposed new chapter will consolidate provisions and address the redundancies found in the existing chapter.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

The agency has determined that the proposed repeal will not affect private real property and is, therefore, compliant with the Private Real Property Preservation Act in Texas Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which authorizes a state agency to review a rule.

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

§39.1. Definitions.
§39.2. Psoroptic Scabies in Infested Herds.
§39.3. Sarcoptic Scabies in Infested Herds.
§39.4. Livestock Exposed to Psoroptic or Sarcoptic Scabies.
§39.5. Quarantines and Release.
§39.6. Duties of Owners or Caretakers of Livestock Infested with or Exposed to Scabies.
§39.7. Livestock at Shows, Fairs, and Exhibitions.
§39.8. Permitted Dips for Scabies and Mange Mite Eradication.
§39.9. Chorioptic Mange.
§39.10. Interstate Movement Requirements for Livestock.

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 May 21, 2014.

TRD-201402392
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 719-0724

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CHAPTER 39. SCABIES AND MANGE MITES

4 TAC §§39.1 - 39.7

The Texas Animal Health Commission (commission) proposes new Chapter 39, §§39.1 - 39.7, concerning Scabies and Mange Mites.

Elsewhere in this issue of the *Texas Register,* the commission contemporaneously proposes the repeal of the existing Chapter 39, concerning Scabies. The purpose of the new chapter is to make substantial changes to the requirements for treatment of livestock infested with or exposed to scabies or mange mites.

Mange (from Latin: *scabere,* "to scratch") is a contagious condition of the skin caused by a variety of mite species. Scabies or mange may occur in a number of domestic and wild animals; the mites that cause these infestations are of different subspecies and refer to *Chorioptes bovis, Psoroptes bovis,* and *Sarcoptes scabiei* mites, which are commonly referred to as chorioptic, psoroptic, and sarcoptic mange, mange, mange mites or scabies. Scabies or mange affected animals suffer severe itching and secondary skin infections.

The commission is proposing to modify the title and content of the current chapter to accurately identify that scabies and other contagious skin diseases identified in the new chapter are caused by mange mites and to include new types of acceptable treatment for those mange mites. The new chapter will allow the use of products approved for use on the specific type of scabies

or mange mite infestation or exposure under the supervision of the commission, United State Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services (USDA, APHIS, VS), or an authorized veterinarian. The new chapter also requires that the product be applied according to label directions, unless there is a discrepancy between requirements contained in federal laws or regulations, state laws or regulations, or the product label. Under the new chapter, the most restrictive requirement would apply unless otherwise authorized by the commission or USDA, APHIS, VS.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect the Texas livestock industry from exposure to scabies and mange by allowing the use of new treatment products.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

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

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

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

Pursuant to §161.061, entitled "Quarantines", if the commission determines that a disease listed in §161.041 or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of: (1) any article or animal that the commission designates to be a carrier of a disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited; and (2) an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.056(a), entitled "Animal Identification Program", the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

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

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

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

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

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

§39.1. Definitions.

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

(1) Approved product--A product indicated to be effective for the treatment and control of scabies and mange mites in livestock.

(2) Authorized veterinarian--Veterinarians who are licensed to practice veterinary medicine in Texas, are Category II accredited by USDA, APHIS, VS for the State of Texas; and have satisfactorily completed Texas Animal Health Commission disease control or eradication program training or provide documentation to the executive director that they have satisfactorily completed substantially similar disease control or eradication program training.

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

(4) Exposed livestock--Livestock that have had direct or indirect contact with animals infested with scabies or mange mites.

(5) Exposed or infested herd--Herd of livestock where one or more head have been confirmed to be infested with scabies or mange mites. The exposed status continues until the prescribed course of treatment is completed and inspected by the commission, USDA, APHIS, VS or an authorized veterinarian.

(6) Infested livestock--Livestock that have been confirmed to be infested with the scabies or mange mite.

(7) Livestock--Cattle, sheep, or goats.

(8) Scabies or mange mites--As used in this chapter includes *Chorioptes bovis, Psoroptes bovis,* and *Sarcoptes scabiei* mites which are reportable to the commission and commonly referred to as chorioptic, psoroptic, and sarcoptic mange, mange or scabies.

(9) USDA, APHIS, VS--United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services.

§39.2. Scabies or Mange Mites Infested or Exposed Livestock.

(a) The owner or caretaker of livestock infested with or exposed to scabies or mange mites must treat the livestock as prescribed in this chapter and under supervision of the commission, the USDA, APHIS, VS or an authorized veterinarian.

(b) All livestock infested with or exposed to scabies or mange mites must be treated with an approved product. The product must be applied in a manner consistent with the product's label or labeling, which includes, but is not limited to, the target species, product indications, use, dosage, administration, intervals, withdrawal, animal safety warnings, precautions and all other conditions specified in the label.

(c) If there is a discrepancy between requirements contained in federal laws or regulations, state laws or regulations, or the product label, the most restrictive requirement shall apply unless otherwise authorized by the commission or the USDA, APHIS, VS.

(d) The person treating any infested or exposed livestock must maintain records of all livestock treated for a minimum of five years from the date of the last treatment. The records must show the owner's or caretaker's name and address, county of origin for the livestock, species and number of animal(s) treated, date of treatment, product used, method of treatment and concentration or dose of treatment.

(e) Treated livestock must be maintained physically separated from all untreated livestock until quarantine release.

(f) When dipping or spraying is the selected treatment, livestock must be treated in a manner to allow complete saturation of the livestock's skin and head.

§39.3. Quarantines and Release.

Livestock infested with or exposed to scabies or mange mites will be immediately quarantined. Unless otherwise approved by the commission, the quarantine will not be released until such time that all livestock in the herd have been properly treated and inspected not less than 14 days after the last required treatment is completed. The herd must be inspected by the commission, the USDA, APHIS, VS, or an authorized veterinarian and the quarantine will be released only when such inspection shows all livestock to be free from scabies or mange mites.

§39.4. Duties of Owners or Caretakers of Livestock Infested with or Exposed to Scabies or Mange Mites.

It shall be the duty of all owners and caretakers of livestock quarantined for infestation or exposure to scabies or mange mites to:

(1) Assist in the inspection and treatment of the livestock;

(2) Provide suitable vats, corrals, pens, or other equipment for the treatment and handling of the livestock;

(3) Provide the approved product used for treatment; and

(4) Prevent movement of livestock that is in violation of the quarantine.

§39.5. Livestock at Shows, Fairs, and Exhibitions.

Livestock that are found to be infested with or exposed to scabies or mange mites must be immediately removed from the premises, quarantined at a new location, and physically separated from all other livestock. These livestock must be treated as prescribed by this chapter.

§39.6. Permitted Dips for Scabies and Mange Mite Eradication.

(a) The commission will authorize for official dipping of animals only those dips, in the appropriate concentrations, that have been approved by the commission for treatment of scabies and mange mites.

(b) The concentration of the dipping chemical used shall be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the applicable agent or by an officially approved vat-side test of the commission.

§39.7. Interstate Movement Requirements for Livestock.

The scabies and mange mites requirements for entry into Texas are located in Chapter 51, §51.7(a) of this title (relating to All Livestock - Special 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 May 21, 2014.

TRD-201402390

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 719-0724

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CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

The Texas Animal Health Commission (commission) proposes an amendment to §45.2, concerning Duty to Report, in Chapter 45, which is entitled "Reportable Diseases".

The purpose of the amendment is to add Novel Swine Enteric Coronavirus Disease(s) to the list of reportable diseases. Novel Swine Enteric Coronavirus Disease(s) (SECD) is a disease in swine caused by emerging porcine coronaviruses, which includes but is not limited to porcine epidemic diarrhea virus (PEDv) and porcine delta coronavirus (PDCoV). SECD affects swine causing diarrhea, vomiting, and 50-100% mortality of infected piglets. The clinical presentation of SECD infections in growing pigs can be variable in its severity and not readily distinguishable from many other causes of diarrhea in growing pigs. While adult pigs can become infected, mortality is low. SECD is clinically indistinguishable from transmissible gastroenteritis (TGE), another swine disease caused by a coronavirus that is endemic in the United States.

The United States Department of Agriculture's (USDA) National Veterinary Services Laboratories (NVSL) confirmed the first PEDv diagnosis in the United States on May 17, 2013. As of May 7, 2014, 29 states, including Texas, had at least one confirmed case of PEDv. NVSL confirmed the first PDCoV diagnosis in the United States in March 2014. As of May 7, 2014, 14 states, including Texas, had at least one confirmed case of PDCoV.

SECD is not a zoonotic disease, does not affect people, and is not a food safety concern. The main, and perhaps only, mode of SECD transmission is fecal-oral; however, contaminated personnel, equipment or other fomites may introduce SECoV into a susceptible herd. No vector or reservoir has been implicated in its spread. Economic loss occurs directly in the form of death and production loss in swine. Further monetary loss occurs because of the cost of biosecurity.

On April 18, 2014, USDA announced that in an effort to further enhance the biosecurity and health of the U.S. swine herd while maintaining movement of pigs in the U.S., the USDA will require reporting of PEDv and PDCoV in order to slow the spread of this disease across the United States. USDA is taking this latest action due to the devastating effect on swine health since it was first confirmed even though PEDv and PDCoV are not a reportable disease under international standards established by the World Organization for Animal Health (OIE).

The commission has also determined after reviewing the rate of morbidity and mortality and the spread of SEDC in North America, that requiring a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report SECD, which includes but is not limited to PEDv or PDCoV, is necessary to protect swine health in this state.

FISCAL NOTE

Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Implementation of this rule poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be prompt notification to the commission of a specific disease that may be diagnosed in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

Pursuant to §161.101, entitled "Duty to Report", the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than bluetongue in an animal to the commission within 24 hours after diagnosis if the disease is: (1) recognized by the United States Department of Agriculture as a foreign animal disease; (2) is the subject of a cooperative eradication program with the United States Department of Agriculture; (3) is a disease reportable to the Office International Des Epizooties; or (4) is the subject of a state of emergency, as declared by the governor.

Pursuant to §161.101(c), the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by subsection (a) or (b) if the commission determines that action to be necessary for the protection of

animal health in this state. The commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

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

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

§45.2. Duty to Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.
Figure: 4 TAC §45.2(a)

(b) In addition to reporting the existence of a disease under subsection (a) of this section, the veterinarian shall also report to the commission information relating to:

(1) the species and number of animals involved;

(2) any clinical diagnosis or postmortem findings;

(3) any death losses;

(4) location; and

(5) owner.

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 May 21, 2014.

TRD-201402391
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 719-0724

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

The State Board for Educator Certification (SBEC) proposes amendments to §§227.1, 227.5, 227.10, 227.15, 227.20, 227.103, 227.105, and 227.107 and new §227.17, concerning provisions for educator preparation candidates. The sections establish requirements for admission to an educator preparation program (EPP) and implement a preliminary criminal history evaluation.

The proposed amendments and new section would update the rules to reflect current law, clarify minimum standards for all educator preparation programs (EPPs), allow for flexibility, and ensure consistency among EPPs in the state. The proposed amendments and new section result from the SBEC's rule review of 19 TAC Chapter 227 conducted in accordance with Texas Government Code, §2001.039, and House Bill (HB) 2012, 83rd Texas Legislature, Regular Session, 2013, which requires the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to EPPs.

The Texas Education Code (TEC), §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The TEC, §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

These proposed revisions reflect discussions held during stakeholder meetings with EPPs on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014; March 3, 2014; and March 4, 2014, with district and regional administrators. Additional changes also reflect input received from the staffs at the TEA and the THECB.

General Provisions

Language in §227.1(b) would be amended to clarify an educator preparation program's role in an educator's criminal history background check as informational.

Definitions

Language in §227.5 would be amended to add a definition of *accredited institution of higher education* for clarity, add a definition of *post-baccalaureate program* based on feedback from preparation programs, and remove a phrase from the definition of *contingency admission* to stay in alignment with the acceptance of accredited institutions of higher education. Language would also be amended to remove definitions for words and terms not used in Chapter 227.

Admission Criteria

Language in §227.10(a) would be amended to align the acceptance of an accredited institution of higher education. In addition, language would be added to specify the minimum requirements for admission to an EPP for those seeking initial certification. The grade point average requirement would be increased to 2.75 from 2.5. A subject-specific, 15 semester credit hour prerequisite would also be added for those seeking admission for mathematics or science certification at or above Grade 7, in accordance with the TEC, §21.0441, added by HB 2012, 83rd Texas Legislature, Regular Session, 2013. The basic skills testing requirement articulated in §227.10(a)(4) would be removed as a requirement.

Language in §227.10(c) would be amended to provide for an EPP to admit a candidate who has either completed another EPP

or who has been employed for three years in a public school under a temporary or probationary certificate if the candidate seeks certification in a new field.

Formal Admission

As a result of recurring feedback from candidates, proposed new 19 TAC §227.17 would be added to clarify and document when an applicant would be considered admitted to an EPP. Proposed new 19 TAC §227.17 would take effect January 1, 2015.

Implementation Date

Language would be amended to reflect an implementation date of March 1, 2015, for the proposed amendments to 19 TAC Chapter 227, Subchapter A, with the exception of proposed new 19 TAC §227.17.

Technical Changes

Minor technical edits such as updating cross references would also be made throughout Chapter 227.

The proposed revisions would have no additional procedural or reporting implications. The proposed revisions would have no additional locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments and new section are in effect there will be fiscal implications for state government (public universities and education service centers) and no fiscal implications for local government as a result of enforcing or administering the proposed amendments and new section.

Due to the proposed increase in the minimum GPA required of an applicant for admission to an EPP from a 2.5 to 2.75, public universities and education service centers could see a decline in revenue from decreased enrollment numbers. After sampling GPA data from previously admitted classes, it is estimated that approximately 11% of admitted candidates had GPAs below 2.75 and thus would not have been admitted had the proposal been in effect at the time. Although many variables make the exact fiscal impact difficult to calculate, some programs could see a loss of revenue commensurate with the 11% of applicants no longer meeting GPA requirements.

Ms. Moore has determined that for the first five-year period the proposed amendments and new section are in effect the public and student benefit anticipated as a result of the proposed rule actions would be the development of clear, minimum EPP admission criteria that would ensure educators are prepared to positively impact the performance of the diverse student population of this state. There are no costs to persons required to comply with the proposed amendments and new section.

In addition, 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.

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 *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments and new section submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.20

The amendments and new section are proposed under the Texas Education Code (TEC), §21.031, 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, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for educator preparation programs (EPPs); §21.049, which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision.

The amendments and new section implement the TEC, §§21.031, 21.044(a), 21.0441, 21.049, 21.050(a), and 21.051.

§227.1. General Provisions.

(a) It is the responsibility of the education profession as a whole to attract candidates and to retain educators who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Educator preparation programs should inform all candidates that, [~~collaborate with local school districts~~] pursuant to the Texas Education Code, §22.083, candidates must undergo a criminal history background check [~~to examine the criminal history of all educator preparation candidates~~] prior to employment by local or regional education authorities [~~participation in educator preparation activities that occur in a school~~].

§227.5. Definitions.

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

(1) Accredited institution of higher education--An institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordination Board.

(2) [~~(1)~~] Alternative certification program--An approved educator preparation program, delivered by entities described in

§228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's [baccalaureate] degree.

(3) [(2)] Candidate--A participant in an educator preparation program seeking certification.

[(3) Clinical teaching--A 12-week full-day teaching practicum in an alternative certification program at a public school accredited by the Texas Education Agency (TEA) or a TEA-recognized private school that may lead to completion of a standard certificate.]

(4) Contingency admission--Conditional admission to an educator preparation program, pending graduation and degree conferred from an accredited institution of higher education [a recognized regional accrediting organization as specified in Chapter 230, Subchapter Y, of this title (relating to Definitions); or an accrediting organization recognized by the Texas Higher Education Coordinating Board].

(5) Educator preparation program--An entity approved by the State Board for Educator Certification to recommend candidates in one or more educator certification fields.

(6) Post-baccalaureate program--An approved educator preparation program designed for individuals who already hold at least a bachelor's degree and approved by State Board for Educator Certification to recommend candidates for certification.

[(6) Internship--A one-year supervised professional assignment at a public school accredited by the TEA or a TEA-recognized private school that may lead to completion of a standard certificate.]

[(7) Practicum--Practical work in a particular field; refers to student teaching, clinical teaching, internship, or practicum for a professional certificate that is in the school setting.]

(7) [(8)] Semester credit hour--One semester credit hour is equal to 15 clock-hours at an accredited university.

[(9) Student teaching--A 12-week full-day teaching practicum in a program provided by an accredited university at a public school accredited by the TEA or a TEA-recognized private school that may lead to completion of a standard certificate.]

§227.10. Admission Criteria.

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all candidates prior to admission to the program, except candidates for career and technology education certification:

(1) for an undergraduate university program, a candidate shall be enrolled in an EPP [educator preparation program] from an accredited institution of higher education [that is accredited by a regional accrediting agency, as recognized by the Texas Higher Education Coordinating Board (THECB)];

(2) for an alternative certification program or post-baccalaureate program, a candidate shall have a bachelor's [baccalaureate] degree earned from and conferred by an accredited institution of higher education [that is recognized by one of the regional accrediting agencies by the THECB, specified in paragraph (1) of this subsection];

(3) for an undergraduate university program, alternative certification program, or post-baccalaureate program, a candidate seeking initial certification shall meet the following criteria in order to be eligible to enter an EPP, unless otherwise indicated by specific certification requirements indicated in the appropriate State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7 [educator preparation program]:

(A) an overall grade point average (GPA) of at least 2.75 [2.5] or at least 2.75 [2.5] in the last 60 semester credit hours; or

(B) documentation and certification from the program director that a candidate's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement. This exception to the minimum GPA requirement will be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any cohort of candidates; and

(C) [for a program candidate who will be seeking an initial certificate,] a minimum of 12 semester credit hours in the subject-specific content area for the certification sought or 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7, a passing score on a content certification examination, or a passing score on a content examination administered by a vendor on the Texas Education Agency [(TEA)]-approved vendor list published by the commissioner of education for the calendar year during which the candidate seeks admission;

[(4) for a program candidate who will be seeking an initial certificate, the candidate shall demonstrate basic skills in reading, written communication, and mathematics or by passing the Texas Academic Skills Program® (TASP®) test or the Texas Higher Education Assessment® (THEA®) with a minimum score of 230 in reading, 230 in mathematics, and 220 in writing. In the alternative, a candidate may demonstrate basic skills by meeting the requirements of the Texas Success Initiative (Texas Education Code, §51.3062) under the rules established by the Texas Higher Education Coordinating Board in Part 1, Chapter 4, Subchapter C of this title (relating to Texas Success Initiative);]

(4) [(5)] for an EPP [a program] candidate who will be seeking an initial certificate, the candidate shall demonstrate oral communication skills as specified in §230.11 [§230.413] of this title (relating to General Requirements);

(5) [(6)] an application and either an interview or other screening instrument to determine the EPP [educator preparation] candidate's appropriateness for the certification sought; and

(6) [(7)] any other academic criteria for admission that are published and applied consistently to all EPP [educator preparation] candidates.

(b) An EPP [educator preparation program] may adopt requirements in addition to those explicitly required in this section.

(c) An EPP [educator preparation program] may not admit a candidate who has completed another EPP [educator preparation program] in the same certification field [or who has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 232, Subchapter A, of this title (relating to Types and Classes of Certificates Issued)].

(d) An EPP [educator preparation program] may admit a candidate for career and technology education certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP [educator preparation program] may admit a candidate who has met the minimum academic criteria through credentials

from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries).

§227.15. Contingency Admission.

(a) A candidate may be accepted into an alternative certification program or post-baccalaureate program on a contingency basis pending receipt of an official transcript showing degree conferred, as specified in §227.10(a)(2) of this title (relating to Admission Criteria), provided that:

(1) the candidate is currently enrolled in and expects to complete the courses and other requirements for obtaining a bachelor's [~~baccalaureate~~] degree at the end of the semester in which admission to the program is sought; and

(2) all other program admission requirements have been met.

(b) A candidate admitted on a contingency basis may begin program training and may be approved to take a certification examination, but shall not be recommended for a probationary certificate until the candidate has been awarded a bachelor's [~~baccalaureate~~] degree.

(c) The contingency admission will be valid for only the semester for which the contingency admission was granted and may not be extended for another semester.

§227.17. Formal Admission.

(a) For an applicant to be formally admitted to an educator preparation program (EPP), the program must notify the applicant by email, letter, or an electronic notification of the offer of admittance.

(b) The applicant must accept the offer of admission through written or electronic confirmation for the applicant to be considered admitted to the EPP.

(c) The requirements of this section apply to applications received by an EPP beginning January 1, 2015.

§227.20. Implementation Date.

This subchapter, except for §227.17 of this title (relating to Formal Admission), applies to an educator preparation program's candidates that begin their first course through that program on or after March 1, 2015. [~~This chapter applies to an educator preparation program candidate who is admitted to an educator preparation program on or after January 1, 2009.~~]

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 May 23, 2014.

TRD-201402440
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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SUBCHAPTER B. PRELIMINARY EVALUATION OF CERTIFICATION ELIGIBILITY

19 TAC §§227.103, 227.105, 227.107

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and the Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

The amendments implement the TEC, §21.041(b)(1) and (4), and the Texas Occupations Code, §53.105.

§227.103. Application.

(a) A request for preliminary criminal history evaluation must be preceded by payment of the required criminal history evaluation fee specified in §230.101(a)(20) [~~§230.436(22)~~] of this title (relating to Schedule of Fees for Certification Services).

(b) A request for preliminary criminal history evaluation must include the following:

(1) a signed and dated application, in the form provided on the Texas Education Agency (TEA) website, containing contact information and the date and description of each offense requested to be evaluated;

(2) an attached statement of the circumstances upon which the arrest is based and the disposition relating to each offense to be evaluated;

(3) court documentation relating to each offense, including, at a minimum, the formal disposition of the offense(s) and related charge(s) (e.g., Judgment, Order of Probation, Sentence, Deferred Adjudication Order, etc.); and

(4) a copy of the receipt for the request for preliminary criminal history evaluation fee.

(c) All required documents and information specified in subsection (b) of this section must be provided with the request for preliminary criminal history evaluation. Any documents or information not provided in the original request will not be considered reasonably available.

(d) The preliminary criminal history evaluation will be based solely on the application and court or law enforcement documents provided. Any information not provided by the requestor shall be considered not reasonably available at the time of the request and may be considered at the time the requestor subsequently applies for a certificate issued by the State Board for Educator Certification. Additional documentation that should be provided, if possible, includes the following:

(1) the formal charge(s) (e.g., indictment, information, or complaint);

(2) evidence that the condition(s) of the court have been met (e.g., completion of probation, receipt for restitution, etc.); and

(3) any available law enforcement report(s) describing the offense or the investigation of the offense.

(e) The application, the statement of circumstances, the required court documentation, and a copy of the receipt for the request for preliminary criminal history evaluation fee must be submitted to the TEA division responsible for educator investigations by United States certified mail, return receipt requested, to the address provided on the application or by facsimile to the facsimile number provided on the application.

(f) A request for preliminary criminal history evaluation is incomplete unless it includes a copy of the receipt for the request for preliminary criminal history evaluation fee, a completed application, a statement of circumstances, and the required court documentation. The TEA staff will take no action on a request that is incomplete.

(g) All documents submitted in connection with a request for preliminary criminal history evaluation, whether complete or incomplete, will not be returned to the requestor. All documents will be retained or destroyed by the TEA in accordance with the TEA records retention schedule.

§227.105. Preliminary Criminal History Evaluation Letter.

(a) Within 90 calendar days of receipt of a complete request for a preliminary criminal history evaluation, the Texas Education Agency (TEA) staff will notify the requestor, by email [~~e-mail~~] to the email [~~e-mail~~] address provided on the requestor's application, of the TEA's determination with regard to the requestor's potential ineligibility based on the matters described in the request for preliminary criminal history evaluation.

(b) The preliminary criminal history evaluation letter will be strictly limited to the facts stated and the documents submitted by the requestor, as of the date of the request. Any documents or information not provided by the requestor will not be considered reasonably available for purposes of evaluating the request. In the event that the requestor subsequently applies for certification by the State Board for Educator Certification, complete fingerprint-based national criminal history information will be required. The TEA staff may conduct a criminal history investigation at that time regarding the offense(s) that were the subject of the request, based on any misstatements, incomplete information, or missing documentation in the request for preliminary criminal history evaluation; additional or subsequent criminal history or inappropriate conduct; or changed circumstances.

(c) The preliminary criminal history evaluation letter relates only to whether the specific information submitted constitutes grounds for ineligibility. The evaluation letter is not a guarantee of educator certification, admission to an educator preparation program, or employment as an educator.

§227.107. Fee for Request for Preliminary Criminal History Evaluation.

(a) The fee to request a preliminary criminal history evaluation under this subchapter shall be in an amount sufficient to cover the cost of administration of the evaluation process and as provided in §230.101 [~~§230.436~~] of this title (relating to Schedule of Fees for Certification Services).

(b) A new fee will be required to reactivate a request that is incomplete because of failure to submit the required documentation within 90 calendar days of receipt by the Texas Education Agency of the initial fee.

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 May 23, 2014.

TRD-201402441

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.1, 228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60

The State Board for Educator Certification (SBEC) proposes amendments to §§228.1, 228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, and 228.60, concerning educator preparation programs (EPPs). The sections establish requirements for EPPs.

The proposed amendments would update the rules to reflect current law, clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state. The proposed amendments result from the SBEC's rule review of 19 TAC Chapter 228 conducted in accordance with Texas Government Code, §2001.039, and House Bill (HB) 2012, 83rd Texas Legislature, Regular Session, 2013, which requires the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to EPPs, and Senate Bill (SB) 460, 83rd Texas Legislature, Regular Session, 2013.

The Texas Education Code (TEC), §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The TEC, §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

The proposed amendments to 19 TAC Chapter 228 reflect discussions held during stakeholder meetings with EPPs held on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014; March 3, 2014; and March 4, 2014, with district and regional administrators. Additional changes also reflect input received from the staffs at the TEA and the THECB.

Definitions

Language in §228.2 would be amended to add a definition of *post-baccalaureate program* based on feedback from preparation programs, add a definition of *professional certification* for clarity, add a definition of *site supervisor* to better reflect the realities of a professional certification practicum, and update other words and terms to be used by all programs in the state to ensure effective communication among and with all educators and stakeholders in the state.

The definition of *clinical teaching* would be amended to allow for 24-week half-day assignments so that candidates in clinical teaching positions could continue with or seek employment. The definition of *field supervisor* would also be amended to require that field supervisors keep their certification current. In addition,

the definition of *internship* would be amended so that it better captures varied school calendars and internship start dates.

Language in §228.2 would also be updated so definitions in 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, and 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, would be uniform.

Approval Process

Language in §228.10 would be amended to delete subsection (a) because the required submission is both redundant and could be obtained by the TEA. Language would be removed in proposed subsection (b) in response to both stakeholder and Texas Sunset Commission recommendations so that all EPPs would be on a five-year review cycle. Current subsection (d) would be deleted so that alternative certification programs could offer clinical teaching opportunities without having to obtain prior approval from TEA staff. Language in proposed subsection (d) would replace current subsection (f) to allow programs to open additional locations provided they notify the TEA in advance and run those programs in accordance with their practices that were approved by the TEA.

Educator Preparation Curriculum

Language in §228.30 would be amended to replace the majority of the curriculum requirements with the Texas teacher standards so that preparation is aligned with evaluation and professional development. Additionally, language would be added to reflect current law that requires training in the detection of students with mental or emotional disorders, in accordance with the TEC, §21.044(c-1).

Preparation Program Coursework and/or Training

Language in §228.35 would be amended to remove the requirement that programs spend six clock-hours on certification test preparation. The amendment also removes the requirement that the TEA keep a list of approved alternative sites and methods for field-based experiences.

Proposed subsection (g) would also be added to differentiate the components of field observations between initial certification of teachers and professional certification.

Technical Changes

Minor technical edits such as updating cross references would also be made throughout Chapter 228.

The proposed amendments would have no additional procedural or reporting implications. The proposed amendments would have no additional locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Moore has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendment would be the development of clear, minimum EPP requirements that would ensure educators are prepared to positively impact the performance of the diverse student population of this state. There are no additional costs to persons required to comply with the proposed amendments.

In addition, 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.

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 *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the Texas Education Code (TEC), §21.031, 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, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §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; §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs (EPPs) based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a

teaching certificate; and §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision.

The amendments implement the TEC, §§21.031, 21.041(b)(1) and (2), 21.044, 21.045(a), 21.049(a), 21.050(a) and (c), and 21.051.

§228.1. General Provisions.

(a) To ensure the highest level of educator preparation and practice, the State Board for Educator Certification (SBEC) recognizes that the preparation of educators must be the joint responsibility of educator preparation programs (EPPs) and the Early Childhood-Grade 12 public and private schools of Texas. Collaboration in the development, delivery, and evaluation of educator preparation is required.

(b) Consistent with the Texas Education Code, §21.049, the SBEC's rules governing educator preparation are designed to promote flexibility and creativity in the design of EPPs [~~educator preparation programs~~] to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

(c) All EPPs [~~educator preparation programs~~] are subject to the same standards of accountability, as required under Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs).

§228.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's [~~baccalaureate~~] degree.

(3) Candidate--An individual who has been admitted into an educator preparation program, including an individual who has been accepted on a contingency basis; also referred to as an enrollee or participant [~~A participant in an educator preparation program seeking certification~~].

(4) Clinical teaching--A minimum 12-week full-day or 24-week half-day educator assignment through an educator preparation [~~alternative certification~~] program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(5) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited university is equivalent to 15 clock-hours. Clock-hours of field-based experiences, [~~student teaching,~~] clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences.

(6) Cooperating teacher--The campus-based mentor teacher for the [~~student teacher or~~] clinical teacher.

(7) Educator preparation program--An entity approved by the State Board for Educator Certification [~~(SBEC)~~] to recommend candidates in one or more educator certification fields.

(8) Entity--The legal entity that is approved to deliver an educator preparation program.

(9) Field-based experiences--Introductory [~~If required by the Texas Education Code, §21.051 and §228.35(a)(3) of this title (relating to Preparation Program Coursework and/or Training), field-based experiences must include 15 clock-hours in which the candidate is actively engaged in instructional or educational activities under supervision. In addition, field-based experiences should also include introductory~~] experiences for a certification candidate involving [~~interactive and~~] reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in a school setting. [~~that reflect:~~]

[~~(A) authentic school settings in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose;~~]

[~~(B) instruction by content certified teachers;~~]

[~~(C) actual students in classrooms/instructional settings with identity proof provisions;~~]

[~~(D) content or grade level specific classrooms/instructional settings;~~]

[~~(E) variable time length of observation; and~~]

[~~(F) reflection of the observation.~~]

(10) Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their [~~his or her~~] performance, and provide constructive feedback to improve their effectiveness as educators [~~his or her professional performance~~].

(11) Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(12) Internship--A supervised, full-time educator assignment for one full school year [~~one academic year (or 180 school days) supervised educator assignment~~] at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(13) Late hire--An individual who has not been accepted into an educator preparation program before June 15 and who is hired for a teaching assignment by a school after June 15 or after the school's academic year has begun.

(14) Mentor--For a classroom teacher, a certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the [~~beginning~~] teacher during his or her intern year in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the [~~beginning~~] teacher's progress to that teacher's educator preparation program.

(15) Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(16) Post-baccalaureate program--An approved educator preparation program designed for individuals who already hold at least a bachelor's degree and approved by the State Board for Educator Certification to recommend candidates for certification.

(17) [~~(16)~~] Practicum--A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.

(18) Professional certification--Certification for superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.

(19) Site supervisor--For a practicum, a certified educator who has experience in the aspect(s) of the professional certification being pursued by the candidate; who has completed training or orientation for site supervision; who guides, assists, and supports the candidate during the practicum; and who reports the candidate's progress to the candidate's educator preparation program.

[~~(17) Student teaching--A 12-week full-day teaching experience through a program provided by an accredited university at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.~~]

(20) [~~(18)~~] Teacher of record--An educator employed by a school district who teaches the majority of the instructional day in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.

(21) [~~(19)~~] Texas Education Agency staff--Staff of the Texas Education Agency [~~TEA~~] assigned by the commissioner of education to perform the State Board for Educator Certification's [~~SBEC's~~] administrative functions and services.

(22) [~~(20)~~] Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.10. Approval Process.

[~~(a) Approval to Operate. A public institution of higher education must provide documentation to the Texas Education Agency (TEA) from the Texas Higher Education Coordinating Board (THECB) of approval to operate in Texas prior to submitting a proposal to offer an educator preparation and/or alternative certification program.~~]

(a) [~~(b)~~] New Entity Approval. An entity seeking initial approval to deliver an educator preparation program (EPP) shall submit an application and proposal with evidence indicating the ability to comply with the provisions of this chapter and Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates). The proposal shall include the following program approval components: entity commitment to adequate preparation of certification candidates, program standards, and community collaboration; criteria for admission to an EPP [~~educator preparation program~~]; curriculum; program delivery and evaluation; and a plan for ongoing support of the candidates. The proposal must also identify the certificates proposed to be offered by the entity and meet applicable federal statutes or regulations. The proposal will be reviewed by the Texas Education Agency (TEA) [~~TEA~~] staff and a pre-approval site visit will be conducted. The TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the entity should be approved.

(b) [~~(c)~~] Continuing Entity Approval. An entity approved by the SBEC under this chapter [~~prior to September 1, 2008,~~] shall be reviewed at least once every five years under procedures approved by the TEA staff; however, a review may be conducted at any time at the discretion of the TEA staff. At the time of the review, the entity shall submit to the SBEC a status report regarding its compliance with existing standards for EPPs [~~educator preparation programs~~] and the entity's original proposal. [~~An entity approved by the SBEC under this chapter after August 31, 2008, shall be approved for a term of ten years and must reapply every ten years thereafter for approval by the SBEC in the same manner as a new educator preparation program seeking approval.~~]

[~~(d) Approval of Clinical Teaching for an Alternative Certification Program. An alternative certification program seeking approval to implement a clinical teaching component shall submit a description of the following elements of the program for approval by the TEA staff:~~]

[~~(1) general clinical teaching program description, including conditions under which clinical teaching may be implemented;~~]

[~~(2) selection criteria for clinical teachers;~~]

[~~(3) selection criteria for mentor teachers;~~]

[~~(4) description of support and communication between candidates, mentors, and the alternative certification program;~~]

[~~(5) description of program supervision; and~~]

[~~(6) description of how candidates are evaluated.~~]

(c) [~~(e)~~] Addition of Certificate Fields.

(1) An EPP [~~educator preparation program~~] that is rated "accredited," as provided in §229.4 [~~§229.3~~] of this title (relating to Determination of Accreditation Status [~~The Accreditation Process~~]), may request additional certificate fields be approved by TEA staff, by submitting the curriculum matrix; a description of how the standards for Texas educators are incorporated into the EPP [~~educator preparation program~~]; and documentation showing that the program has the staff knowledge and expertise to support individuals participating in each certification field being requested. The curriculum matrix must include the standards, framework competencies, applicable Texas Essential Knowledge and Skills, course and/or module names, and the benchmarks or assessments used to measure successful program progress. An EPP [~~educator preparation program~~] rated "accredited," as provided in §229.4 [~~§229.3~~] of this title, and currently approved to offer a content area certificate for which the SBEC is changing the grade level of the certificate may request to offer the preapproved content field at different grade levels by submitting a modified curriculum matrix that includes the standards, course and/or module names, and the benchmarks or assessments used to measure successful program progress. The requested additional certificate fields must be within the classes of certificates for which the EPP [~~educator preparation program~~] has been previously approved by the SBEC. An EPP [~~educator preparation program~~] that is not rated "accredited" may not apply to offer additional certificate fields or classes of certificates.

(2) An EPP [~~educator preparation program~~] that is rated "accredited" may request the addition of certificate fields in a class of certificates that has not been previously approved by the SBEC, but must present a full proposal for consideration and approval by the SBEC.

(d) Addition of Program Locations. An EPP that is rated "accredited," as provided in §229.4 of this title, may open additional locations, provided the program informs the SBEC of any additional locations at which the program is providing educator preparation 60 days prior to providing educator preparation at the location. Additional program locations must operate in accordance with the program components under which the program has been approved to operate.

[(f) Addition of Program Locations. An educator preparation program that proposes to provide educator preparation in a different geographic location from that contained in its approved proposal shall present a new proposal for consideration and approval by the SBEC that includes provisions for meeting all program requirements at the new location. The educator preparation program will be notified in writing of its proposal approval or denial within 60 days following a determination by the SBEC. If an educator preparation program has already added additional locations or is already providing educator preparation in locations different from that contained in its original approved proposal as of January 1, 2009, the additional locations are not required to be presented to or approved by the SBEC. However, the educator preparation program shall inform the SBEC of the existence of the additional locations at which the program is providing educator preparation within 60 days of the adoption of this subsection.]

(e) [(g)] Contingency of Approval. Approval of an EPP [all educator preparation programs] by the SBEC or by the TEA staff, including each specific certificate field, is contingent upon approval by other lawfully established governing bodies[,] such as the Texas Higher Education Coordinating Board [THECB], boards of regents, or school district boards of trustees. Continuing EPP [educator preparation program] approval is contingent upon compliance with superseding state and federal law.

§228.20. Governance of Educator Preparation Programs.

(a) Preparation for the certification of educators may be delivered by an institution of higher education, regional education service center, public school district, or other entity approved by the State Board for Educator Certification (SBEC) under §228.10 of this title (relating to Approval Process).

(b) The preparation of educators shall be a collaborative effort among public schools accredited by the Texas Education Agency (TEA) and/or TEA-recognized private schools; regional education service centers; institutions of higher education; and/or business and community interests; and shall be delivered in cooperation with public schools accredited by the TEA and/or TEA-recognized private schools. An advisory committee with members representing as many as possible of the groups identified as collaborators in this subsection shall assist in the design, delivery, evaluation, and major policy decisions of the educator preparation program (EPP). The approved EPP [educator preparation program] shall approve the roles and responsibilities of each member of the advisory committee and shall meet a minimum of twice during each academic year.

(c) The governing body and chief operating officer of an entity approved to deliver educator preparation shall provide sufficient support to enable the EPP [educator preparation program] to meet all standards set by the SBEC[,] and shall be accountable for the quality of the EPP [educator preparation program] and the candidates whom the program recommends for certification.

(d) All EPPs [educator preparation programs] must be implemented as approved by the SBEC as specified in §228.10 of this title. [An approved educator preparation program may not expand to other geographic locations without prior approval of the SBEC.]

(e) Proposed amendments to an EPP [educator preparation program] shall be submitted to the TEA staff and approved prior to implementation. Significant amendments, related to the five program approval components specified in §228.10(a) [§228.10(b)] of this title, must be approved by the SBEC. The EPP [educator preparation program] will be notified in writing of the [its proposal] approval or denial of its proposal within 60 days following a determination by the SBEC. [If an educator preparation program has already implemented significant amendments to its original approved proposal as of January 1, 2009, those amendments are not required to be presented to or approved by the SBEC. However, the educator preparation program shall inform the SBEC of the existence of the significant amendments within 60 days of the adoption of this subsection.]

§228.30. Educator Preparation Curriculum.

(a) The educator standards adopted by the State Board for Educator Certification (SBEC) shall be the curricular basis for all educator preparation and, for each certificate, address the relevant Texas Essential Knowledge and Skills (TEKS).

(b) The curriculum for each educator preparation program shall rely on scientifically-based research to ensure teacher effectiveness and align to the TEKS. Coursework and training should be sustained, rigorous, interactive, student focused, and performance based. The following subject matter shall be included in the curriculum for candidates seeking initial certification:

(1) reading instruction, including instruction that improves students' content-area literacy [the specified requirements for reading instruction adopted by the SBEC for each certificate];

(2) the code of ethics and standard practices for Texas educators, pursuant to Chapter 247 of this title (relating to Educators' Code of Ethics);

(3) the skills and competencies captured in the Texas teacher standards, as indicated in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards), which include:

(A) instructional planning and delivery;

(B) knowledge of students and student learning;

(C) content knowledge and expertise;

(D) learning environment;

(E) data-driven practice; and

(F) professional practices and responsibilities;

(4) instruction in detection and education of students with dyslexia, as indicated in the Texas Education Code (TEC), §21.044(b); and

(5) instruction in detection of students with mental or emotional disorders, as indicated in the TEC, §21.044(c-1).

[(3) child development;]

[(4) motivation;]

[(5) learning theories;]

[(6) TEKS organization, structure, and skills;]

[(7) TEKS in the content areas;]

[(8) state assessment of students;]

[(9) curriculum development and lesson planning;]

[(10) classroom assessment for instruction/diagnosing learning needs;]

[(11) classroom management/developing a positive learning environment;]

[(12) special populations;]

[(13) parent conferences/communication skills;]

[(14) instructional technology;]

[(15) pedagogy/instructional strategies;]

[(16) differentiated instruction; and]

[(17) certification test preparation.]

§228.35. Preparation Program Coursework and/or Training.

(a) Coursework and/or Training for Candidates Seeking Initial Certification.

(1) An educator preparation program (EPP) shall provide coursework and/or training to ensure the educator is effective in the classroom.

(2) Professional development should be sustained, intensive, and classroom focused.

(3) An EPP [educator preparation program] shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training [that includes at least six clock-hours of explicit certification test preparation that is not embedded in other curriculum elements]. A candidate who does not qualify as a late hire who is issued a probationary certificate after September 1, 2012, may not be employed by a school district as a teacher of record until the candidate completes a minimum of 30 [15] clock-hours of field-based experience[, student teaching,] or clinical teaching in which the candidate is actively engaged in instructional or educational activities under supervision at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose, as provided in this section. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any [student teaching,] clinical teaching[,] or internship:

(A) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission[,] or other video or technology-based method; and

(B) 80 clock-hours of coursework and/or training.

[(4) An educator preparation program that is not an alternative certification program must require, as part of the curriculum for a bachelor's degree that is a prerequisite for educator certification, that a candidate receive instruction in detection and education of students with dyslexia. This instruction must:]

[(A) be developed by a panel of experts in the diagnosis and treatment of dyslexia who are:]

[(i) employed by institutions of higher education; and]

[(ii) approved by the State Board for Educator Certification (SBEC); and]

[(B) include information on:]

[(i) characteristics of dyslexia;]

[(ii) identification of dyslexia; and]

[(iii) effective, multisensory strategies for teaching students with dyslexia.]

(4) [(5)] All coursework and/or training shall be completed prior to EPP [educator preparation program] completion and standard certification.

(5) [(6)] With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved TEA continuing professional education provider.

(6) [(7)] Each EPP [educator preparation program] must develop and implement specific criteria and procedures that allow candidates to substitute prior or ongoing experience and/or professional training for part of the educator preparation requirements, provided that the experience or training is not also counted as a part of the internship, clinical teaching, [student teaching,] or practicum requirements, and is directly related to the certificate being sought.

(b) Coursework and/or Training for Professional Certification [(i.e., superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher)]. An EPP [educator preparation program] shall provide coursework and/or training to ensure that the educator is effective in the professional assignment. An EPP [educator preparation program] shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the state standards for the applicable certification field.

(c) Late Hire Provisions. A late hire for a school district teaching position may begin employment under a probationary certificate before completing the pre-internship requirements of subsection (a)(3) of this section and, if applicable, 15 clock-hours of active, supervised experience, but shall complete these requirements within 90 school days of assignment.

(d) Educator Preparation Program Delivery. An EPP [educator preparation program] shall provide evidence of ongoing [on-going] and relevant field-based experiences throughout the EPP [educator preparation program, as determined by the advisory committee as specified in §228.20 of this title (relating to Governance of Educator Preparation Programs),] in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification, each EPP [educator preparation program] shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship[, student teaching,] or clinical teaching. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission[,] or other video or technology-based method. Field-based experiences must include 15 clock-hours in which the candidate, under supervision, is actively engaged in instructional or educational activities that include:

(A) authentic school settings in a public school accredited by the TEA or other school approved by the TEA for this purpose;

(B) instruction by content certified teachers;

(C) actual students in classrooms/instructional settings with identity-proof provisions;

(D) content or grade-level specific classrooms/instructional settings; and

(E) reflection of the observation.

(2) For initial certification, each EPP [educator preparation program] shall also provide one of the following:

[(A) student teaching, as defined in §228.2 of this title, for a minimum of 12 weeks;]

(A) [(B)] clinical teaching, as defined in §228.2 of this title, for a minimum of 12 weeks full day or 24 weeks half day; or

(B) [(C)] internship, as defined in §228.2 of this title, for a minimum of one full school year [academic year (or 180 school days)] for the assignment that matches the certification field for which the individual is prepared by [accepted into] the EPP [educator prepara-

~~tion program~~]. The individual would hold a probationary certificate and be classified as a "teacher" as reported on the campus Public Education Information Management System (PEIMS) data. An EPP [~~educator preparation program~~] may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(i) An internship[~~, student teaching,~~] or clinical teaching for an [~~Early Childhood-Grade 4 and~~] Early Childhood-Grade 6 candidate may be completed at a Head Start Program with the following stipulations:

(I) a certified teacher is available as a trained mentor;

(II) the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(III) the Head Start program teaches three-[~~three~~] and four-year-old students; and

(IV) the state's pre-kindergarten curriculum guidelines are being implemented.

(ii) An internship, [~~student teaching,~~] clinical teaching, or practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(3) For candidates seeking professional certification [~~as a superintendent, principal, school counselor, school librarian, or an educational diagnostician~~], each EPP [~~educator preparation program~~] shall provide a practicum, as defined in §228.2 of this title, for a minimum of 160 clock-hours.

(4) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, [~~student teaching,~~] clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, [~~student teaching,~~] clinical teaching, and/or practicum.

(B) An EPP [~~educator preparation program~~] may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience [~~,~~] or for video or other technology-based depiction of a school setting. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards. [~~To prevent unnecessary duplication of such applications, the TEA shall maintain a list of the schools, school systems, videos, and other technology-based transmissions that have been approved by the TEA for field-based experience.~~]

(C) An EPP [~~educator preparation program~~] may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, [~~student teaching,~~] clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the EPP [~~educator preparation program~~] to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An EPP [~~educator preparation program~~] may file an application with the SBEC for approval, subject to periodic review, of a public or private school located outside the United States, as a site for [~~student teaching or~~] clinical teaching required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(e) Campus Mentors and Cooperating Teachers. In order to support a new educator and to increase teacher retention, an EPP [~~educator preparation program~~] shall collaborate with the campus administrator to assign each candidate a campus mentor during his or her internship or assign a cooperating teacher during the candidate's [~~student teaching or~~] clinical teaching experience. The EPP [~~educator preparation program~~] is responsible for providing mentor and/or cooperating teacher training that relies on scientifically-based research, but the program may allow the training to be provided by a school district, if properly documented.

(f) Ongoing [~~On-Going~~] Educator Preparation Program Support for Initial Certification of Teachers. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. The field supervisor shall document instructional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's campus administrator. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Each observation must be at least 45 minutes in duration, [~~and~~] must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(2) An EPP [~~educator preparation program~~] must provide the first observation within the first six weeks of all assignments.

(3) For an internship, an EPP [~~educator preparation program~~] must provide a minimum of two formal observations during the first four months of the assignment [~~semester~~] and one formal observation during the last five months of the assignment [~~second semester~~].

(4) For [~~student teaching and~~] clinical teaching, an EPP [~~educator preparation program~~] must provide a minimum of three observations during the assignment, which is a minimum of 12 weeks.

[~~(5) For a practicum, an educator preparation program must provide a minimum of three observations during the term of the practicum.~~]

(g) Ongoing Educator Preparation Program Support for Professional Certification. Supervision of each candidate shall be con-

ducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. The field supervisor shall document professional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's site supervisor. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Observations must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(2) Over the course of the practicum, a minimum of 45 minutes of observation time must be on the candidate's site in a face-to-face setting.

(3) An EPP must provide the first observation within the first six weeks of all assignments.

(4) An EPP must provide a minimum of three observations during the term of the practicum.

(h) [~~(g)~~] Exemption. Under the Texas Education Code (TEC), §21.050(c), a candidate who receives a bachelor's [~~baccalaureate~~] degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363 [~~§54.214~~], is exempt from the requirements of this chapter relating to field-based experience or internship consisting of clinical [~~student~~] teaching.

§228.40. Assessment and Evaluation of Candidates for Certification and Program Improvement.

(a) To ensure that a candidate for educator certification is prepared to receive a [~~the~~] standard certificate, the entity delivering educator preparation shall establish benchmarks and structured assessments of the candidate's progress throughout the educator preparation program (EPP).

(b) An EPP [~~educator preparation program~~] shall determine the readiness of each candidate to take the appropriate certification assessment of pedagogy and professional responsibilities, including professional ethics and standards of conduct. An EPP [~~educator preparation program~~] shall not grant test approval for the pedagogy and professional responsibilities assessment until a candidate has met all of the requirements for admission to the program and has been fully accepted into the EPP [~~educator preparation program~~].

(c) For the purposes of EPP [~~educator preparation program~~] improvement, an entity shall continuously evaluate the design and delivery of the educator preparation curriculum based on performance data, scientifically-based research practices, and the results of internal and external feedback and assessments.

(d) An EPP [~~educator preparation program~~] shall retain documents that evidence a candidate's eligibility for admission to the program and evidence of completion of all program requirements for a period of five years after program completion.

§228.50. Professional Conduct.

During the period of preparation, the educator preparation program [~~entity~~] shall ensure that the individuals preparing candidates and the candidates themselves adhere [~~demonstrate adherence~~] to Chapter 247 of this title (relating to Educators' Code of Ethics).

§228.60. Implementation Date.

(a) The provisions of this chapter that were in effect on the date an educator preparation program (EPP) candidate was admitted to an EPP [~~educator preparation program~~] shall determine the program requirements applicable to that candidate.

(b) All provisions in this chapter, except the total clock-hour training requirement, shall apply to §230.39 [~~§232.5~~] of this title (relating to Temporary Teacher Certificates)[~~, except that a certificate issued under §232.5 of this title shall require 380 total clock-hours of training~~].

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 May 23, 2014.

TRD-201402442
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§229.2 - 229.9

The State Board for Educator Certification (SBEC) proposes amendments to §§229.2-229.9, concerning the accountability system for educator preparation programs (EPPs). The sections establish the process used for issuing annual accreditation ratings for all EPPs.

The proposed amendments would update and make uniform definitions, modify the standards used for enforcing the reporting of data, clarify the standards used for accountability, adjust the small group exception requirements, and establish a new process for challenging sanctions imposed on programs that fail the accountability system.

House Bill 2012, 83rd Texas Legislature, Regular Session, 2013, requires the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to EPPs. Due to its related nature, a review of Chapter 229 was also conducted and, as a result, proposed amendments to Chapter 229 are necessary.

The Texas Education Code (TEC), §21.045, states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs.

The proposed amendments reflect discussions held during stakeholder meetings with EPPs on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014; March 3, 2014; and March 4, 2014, with district and regional administrators. Additional changes also reflect input received from the staffs at the TEA and the THECB.

Definitions

Language in §229.2 would be amended to add a definition of *consecutively measured years* to clarify the effect to changes made to the small group exception size, update the definition of *practicum* to better reflect the context of professional certification

programs, and delete definitions of words and terms that are no longer used in Chapter 229.

Language in §229.2 would also be updated so definitions in 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, and 19 TAC Chapter 228, Requirements for Educator Preparation Programs, would be uniform.

Required Submissions of Information, Surveys, and Other Data

Under the current rules, individuals who hold certificates, school districts, charters, and EPPs may be held accountable for failure to report required data only if that failure was done willfully or recklessly, which required the SBEC to prove the mindset and intent of those who did not report data and, therefore, made the rule essentially unenforceable in most cases. Proposed amendments to Chapter 229 would remove the willfully and recklessly requirement to allow SBEC the option to hold these entities accountable for failure to report required data without first having to prove mindset and intent.

Determination of Accreditation Status

Language in §229.4 would be amended to replace *consecutive* with *consecutively measured* to accommodate situations where EPPs fall within the small group exception provisions. Subsection (g) would be amended to increase the EPP candidate group size needed to be measured against an accountability standard. The group size would increase from 11 to 21 so that no measure related to a single EPP candidate could be the sole cause of the failure to meet a standard. The language would also be amended to more clearly articulate the process for determining a measure when groups fail to meet the threshold of 21 or more candidates.

Sanctions, Reviews, and Contested Cases

Under current rule, when an EPP is assigned a failing accreditation rating by SBEC, subject to sanctions or revocation of their ability to recommend educator candidates, the EPP has the opportunity to request a record review by TEA staff. After the record review, the proposal goes to SBEC for adoption. In cases of revocation, the SBEC decision is appealable to the State Office of Administrative Hearings (SOAH), which reviews the SBEC decision under a substantial evidence standard. The SOAH decision is final and not appealable.

Proposed amendments to Chapter 229 modify this process. When TEA staff proposes to assign an EPP with a failing accreditation rating that makes the EPP subject to sanctions or revocation of its ability to recommend educator candidates, the EPP has the opportunity to request an informal hearing with TEA before the proposed accreditation is presented to SBEC for adoption. After the informal hearing, the TEA will submit a final recommendation to the SBEC. If the final recommendation proposes revocation, the EPP has an opportunity to request a hearing before SOAH to determine the appropriateness of the proposed recommendation, before SBEC rules on TEA's recommendation. SOAH will hear the case on a preponderance of the evidence standard, as SOAH hears disciplinary cases for certifications and licenses, rather than on a substantial evidence standard. SOAH decisions will then be sent to SBEC for final determination. After the final determination, an EPP could contest the SBEC's decision in accordance with the Administrative Procedure Act in Texas district court.

These changes will simplify the process, remove the TEA as acting as a tribunal, provide EPPs with an impartial arbiter for revocation determinations, and restore SBEC as the final arbiter of decisions.

Technical Changes

Minor technical edits such as updating cross references would also be made throughout Chapter 229.

The proposed amendments would have no additional procedural or reporting implications. The proposed amendments would have no additional locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Moore has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved educator preparation program. There are no additional costs to persons required to comply with the proposed amendments.

In addition, 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.

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 *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the Texas Education Code (TEC), §21.041(c), which requires the State Board for Educator Certification (SBEC) to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.041(d), which authorizes the SBEC to adopt fees for the approval or renewal of an educator preparation program or for the addition of a certificate or field of certification to the scope of a program's approval; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; §21.045(b), which states that each educator preparation program shall submit spe-

cific performance data, information, and data elements as required by the SBEC for an annual performance report to ensure candidate access and equity; §21.045(c), which states that the SBEC shall propose rules establishing performance standards based on subsection (a) for the accountability system for educator preparation for accrediting educator preparation programs; §21.0451, which states that the SBEC shall propose rules for the sanction of educator preparation programs that do not meet accountability standards and shall annually review the accreditation status of each educator preparation program. The costs of technical assistance required under subsection (a)(2)(A) or the costs associated with the appointment of a monitor under subsection (a)(2)(C) shall be paid by the sponsor of the educator preparation program; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an educator preparation program and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

The amendments implement the TEC, §§21.041(c) and (d), 21.045, 21.0451, and 21.0452.

§229.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31 [~~A period of 12 consecutive months, starting September 1 and ending August 31~~].

(2) ACT®--The college entrance examination from ACT®.

(3) Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(4) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's [~~baccalaureate~~] degree.

(5) Beginning teacher--For purposes of this chapter, a classroom teacher with less than three years experience.

(6) Campus-based mentor--A certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the beginning teacher; and who reports the beginning teacher's progress to that teacher's educator preparation program.

(7) Candidate--An individual who has been admitted into an educator preparation program, including an individual who has been accepted on a contingency basis; also referred to as an enrollee or participant.

(8) Certification field--Academic [~~Professional development (elementary and secondary) and delivery system fields, academic~~] or career and technical content fields, special education fields, specializations, or professional fields in which an entity is approved to offer certification.

(9) Clinical teaching--A minimum 12-week full-day or 24-week half-day educator assignment through an educator preparation [~~teaching practicum in an alternative certification~~] program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose [~~a Texas Education Agency-recognized private school~~] that may lead to completion of a standard certificate; also referred to as student teaching.

(10) Completer--According to the Higher Education Act, "A person who has met all the requirements of a state-approved educator preparation program." The term completer is no longer used to define the class of educator preparation program candidates subject to a determination of certification examination pass rate.

(11) Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(g) of this title (relating to Determination of Accreditation Status).

(12) [~~(11)~~] Cooperating teacher--The campus-based mentor teacher for the [~~student teacher or~~] clinical teacher.

(13) [~~(12)~~] Demographic group--Male and female, as to gender; the aggregate reporting categories established by the Higher Education Act, as to race and ethnicity. Each educator preparation program will assign a candidate to one gender demographic group and at least one Higher Education Act-established race or ethnicity group.

(14) [~~(13)~~] Educator preparation program [~~provider~~]--An entity approved by the State Board for Educator Certification to recommend candidates in one or more educator certification fields.

(15) [~~(14)~~] Educator preparation program data--Data elements reported to meet requirements under the Texas Education Code, §21.045(b).

(16) [~~(15)~~] Examination--An examination or other test required by statute or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(17) [~~(16)~~] Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has [~~with~~] advanced credentials, [~~who is hired by the educator preparation program~~] to observe candidates, monitor their performance [~~performances~~], and provide constructive feedback to improve their effectiveness as educators [~~an educator~~]. [~~A campus mentor or cooperating teacher, assigned as required by §228.35(e) of this title (relating to Preparation Program Coursework and/or Training), may not also serve as a field supervisor.~~]

(18) [~~(17)~~] First year in the classroom--For purposes of the Texas Education Code, §21.045(a)(4), and its implementation in this chapter, the first year of employment as a classroom teacher.

(19) [~~(18)~~] GPA--Grade point average.

(20) [~~(19)~~] GRE®--Graduate Record Examinations®.

(21) [~~(20)~~] Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

[~~(21) Highly qualified teacher--A teacher who has a baccalaureate degree and full state certification and has demonstrated competency in all subjects in which he or she teaches. A highly qualified teacher has not had any certification requirements waived on an emergency certificate or permit.~~]

[(22) Highly qualified teacher in an alternative certification program--A teacher who is participating in an alternative certification program may be considered to meet the certification requirements of the definition of a highly qualified teacher (and not be counted on a waiver) if he or she is issued a probationary certificate whereby he or she is permitted to assume functions as a regular classroom teacher for a specified period of time not to exceed three years and he or she demonstrates satisfactory progress toward full certification. The teacher's alternative certification program must provide high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction before and while teaching. The teacher must receive intensive supervision that consists of structured guidance and regular ongoing support, as required by §228.35 of this title (relating to Preparation Program Coursework and/or Training).]

[(23) IHE--Institution of Higher Education.]

(22) [(24)] Institutional report--Educator preparation program data reported to the United States Department of Education and the Texas Education Agency as required under the Higher Education Act.

(23) [(25)] Internship--A [one-year] supervised, full-time educator [professional] assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose [a Texas Education Agency-recognized private school] that may lead to completion of a standard certificate.

(24) [(26)] Pass rate--For each academic year, the percent of tests passed by candidates who have finished all educator preparation program requirements for coursework; training; and internship, [student teaching,] clinical teaching, or practicum by the end of that academic year. For purposes of determining the pass rate, candidates shall not be excluded because the candidate has not been recommended for certification, has not passed a certification examination, or is not considered a "completer" for purposes of the Higher Education Act or other applicable law. The pass rate is based solely on the examinations required to obtain certification in the field(s) for which the candidate serves his or her internship, [student teaching,] clinical teaching, or practicum. Examinations not required for certification in that field or fields, whether taken before or after admission to an educator preparation program, are not included. The rate reflects a candidate's success only on the last attempt made on the examination by the end of the academic year in which the candidate finishes the coursework; training; and internship, [student teaching,] clinical teaching, or practicum program requirements, and does not reflect any attempts made after that year. The formula for calculation of pass rate is the number of successful (i.e., passing) last attempts made by candidates who have finished the specified educator preparation program requirements divided by the total number of last attempts made by those candidates.

(25) [(27)] Practicum--A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher [Practical work in a particular field; refers to student teaching, clinical teaching, internship, or practicum for a professional certificate that is in the school setting].

(26) [(28)] SAT®--The college entrance examination from the College Board.

(27) [(29)] Scaled score--A conversion of a candidate's raw score on an examination or a version of the examination to a common scale that allows for a numerical comparison between candidates.

[(30) Student teaching--A 12-week full-day teaching practicum in a program provided by an accredited university at a public school accredited by the Texas Education Agency or a Texas Education Agency-recognized private school that may lead to completion of a standard certificate.]

(28) [(31)] Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's [SBEC's] administrative functions and services.

[(32) Willfully or recklessly--With conscious disregard for the requirements of complete and accurate reporting imposed by this chapter.]

§229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP [educator preparation] candidates, beginning teachers, field supervisors, school principals and administrators, campus mentors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsection (e) of this section and the Texas Education Code (TEC), §21.045 and §21.0452.

(b) Any individual holding a Texas-issued educator certificate who [willfully or recklessly] fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, shall be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that [willfully or recklessly] fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, shall be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that [willfully or recklessly] fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, shall be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually on September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by school administrators and principals shall be submitted by June 15 of any academic year in which the school administrator and principal have had experience with a candidate or beginning teacher who was a participant in an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 1 of each academic year in which it is required.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.

Figure: 19 TAC §229.3(f)(1)

[Figure: 19 TAC §229.3(f)(1)]

(2) Participants in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the SBEC of the survey is a requirement for issuance of a standard certificate.

(3) Principals or designated administrators in Texas public schools and open-enrollment charter schools shall complete individual teacher performance surveys, in a form to be approved by the SBEC, for each beginning teacher under the supervision of an EPP.

(4) Principals or designated administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success for each EPP with which the principals or designated administrators have had experience in the previous year.

§229.4. Determination of Accreditation Status.

(a) The accreditation status of an educator preparation program (EPP) shall be determined at least annually, based on performance standards established in rule by the State Board for Educator Certification (SBEC), with regard to the following EPP accountability performance indicators, disaggregated with respect to gender and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act), and other requirements of this chapter:

(1) the pass rate performance standard of certification examinations of EPP candidates shall be 80% for the academic year;[:]

[(A) 70% for the 2009-2010 academic year;]

[(B) 75% for the 2010-2011 academic year; and]

[(C) 80% for the 2011-2012 academic year;]

(2) the results of appraisals of beginning teachers by school administrators, based on an appraisal document and standards that must be independently developed by the Texas Education Agency (TEA) staff and approved by the SBEC;

(3) to the extent practicable, as valid data become available and performance standards are developed, the improvement in student achievement of students taught by beginning teachers for the first three years following certification; and

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(f) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision of [beginning] teachers during their internship [first] year [in the classroom]. The performance standard will be a 95% compliance rate with SBEC requirements as to the frequency, duration, and required documentation of field supervision for each EPP candidate.

[(A) The 2009-2010 academic year will be a pilot year for these data collections.]

[(B) For the 2010-2011 academic year, the performance standard will be a 90% compliance rate with SBEC requirements as to the frequency, duration, and required documentation of field supervision for each EPP candidate.]

[(C) For the 2011-2012 academic year, the performance standard will be a 95% compliance rate with SBEC requirements as to the frequency, duration, and required documentation of field supervision for each EPP candidate.]

(b) An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(c) An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(d) Accredited-Warned status. An EPP shall be assigned Accredited-Warned status if the EPP:

(1) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the four performance indicators set forth in subsection (a) of this section in any one year;

(2) fails to meet the standards in any two gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(3) fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for two consecutively measured [consecutive] years, regardless of whether the deficiency is in the same demographic group or standard.

(e) Accredited-Probation status. An EPP shall be assigned Accredited-Probation status if the EPP:

(1) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the four performance indicators set forth in subsection (a) of this section for two consecutively measured [consecutive] years;

(2) fails to meet the standards in any three gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(3) fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for three consecutively measured [consecutive] years, regardless of whether the deficiency is in the same demographic group or standard.

(f) Not Accredited-Revoked status.

(1) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured [consecutive] years.

(2) An EPP may be assigned Not Accredited-Revoked status if the EPP is assigned Accredited-Probation status for two consecutively measured [consecutive] years, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(3) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(4) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(5) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification, but may complete the training of candidates already admitted by the EPP and recommend

them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(g) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated, shall be measured against performance standards described in this chapter in any one year in which the number of individuals exceeds 20.

(2) [~~(1)~~] For an EPP candidate group [~~If any EPP candidate group subject to the performance standards described in this chapter, including groups~~] disaggregated by gender, ethnicity, and certification field, where [~~fails to meet the required academic year aggregate standard for any applicable class of performance indicators, and~~] the group contains 20 [~~ten~~] or fewer individuals, [~~the failure to meet~~] the group's performance [~~standard~~] shall not be counted for purposes of accreditation status determination for that academic year.

(3) For an EPP candidate group not disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(4) If the preceding year's EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contained 20 or fewer individuals, that group performance shall be combined with the following year's group performance, and if the two-year cumulated group contains more than 20 individuals, then the two-year cumulated group performance must be measured against the standards in that second year.

[~~(2) The next year's performance indicators of a group not counted the previous year shall be combined with the group's preceding year performance indicators, and if the cumulated performance indicators fail to meet the required aggregate standard for any applicable class of performance indicators, the group shall be counted as failing to meet performance standards for that academic year, as long as the cumulative number of individual performance indicators exceeds ten.~~]

(5) [~~(3)~~] If the two-year cumulated EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contains 20 or fewer individuals, then the two-year cumulated group performance shall be combined with the following year's group performance. [~~performance indicators fail to meet performance standards but still do not exceed ten individual performance indicators, the group shall not be counted again that year. The two-year cumulated performance indicators shall then be combined with the following year performance indicators of the group.~~] The three-year cumulated group performance [~~indicators of the group~~] must be measured against the standards in that third year, regardless of how small the cumulated number of group members [~~individual performance indicators~~] may be.

(6) In any reporting year in which the EPP candidate group, not disaggregated by gender and ethnicity, or in which the EPP candidate group, disaggregated by certification field, does not meet the necessary number of individuals needed to measure against performance standards for that year, any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. TEA staff may modify the sanction as TEA staff deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

[~~(4) The performance indicators of a group shall be measured against performance standards described in this chapter in any one year in which the number of individual performance indicators or cumulated number of individual performance indicators as provided herein exceeds ten.~~]

[~~(5) After a year in which a group has been counted as failing to meet a performance standard, the individual performance indicators of the group related to that standard shall be counted in each subsequent consecutive year thereafter in which the performance indicators of the group fail to meet the standard, regardless of how small the number of individual performance indicators in the group may continue to be.~~]

[~~(6) An EPP shall develop and file with TEA an action plan as required in subsection (h) of this section after one of its candidate groups fails to meet a performance standard regardless of whether the group contains less than ten performance indicators and is not counted for accreditation status purposes as failing to meet a performance standard.~~]

(h) An EPP that fails to meet a required performance standard shall develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates, especially regarding the performance standard that was not met. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP of the failure to meet a performance standard.

(i) To the extent of any conflict, this section controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

§229.5. Accreditation Sanctions and Procedures.

(a) If an educator preparation program (EPP) has been assigned Accredited-Warned or Accredited-Probation status, or if the State Board for Educator Certification (SBEC) determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC; and/or

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC.

(b) Notwithstanding the accreditation status of an EPP, if the performance of all candidates admitted to an individual certification field offered by an EPP fail to meet any of the standards in §229.4(a) of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification field shall be revoked. Any candidates already admitted for preparation in that field may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that field unless and until the SBEC reinstates approval for the EPP to offer that certification field.

(c) For purposes of determining compliance with subsection (b) of this section, only performance of individual certification fields in the 2012-2013 academic year and subsequent academic years will be considered. To the extent of any conflict, this subsection controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

(d) [~~(c)~~] Performance indicators by gender and ethnic groups shall not be counted for purposes of subsection (b) of this section, relat-

ing to performance standards for individual certification fields. If the number of counted performance indicators for a certification field is 20 [ten] or fewer, and the performance indicators fail to meet any of the standards in §229.4(a) of this title, those performance indicators shall not count that year, but shall be cumulated and counted in the same manner as provided in §229.4(c) and (d) of this title.

(e) [(d)] An EPP shall be notified in writing regarding any proposed action taken pursuant to this section, or proposed [the] assignment of an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(f) [(e)] All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

§229.6. Continuing Approval.

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.10(b) [§228.10(c)] of this title (relating to Approval Process), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program admissions, operations, coursework, training, recommendation for certification, and the integrity of required data submissions.

(b) After a continuing approval review pursuant to §228.10(b) [§228.10(c)] of this title, if the Texas Education Agency (TEA) staff finds that an EPP has [willfully or recklessly] failed to comply with SBEC rules relating to the qualifications of candidates recommended for certification or to the integrity of reported program data, the TEA staff may issue a proposed recommendation [proposal] for SBEC action relating to the EPP's approval to recommend candidates for educator certification. The proposed recommendation [proposal] for SBEC action may include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation [proposal] for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal [Record] Review of Texas Education Agency Recommendations [Certain Decisions]), and an EPP shall be entitled to an informal [a record] review of the proposed recommendation [proposal], under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation [proposal] for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal [record] review, a final recommendation [proposal for decision] will be issued by the TEA staff [representative and submitted to the SBEC for entry of a final order]. The final recommendation [order] may include changes or additions to the proposed recommendation [order] and such modifications are not subject to another informal [record] review procedure. [This order may be appealed only if the final order issued by the SBEC orders revocation of approval of an EPP to recommend candidates for educator certification, as provided by §229.8 of this title (relating to Accreditation Revocation Appeals).]

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

§229.7. Informal [Record] Review of Texas Education Agency Recommendations [Certain Decisions].

(a) Applicability. This section applies only to a notice required under §229.5(e) [§229.5(d)] of this title (relating to Accreditation Sanctions and Procedures) or under §229.6(c) of this title (relating to Continuing Approval) proposing to:

(1) require an educator preparation program (EPP) or a particular field of certification offered by an EPP to obtain technical assistance as provided by the Texas Education Code (TEC), §21.0451(a)(2)(A);

(2) require an EPP or a particular field of certification offered by an EPP to obtain professional services as provided by the TEC, §21.0451(a)(2)(B);

(3) appoint a monitor for an EPP or a particular field of certification offered by an EPP as provided by the TEC, §21.0451(a)(2)(C);

(4) assign an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked, as specified in §229.4 of this title (relating to Determination of Accreditation Status);

(5) issue a public reprimand or impose conditions on the continuing approval of an EPP to recommend candidates for certification pursuant to §229.5(e) [§229.5(d)] of this title;

(6) revoke the approval of an EPP to recommend candidates for certification in a particular field of certification; or

(7) revoke the approval of an EPP to recommend candidates for certification.

(b) Notice. Notice of a proposed recommendation for an order or change in accreditation status, subject to this section, shall be made as provided by §229.5(e) [§229.5(d)] and §229.6(c) of this title, and this section.

(1) The notice shall attach or make reference to all information on which the proposed recommendation [order] is based.

(A) Information maintained on the Texas Education Agency (TEA) and State Board for Educator Certification (SBEC) websites may be referenced by providing a general citation to the information.

(B) The TEA and SBEC reports previously sent to the EPP may be referenced by providing the title and date of the report.

(C) On request, the TEA shall provide copies of, or reasonable access to, information referenced in the notice.

(2) The notice shall state the procedures for requesting an informal [a record] review of the proposed recommendation [order] or change in accreditation status under this section, including the name and department of the TEA staff [representative] to whom a request for an informal [record] review may be addressed.

(3) The notice shall set a deadline for requesting an informal [a record] review, which shall not be less than 14 [ten] calendar days from the date of receipt of the notice. The notice may be delivered by mail, personal delivery, facsimile, or email.

(c) Request. The chief operating officer of the EPP may request, in writing, an informal [~~a record~~] review under this section.

(1) The request must be properly addressed to the member of the TEA staff [~~representative~~] identified in the notice under subsection (b)(2) of this section and must be received by [~~the~~] TEA staff [~~representative~~] on or before the deadline specified in subsection (b)(3) of this section.

(2) The request must set out the reasons the EPP believes the recommendation is incorrect, with citations to include supporting evidence. The EPP may submit any written information to TEA as evidence to support its request, without regard to admissibility under the Texas Rules of Evidence. The request for review shall concisely state, in numbered paragraphs: [~~A timely and sufficient request for record review is a prerequisite for any appeal of the proposed order under §229.8 of this title (relating to Accreditation Revocation Appeals).~~]

(A) if alleging the decision was made in violation of a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the decision;

(B) if alleging the decision was made in excess of the SBEC's statutory authority, the SBEC's statutory authority and the specific facts supporting a conclusion that the decision was made in excess of this authority;

(C) if alleging the decision was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the decision was made through unlawful procedure;

(D) if alleging the decision was affected by other error of law, the law violated and the specific facts supporting a conclusion that the decision violated that law;

(E) if alleging the decision was not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole, each finding, inference, conclusion, or decision that was unsupported by substantial evidence in the record;

(F) if alleging the decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected;

(G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the EPP that were prejudiced by such violation, error, or defect;

(H) a concise statement of the relief sought by the EPP (petitioner); and

(I) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.

(3) Failure to comply with the requirements of this subsection shall result in dismissal of the request for informal review.

(d) No review requested. If the EPP fails to request an informal review by the deadline set in accordance with subsection (b)(3) of this section, the proposed recommendation will become a final recommendation and will proceed in accordance with subsection (f) of this section.

(e) Informal review. In response to a request under subsection (c) of this section, TEA staff will review the materials and documents provided by the EPP and issue a final recommendation. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review.

(f) Final recommendation.

(1) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may request that TEA staff schedule the matter for a hearing before an administrative law judge at the State Office of Administrative Hearings (SOAH), as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(2) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration of a final order.

(3) The rules of evidence do not apply. Presentations need not follow question-and-answer format.

[~~(d) Preliminary matters.~~]

[~~(1) In response to a request under subsection (c) of this section, the TEA representative shall provide written notice to the EPP of the date, time, and place for the record review.~~]

[~~(A) In the written notice, the TEA representative may:~~]

~~*(i)* set time limits for presentations on the record review;~~]

~~*(ii)* set deadlines for exchanging documents prior to the record review;~~]

~~*(iii)* set deadlines for identifying participants who may present information or ask questions during the record review; and~~]

~~*(iv)* provide any other instructions on the conduct of the record review.~~]

[~~(B) The TEA representative may consider reasonable requests to reschedule the record review and associated deadlines, but shall give primary importance to the need for a timely resolution of the matter under record review.~~]

[~~(C) The record review shall be completed on or before the expiration of 30 calendar days following receipt of the request under subsection (c) of this section.~~]

[~~(D) Timely completion of the record review under subsection (c) of this section is a prerequisite for an appeal of the proposed order under §229.8 of this title.~~]

[~~(2) The EPP shall submit any written information to the TEA representative in advance of the record review. To be considered part of the record, such information must also be presented during the record review.~~]

[~~(3) In its request for record review, or within a reasonable time thereafter, the EPP may request that specific TEA staff attend the record review to assist the TEA representative in reviewing the information presented.~~]

[~~(A) Such request shall be limited to TEA staff directly involved in the development of the information identified in the notice under subsection (b) of this section.~~]

[~~(B) If reasonable and practicable, the TEA representative shall schedule the record review so as to allow the requested TEA staff to attend.~~]

[~~(4) At all times prior to the record review, the EPP is encouraged to contact the office of the TEA representative to discuss the process and to facilitate preliminary matters. However, such commu-~~

nications will not be recorded and will not be considered part of the record.]

[(5) The EPP identification number of the affected entity must be included in all written correspondence on the record review, as well as the date the notice was issued under subsection (b) of this section. Correspondence relating to the record review may be made part of the record.]

[(6) All deadlines under this section shall be calculated from the date of actual receipt. No mailbox rule applies.]

[(e) Record review.]

[(1) The TEA representative shall meet with the chief operating officer and/or representatives of the EPP at the TEA headquarters in Austin, Texas, to receive oral and written information.]

[(2) The proceedings shall be recorded by audiotape or similar means. The audiotape and all written information presented during the record review shall comprise the official record of the proceedings.]

[(3) The EPP may have legal counsel present during the proceedings.]

[(4) The EPP may present information verbally and in writing and may rebut information presented by the TEA staff.]

[(5) The rules of evidence do not apply. Presentations need not follow question-and-answer format.]

[(6) The EPP may ask questions of the TEA staff. The TEA representative may designate a specific portion of the meeting for this purpose.]

[(7) The TEA representative may ask questions of any participant directly or through the TEA staff.]

[(8) The TEA representative shall strictly confine presentations and questions to the matters set forth in the notice and shall exclude information that is irrelevant, immaterial, or unduly repetitious.]

[(9) On request, the TEA representative shall include in the record a brief written proffer describing any information excluded under paragraph (8) of this subsection. In lieu of a written proffer, an oral statement may be recorded on a separate audiotape. If the excluded information is in writing, the document shall be identified as excluded and preserved with the record.]

[(10) The TEA representative may take official notice of generally recognized information within the TEA staff's area of specialized knowledge.

[(A) Each party shall be notified, either before or during the record review, of the material officially noticed, including TEA staff memoranda or information.]

[(B) Any participant may present information to rebut information that is officially noticed.]

[(11) The special skills and knowledge of the TEA representative and staff shall be used in evaluating all information presented during the record review.]

[(12) At the request of the EPP, a record review may be conducted by telephone or similar means.]

[(13) A participant may present information via telephone or similar means during any record review.]

[(f) Final order. Following the record review, a proposal for decision will be issued by the TEA representative and submitted to the SBEC for entry of a final order. The final order may include changes or additions to the proposed order and such modifications are not subject to another record review procedure. This order may be appealed only as provided by §229.8 of this title.]

[(g) No request. If no record review is requested by the deadline specified in subsection (b)(3) of this section, a final order may be issued without record review. An order issued without record review may not be appealed under §229.8 of this title, or otherwise.]

[(1) The approval of an EPP to provide educator preparation is automatically:]

[(A) revoked, void, and of no further force or effect on the effective date of a final decision by the SBEC ordering the EPP closed under this subsection; and]

[(B) modified to remove authorization for an individual certification field on the effective date of a final decision by the SBEC ordering the EPP closed under this subsection.]

[(2) If sanctions other than revocation of approval and EPP closure are imposed on an EPP under the procedures provided by this subsection, an EPP is not entitled to any additional hearing or appeal.]

(g) [(h)] Other law. Texas Government Code, Chapter 2001, and the TEC, §7.057, do not apply to an informal [a record] review under this section.

§229.8. Contested Cases for Accreditation Revocation [Appeals].

(a) [Applicability.] This section applies only to a final recommendation [order] issued under §229.5 of this title (relating to Accreditation Sanctions and Procedures) or §229.6 of this title (relating to Continuing Approval) that proposes [orders] revocation of approval and closure of an educator preparation program (EPP) and does not apply to a final recommendation proposing the assignment of [decision or order assigning] Accredited-Warned or Accredited-Probation status or ordering any other sanction, including, without limitation, withdrawing approval to offer a specific certification field, public reprimand, imposing conditions upon continuing approval, requiring technical assistance, requiring professional services, or appointing a monitor.

(b) If an EPP declines to sign a final recommendation, or if the EPP fails to respond timely to a notice of a proposed recommendation, Texas Education Agency (TEA) staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH) in accordance with [Applicability of other law. An appeal under this section shall be governed by] the contested case procedures set out in §§249.19-249.40 of this title, [provided by Chapter 157, Subchapter EE, of this title (relating to Review by State Office of Administrative Hearings: Certain Accreditation Sanctions)] and Texas Government Code, Chapter 2001. To the extent that a provision of this section conflicts with a rule or practice of the SOAH [State Office of Administrative Hearings (SOAH)], this section shall prevail.

(c) Upon a final decision from the State Board for Educator Certification (SBEC) ordering the EPP closed under this subsection in keeping with §249.39 of this title (relating to Final Decisions and Orders), the approval of an EPP to provide educator preparation is:

(1) automatically revoked, void, and of no further force or effect on the effective date of a final decision by the SBEC; and

(2) automatically modified to remove authorization for an individual certification field on the effective date of a final decision by the SBEC.

(d) This section satisfies the hearing requirements of the Texas Education Code, §21.0451(a)(2)(D) and (a)(3).

[(c) Petition for review. An EPP subject to a decision (final order), made applicable to this section by subsection (a) of this section, may file with the State Board for Educator Certification (SBEC) a petition for review of that decision not later than 30 calendar days after the date the decision to be reviewed is received by the EPP. The decision may be delivered by mail, personal delivery, facsimile, or email.]

[(1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits and incorporated documents.]

[(2) The petition for review shall concisely state, in numbered paragraphs:]

[(A) if alleging the decision was made in violation of a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the decision;]

[(B) if alleging the decision was made in excess of the SBEC's statutory authority, the SBEC's statutory authority and the specific facts supporting a conclusion that the decision was made in excess of this authority;]

[(C) if alleging the decision was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the decision was made through unlawful procedure;]

[(D) if alleging the decision was affected by other error of law, the law violated and the specific facts supporting a conclusion that the decision violated that law;]

[(E) if alleging the decision was not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole, each finding, inference, conclusion, or decision that was unsupported by substantial evidence in the record;]

[(F) if alleging the decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and]

[(G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the EPP that were prejudiced by such violation, error, or defect.]

[(3) A petition for review shall further contain:]

[(A) a concise statement of the relief sought by the EPP (petitioner); and]

[(B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.]

[(4) A request for relief in a review under this section may not be made orally or as part of the record at a record review, prehearing conference, or hearing.]

[(5) Failure to comply with the requirements of this subsection shall result in dismissal of the petition for review. A petition for review may not be amended or supplemented after the deadline for filing a petition for review.]

[(6) The SBEC shall transmit the petition for review to the SOAH with a request that it be docketed.]

[(7) If the SBEC chooses to file an answer, the answer must be filed by the date the record is filed under subsection (l) of this section.]

[(d) Standard of review. A challenge under this section shall be governed by the substantial evidence rule as provided by the Texas Government Code, §2001.174 and §2001.175, and judicial case precedents construing those provisions.]

[(e) Matters within SBEC's discretion. The SOAH may not substitute the SOAH judgment for the judgment of the SBEC on questions committed to the SBEC's discretion. Questions committed to the SBEC's discretion include, but are not limited to, the following:]

[(1) any questions arising under a statute, rule, or other legal standard that requires or permits the SBEC to make a decision within general legal guidelines that do not mandate a specific result under the circumstances; and]

[(2) the execution of any act authorized or required to be taken by the SBEC.]

[(f) Weight of evidence. The SOAH may not substitute the SOAH judgment for the judgment of the SBEC on the weight to be assigned the evidence before the SBEC.]

[(g) SOAH decisions. The SOAH may affirm the SBEC decision in whole or in part. The SOAH shall reverse and remand the decision for further proceedings if substantial rights of the EPP have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the SBEC are:]

[(1) in violation of a statutory provision;]

[(2) in excess of the SBEC's authority;]

[(3) made through unlawful procedure;]

[(4) affected by other error of law;]

[(5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or]

[(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.]

[(h) Remand. An order of remand may not direct or control the SBEC's exercise of discretion on a matter committed to the SBEC's discretion by the Texas Education Code (TEC), Chapter 21, Subchapter B, and the SBEC shall continue to exercise that discretion after remand. On remand, the SBEC shall apply the facts and law as determined by the SOAH to reach a new decision in light of all the circumstances of the case.]

[(i) Scope of review. The administrative law judge (ALJ) is confined to the SBEC record, except that the ALJ may receive evidence of procedural irregularities alleged to have occurred before the SBEC that are not reflected in the record.]

[(j) Additional evidence. A party may apply to the ALJ to present additional evidence of procedural irregularities alleged to have occurred before the SBEC that are not reflected in the record. If the additional evidence is material to the outcome of the review, and if there were good reasons for the failure to present it in the proceeding before the SBEC, the ALJ may order that the additional evidence be taken before the SBEC or its TEA representative on conditions determined by the ALJ. The SBEC shall file the additional evidence and any changes, new findings, or decisions with the ALJ. The ALJ may not take testimony, question witnesses, administer oaths, rule on questions of evidence, or compel discovery or disclosure of evidence in any form.]

[(k) Components of SBEC record. The SBEC record of proceedings shall include the following components, as specified under §229.7 of this title (relating to Record Review of Certain Decisions):]

[(1) the notice of proposed order, including all information referenced in the notice;]

[(2) the request for record review, including any request for the attendance of specific TEA staff under §229.7(d)(3) of this title;]

[(3) any written correspondence made a part of the record by the TEA representative under §229.7(d)(5) of this title;]

[(4) any audiotapes or similar recordings made a part of the record by the TEA representative under §229.7(d) of this title;]

[(5) all audiotapes or similar recordings of the record review and any recorded telephone conferences, proffers of excluded information, or other recorded proceedings before the TEA representative under §229.7 of this title;]

[(6) all written information presented to the TEA representative during the record review;]

[(7) a description of all matters officially noticed; and]

[(8) the final order issued under §229.7(f) of this title.]

[(l) Proceedings regarding SBEC record. The SBEC shall file the original or a certified copy of the entire record of the proceeding under review not later than 20 calendar days after the date the petition for review is filed, unless additional time is allowed by the ALJ. The record may be shortened by stipulation of all parties to the review proceedings. The ALJ may assess costs against a party who unreasonably refuses to stipulate to limit the record, unless that party is required to pay all costs of record preparation. The petitioner shall offer, and the ALJ shall admit, the TEA record into evidence as an exhibit. The ALJ may require or permit later corrections or additions to the record.]

[(m) Enforcement of decision pending review. The pendency of a review under this section does not stay or otherwise affect the enforcement of the SBEC decision challenged under this chapter.]

[(n) Expedited review. The SOAH shall expedite its review of a challenge under this section. The ALJ shall issue a pre-hearing order initially setting a date for closure of the record that is not later than 30 calendar days after the date the petition for review is filed. The ALJ may grant a continuance of the record closure date only for good cause shown. The ALJ may not order a settlement conference, mediation, or other form of alternative dispute resolution. The ALJ shall issue a final order not later than 30 calendar days after the date on which the record is finally closed.]

[(o) Final decision. The decision of the ALJ is final and may not be appealed. The decision of the ALJ:]

[(1) must rule on any mandatory sanction required by the TEC, §21.0451;]

[(2) may not order a sanction or relief that the SBEC is not authorized to order under applicable law; and]

[(3) may not change an accreditation status.]

§229.9. Fees for Educator Preparation Program Approval and Accountability.

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application (nonrefundable; includes pre-approval visit)--$1,000.

(2) New educator preparation program approval (includes post-approval visit)--$1,000.

[(3) Ten-year reapplication for an educator preparation program approved after August 31, 2008 (includes approval visit)--$2,000.]

(3) [(4)] Five-year continuing approval visit pursuant to §228.10(b) [§228.10(c)] of this title (relating to Approval Process)--$1,500.

(4) [(5)] Monitoring or technical assistance visit--$1,500.

(5) [(6)] Addition of new certification field or addition of clinical teaching--$500.

(6) [(7)] Addition of each new class of certificate--$1,000.

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 May 23, 2014.

TRD-201402443
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.17

The State Board for Educator Certification (SBEC) proposes an amendment to §249.17, concerning disciplinary proceedings, sanctions, and contested cases. The section establishes decision-making guidelines. The proposed amendment would clarify that under the SBEC decision-making guidelines, actions that constitute "engaged in" and "solicitation" are distinct grounds for permanent revocation or denial of certification. The proposed amendment would also clarify that fact findings from final orders from other state jurisdictions may also provide the basis for initiating disciplinary proceedings in Texas.

The Texas Education Code, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. Section 249.17, Decision-Making Guidelines, reflects several provisions of statutory authority that provide a framework and guidance for the Texas Education Agency, administrative law judges, and the SBEC in resolving issues dealing with certification.

Section 249.17(d) deals with when permanent revocation or a certification or denial of an applicant for certification should occur. Specifically, subsection (d)(1) currently calls for permanent revocation or permanent denial of an applicant when the certification holder or applicant "engaged in or solicited any sexual contact or romantic relationship with a student or minor as defined in §249.3 of this title (relating to Definitions)". In a recent contested case hearing, an administrative law judge interpreted "engaged in or solicited" as a single action subject to the same definition rather than as two distinct and separate actions that independently could give rise to permanent revocation or denial.

The proposed amendment to 19 TAC §249.17(d) would clarify the rule to ensure that the actions of "engaged in" and "solicited" are separate and distinct types of conduct that would result in permanent revocation or denial. Current paragraphs (2)-(6) would be renumbered accordingly.

Section 249.17(e) deals with how SBEC treats findings of fact contained in final orders from other states. The proposed amendment to 19 TAC §249.17(e) would clarify the rule to make clear that the findings of fact contained in an out-of-state order may provide a factual basis for SBEC action.

The proposed amendment would have no procedural and reporting implications. Also, the proposed amendment would have no locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Moore has determined that for the first five-year period the proposed amendment is in effect the public and student benefit anticipated as a result of the proposed amendment would be clarifying the SBEC rule regarding the types of conduct that would result in permanent revocation or denial of a certificate and actions in other states that could result in disciplinary action in Texas. There are no additional costs to persons required to comply with the proposed amendment.

In addition, 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.

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 *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendment is proposed 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §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; §21.058(a), (b), and (d), which provide for the revocation of educator certificates based on conviction of certain offenses; 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 the 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.

The proposed amendment implements the TEC, §§21.031(a); 21.041(b)(4) and (7); 21.058(a), (b), and (d); and 21.060; and the Texas Occupations Code, §53.021(a).

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct;

(5) whether the sanction will deter future violations; and

(6) any other relevant circumstances or facts.

(d) Permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:

(1) engaged in [~~or solicited~~] any sexual contact or romantic relationship with a student or minor [~~as defined in §249.3 of this title (relating to Definitions)~~];

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) [~~(2)~~] possessed or distributed child pornography;

(4) [~~(3)~~] was registered as a sex offender;

(5) [~~(4)~~] committed criminal homicide;

(6) [~~(5)~~] transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property; or

(7) [~~(6)~~] committed any offense described in the TEC, §21.058.

(e) Sanctioned misconduct in another state. The findings of fact [~~SBEC shall give full faith and credit to the fact findings~~] contained in final orders from any [~~of all~~] other state jurisdiction may provide the factual basis for SBEC disciplinary action [~~jurisdictions~~]. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding [~~shall sanction~~] the educator's Texas educator certificate and impose a sanction as provided under this chapter [~~SBEC rules~~].

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 May 23, 2014.

TRD-201402444
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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CHAPTER 250. ADMINISTRATION
SUBCHAPTER B. RULEMAKING PROCEDURES

19 TAC §250.20

The State Board for Educator Certification (SBEC) proposes an amendment to §250.20, concerning rulemaking procedures. The SBEC rule provides the process for petitioning the SBEC for the adoption, amendment, or repeal of an SBEC rule in the Texas Administrative Code. The Texas Government Code, §2001.021, requires that a state agency by rule prescribe the form for a petition and the procedures for its submission, consideration, and disposition.

The proposed amendment to 19 TAC §250.20 would update the rule to clarify the Texas Education Agency (TEA) as TEA staff. In addition, Figure: 19 TAC §250.20(a) would be updated to reflect the name of the office to which the form should be mailed. The proposed amendment results from the SBEC's rule review of 19 TAC Chapter 250 conducted in accordance with Texas Government Code, §2001.039.

The proposed amendment would have no additional procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule action.

Ms. Moore has determined that for the first five-year period the proposed amendment is in effect the public and student benefit anticipated as a result of the proposed rule action would be a concise procedure to petition for adoption of SBEC rules or rule changes. There are no additional costs to persons required to comply with the proposed amendment.

In addition, 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.

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 *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendment is proposed under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.041(b)(1), which requires the State Board for Educator Certification 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 Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for its submission, consideration, and disposition.

The proposed amendment implements the TEC, §21.035 and §21.041(b)(1), and Texas Government Code, §2001.021.

§250.20. Petition for Adoption of Rules or Rule Changes.

(a) Any interested person may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on a form provided in this subsection. The petition shall be signed and submitted to the designated Texas Education Agency (TEA) office. The TEA staff shall evaluate the merits of the proposal to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.
Figure: 19 TAC §250.20(a)
[~~Figure: 19 TAC §250.20(a)~~]

(b) In accordance with the Texas Government Code, §2001.021, the TEA staff must respond to the petitioner within 60 calendar days of receipt of the petition.

(1) Where possible, the recommendation concerning the petition shall be placed on the SBEC agenda, and the SBEC shall act on the petition within the 60-calendar-day time limit.

(2) Where the time required to review the petition or the scheduling of SBEC meetings will not permit the SBEC to act on the petition within the required 60 calendar days, the TEA staff shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation will be presented to the SBEC for action.

(c) The SBEC will review the petition and the recommendation and will either direct the TEA staff to begin the rulemaking process or deny the petition, giving reasons for the denial. The TEA staff will notify the petitioner of the SBEC's action related to the petition.

(d) Without limitation to the reasons for denial in this subsection, the SBEC may deny a petition on the following grounds:

(1) the SBEC does not have jurisdiction or authority to propose or to adopt the petitioned rule;

(2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBEC, or other law;

(3) the SBEC determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding; or

(4) the petitioner is inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing a petition:

(A) before the fourth anniversary of the SBEC's having previously considered and rejected a similar rule on the same subject matter; or

(B) to amend a rule proposed or adopted by the SBEC that has not yet become effective.

(e) If the SBEC initiates rulemaking procedures in response to a petition, the rule text which the SBEC proposes may differ from the rule text proposed by the petitioner.

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 May 23, 2014.

TRD-201402445
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.35

The Texas Board of Nursing (Board) proposes new §213.35 pertaining to Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program. The new rule is proposed under the authority of the Occupations Code §301.1605(a) and §301.453. The new rule will effectuate a two-year pilot program designed to evaluate the use of individualized competency assessments and targeted remediation plans as a form of disciplinary action for nursing practice violations of the Nursing Practice Act (NPA). The KSTAR pilot disciplinary orders will be offered as an alternative to conventional disciplinary sanctions of warning with probationary stipulations as authorized by §301.453 of the Occupations Code. The pilot will permit the evaluation of this alternative form of discipline to determine if individualized competency assessments combined with a designed remedial plan can effectively address competency questions and reduce the need for extended probation and monitoring of disciplined nurses.

Background

In October of 2013, the Board approved a two-year pilot in consultation with Texas A&M Health Sciences Center College of Nursing and the Rural and Community Health Institute (RCHI) to offer the KSTAR program for nurses with practice violations as a form of discipline that would ordinarily result in a disciplinary sanction of a warning and below.

The Disciplinary Matrix adopted in Board Rule §213.33 discusses certain forms of discipline including those for violations related specifically to practice breakdowns. When practice breakdowns occur, a nurse's level of competency is questioned and the Board must attempt to ensure minimum competency. The sanctions that may be imposed range from remedial education to revocation. However, if revocation is not appropriate based on the nature of the violation, the disciplinary remedy usually includes remedial education and monitoring under the supervision of another nurse for at least one year.

The Board has continued to explore regulatory options consistent with Just Culture concepts and has considered alternatives to conventional disciplinary orders that may provide correction of knowledge deficits, yet also be viewed as less punitive. The Board's Deferred Discipline pilot and Corrective Action strategies are examples. Staff and RCHI, for the last few years, have engaged in discussions aimed at utilizing innovative alternatives to discipline that may remediate a nurse's practice and eliminate the ongoing monitoring and supervisory requirement.

RCHI has been involved in the development of KSTAR for Nurses, which is a comprehensive program designed to perform a competency assessment and provide individualized remediation to ensure minimum nurse competency. The program, with Staff input, is designed to assess a nurse's knowledge base and level of expertise; and if deficits exist, develop an individualized education plan that includes a period of monitoring and follow-up. In addition, the program may also be customized for nurses who desire to re-enter practice after an extended period of time.

The KSTAR pilot program may provide evidence based research to someday design a non-punitive alternative to discipline for nurses with practice related errors. A more individualized approach to education and demonstration of competency may enhance the Texas Board of Nursing's (BON) ability to reassure the public that a nurse's practice can be remediated.

Section by Section Overview.

Proposed new §213.35(b) sets forth the purpose of the proposed pilot program. The purpose of the proposed new rule is to evaluate the effectiveness of the KSTAR program, or an equivalent, as an alternative method of discipline. The pilot will develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the NPA and use targeted remedial education to correct identified deficiencies in order to ensure minimum competency. Additionally, the pilot will develop an alternative extensive orientation program consistent with §217.6(b) and §217.9(g) that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of an alternative extensive orientation will provide evidence-based assurance of minimum nurse competency before returning to practice.

Proposed new §213.35(c) sets forth the approval process for pilot program provider under the proposed new rule. Proposed new §213.35(c) gives discretion to the Executive Director to approve a pilot program provider that meets the minimum requirements of this rule.

Proposed new §213.35(d) clarifies that the KSTAR pilot program order will be considered a method of discipline pursuant to Texas Occupations Code §301.453 or §301.6555. Proposed new §213.35(d) clarifies that the KSTAR pilot program order will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

Proposed new §213.35(e) clarifies that participation in the KSTAR pilot program will only be through an agreed order and the opportunity to enter into a KSTAR pilot program is at the sole discretion of the Executive Director.

Proposed new §213.35(f) establishes the responsibilities of nurses participating in the KSTAR pilot program. Proposed new §213.35(f) makes clear that each nurse will be responsible for the entire cost of participation in the KSTAR pilot program. Each nurse subject to a KSTAR order must: (i) enroll in the pilot program within 45 days of the date of the order unless otherwise agree; (ii) submit to an individualized assessment designed to evaluate nurse practice competency and to support a targeted remediation plan; (iii) follow all requirements within the remediation plan if any; (iv) successfully complete the KSTAR order within one year from the effective date of the agreed order; and (v) provide written proof of successful completion of the KSTAR pilot program to the Board.

Proposed new §213.35(g) establishes the minimum requirements of the KSTAR pilot program provider. Proposed new §213.35(g) sets forth that the KSTAR pilot program provider should be capable of meeting the following requirements: (i) provide reasonable intake and assessment options within 45 days of enrollment; (ii) perform an individualized comprehensive assessment designed to evaluate nurse practice competency; (iii) develop a written individualized remediation plan to ensure minimum competency that may include a period of monitoring and follow-up; (iv) if requested by the Board, provide the remediation plan to the Board for review and approval; (v) provide the education, resources, tools and support that the remediation plan requires; and (vi) provide a written report to the nurse and the Board upon the successful completion of the remediation plan.

Proposed new §213.35(h) establishes that every KSTAR pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing jurisprudence and ethics.

Proposed new §213.35(i) sets forth that if the individualized assessment identifies further violations of the NPA, including inability to practice nursing safely, further disciplinary action may be taken based on such results in the assessments.

Proposed new §213.35(j) sets forth that a KSTAR pilot program action under the pilot program will be available: (i) for individuals with no prior disciplinary history with the Board; (ii) for violations of the NPA and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or any deferred order issued pursuant to §213.34; (iii) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings; (iv) only if the probationary stipulations outlined in the KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and (v) for violations of the NPA and/or Board rules that were pending with the Board on January 1, 2014, or after.

Proposed new §213.35(k) sets forth that violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a KSTAR pilot program action under the pilot program.

Proposed new §213.35(l) establishes that KSTAR pilot program action under the pilot program will not be available to: (i) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure); (ii) an individual whose application under §217.2 of this title (relating Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or (iii) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Proposed new §213.35(m) sets forth that if an individual fails to comply with a probationary stipulation required by the KSTAR pilot program order or if a subsequent complaint is filed against an individual during the pendency of the KSTAR pilot program order, the Board may treat the KSTAR pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

Proposed new §213.35(n) establishes that the outcome and effectiveness of the pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

Finally, proposed new §213.35(o) sets forth that the Board may contract with a third party to perform the monitoring and evaluation of the KSTAR pilot program.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new rule is in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. However, approval for the pilot program is for only two years.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new chapter is in effect, the anticipated public benefit will be the adoption of a pilot program that: (i) creates an opportunity for alternative discipline for nurses with practice-related errors; (ii) provides potentially less burdensome remediation for nurses than traditional disciplinary stipulation; (iii) may increase the opportunity for nurses to reenter into practice with fewer employment barriers, yet still provides evidence-based assurance to the public of their competency; (iv) allows for a more individualized approach to education and demonstration of competency may enhance the Board's ability to reassure the public that a nurse's practice has been remediated; (v) may lead to a more non-punitive approach to discipline and increase likelihood that a nurse who has been remediated remains in the workforce; (vi) may assist individuals who choose to re-enter nursing practice after an extended absence of four or more years; and (vii) knowledge gained from this type of evidence-based program may be used to inform nursing regulation and future public policy.

Potential Costs for Applicants Complying with the Proposal. The Board anticipates an associated cost of an estimated $2,750.00 per KSTAR participant. This fee includes all testing and teaching materials, resources, and a report to the Board upon completion of the pilot. In addition to the fee, each KSTAR participant would be responsible for their own travel expenses to the KSTAR facility. As participation in the KSTAR pilot program is voluntary, only those participants that choose to avail themselves of the provisions of the proposed new rule may incur associated costs of the program. If an applicant incurs costs associated with the pilot program, the costs will likely result from the provisions of proposed new §213.35.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined there is no economic impact and that no small or micro business will be affected by the proposed new rule. Therefore, applicants who apply for approval of an innovative pilot program under the proposed new rule do so at their own choice, and as a result, agree to bear any associated costs of compliance with the requirements of the proposed new rule.

Takings Impact Assessment. The Board 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 or any request for a public hearing must be submitted no later than 5:00 p.m. on July 7, 2014, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Melinda Hester, RN, Lead Nursing Consultant for Practice, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to melinda.hester@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new rule is proposed under the Occupations Code §§301.151, 301.1605(a) and 301.453.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1605(a) authorizes the Board to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

Section 301.453(a) authorizes the Board to enter an order imposing one or more of the following if the Board determines that a person has committed an act listed in §301.452(b): (i) denial of the person's application for a license; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including (A) limiting to or excluding from the person's practice one or more specified activities of nursing or (B) stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) authorizes in addition to or instead of an action under Subsection (a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education of counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol of the use of drugs and submit to random periodic screening for alcohol or drug use.

Section 301.453(c) authorizes the Board to probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) authorizes the Board to impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license if the Board suspends, revokes, or accepts surrender of a license.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §§301.151, 301.1605(a), and 301.453.

§213.35. Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program.

(a) This section is authorized by Texas Occupations Code §301.1605(a) and §301.453 and implements the Knowledge, Skills, Training, Assessment and Research (KSTAR) pilot program approved by the Texas Board of Nursing on October 17, 2014. The pilot program will commence after the final adoption of this rule and will continue for a period not to exceed two years from the implementation date. The program may be extended upon an approval of a written application submitted to the Board.

(b) The purpose of this rule is to evaluate the effectiveness of the KSTAR program, or an equivalent, as an alternative method of discipline. The pilot will develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the Nursing Practice Act (NPA) and use targeted remedial education to correct identified deficiencies in order to ensure minimum competency. Additionally, the pilot will develop an alternative extensive orientation program consistent with §217.6(b) of this title (relating to Failure to Renew License) and §217.9(g) of this title (relating to Inactive and Retired Status) of this title that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of an alternative extensive orientation will provide evidence-based assurance of minimum nurse competency before returning to practice.

(c) Approval of the pilot program provider is within discretion of the Executive Director and any provider must be able to meet the requirements of this rule.

(d) The KSTAR pilot program order will be considered a method of discipline pursuant to Texas Occupations Code §301.453 or §301.6555; and will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

(e) Participation in the KSTAR pilot program will only be through an agreed order and the opportunity to enter into a KSTAR pilot program order is at the sole discretion of the Executive Director.

(f) Each nurse will be responsible for the entire cost of participation in the KSTAR pilot program. Each nurse subject to a KSTAR order must:

(1) enroll in the pilot program within 45 days of the date of the order unless otherwise agree;

(2) submit to an individualized assessment designed to evaluate nurse practice competency and to support a targeted remediation plan;

(3) follow all requirements within the remediation plan if any;

(4) successfully complete the KSTAR order within one year from the effective date of the agreed order; and

(5) provide written proof of successful completion of the KSTAR pilot program to the Board.

(g) The KSTAR pilot program provider should be capable of meeting the following requirements:

(1) provide reasonable intake and assessment options within 45 days of enrollment;

(2) perform an individualized comprehensive assessment designed to evaluate nurse practice competency;

(3) develop a written individualized remediation plan to ensure minimum competency that may include a period of monitoring and follow-up;

(4) if requested by the Board, provide the remediation plan to the Board for review and approval;

(5) provide the education, resources, tools and support that the remediation plan requires; and

(6) provide a written report to the nurse and the Board upon the successful completion of the remediation plan.

(h) Every KSTAR pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing jurisprudence and ethics.

(i) If the individualized assessment identifies further violations of the Nursing Practice Act, including inability to practice nursing safely, further disciplinary action may be taken based on such results in the assessments.

(j) A KSTAR pilot program action under the pilot program will be available:

(1) for individuals with no prior disciplinary history with the Board;

(2) for violations of the NPA and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or any deferred order issued pursuant to §213.34 of this title (relating to Deferred Discipline);

(3) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings;

(4) only if the probationary stipulations outlined in the KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and

(5) for violations of the NPA and/or Board rules that were pending with the Board on January 1, 2014, or after.

(k) Violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a KSTAR pilot program action under the pilot program.

(l) KSTAR pilot program action under the pilot program will not be available to:

(1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);

(2) an individual whose application under §217.2 of this title (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or

(3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(m) If an individual fails to comply with a probationary stipulation required by the KSTAR pilot program order or if a subsequent complaint is filed against an individual during the pendency of the KSTAR pilot program order, the Board may treat the KSTAR pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

(n) The outcome and effectiveness of the pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(o) The Board may contract with a third party to perform the monitoring and evaluation of the KSTAR pilot program.

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 May 22, 2014.

TRD-201402408
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-6821

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amendments to §329.1, regarding General Licensure Requirements. The amendment allows new licensees to work on the basis of website verification of licensure.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clearly identified as a more expeditious procedure for new licensee verification. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, and therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

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

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

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

§329.1. General Licensure Requirements and Procedures.

(a) Requirements. All applications for licensure shall include:

(1) a completed board application form with a recent color photograph of the applicant;

(2) the non-refundable application fee as set by the executive council;

(3) a successfully completed board jurisprudence exam on the Texas Physical Therapy Practice Act and board rules; and

(4) documentation of academic qualifications.

(A) For applicants who completed their physical therapy education in the U.S., the documentation required is:

(i) a transcript sent directly to the board from the degree-granting institution showing enrollment in the final semester of an accredited PT or PTA program as provided in §453.203 of the Act; and

(ii) a statement signed by the program director or other authorized school official, notarized or with the school seal affixed, stating that the applicant has successfully completed the PT or PTA program.

(B) For applicants who completed their physical therapy education outside of the U.S., the documentation required is set out in §329.5 of this title (relating to Licensing Procedures for Foreign-Trained Applicants).

(C) For applicants who are active U.S. military service members or veterans, any military service, training or education verified and credited by an accredited PT or PTA program is acceptable to the board.

(b) Licensure by examination. If an applicant has not passed the national licensure exam, the applicant must also meet the requirements in §329.2 of this title (relating to License by Examination).

(c) Licensure by endorsement. If the applicant is licensed as a PT or PTA in another state or jurisdiction of the U.S., the applicant must also meet the requirements as stated in §329.6 of this title (relating to Licensure by Endorsement).

(d) Application expiration. An application for licensure is valid for one year after the date it is received by the board.

(e) False information. An applicant who submits an application containing false information may be denied licensure by the board.

(f) Rejection. Should the board reject an application for licensure, the reasons for the rejection will be stated. The applicant may submit additional information and request reconsideration by the board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act, §453.352.

(g) Changes to licensee information. Applicants and licensees must notify the board in writing of changes in address of record, and residential, mailing, or business addresses within 30 days of the change. For a name change at time of renewal, the licensee must submit a copy of the legal document enacting the name change with the renewal application.

(h) Replacement copy of license. The board will issue a copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. The board will issue a new original license after a name change upon receipt of a written request, the appropriate fee, and a copy of the legal document enacting the name change.

(i) A new licensee may provide physical therapy services upon online verification of licensure. The Board will maintain a secure resource for verification of license status and expiration date on its website.

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 May 23, 2014.

TRD-201402428
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amendments to §341.3, regarding Qualifying Continuing Competence Activities. The amendments revise the method of obtaining credit for service as a Clinical Instructor and the method of qualifying manuscript and grant reviews for credit.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be PTs and PTAs that are competent to practice. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

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

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

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

§341.3. Qualifying Continuing Competence Activities.

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

(1) Continuing education (CE).

(A) Program content and structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) Records of each licensee who participates in the program must be maintained for four years by the CE sponsor/provider and must be made available to the board-approved organization upon request.

(B) CE programs subject to this subsection include the following:

(i) Live programs.

(I) One contact hour equals 1 continuing competence unit (CCU).

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(ii) Self-study programs - Structured, self-paced programs or courses offered through electronic media (for example, via the internet or on DVD) or on paper (for example, a booklet) completed without direct supervision or attendance in a class.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and instructional format of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(iii) Regular inservice-type programs over a one-year period where individual sessions are granted 2 CCUs or less.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or program approval number with the maximum CCUs granted and the CCU value of each session or group of sessions specified and justified.

(III) Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs earned can be calculated by the program sponsor/provider for submission to the board-approved organization.

(IV) If selected for audit, the licensee must submit the specified documentation.

(iv) Large conferences with concurrent programming.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the licensee's name and license number; title, sponsor/provider, date(s); and location of the conference; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or course approval number.

(III) If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) College or university courses.

(A) Courses at regionally accredited US colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All college courses in this subsection are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration includes the course syllabus for each course and an official transcript.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Courses submitted to meet the ethics/professional responsibility requirement must be approved as stated in §341.2 of this chapter (relating to Continuing Competence Requirements).

(C) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this section.

(D) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for an audit, the licensee must submit an official transcript.

(3) Scholarship.

(A) Publications. Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management written for the professional or lay audience. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(i) The publication must be published within the 24 months prior to the license expiration date.

(ii) CCU values for types of original publications are as follows:

(I) A newspaper article (excluding editorials and opinion pieces) may be valued up to 3 CCUs.

(II) A regional/national magazine article (excluding editorials and opinion pieces) may be valued up to 10 CCUs.

(III) A case study in a peer reviewed publication, monograph, or book chapter(s) is valued at 20 CCUs.

(IV) A research article in a peer reviewed publication, or an entire book is valued at 30 CCUs.

(iii) Documentation required for consideration includes the following:

(I) For newspaper articles, a copy of the article and the newspaper banner, indicating the publication date;

(II) For magazine articles and publications in peer reviewed journals, a copy of the article and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(III) For monographs or single book chapters, a copy of the first page of the monograph or chapter, and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(IV) For an entire book or multiple chapters in a book, the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Manuscript review. Reviews of manuscripts for peer-reviewed publications pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management. The Board will maintain and make available a list of peer-reviewed publications that are automatically approved for manuscript review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One manuscript review is valued at 3 CCUs.

(iii) For each renewal:

(I) PTs may submit no more than 3 manuscript reviews (9 CCUs).

(II) PTAs may submit no more than 2 manuscript reviews (6 CCUs).

~~*[(iv)* Documentation required for consideration is a copy of the letter or certificate from the publisher confirming completion of manuscript review.]~~

(iv) [~~(v)~~] If selected for audit, the licensee must submit a copy of the letter or certificate from the publisher confirming completion of manuscript review. [~~the approval letter from the board-approved organization.~~]

(v) A peer-reviewed publication not on the list of recognized publications for manuscript review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the peer-reviewed journal;

(II) The name of the manuscript; and

(III) A description of the journal's relevance to the physical therapy profession.

(C) Grant proposal submission. Submission of grant proposals by principal investigators or co-principal investigators for research that is pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The grant proposal must be submitted to the funding entity within the 24 months prior to the license expiration date.

(ii) One grant proposal is valued at 10 CCUs.

(iii) Licensees may submit a maximum of 1 grant proposal (10 CCUs).

(iv) Documentation required for consideration is a copy of the grant and letter submitted to the grant provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(D) Grant review for research pertinent to healthcare. The Board will maintain and make available a list of grant-issuing entities that are automatically approved for grant review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One grant review is valued at 3 CCUs.

(iii) Licensees may submit a maximum of 2 grant reviews (6 CCUs).

~~*[(iv)* Documentation required for consideration is a letter or certificate confirming grant review from the grant-provider.]~~

(iv) [~~(v)~~] If selected for audit, the licensee must submit a letter or certificate confirming grant review from the grant provider. [~~the approval letter from the board-approved organization.~~]

(v) A grant-issuing entity not on the list of recognized entities for grant review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the grant-issuing entity;

(II) The name of the grant; and

(III) A description of the grant's relevance to the physical therapy profession.

(4) Teaching and Presentation Activities.

(A) First-time development or coordination of course(s) in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(B) First-time development or coordination of course(s) in a regionally accredited U.S. college or university program for other health professions.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Presentation or instruction as a guest lecturer in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(D) Presentation or instruction as a guest lecturer in a regionally accredited U.S. college or university program for other health professions.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(E) First-time development, presentation or co-presentation at state, national or international workshops, seminars, or professional conferences, or at a board-approved continuing education course.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit no more than 10 CCUs for this activity.

(II) PTAs may submit no more than 8 CCUs for this activity.

(iv) Documentation required for consideration includes one of the following: a copy of a brochure for the presentation indicating the licensee as a presenter; or, a copy of the cover from the program and page(s) indicating the licensee as a presenter.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(F) Service as a clinical instructor for full-time, entry-level PT or PTA students enrolled in accredited education. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The instructorship must be completed within the 24 months prior to the license expiration date.

(ii) Valuation of clinical instruction is as follows:

(I) Supervision of full-time PT or PTA students for 5 [6] - 11 weeks is valued at 5 CCUs.

(II) Supervision of full-time PT or PTA students for 12 weeks or longer is valued at 10 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a letter or certificate from the coordinator of clinical education confirming clinical supervision and the number of weeks [~~hours~~] supervised from the education program.

(5) Advanced Training, Certification, and Recognition.

(A) Specialty Examinations. The Board will maintain and make available a list of recognized specialty examinations. Successful completion of a recognized specialty examination (initial or recertification) is automatically approved and assigned a standard approval number by the board-approved organization.

(i) The specialty examination must be successfully completed within the 24 months prior to the license expiration date.

(ii) Each recognized specialty examination is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter from the certifying body notifying the licensee of completion of the specialty from the credentialing body, and a copy of the certificate of specialization.

(iv) A specialty examination not on the list of recognized examinations but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) Identification and description of the sponsoring organization and its authority to grant a specialization to PTs or PTAs;

(II) A complete description of the requirements for specialization including required clock hours of no less than 1,500 completed within the prior 24 months;

(III) A copy of the letter notifying the licensee of completion of the specialty from the certifying body, and a copy of the certificate of specialization.

(B) American Physical Therapy Association (APTA) Certification for Advanced Proficiency for the PTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The certification must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of specialty certification is valued at 20 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the advanced proficiency, and a copy of the certificate of proficiency.

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of recognized residencies and fellowships. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the fellowship, and a copy of the fellowship certificate.

(D) Supervision or mentorship of a resident or fellow in an APTA credentialed residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Clinical supervision of residents or fellows for 1 year is valued at 10 CCUs.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the credentialed residency or fellowship program confirming participation as a clinical mentor, with the length of time served as a clinical mentor.

(E) Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Completion of a PRT is valued at 15 CCUs.

(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.

(6) Professional Membership and Service. Licensees may submit activities in this category for up to one half of their CC requirement (PT - 15 CCUs, PTAs - 10 CCUs) at time of renewal. Licensees must demonstrate membership or participation in service activities for a minimum of one year during the renewal period to receive credit. Credit is not prorated for portions of years.

(A) Membership in the APTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of membership is valued at 1 CCU.

(ii) If selected for audit, the licensee must submit a copy of the current membership card.

(B) Service on a board, committee, or taskforce for the Texas Board of Physical Therapy Examiners, the APTA (or an APTA component), or the FSBPT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 9 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter on official organization letterhead or certificate confirming completion of service.

(C) Service as a TPTA Continuing Competence Approval Program reviewer. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 6 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(D) Service as an item writer for the national PT or PTA exam. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 5 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 10 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

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 May 23, 2014.

TRD-201402429
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-6900

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22 TAC §341.6

The Texas Board of Physical Therapy Examiners proposes amendments to §341.6, regarding License Restoration. The amendments expand the requirements licensees must meet before restoring or reinstating a Texas license that has been expired one year or more.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be to encourage more PTs and PTAs whose licenses have expired to return to the workforce if they are in Texas. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

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

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

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

§341.6. License Restoration.

(a) The board may reinstate a license that has been expired one year or more through the process of restoration if certain requirements are met.

(b) Duration. The original expiration date of a restored license will be adjusted so that the license will expire two years after the month of restoration.

(c) Persons who are currently licensed in good standing in another state, district, or territory of the U.S. The requirements for restoration are:

(1) a completed restoration application form;

(2) a passing score on the jurisprudence examination;

(3) verification of Licensure from all states in which the applicant holds or has held a license; and

(4) the restoration fee.

(d) Persons who are not currently licensed in another state or territory of the U.S.

(1) A licensee whose Texas license is expired for one to five years. The requirements for restoration are:

(A) a completed restoration application form;

(B) a passing score on the jurisprudence examination;

(C) the restoration fee; [~~and~~]

(D) verification of Licensure from all states in which the applicant has held a license; and [~~successful completion of a practice review tool and board-approved continuing competence activities (PT 30 CCUs, PTAs 20 CCUs) including two CCUs of approved ethics/professional responsibility activities, or passage of the national examination.~~]

(E) demonstration of competency. Competency may be demonstrated in one of the following ways:

(i) reexamination with a passing score on the national physical therapy exam;

(ii) completion of an advanced degree in physical therapy within the last five years;

(iii) For PTs only: successful completion of a board-approved practice review tool and 30 CCUs of board-approved continuing competence activities;

(iv) For PTs only: 480 hours on-site supervised clinical practice and 30 CCUs of board-approved continuing competence activities within the previous 24 months;

(v) For PTAs only: 320 hours on-site supervised clinical practice and 20 CCUs of board-approved continuing competence activities.

(2) A licensee whose Texas license is expired for five years or more may not restore the license but may obtain a new license by taking the national examination again and getting a new license by relicensure. The requirements for relicensure are:

(A) a completed restoration application form;

(B) a passing score on the jurisprudence examination;

(C) the restoration fee; and

(D) a passing score on the national exam, reported directly to the board by the Federation of State Boards of Physical Therapy.

(e) Military spouses. The board may restore the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the U.S., who has, within the five years preceding the application date, held the license in this state that expired while the applicant lived outside of this state for at least six months. In addition to the requirements listed in subsection (c)(1) - (4) of this section, the application for restoration shall include:

(1) official documentation of current active duty of the applicant's spouse;

(2) official documentation of residence outside of Texas for a period of no less than six months, including the date the applicant's license expired; and

(3) demonstration of competency. Competency may be demonstrated in one of the following ways:

(A) verification of current licensure in good standing in another state, district or territory of the U.S.;

(B) reexamination with a passing score on the national physical therapy exam;

(C) completion of an advanced degree in physical therapy within the last five years; or

(D) successful completion of a practice review tool and continuing competence activities as specified by the board.

(f) Renewal of a restored license. To renew a license that has been restored, a licensee must comply with all requirements in §341.1 of this title (relating to Requirements for Renewal).

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 May 23, 2014.

TRD-201402430
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-6900

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CHAPTER 343. CONTESTED CASE PROCEDURE

22 TAC §343.1

The Texas Board of Physical Therapy Examiners proposes amendments to §343.1, regarding Definitions. The amendments streamline the process for filing a complaint against a licensee.

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

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clearly identified as a more expeditious procedure for filing a complaint against a licensee of this board. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, and therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

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

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

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

§343.1. Definitions.

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

(1) Act--The Texas Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e.

(2) Agency--The Board of Physical Therapy Examiners.

(3) APTRA--The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(4) Applicant--A qualified individual who presents application for licensure as a physical therapist or physical therapist assistant or for reinstatement of a previously suspended or revoked license.

(5) Board--The members of the Board of Physical Therapy Examiners who are appointed pursuant to Texas Civil Statutes, Article 4512e.

(6) Board order--A final decision of the board issued in a contested proceeding or in lieu of such proceeding, which may include findings of fact and conclusions of law, separately stated.

(7) Complaint--A written [~~sworn~~] statement of allegations filed with the board which includes a statement of the matters asserted, including any supporting documentation available, [~~and reference to the particular sections of the statutes and rules involved,~~] the filing of which may initiate [~~initiates~~] a contested case proceeding.

(8) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(9) Disciplinary action--Imposition of a sanction by the board which may include reprimand, suspension, probation, or revocation of a license, or other appropriate requirements.

(10) Executive director--The executive director of the Board of Physical Therapy Examiners.

(11) Licensee--A person who holds a license either permanent or temporary under the Physical Therapy Practice Act.

(12) Moral turpitude--Baseness, vileness, or dishonesty of a high degree.

(13) Notice--A statement of intended date, time, place, and nature of a hearing, and the legal authority and jurisdiction under which a hearing is to be held. Notice may include a formal complaint filed to initiate a contested case proceeding.

(14) Party--Each person with a sufficient legal, economic, or other interest to be named or admitted as such by the agency to a contested case proceeding before the agency.

(15) Probation--Each person whose license is suspended is placed on probation for the length of the suspension.

(16) Reinstatement--The individual with a revoked license must demonstrate or supply evidence to the board of his or her rehabilitation or current fitness to hold a license. Reinstatement petitions shall be considered no sooner than 180 days after the revocation order becomes final and enforceable.

(17) Reprimand--A public and formal censure against a license.

(18) Respondent--A person who has been made the subject of a formal or informal complaint alleging violation of the Texas Physical Therapy Practice Act or rules, regulations, or orders of the Board of Physical Therapy Examiners.

(19) Revocation--The withdrawal or repeal of a license. Revocation is established for minimum period of one year.

(20) Staff--The investigative staff of the Board of Physical Therapy Examiners.

(21) Suspension--The temporary withdrawal of a license. The board may suspend for one day or a designated number of years or until a specified event occurs.

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 May 23, 2014.

TRD-201402431
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-6900

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

Background, Justification and Summary

The amendment to §501.90 will add additional state, federal and other regulatory bodies to the list of agencies whose disciplinary action against a licensee would be considered a discreditable act warranting Board action.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to expedite the process of protecting the public from substandard accounting work.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on July 7, 2014.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.90. Discreditable Acts.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a CPA or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) discipline by state or federal agencies or boards, local governments or commissions for violations of laws or rules on ethics by licensees that engage in activities regulated by those entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas State Treasurer, Texas Securities Board, Texas Department of Insurance, Texas State Bar, Texas Secretary of State, National Association of Security Dealers, and the Financial Industry Regulatory Authority. A conviction or final finding of unethical conduct by a competent authority is prima facie evidence of a violation;

(9) [~~(8)~~] knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) [~~(9)~~] fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) [~~(10)~~] failure to comply with a final order of any state or federal court;

(12) [~~(11)~~] repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) [~~(12)~~] intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) [~~(13)~~] giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) [~~(14)~~] threats of bodily harm or retribution to a client;

(16) [~~(15)~~] public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(17) [~~(16)~~] voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge;

(ii) a summons under the provisions of:

(I) the Internal Revenue Code of 1986 and its subsequent amendments;

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(iii) a congressional or grand jury subpoena; or

(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of CPAs;

(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(18) [~~(17)~~] breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(19) [~~(18)~~] Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

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 May 22, 2014.

TRD-201402415
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-7842

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CHAPTER 515. LICENSES

22 TAC §515.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.4, concerning License Expiration.

Background, Justification and Summary

The amendment to §515.4 clarifies the Board's sanctions for the failure of licensees to submit the required documents for license renewal for three consecutive years.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assist the public in understanding the consequences of a licensee failing to submit the required documents for license renewal for three consecutive years.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on July 7, 2014.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.4. License Expiration.

(a) Failure to submit to the board a completed renewal notice, the renewal fee and any other required documents before the license expiration date will result in the expiration of the individual's or the firm's license(s).

(b) Failure to submit to the board a completed renewal notice, the renewal fee and any other required documents for three consecutive years may result in the revocation of the individual's certificate.

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 May 22, 2014.

TRD-201402416
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.111

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.111, concerning Required CPE Reporting.

Background, Justification and Summary

The amendment to §523.111 clarifies the Board's sanctions for the failure of licensees to report the minimum required CPE hours, complete license renewals or pay license renewal fees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assist the public in understanding the consequences of a licensee failing to report the required Continuing Professional Education coursework.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on July 7, 2014.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.111. Required CPE Reporting.

(a) To receive or retain a license, a licensee shall earn and is responsible for the accurate reporting of the required CPE credit hours for the reporting period under §523.112 of this chapter (relating to Required CPE Participation) and §523.130 of this chapter (relating to Ethics Course Requirements).

(b) Licensees reporting CPE must document their participation and retain evidence of that documentation for the five most recent reporting periods, including:

(1) sponsor name and identification number;

(2) title or description of content, or both;

(3) date(s) of completion;

(4) location; and

(5) number of credit hours.

(c) Evidence of completion is the certificate supplied by the sponsor. The board may verify CPE reported by licensees and licensees shall submit the supporting evidence to the board within a reasonable amount of time, if such data is requested.

(d) Credit hours earned from sources other than registered sponsors should be submitted on the appropriate form, "Claiming Continuing Professional Education Credits from a Non-Registered Sponsor," justifying the reason the CPE credit hours are being claimed and the benefit to the licensee or the licensee's employer.

(e) A licensee who fails to report the minimum required CPE credit hours completed during the accrual period will be subject to suspension and his certificate may be revoked for failing to report the minimum required CPE credit hours for three consecutive years [~~disciplinary action under §523.114 of this chapter (relating to Disciplinary Actions Relating to CPE)~~].

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 May 22, 2014.

TRD-201402417
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-7842

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22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112, concerning Required CPE Participation.

Background, Justification and Summary

The amendment to §523.112 better describes the requirement for CPE hours prior to the issuance of a license.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assist the public in understanding the nature of the requirement for completing Continuing Professional Education hours.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on July 7, 2014.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.112. Required CPE Participation.

(a) A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period.

(b) CPE, except as provided by board rule, shall be offered by board-contracted CPE sponsors.

(c) CPE requirements for the issuance or renewal of a license are as follows:

(1) Licensees who have been certified or registered for less than 12 months do not have a CPE hour requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(2) To be issued a license for the first full 12-month license period, the licensee does not have a CPE [~~accrual~~] requirement and can report zero hours. CPE earned prior to the first 12-month [~~twelve-month~~] license period will not be applied toward the three-year requirement.

(3) To be issued a license for the second full 12-month period, the licensee shall report a minimum of 20 CPE hours. The hours shall be completed [~~accrued~~] in the 12 months preceding the second year of licensing.

(4) To be issued a license for the third full 12-month license period, the licensee shall report a total of at least 60 CPE hours that were completed [~~accrued~~] in the 24 months preceding the license period. At least 20 hours of the requirement shall be completed [~~accrued~~] in the 12 months preceding the third year of licensing.

(5) To be issued a license for the fourth full 12-month period, the licensee shall report a total of at least 100 CPE hours that were completed [~~accrued~~] in the 36 months preceding the license period. At least 20 hours of the requirement shall be completed [~~accrued~~] in the 12 months preceding the fourth year of licensing.

(6) To be issued a license for the fifth and subsequent license periods, the licensee shall report a total of at least 120 CPE hours that were completed [~~accrued~~] in the 36 months preceding the license period, and at least 20 hours of the requirement shall be completed [~~accrued~~] in the 12 months preceding the fifth year of licensing.

(d) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement shall pay the required fees and penalties and must complete [~~accrue~~] the minimum CPE credit hours missed.

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 May 22, 2014.

TRD-201402418
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-7842

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22 TAC §523.114

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.114, concerning Disciplinary Actions Related to CPE.

Background, Justification and Summary

The amendment to §523.114 will clarify the Board's sanctions for the failure of licensees to report the minimum required CPE hours, complete license renewals or pay license renewal fees.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assist the public in understanding the consequences of a licensee failing to report the required Continuing Professional Education coursework.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose

any duties or obligations upon small businesses or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on July 7, 2014.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.114. Disciplinary Actions Related to CPE.

(a) A licensee who fails to comply with the provisions of §523.130 of this chapter (relating to Ethics Course Requirements), §523.111 of this chapter (relating to Required CPE Reporting) or §523.112 of this chapter (relating to Required CPE Participation) may be subject to disciplinary action under the Act, for a violation of the Rules of Professional Conduct, §501.94 of this title (relating to Mandatory Continuing Professional Education), which requires compliance with §523.130 of this chapter, §523.111 of this chapter, and §523.112 of this chapter.

(b) A licensee who fails to report the minimum required CPE credit hours completed during the accrual period will be subject to suspension and his certificate may be revoked for failing to report the minimum required CPE credit hours for three consecutive years.

(c) [~~(b)~~] The board may initiate disciplinary action as authorized in the Act if it finds evidence of falsification, fraud, or deceit in CPE documentation.

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

Filed with the Office of the Secretary of State on May 22, 2014.

TRD-201402419
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 305-7842

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.1, 741.13, 741.61, 741.62, 741.64, 741.81, 741.84, 741.141, 741.161, 741.162, 741.164, and 741.211 - 741.215; the repeal of §741.66 and §741.86; and new §§741.66, 741.86, 741.216, and 741.231 - 741.233, concerning the regulation and licensure of speech-language pathologists and audiologists.

BACKGROUND AND PURPOSE

In accordance with Texas Occupations Code, Chapter 401, this proposal updates the board's rules to reflect current operational procedures in processing and approving licensure applications and provides clarification of the rules' intent for license holders and the public. The amendments and addition to Subchapter O, amendments to §741.61, new §741.66 and §741.86; the proposed new §741.81(f); and new Subchapter P are all necessary to comply with Senate Bill (SB) 312, 83rd Legislature, Regular Session, 2013, an Act which amends and adds new provisions to Texas Occupations Code, Chapter 401, regarding the practice of speech-language pathology and audiology.

SB 312 authorizes the board to adopt rules for the practice of speech-language pathology and audiology using telecommunications technology. In implementing this provision, the board has modified existing Subchapter O so that the definitions in §741.211 apply to both audiologists and speech-language pathologists; §§741.212 - 741.215 apply only to speech-language pathologists; and §741.216 sets forth the requirements applicable only to audiologists engaging in telepractice.

Subchapter P reflects the implementation of another provision in SB 312, one which requires the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) to adopt joint rules to provide for the fitting and dispensing of hearing instruments by telepractice. Another section of SB 312, together with SB 162 (83rd Legislature, Regular Session, 2013), sets forth the terms under which the board is required to issue, as soon as practicable, a full professional license to a qualified military spouse, §741.66 and §741.86. Finally, SB 312 also removes a six-hour course requirement for licensure, §741.61, and provides for the renewal of certain lapsed audiology licenses issued between September 1, 2007 and 2011, to audiologists holding master's degrees, §741.81(f).

The proposed rule changes to the following sections of Chapter 741 clarify, correct, or update various rules to improve understanding and better reflect the licensing processes and procedures currently in place: §§741.1, 741.13, 741.62, 741.64, 741.84, 741.141, 741.161, 741.162, and 741.164.

SECTION-BY-SECTION SUMMARY

The amendments to §741.1 are proposed to clarify certain existing definitions and to define new terms used in new rule sections.

The amendment to §741.13 is proposed to delete obsolete language.

The amendment to §741.61 is proposed to identify the specific time frame for applications to which one of the educational requirements for licensure applies.

The amendment to §741.62 is proposed to correct a grammatical error.

The amendments to §741.64 are proposed to correct an exception to a paragraph and clarifies the requirements for signatures that are needed on formal documentation relating to the reimbursement of services rendered.

The amendment proposed to §741.81 is to add a new subsection (f), to comply with SB 312, to set forth the conditions under which a lapsed license of an audiologist who was licensed between September 1, 2007 and September 1, 2011, may renew his or her audiology license, including the requirement that an application for such renewal must be filed before September 1, 2014.

The amendment to §741.84 is proposed to correct a grammatical error.

The amendments to §741.141 are proposed to clarify the types and expiration periods of licenses issued by the board.

The amendments to §741.161 are proposed to clarify how renewal documentation can be submitted to the board.

The amendments to §741.162 are proposed to clarify the areas in which continuing education credits may be earned; the number of continuing education hours that can be used for university and/or college course work; that continuing education hours can rollover to the next consecutive renewal period; that the board will accept continuing education registries as proof of completion of continuing education credits; and deletes obsolete language regarding American Medical Association Category I continuing education events.

The amendments to §741.164 are proposed to correct grammatical errors.

The amendments to §741.211 are proposed to add new terms and to clarify existing definitions relating to telehealth.

The amendment to §741.212 revises the title of the rule and is proposed to clarify the service delivery models that speech-language pathologists may use to perform speech-language pathology services by telehealth.

The amendments to §741.213 are proposed to provide that this particular telehealth rule applies only to speech-language pathologists and to clarify the requirements of the rule.

The amendment to §741.214 is proposed to provide that this particular telehealth rule applies only to speech-language pathologists and to clarify the limitations on the use of telecommunications technology by speech-language pathologists.

The amendment to §741.215 is proposed to provide that this particular telehealth rule applies only to speech-language pathologists.

New §741.216 creates a new rule applicable to audiologists which sets forth all of the requirements for providing audiology services by telepractice.

New §741.231, the first rule in new Subchapter P, sets forth the purpose of the joint rule between the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) regarding fitting and dispensing hearing instruments by telepractice.

New §741.232 defines the terms applicable to the rules in the new Subchapter P.

New §741.233 sets forth the requirements for providing telehealth services for the fitting and dispensing of hearing instruments.

The repeal and new revisions to §741.66 are proposed to comply with SB 312, 83rd Legislature, Regular Session, 2013, regarding licensing as speech-language pathologists of military service members, military veterans, and military spouses.

The repeal and new revisions to §741.86 are proposed to comply with SB 312, 83rd Legislature, Regular Session, 2013, regarding licensing as audiologists of military service members, military veterans, and military spouses.

FISCAL NOTE

Stewart Myrick, Interim Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

Mr. Myrick has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses and micro-businesses is not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The amendments do no impose additional fees. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Myrick has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Interim Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to speech@dshs.state.tx.us. Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendment affects Texas Occupations Code, Chapter 401.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the following words and terms shall have the following meanings. [~~Refer to Texas Occupations Code, §401.01, for definitions of additional words and terms.~~]

(1) ABA--The American Board of Audiology.

(2) Act--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists.

(3) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists; and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(4) [~~(3)~~] ASHA--The American Speech-Language-Hearing Association.

(5) Assistant in audiology--An individual required to be licensed under Texas Occupations Code, §401.312, to provide audiological support services as described under §741.84 of this title (relating to Requirements for an Assistant in Audiology License).

(6) Assistant in speech-language pathology--An individual required to be licensed under Texas Occupations Code, §401.312, to provide speech-language pathology support services as described under §741.64 of this title (relating to Requirements for an Assistant Speech-Language Pathology License).

(7) Audiologist--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302 and §401.304, to practice audiology.

(8) Audiology--The application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communicative disorders involving speech, language, or auditory or vestibular function or other aberrant behavior related to hearing loss.

(9) Board--The State Board of Examiners for Speech-Language Pathology and Audiology.

(10) Client--A consumer or proposed consumer of audiology or speech-language pathology services.

[~~(4) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.~~]

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

(12) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(13) [~~(6)~~] Extended absence--More than two consecutive working days for any single continuing education experience.

(14) [~~(7)~~] Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(15) [~~(8)~~] Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments. [~~using professionally accepted practices to select, adapt, or sell a hearing instrument.~~]

[~~(9) Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.~~]

(16) [~~(10)~~] Hearing instrument--Any wearable instrument or device designed for, or represented as[~~:~~] aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(17) [~~(11)~~] Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(18) Intern in audiology--An individual licensed under Texas Occupations Code, §401.311, and pursuant to §741.82 of this title (relating to Requirements for an Intern Audiology License) and who works under the direction of an individual who holds a current, renewable, unrestricted audiology license under Texas Occupations Code, §401.302 and §401.304.

(19) Intern in speech-language pathology--An individual licensed under Texas Occupations Code, §401.311, and pursuant to §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) and who works under the direction of an individual who holds a current, renewable, unrestricted speech-lan-

guage pathology license under Texas Occupations Code, §401.302 and §401.304.

(20) Provisional Licensee--An individual granted a provisional license under Texas Occupations Code, §401.308.

(21) Renewal Period--A two-year cycle for a license.

[(12) Licensed Assistant in Speech-Language Pathology--An individual who provides speech language pathology support services under supervision of a licensed speech-language pathologist.]

[(13) Licensed Assistant in Audiology--An individual who provides audiological support to clinical programs under supervision of a licensed audiologist.]

(22) [(14)] Sale or purchase--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(23) Speech-language pathologist--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302 and §401.304, to practice speech-language pathology.

(24) Speech-language pathology--The application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or group.

(25) [(15)] Telehealth--See definition(s) in Subchapter O, Telehealth, §741.211 of this title (relating to Definitions Relating to Telehealth). [The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to an individual from a provider through hardwire or internet connections.]

[(16) Telepractice--The practice of telehealth.]

(26) [(17)] Under the direction of--The speech-language pathologist or audiologist supervises and directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

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 May 23, 2014.

TRD-201402451
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER B. THE BOARD

22 TAC §741.13

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendment affects Texas Occupations Code, Chapter 401.

§741.13. Transaction of Official Business.

(a) (No change.)

(b) The board shall elect, by a simple majority vote of those members present, an assistant presiding officer[, and a secretary-treasurer] at the meeting held nearest to January 1st. If a vacancy occurs [in any of the offices at any other time], it shall be filled by a simple majority vote of those members present at any board meeting.

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on May 23, 2014.

TRD-201402452
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61, 741.62, 741.64, 741.66

STATUTORY AUTHORITY

The amendments and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendments and new rule affect Texas Occupations Code, Chapter 401.

§741.61. Requirements for a Speech-Language Pathology License.

(a) (No change.)

(b) The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the board and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, *et seq.).*

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

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

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) - (5) (No change.)

(c) - (g) (No change.)

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) - (l) (No change.)

(m) If the intern holds a valid license, the intern may continue to practice under supervision for up to 30 days after the board office receives the Report of Completed Internship form.[~~; or~~]

(n) (No change.)

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) - (f) (No change.)

(g) A licensed speech-language pathology supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

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

(5) An exception to paragraph (4) [~~(3)~~] of this subsection may be requested. The supervising speech-language pathologist shall submit the prescribed alternate supervision request plan form for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan. The plan shall be for not more than one year's duration.

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

(h) (No change.)

(i) The licensed assistant shall not:

(1) - (16) (No change.)

(17) [~~write or~~] sign any formal document relating to the reimbursement for or the provision of speech-language pathology services without the licensed assistant's board approved speech-language pathology supervisor's signature; or

(18) (No change.)

(j) - (m) (No change.)

§741.66. Licensing as Speech-Language Pathologists of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out the speech-language pathology licensing process and procedures for military service members, military veterans, and military spouses required under Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) and Texas Occupations Code, §401.315 (relating to Licensing for Military Spouses as speech-language pathologists or audiologists). For purposes of this section:

(1) Military service member means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse means a person who is married to a military service member who is currently on active duty.

(3) Military veteran means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide to the board documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) An applicant shall provide to the board acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensure requirements of that jurisdiction are substantially equivalent to the licensure requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by Texas Occupations Code, Chapter 53.

(f) The board shall issue, as soon as practicable, a license to a verified military spouse who has completed and submitted the application and required fee(s) to the board and meets the following requirements:

(1) was licensed in good standing as a speech-language pathologist in another state as of the date of the application;

(2) holds a master's degree in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is:

(A) approved by the board; and

(B) recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, *et seq.);*

(3) has not been the subject of a disciplinary action in any jurisdiction in which the applicant is or has been licensed; and

(4) has no criminal history that would preclude issuance of the license pursuant to Texas Occupations Code, Chapter 53.

(g) If the board issues an initial license to an applicant who is a verified military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide to the board proof of completion of those requirements at the time of the first renewal of the license. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first renewal of the license.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved

complaints against the applicant and if there is no other bar to licensure, such as a criminal background or non-compliance with a board order.

(i) In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

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

Filed with the Office of the Secretary of State on May 23, 2014.

TRD-201402454
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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22 TAC §741.66

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The repeal affects Texas Occupations Code, Chapter 401.

§741.66. Speech-Language Pathology Licensing of Spouses of Members of the Military.

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 May 23, 2014.

TRD-201402455
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81, 741.84, 741.86

STATUTORY AUTHORITY

The amendments and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendments and new rule affect Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

(a) - (e) (No change.)

(f) An individual who was licensed as an audiologist in this state between September 1, 2007 and September 1, 2011, and who files an application for a license in audiology before September 1, 2014, may renew the lapsed license if the individual meets the following conditions:

(1) has a master's degree in audiology;

(2) has completed approved continuing education in an amount equal the to the number of hours that would have been required had the license not lapsed;

(3) has completed the jurisprudence examination;

(4) has completed and cleared the board required fingerprinting and criminal history background check; and

(5) has paid the appropriate current renewal fee and late fee.

§741.84. Requirements for an Assistant in Audiology License.

(a) - (h) (No change.)

(i) Although the licensed supervising audiologist may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

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

(4) Examples of duties which a licensed assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the licensed assistant, provided appropriate training has been received, are to:

(A) - (C) (No change.)

(D) collect data during aural rehabilitation therapy documenting progress [~~the processing~~] and results of therapy;

(E) - (T) (No change.)

(5) (No change.)

(j) - (l) (No change.)

§741.86. Licensing as Audiologists of Military Service Members, Military Veterans, and Military Spouses.

(a) This section sets out the audiology licensing process and procedures for military service members, military veterans, and military spouses required under Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) and Texas Occupations Code, §401.315 (relating to Licensing for Military Spouses as speech-language pathologists or audiologists). For purposes of this section:

(1) Military service member means a person who is currently serving in the armed forces of the United States, in a reserve

component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) Military spouse means a person who is married to a military service member who is currently on active duty.

(3) Military veteran means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide to the board documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) An applicant shall provide to the board acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensure requirements of that jurisdiction are substantially equivalent to the licensure requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by Texas Occupations Code, Chapter 53.

(f) The board shall issue, as soon as practicable, a license to a verified military spouse who has completed and submitted the application and required fee(s) to the board and meets the following requirements:

(1) was licensed in good standing as an audiologist in another state as of the date of the application;

(2) holds a master's degree in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is:

(A) approved by the board; and

(B) recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 *et seq.);*

(3) has not been the subject of a disciplinary action in any jurisdiction in which the applicant is or has been licensed; and

(4) has no criminal history that would preclude issuance of the license pursuant to Texas Occupations Code, Chapter 53.

(g) If the board issues an initial license to an applicant who is a verified military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide to the board proof of completion of those requirements at the time of the first renewal of the license. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first renewal of the license.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(i) In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

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

Filed with the Office of the Secretary of State on May 23, 2014.

TRD-201402456
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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22 TAC §741.86

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The repeal affects Texas Occupations Code, Chapter 401.

§741.86. Audiology Licensing of Spouses of Members of the Military.

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 May 23, 2014.

TRD-201402457
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Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER K. ISSUANCE OF LICENSE

22 TAC §741.141

STATUTORY AUTHORITY

The amendment is authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendment affects Texas Occupations Code, Chapter 401.

§741.141. Issuance of License.

(a) (No change.)

(b) The board shall issue an initial license to an applicant for an intern in speech-language pathology or an intern in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. [~~The license shall expire two years past the effective date.~~]

(c) The board shall issue a temporary certificate of registration in speech-language pathology [~~or a temporary certificate of registration in audiology~~] to an applicant after the fee, forms, and other documentation have been received and approved by the board or board staff. The registration shall expire eight weeks after the next scheduled examination as required by §741.121 of this title (relating to Examination Administration). This certificate is non-renewable and there is no allowed grace period after expiration of the certificate.

(d) - (g) (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 May 23, 2014.

TRD-201402458

Vickie Dionne, Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: July 6, 2014

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

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SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION

22 TAC §§741.161, 741.162, 741.164

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendments affect Texas Occupations Code, Chapter 401.

§741.161. Renewal Procedures.

(a) - (f) (No change.)

(g) The board office shall not consider a license to be renewed until the following has been received and found acceptable:

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

(4) If the licensee chooses to use the online renewal process, the renewal form and renewal fee, as detailed in paragraphs (1) and (2) of this subsection, will be accepted automatically. The license will be considered renewed when the online renewal is processed in the board office and board staff has determined [~~determine~~] that all documentation has been provided. If additional documentation is required, such as documentation for an audit as defined in subsection (o) of this section, that documentation shall [~~must~~] be emailed, faxed, or mailed to the board office. Although the license may complete the renewal process online, the board office shall not consider the license renewed until the additional documentation has been received and accepted by the board office.

(h) An intern shall submit the following for license renewal:

(1) license renewal fee [~~the items listed in subsection (g) of this section~~];

(2) - (3) (No change.)

(i) - (v) (No change.)

§741.162. Requirements for Continuing Professional Education.

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

(e) Continuing professional education shall be earned in one of the following areas:

(1) - (2) (No change.)

(3) audiology; [~~or~~]

(4) ethics; or

(5) [~~(4)~~] an area of study related to the areas listed in paragraphs (1) - (4) [~~(3)~~] of this subsection.

(f) Any continuing education activity shall be provided by a board [~~an~~] approved sponsor with the exception of activities referenced in subsections (g) - (i) of this section. A list of approved sponsors designated by the board shall be made available to all licensees on the board's website [~~and updated as necessary~~].

(g) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (e)(1) - (4) [~~(3)~~] of this section shall be approved for a maximum of 20 [~~10~~] continuing education [~~clock~~] hours per semester year [~~hour~~].

(h) For any coursework that is offered by a sponsor that is not board approved, the licensee shall submit by email the course brochure or syllabus 30 days prior to the event for consideration for approval. [~~University or college course work in a related area or events approved by the American Medical Association (Category I) in a related area as referenced in subsection (e)(4) of this section may be approved if the activity furthers the licensee's knowledge of speech-language pathology or audiology or enhances the licensee's service delivery. A licensee shall complete the board's approved form for prior approval of such events.~~] Partial credit may be awarded.

(i) Earned continuing education hours exceeding the minimum requirement in a previous renewal period shall first be applied to the continuing education requirement for the current renewal period.

(1) A maximum of 10 additional clock hours may be accrued during a license period to be applied to the next consecutive renewal period. Two of the 10 additional clock hours of the rollover hours may be in ethics.

(2) A maximum of 15 additional clock hours may be accrued by dual speech-language pathology and audiology licensees during a license period to be applied to the next consecutive renewal period.

(j) (No change.)

(k) Proof of completion of a valid continuing education experience shall include the name of the licensee, the sponsor of the event, the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) a letter, Continuing Education (CE) registry, or form bearing a valid signature or verification as designated by the board approved sponsor;

(2) in the event verification referenced in paragraph (1) of this subsection cannot be obtained, the board may accept verification from the presenter of an approved event if the presenter can also provide proof that the event was acceptable to an approved sponsor; or

(3) an original or certified copy of the university or college transcript if earned under subsection [~~subsections~~] (g) [~~- (h)~~] of this section.[~~;~~]

[~~(4) a letter or form from the American Medical Association if earned under subsection (h) of this section stating the event was approved for Category I; and~~]

[~~(5) if the continuing education event was earned under subsection (h) of this section, a letter or form from the board office granting prior board approval of the event in addition to documentation listed in paragraphs (3) and (4) of this subsection. If this approval was not obtained, the licensee shall not include the event on the documentation. The licensee shall comply with the requirements set out in subsection (h) of this section and, if approval is granted, add the event to the documentation.~~]

(l) (No change.)

(m) The audit process shall be as follows.

(1) (No change.)

(2) A licensee selected for audit shall submit documentation defined in subsections (k) and (l) [~~and (m)~~] of this section at the time the renewal form and fee are submitted to the board.

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

(n) (No change.)

§741.164. Late Renewal of a License.

(a) Licensees who fail [~~fails~~] to renew their license before the end of the 60-day grace period shall be assessed a late renewal penalty as required by the Act, unless the license had been placed on inactive status.

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

(h) Failure to [~~timely~~] furnish the information in a timely manner or providing false information during the late renewal process are grounds for disciplinary action.

(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 May 23, 2014.

TRD-201402459
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Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER O. TELEHEALTH

22 TAC §§741.211 - 741.216

STATUTORY AUTHORITY

The amendments and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The amendments and new rule affect Texas Occupations Code, Chapter 401.

§741.211. Definitions Relating to Telehealth.

Unless the context clearly indicates otherwise, the [~~The~~] following words and terms, when used in this subchapter, [~~chapter~~] shall have the following [~~indicated~~] meanings [~~unless the context clearly indicates otherwise~~].

[~~(1) Board--The State Board of Examiners for Speech-Language Pathology and Audiology.~~]

(1) [~~(2)~~] Client--A consumer or proposed consumer of speech-language pathology or audiology [~~telehealth~~] services.

(2) [~~(3)~~] Client site [~~Client/Patient Site~~]--The physical location [~~Location~~] of the [~~patient or~~] client at the time the services are [~~service is~~] being furnished via telecommunications.

(3) [~~(4)~~] Consultant--Any professional who collaborates with a provider of telehealth services to provide services to clients.

(4) [~~(5)~~] Facilitator--The individual [~~Individual~~] at the client site who assists with the delivery of [~~facilitates~~] the telehealth services [~~service delivery~~] at the direction of the audiologist or speech-language pathologist.

(5) [~~(6)~~] Provider--An individual who holds a current, renewable, unrestricted speech-language pathology or audiology license under Texas Occupations Code, §401.302 and §401.304; or an individual who holds an audiology intern license under Texas Occupations Code, §401.311. [~~A speech-language pathologist or audiology fully licensed by the board who provides telehealth services.~~]

(6) [~~(7)~~] Provider site [~~Site~~]--The physical location [~~Site~~] at which the speech-language pathologist or audiologist delivering the services are [~~service is~~] located at the time the services are [~~service is~~] provided via telecommunications which is distant or remote from the client site.

(7) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the

provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(8) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telepractice services.

(9) [~~(8)~~] Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a client from a provider.

(10) [~~(9)~~] Telehealth services [~~Service~~]--The application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation.

(11) [~~(10)~~] Telepractice--The use of telecommunications technology by a license holder for an assessment, intervention, or consultation regarding a speech-language pathology or audiology client. [~~practice of telehealth.~~]

(12) Telepractice services--The rendering of audiology and/or speech-language pathology services through telepractice to a client who is physically located at a site other than the site where the provider is located.

§741.212. Service Delivery Models of Speech-Language Pathologists.

(a) - (c) (No change.)

§741.213. Requirements [~~Guidelines~~] for the Use of Telehealth by Speech-Language Pathologists.

(a) The requirements of this section apply to the use of telehealth by speech-language pathologists.

(b) [~~(a)~~] A provider shall comply with the board's Code of Ethics and Scope of Practice requirements when providing telehealth services.

(c) [~~(b)~~] The scope, nature, and quality of services provided via telehealth are the same as that provided during in-person sessions by the provider.

(d) [~~(c)~~] The quality of electronic transmissions shall be equally appropriate for the provision of telehealth services as if those services were provided in person.

(e) [~~(d)~~] A provider shall only utilize technology which they are competent to use as part of their telehealth services.

(f) [~~(e)~~] Equipment used for telehealth services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services.

(g) [~~(f)~~] Equipment used at the client/patient site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.

(h) [~~(g)~~] The initial contact between the speech-language pathologist [~~provider~~] and client shall be at the same physical location to assess the client's candidacy for telehealth, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications prior to the client receiving telehealth services.

(i) [~~(h)~~] A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the client or consultant level of comfort.

(j) [~~(i)~~] When a provider collaborates with a consultant from another state in which the telepractice services are delivered, the consultant in the state in which the client receives services shall be the primary care provider for the client.

(k) [~~(j)~~] As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telehealth services were provided in person.

(l) [~~(k)~~] A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(m) [~~(l)~~] Upon request, a provider shall submit to the board data which evaluates effectiveness of services provided via telehealth including, but not limited to, outcome measures.

(n) [~~(m)~~] Telehealth providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(o) [~~(n)~~] Notification of telehealth services shall [~~should~~] be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.

§741.214. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists [~~of Telehealth Services~~].

(a) The limitations of this section apply to the use of telecommunications technology by speech-language pathologist.

(b) Supervision of a licensed assistant and/or intern in speech-language pathology shall not be undertaken through the use of telecommunications technology unless an exception to this prohibition is secured pursuant to the terms of this section.

(c) An exception to subsection (b) of this section shall be requested by the speech-language pathologist submitting the prescribed alternate supervision request form for review by the board's designee, within 15 working days of receipt of the request. The board's designee shall approve or not approve the plan. The plan shall be for not more than one year's duration.

(d) If the exception referenced in subsection (c) of this section is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan.

(e) Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.

§741.215. Requirements for [~~of Personnel~~] Providing Telehealth Services in Speech-Language Pathology.

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

§741.216. Requirements for Providing Telepractice Services in Audiology.

(a) Unless otherwise legally authorized to do so, an individual shall not render telepractice services in audiology from the state of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telepractice services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telepractice services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telepractice services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telepractice services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telepractice session.

(e) The provider of telepractice services, prior to allowing a facilitator to assist the provider in rendering telepractice services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) Those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the rendering of audiology services for which no form of license, permit, authorization or exemption under the Texas Occupations Code is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, authorization or exemption required under the Texas Occupations Code to perform the task.

(g) A provider shall not render telepractice services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telepractice services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telepractice services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telepractice services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent audiology service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) Providers and facilitators involved in the provider's delivery of telepractice services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telepractice services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(k) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

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 May 23, 2014.

TRD-201402460
Vickie Dionne, Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 776-6972

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SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

22 TAC §§741.231 - 741.233

STATUTORY AUTHORITY

The new rules are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022 and §401.405, which specifically authorize the board to adopt telepractice rules for audiologists and speech-language pathologists.

The new rules affect Texas Occupations Code, Chapter 401.

§741.231. Purpose.

Under Texas Occupations Code, §401.2022 and §402.1023, the State Board of Examiners for Speech-Language Pathology and Audiology (board) and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee), with the assistance of the department, are to adopt rules jointly to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. The rules in this subchapter contain joint rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

§741.232. Definitions.

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

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Board--The State Board of Examiners for Speech-Language Pathology and Audiology.

(3) Client--A consumer or proposed consumer of services.

(4) Client site--The site at which the client is physically located.

(5) Committee--The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(6) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(7) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post fitting counseling for the purpose of fitting and dispensing hearing instruments.

(8) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(9) Provider--An individual who holds a current, renewable, unrestricted audiology license under Texas Occupations Code, §401.302 and §401.304; an individual who holds an audiology intern license under Texas Occupations Code, §401.311; or an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision.

(10) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(11) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(12) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(13) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(14) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

§741.233. Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.

(a) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the state of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(e) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption under either of the Acts is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, authorization or exemption required under either of the Acts to perform the task.

(g) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) The initial professional contact between the provider and client shall be at the same physical location.

(k) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(l) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

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 May 23, 2014.

TRD-201402461

Vickie Dionne, Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: July 6, 2014

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER B. COST-SHARE ASSISTANCE FOR WATER SUPPLY ENHANCEMENT

31 TAC §§517.22 - 517.39

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC Chapter 517, Subchapter B, §§517.22 - 517.37; and proposes new §517.38 and §517.39, concerning the agency's administration of the Water Supply Enhancement Program.

Section by Section Changes

Section 517.22 involves striking the redundant word water from the purpose statement and the insertion of some commas to better separate terms used.

Section 517.23 involves deleting the words brush control and substituting water supply enhancement in the text; uncapitalizing Water Supply Enhancement Program in the text; changing Texas State Soil and Water Conservation Board to read just State Board; deleting soil and water conservation district and inserting the acronym SWCD; inserting commas throughout the text to better separate terms used in this section; deleting "of Texas" in reference to the Agriculture Code as it is understood; deleting Natural Resources Conservation Service and inserting the acronym NRCS; inserting a new §517.23 (17) to define Practice standard as a conservation practice in the NRCS Field Office Technical Guide (FOTG) and renumbering the paragraphs that follow up to §517.23(24); deleting §517.23(24) as Texas Parks and Wildlife Department doesn't need defining in this section.

Section 517.24 involves inserting the word State in the section title of Water Supply Enhancement Plan; uncapitalizing Water Supply Enhancement Plan in the text; inserting some commas to better separate terms used in this section; in §517.24(c) the reference to the Agriculture Code is revised from §203.051 to §201.029; deleting soil and water conservation district and inserting the acronym SWCD; and deleting the word board and clarifying that it is the State Board.

Section 517.25 involves inserting some commas to better separate terms used in this section; deleting the word board and clarifying that it is the State Board; deleting soil and water conservation district and inserting the acronym SWCD; changing the term title to subchapter; amending §517.25(c) to clarify that the State Board shall consult with stakeholders, including hydrologists and representatives from SWCDs to develop standard methods of reporting the projected water yield described in existing subsection (b); inserting a new §517.25(c)(1) to state that the standard method of reporting projected water yield in feasibility studies allows for a direct comparison of potential benefits between proposed projects and that the projected water yield for the brush treatment scenarios for each sub-basin shall be reported in a feasibility study as the average annual gallons of water yielded per treated acre of brush, averaged over the simulation period used in the computer model; inserting new §517.25(f) to describe the ranking Index methodology for funding project proposals through a competitive grant process that ranks applications using the criteria of water supplies expected to be gained from a project and explains that a ranking index is calculated using the evaluation criteria described in the subsection and describes how ranking may be adjusted for projects that propose a more favorable cost-sharing rate.

Section 517.26 involves deleting the word board and clarifying that it is the State Board; clarifies §517.26(a) to state that the State Board shall establish a process for providing assistance to applicants in locating a hydrologist to conduct a feasibility study for a project using a water yield model described in §517.25(b) rather than in §203.053(b) of the Agriculture Code; inserts a new §517.26(d) to explain that applications for funding a feasibility study will be referred to a Science Advisory Committee for review and recommendation on which applications should receive funding and explains that in reviewing the applications the Science Advisory Committee will consider science-oriented questions described in the State Water Enhancement Plan and states that the State Board will consider recommendations from the Science Advisory Committee in formulating recommendations for funding.

Section 517.27 involves deleting soil and water conservation district and inserting the acronym SWCD; deleting the word board and clarifying that it is the State Board; and changes the language used to describe "cost-share participation by the state" and amends it to read "cost-share from the state".

Section 517.28 involves deleting the word board and clarifying that it is the State Board; deleting the words local district and inserting SWCD in this section; and inserts commas throughout the text to better separate terms used in this section.

Section 517.29 involves inserting Landowner into the section title so it will read "Approval of Landowner Application"; deleting the word board and clarifying that it is the State Board; inserts commas throughout the text to better separate terms used in this section; deletes the reference to §203.157, Agriculture Code to read as §517.28 of this subchapter; deletes the reference to §203.055, Agriculture Code to read as §517.31 of this subchap-

ter; and deletes the term eradication and inserts the term control in the text.

Section 517.30 involves deleting the word board and clarifying that it is the State Board; inserts commas throughout the text to better separate terms used in this section; deletes the words The District board and inserts A SWCD; and deletes §517.30(e) which stated The quantity of stream flows or groundwater or water conservation from the eradication of brush is a consideration in assigning priority as this subsection is duplicative and has the same purpose as §517.30(d).

Section 517.31 involves deleting the word board and clarifying that it is the State Board; inserts commas throughout the text to better separate terms used in this section; changes chapter to subchapter in reference to the State Board approving all methods used to control brush; amends §517.31(b) by deleting the reference to Chapter 203, Subchapter E, Agriculture Code and clarifies that a method approved by the State Board for use under the cost-sharing program is provided in this subchapter; amends §517.31(b)(1) by stating that the method for controlling brush must be consistent with the practice standard for brush control as specified within the NRCS FOTG; and amends §517.31(b)(3) by inserting language which states projects will have a beneficial impact on the development of water resources and wildlife habitat and will not harm sensitive or critical habitat of endangered or threatened species.

Section 517.32 involves deleting the word board and clarifying that it is the State Board; deletes the word district and substitutes the acronym SWCD; and deletes the reference to Chapter 203, Subchapter E, Agriculture Code and now specifies that references are to this subchapter.

Section 517.33 involves inserting commas throughout the text to better separate terms used in this section; clarifies that estates along with trusts are eligible for cost-share assistance and makes clear that the land must be in an agricultural or wildlife operation; deletes the words state brush control and brush control and inserts water supply enhancement; clarifies that an exception may be granted by the State Board to the paragraph dealing with simultaneously receiving cost-share from the federal government if the federal participation enhances the efficiency and effectiveness of the state program.

Section 517.34 involves deleting the word board and inserting State Board in the text of the rule.

Section 517.35 involves deleting the word board and inserting State Board in the text of the rule; deletes the word board following the SWCD where it occurs in this section; inserting commas throughout the text to better separate terms used in this section; deletes the words "governing board of the" when referring to a designated SWCD as the board is implied in the acronym; and deletes an unneeded "the" from the text.

Section 517.36 involves inserting for Landowners into the section title so it will read "Water Supply Enhancement Plans for Landowners"; involves deleting the word board and inserting State Board in the text of the rule; inserting commas throughout the text to better separate terms used in this section; adds a new §517.36(f) to state a plan created under this section may not condition implementation of the provision for follow-up brush control on receipt of additional funding for the follow-up brush control from a state source other than original cost-sharing contract; adds a new §517.36(g) to state status reviews required by subsection (b)(4) will be conducted by the State Board within three to five years after the initial treatment and that a second review will be conducted within eight to nine years after the initial treatment; adds a new §517.36(h) to state that if the eligible person, as defined in §517.33(a) receives a cost-share contract and is found to be out of compliance with the provision described in subsection (b)(3), then the person will not be eligible for another water supply enhancement contract for a period of ten years after being found out of compliance.

Section 517.37 involves deleting the words Soil and Water Conservation leaving the agency name as State Board; deleting the acronym TPWD from the text; and deleting the word supply and substituting the word quantity in the text and inserting a comma before the start of the last subsection.

A new §517.38 is proposed to describe the geospatial analysis used for the prioritizing the acreage eligible for cost-share; new §517.38(a) declares that a geospatial analysis will be performed to delineate and prioritize the acres eligible for cost-share that have the highest potential to yield water within a project watershed and states that the geospatial analysis addresses the considerations described in §517.25(d)(2); new §517.38(b) states the geospatial analysis will consider multiple landscape characteristics for a project watershed and will assign a ranking to all areas of the watershed based on the overall number of characteristics present for each location and explains that each characteristic has multiple criteria each with a ranking value assigned and further explains that the characteristics will include brush density (type and density), soils (hydrologic properties), slope, proximity to waterbodies (including riparian areas and other hydrologically sensitive areas critical to streamflow and aquifer recharge), and proximity to watershed outlet; new §517.38(c) describes areas that will be excluded due to their sensitive nature and not eligible for program treatment; areas designated as sensitive or critical habitat of endangered or threatened species and slopes greater than 16 percent as stated as excluded areas; new §517.38(d) states that the geospatial analysis will result in four brush control priority zones for each watershed and those four zones are high, medium, low and not eligible; new §517.38(e) states that different ranking values may be assigned to the multiple criteria of each characteristic, based on their impact on the target water supply and goal for the project and clarifies that the intended goal of the project may be either to manage brush for infiltration enhancement of aquifers or to manage brush for runoff enhancement of surface waterbodies.

A new §517.39 is proposed to provide provisions for SWCDs to provide technical assistance to landowners for brush control and to administer the water supply enhancement cost-share program. New §517.39(a) states that an SWCD participating in a water supply enhancement program must choose one of two options to provide technical assistance to landowners for brush control and to administer the water supply enhancement program. New §517.39(b) describes option A as requiring the SWCD to agree to allow a regional conservation technician, funded by the State Board, to perform all duties and responsibilities associated with implementing a water supply enhancement project within the jurisdiction of the SWCD, to cooperate with the regional conservation technician and the State Board and the participating SWCD would not be eligible for any reimbursements of costs associated with implementing a water supply enhancement project within the SWCD. New §517.39(c) describes Option B as the SWCD choosing to administer the water supply enhancement program within their jurisdiction, as provided for in §517.32(a), and agreeing to employ a district conservation technician to perform all duties and responsibilities necessary to provide technical assistance and to administer

the cost-share program within their district. The state board and the regional conservation technician will not perform duties and responsibilities associated with the provisions of technical assistance or administering the cost-share program but will provide guidance and direction to the participating SWCD on State Board rules, policies, and procedures. Under this option the participating SWCD may be reimbursed for actual costs incurred with implementing the water supply enhancement program up to 15 percent of the cost-share allocation for the project. Costs incurred with either providing technical assistance and administering functions of implementing a water supply enhancement project and performed by an employee of the SWCD will be eligible for reimbursement. The maximum pay rate allowed under State Board Technical Assistance Rule §519.8 shall also apply to salary costs associated with administrative functions performed by participating SWCDs.

Mr. Kenny Zaijcek, Fiscal Officer, State Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zaijcek has also determined that for the first five year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will be the possibility of increased participation in the water supply enhancement program and potential water yield enhancement as a result of that participation.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 259.

The amendments are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code and under the Agriculture Code, Title 7, Chapter 203, §203.012, which authorizes the board to adopt reasonable rules necessary to carry out the chapter.

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

§517.22. Purpose.

The purpose of the water supply enhancement program is to increase available surface [~~water~~] and ground water [~~groundwater~~] through:

(1) selective control, removal, or reduction of noxious brush species that are detrimental to water conservation; and

(2) revegetation of land on which noxious brush has been controlled, removed, or reduced.

§517.23. Definitions.

For the purposes of this subchapter the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board for cost-share assistance.

(2) Applicant--An eligible person who applies for cost-share assistance.

(3) Area--A sub-basin or other portion of land within a project.

(4) Available funds--Allocated funds that have not been obligated.

(5) Average costs--The constructed cost, which is based on actual costs and current cost estimates, considered necessary to carry out a conservation practice.

(6) Brush control--The selective control, removal, or reduction of noxious brush such as mesquite, juniper, salt cedar, or other phreatophytes that, as determined by the State Board, consumes water to a degree that is detrimental to water conservation; and the revegetation of land on which this brush has been controlled.

(7) Water supply enhancement [~~Brush control~~] plan--A site-specific plan for implementation of brush control, sound range management practices, and other soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD [~~Soil and Water Conservation District~~].

(8) Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(9) Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

(10) Eligible land--Those lands within a designated critical area that are eligible for application of water supply enhancement program [~~Water Supply Enhancement Program~~] cost-share assistance.

(11) Eligible person--Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a water supply enhancement project watershed [~~brush control area~~] shall be eligible for cost-share assistance.

(12) Field Office Technical Guide, herein referred to as FOTG--The official NRCS [~~Natural Resources Conservation Service~~] guidelines, criteria, and standards for planning and applying conservation practices, management measures, and works of improvement that have the purpose of solving or reducing the severity of natural resource use problems or taking advantage of resource opportunities.

(13) Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture.

(14) Operator--Any person(s), firm, or corporation with a contractual arrangement with the owner of the land that grants operational control of an agricultural enterprise.

(15) Obligated funds--Monies from a critical area's allocated funds that have been committed to an applicant after final approval of the water supply enhancement [~~brush control~~] contract by the State Board [~~Texas State Soil and Water Conservation Board~~].

(16) Performance agreement--A component of the water supply enhancement [~~Water Supply Enhancement Program~~] contract whereby the eligible person receiving the benefit of cost-share assistance provides written agreement to the SWCD [~~Soil and Water Conservation District~~] to perform brush control in accordance with standards established by the State Board [~~Texas State Soil and Water Conservation Board~~] and the terms of the water supply enhancement [~~brush control~~] contract.

(17) Practice standard--A technical specification for a conservation practice within the NRCS FOTG that contains information on why and where the practice should be applied, and sets forth the min-

imum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s).

(18) [~~(17)~~] Priority system--The system devised under guidelines of the State Board, for ranking water supply enhancement project [~~brush control~~] applications and for facilitating the disbursement of allocated funds in line with the project watershed's [~~brush control area's~~] priorities.

(19) [~~(18)~~] Program year--The period from September 1 through August 31.

(20) [~~(19)~~] Project Area--An area of critical need designated by the State Board [~~Texas State Soil and Water Conservation Board~~] according to the criteria established in §517.25 of this subchapter.

(21) [~~(20)~~] Project--A watershed or portion of a watershed in which water supply enhancement activities are performed.

(22) [~~(21)~~] Proposal--A request submitted by a SWCD [~~soil and water conservation district~~] or other political subdivision of the State [~~state~~] for state funds to be used in a watershed or portion of a watershed for water supply enhancement activities.

(23) [~~(22)~~] Soil and Water Conservation District, herein referred to as SWCD--A government subdivision of this State [~~state~~] and a public body corporate and politic, organized pursuant to the Agriculture Code [~~of Texas~~], Chapter 201.

(24) [~~(23)~~] State Board--The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code [~~of Texas~~], Chapter 201.

~~[(24) Texas Parks and Wildlife Department, herein referred to as TPWD--The government agency of this state organized pursuant to the Parks and Wildlife Code of Texas, Title 2, Chapter 11.]~~

(25) Water Conservation--The process of reducing water consumption and/or preventing future increases in water consumption. As related to brush control, the process of reducing water-consuming [~~water consuming~~] brush and subsequently, the enhancement of available water resources.

(26) Water Supply Enhancement Contract--A legally binding 10-year agreement between the applicant and the State Board [~~Texas State Soil and Water Conservation Board~~] whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the State Board [~~Texas State Soil and Water Conservation Board~~]. Only practice(s) that the State Board [~~Texas State Soil and Water Conservation Board~~] has approved and are included in an approved water supply enhancement [~~brush control~~] plan are eligible for inclusion in the water supply enhancement [~~brush control~~] contract.

(27) Water Supply Enhancement--The [~~Includes brush control and subsequently the~~] enhancement of available water resources through brush control.

§517.24. State Water Supply Enhancement Plan.

(a) The State Board shall prepare and adopt a state water supply enhancement plan. The State Board shall review and may amend the plan at least every two years to take into consideration changed conditions.

(b) The state water supply enhancement plan [~~Water Supply Enhancement Plan~~] shall include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem.

(c) The plan adopted under this section must list goals the State Board [~~board~~] establishes under §201.029 [~~§203.051~~], Agriculture Code, for the water supply enhancement program. These goals must include:

(1) a goal describing the intended use of any water supply enhanced or conserved by the program, [~~:~~] such as agricultural purposes or drinking water purposes; and

(2) a goal describing the populations that the water supply enhancement program will target.

(d) Before the State Board adopts the plan, the State Board shall call and hold a public hearing to consider the [~~a~~] proposed plan.

(1) In addition to providing notice in the Texas Register, the State Board shall mail written notice of the hearing to each SWCD in the state not less than 30 days before the date the hearing is to be held. The notice must include the date and place for holding the hearing, state the purpose for holding the hearing, and include instructions for each SWCD [~~district~~] to submit written comments on the proposed plan.

(2) At the hearing, representatives of a SWCD and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The State Board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and testimony before taking final action on the plan.

(3) After the conclusion of the hearing, the State Board shall consider the testimony, including the information and suggestions made at the hearing and in written comments, and after making any changes in the proposed plan that it finds necessary, the State Board shall adopt the plan.

§517.25. Criteria for Accepting and Prioritizing Water Supply Enhancement Projects.

(a) The State Board hereby establishes [~~adopts rules establishing~~]:

(1) criteria for accepting project proposals; and

(2) a system to prioritize projects for each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield.

(b) The criteria required by subsection (a)(1) of this section includes a requirement that each proposal state the projected water yield of the proposed project, as modeled by a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply.

(c) The State Board [~~board~~] shall consult with stakeholders, including hydrologists [~~hydrologist~~] and representatives from SWCDs to develop standard methods of reporting the projected water yield described in subsection (b) of this section. A standard method of reporting the projected water yield in feasibility studies allows for a direct comparison of potential benefits between proposed projects. The projected water yield for the brush treatment scenarios for each sub-basin shall be reported in a feasibility study as the average annual gallons of water yielded per treated acre of brush, averaged over the simulation period used in the computer model. [~~soil and water conservation districts.~~]

(d) In prioritizing projects under subsection (a)(2) of this section, the State Board [~~board~~] shall consider:

(1) the need for conservation of water resources within the territory of the project based on the state water plan adopted under §16.051, Water Code;

(2) the projected water yield of areas of the project, based on soil, slope, land use, types and distribution of trees, brush, and other vegetative matter, and proximity of trees, brush, and other vegetative matter to rivers, streams, and channels;

(3) any method the project may use to control brush;

(4) cost-sharing contract rates within the territory of the project;

(5) the location and size of the project;

(6) the budget of the project and any associated requests for grant funds submitted under this subchapter [~~title~~];

(7) the implementation schedule of the project; and

(8) the administrative capacities of the State Board [~~board~~] and the entity that will manage the project.

(e) In prioritizing projects under subsection (a)(2) of this section the State Board [~~board~~] may consider:

(1) scientific research on the effects of brush removal on water supply; and

(2) any other criteria that the State Board [~~board~~] considers relevant to assure that the water supply enhancement program can be effectively, efficiently, and economically implemented.

(f) Ranking Index Methodology.

(1) Funding for project proposals will be allocated through a competitive grant process that will rank applications using the following evaluation criteria:

(A) Public water supplies expected to be benefited by the project;

(B) Water supply yield enhancement to target water supply, which is the projected water yield from a feasibility study;

(C) Water User Groups relying on the water supplies;

(D) Percent of target water supply used by Water User Groups; and

(E) Population of Water User Groups.

(2) A Ranking Index is calculated using the evaluation criteria described in paragraph (1) of this subsection which gives a measure of the water yield increased per capita user for each proposal. The Ranking Index equals the percent reliance of the Water User Groups on the source to be enhanced multiplied by the projected water yield enhancement from the feasibility study divided by the population of the Water User Groups.

(3) In order to address the criterion described in subsection (d)(4) of this section, the Ranking Index may be adjusted for projects that propose a more favorable cost-sharing contract rate. That is, the Ranking Index will be adjusted to give more favorable consideration to a project that proposes a cost-share rate that lessens the State's cost. This adjustment to the Ranking Index may be applied as a percentage bonus.

§517.26. Feasibility Studies.

(a) The State Board [~~board~~] shall establish a process for providing assistance, to applicants submitting project proposals, in locating a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply to conduct a feasibility study for a project using a water yield model as described by §517.25(b) of this subchapter [~~§203.053(b), Agriculture Code~~].

(b) The State Board [~~board~~] may:

(1) dedicate a portion of the money appropriated to the State Board [~~board~~], that it considers appropriate, to fund part or all of a feasibility study under this section; and

(2) establish procedures to distribute the money under paragraph (1) of this subsection.

(c) To receive funding for a feasibility study under subsection (b) of this section, a person must submit to the State Board [~~board~~] an application for funding that includes a statement of the project's anticipated impact on water resources.

(d) Applications for funding a feasibility study under subsection (b) of this section will be referred to a Science Advisory Committee, established by the State Board, for review. The Science Advisory Committee will review the applications and make recommendations to the State Board on which applications should receive funding.

(1) In reviewing the applications and formulating recommendations, the Science Advisory Committee will consider science-oriented questions described in the State Water Supply Enhancement Plan.

(2) In formulating recommendations for funding to the State Board, State Board staff will consider recommendations from the Science Advisory Committee and programmatic- and policy-oriented questions described in the State Water Supply Enhancement Plan.

§517.27. Application for Cost-Sharing.

A person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program and to obtain cost-share from [~~participation by~~] the state shall file an application for a cost-sharing contract with the SWCD [~~district board in the district~~] in which the land on which the contract is to be performed is located. The application must be in the form provided by State Board [~~board~~] rules.

§517.28. Considerations in Passing on Application.

In passing on an application for cost-sharing, the State Board [~~board~~] shall consider:

(1) the location of the land that is subject to the cost-sharing contract;

(2) the method of control the applicant will use;

(3) the plans for revegetation;

(4) the total cost of the contract;

(5) the amount of land to be included in the contract;

(6) whether the applicant is financially able to provide the applicant's share of the money for the project;

(7) the cost-sharing percentage, if an applicant agrees to a higher degree of financial commitment;

(8) any comments and recommendations submitted by a SWCD [~~local district~~], the Texas Department of Agriculture, the Texas Water Development Board, or the Texas Parks and Wildlife Department; and

(9) any other pertinent information considered necessary by the State Board [~~board~~].

§517.29. Approval of Landowner Application.

The State Board [~~board~~] may approve an application for cost-sharing if, after considering the factors listed in §517.28 of this subchapter [~~§203.157, Agriculture Code~~], and any other relevant factors, the State Board [~~board~~] finds:

(1) the owner of the land fully agrees to cooperate in the cost-sharing contract; and

(2) the method of control [~~eradication~~] is a method approved by the State Board [~~board~~] under §517.31 of this subchapter [~~§203.055, Agriculture Code~~].

§517.30. Administration of Expenditures.

(a) A SWCD [~~The District board~~] may administer expenditures of the state's share of the money required by a cost-sharing contract and shall report periodically to the State Board [~~board~~] on the expenditure of those funds in the manner required by the State Board [~~board~~].

(b) If the demand for funds under the cost-sharing program is greater than funds available, the State Board [~~board~~] shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(c) The State Board [~~board~~] shall give more favorable consideration to a particular project if the applicants individually or collectively agree to increase the percentage share of costs under the cost-share agreement.

(d) The State Board [~~board~~] shall consider quantity of stream flows, the quantity of groundwater, and the amount of water conservation from eradication of brush each to be a priority.

~~[(e) The quantity of stream flows or groundwater or water conservation from the eradication of brush is a consideration in assigning priority.]~~

§517.31. Approval of Brush Control Methods.

(a) The State Board [~~board~~] shall study and must approve all methods used to control brush under this subchapter [~~chapter~~] considering the overall impact of the project.

(b) The State Board [~~board~~] may approve a method for use under the cost-sharing program provided by this subchapter [~~Chapter 203, Subchapter E, Agriculture Code~~], if the State Board [~~board~~] finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush and is consistent with the practice standard for brush control as specified within the NRCS FOTG;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat and will not harm sensitive or critical habitat of endangered or threatened species;

(4) will maintain topsoil to prevent erosion or silting of any river or stream; and

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.

§517.32. Powers and Duties of SWCDs.

(a) Each SWCD [~~district~~] may administer the aspects of the water supply enhancement program within the jurisdiction of that SWCD [~~district~~].

(b) Each SWCD [~~district~~] may accept for transmission to the State Board [~~board~~] applications for cost-sharing under this subchapter [~~Chapter 203, Subchapter E, Agriculture Code~~], and may examine and assist the applicant in assembling the application in proper form before the application is submitted to the State Board [~~board~~].

(c) Before a SWCD [~~district~~] submits an application to the State Board [~~board~~], it shall examine the application to assure that it complies with rules of the State Board [~~board~~] and that it includes all information and exhibits necessary for the State Board [~~board~~] to pass on the application.

(d) At the time that the SWCD [~~district~~] examines the application, it shall prepare comments and recommendations relating to the application and the SWCD [~~district board~~] may provide comments and recommendations before they are submitted to the State Board [~~board~~].

(e) After reviewing the application, the SWCD [~~district board~~] shall submit to the State Board [~~board~~] the application and the comments and recommendations.

(f) Each SWCD [~~district~~] on behalf of the State Board [~~board~~] may inspect and supervise cost-sharing contracts within its jurisdiction in which state money is provided under this subchapter [~~Chapter 203, Subchapter E, Agriculture Code~~].

(g) Each SWCD [~~district board~~] exercising the duties under subsection (f) [~~(b)~~] of this section shall periodically report to the State Board [~~board~~] relating to this inspection and supervision in the manner provided by the State Board [~~board rules~~].

(h) The State Board [~~board~~] may direct a SWCD [~~district~~] to manage any problem that arises under a cost-sharing contract for water supply enhancement in that SWCD [~~district~~] and to report to the State Board [~~board~~].

§517.33. Eligibility for Cost-Share Assistance.

(a) Eligible person. Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who is an owner, lessee, tenant, or sharecropper in an agricultural or wildlife operation.

(b) Ineligible person.

(1) A person is not eligible to participate in the water supply enhancement [~~state brush control~~] program or to receive money from the water supply enhancement [~~state brush control~~] program if the person is simultaneous receiving any cost-share money for brush control on the same acreage from a federal government program.

(2) The State Board may grant an exception to paragraph (1) of this subsection if the State Board finds that joint participation of the state water supply enhancement program [~~brush control~~] and any federal brush control program will enhance the efficiency and effectiveness of a project and lessen the state's financial commitment to the project.

(c) Eligible land. To be eligible for cost-share assistance, the land must be in an agricultural or wildlife operation within a designated project area and fall into any of the following categories:

(1) land within the state that is privately owned by an eligible person;

(2) land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or

(3) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.

(d) Ineligible lands. Allocated funds shall not be used on land outside of a designated area.

(e) Eligible purposes. Cost-share assistance shall be available only for brush control included in an approved water supply enhancement [~~brush control~~] plan and contract and determined to be needed by the local SWCD to conserve water.

(f) Eligible practices. Brush control methods, which the State Board has approved and which are included in the applicant's approved water supply enhancement [~~brush control~~] plan and contract, shall be eligible for cost-share assistance.

(g) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person shall file an application with the local SWCD.

§517.34. Limit on Cost-Sharing Participation.

(a) Not more than 70 percent of the total cost of a single cost-sharing contract may be made available as the state's share in cost-sharing.

(b) A person is not eligible to participate in or to receive money from the state water supply enhancement program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from the federal government.

(c) The State Board [~~board~~] may grant an exception to subsection (b) of this section if the State Board [~~board~~] finds that joint participation of the state water supply enhancement program and any federal brush control program will:

(1) enhance the efficiency and effectiveness of the water supply enhancement program;

(2) lessen the state's financial commitment to the person receiving money from the water supply enhancement program through a cost-sharing contract; and

(3) not exceed 80 percent of the total cost of the cost-sharing contract.

(d) A political subdivision of this state is eligible for cost-sharing under the water supply enhancement program, provided that the state's share may not exceed 50 percent of the total cost of a single cost-sharing contract.

(e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single cost-sharing contract on public lands may be made available as the state's share in cost-sharing.

§517.35. Contract for Cost-Sharing.

(a) On approval of an application for cost-sharing by the State Board [~~board~~], the State Board [~~board~~] or the [~~governing board of the~~] designated SWCD [~~board~~] shall negotiate cost-sharing contracts with the successful applicants in the project territory.

(b) The State Board [~~board~~] or the designated SWCD [~~board~~] shall negotiate a contract with the successful applicant subject to:

(1) the conditions established by the State Board [~~board~~] in approving the application;

(2) any specified instructions provided by the State Board [~~board~~]; and

(3) State Board [~~board~~] rules.

(c) On completion of the negotiations by the SWCD [~~board~~], it shall submit the proposed contract to the State Board [~~board~~] for approval.

(d) The State Board [~~board~~] shall examine the contract and if the State Board [~~board~~] finds that the contract meets all the conditions of the State Board's [~~board's~~] resolution, instructions, and rules, it shall approve the contract and provide to the individual on faithful performance of the terms of the contract the money that constitutes the state's share of the project.

(e) The State Board [~~board~~] may develop guidelines to allow partial payment of the state's share of a cost-sharing contract as certain portions or percentages of contracted work are completed, but [~~the~~] state money may not be provided in advance for work remaining to be done.

§517.36. Water Supply Enhancement Plans for Landowners.

(a) The State Board [~~board~~] shall consult with each successful applicant for a cost-sharing contract to create a 10-year plan for the land that is subject to the contract to enhance the water supply in the area.

(b) A plan created under this section must include:

(1) provisions for brush control or other water supply enhancement activities;

(2) a provision for follow-up brush control;

(3) a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan; and

(4) periodic dates throughout the course of the 10-year plan on which the State Board [~~board~~] will inspect the status of brush control on the land that is subject to the contract.

(c) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(d) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person.

(e) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and terms of the contract has not expired, the participant, heir(s), or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s), or the buyer(s) by agreement with the seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis, in consultation with the SWCD, may grant a waiver to this requirement.

(f) A plan created under this section may not condition implementation of the provision for follow-up brush control on receipt of additional funding for the follow-up brush control from a state source other than the original cost-sharing contract.

(g) Status reviews as required by subsection (b)(4) of this section are conducted by the State Board within three to five years after initial treatment of brush. A second status review is conducted within eight to nine years after initial treatment.

(h) If the eligible person, as defined in §517.33(a) of this subchapter, receiving a cost-sharing contract is found to be out of compliance with the provision described in subsection (b)(3) of this section, that person will not be eligible for another water supply enhancement contract from the State Board for a period of ten years after being found out of compliance.

§517.37. Consultation.

The State [~~Soil and Water Conservation~~] Board shall consult with:

(1) The Texas Parks and Wildlife Department [~~(TPWD)~~] in regard to the effects of the water supply enhancement program on fish and wildlife;

(2) The Texas Water Development Board in regard to the effects of the water supply enhancement program on water quantity [~~supply~~]; and

(3) The Texas Department of Agriculture in regard to the effects of the water supply enhancement program on agriculture.

§517.38. Geospatial Analysis for Prioritizing Acreage Eligible for Cost-Share.

(a) In order to maximize the positive impacts of brush control on water supply enhancement and the effective and efficient use of allocated funds, a geospatial analysis will be performed to delineate and prioritize the acres eligible for cost-share that have the highest potential to yield water within a project watershed. The geospatial analysis addresses the consideration described in §517.25(d)(2) of this subchapter.

(b) The geospatial analysis will consider multiple landscape characteristics for a project watershed and will assign a ranking to all areas of the watershed based on the overall number of these characteristics that apply to a specific location. Each characteristic has multiple criteria each with a ranking value assigned. Characteristics that will be assessed in the geospatial analysis include:

(1) Brush Density--type and density of brush to be treated in fraction of the area with treatable brush;

(2) Soils--relative to hydrologic properties such as runoff potential or recharge/infiltration rate;

(3) Slope--sufficiently steep to carry water to streambed but not impair method of brush control;

(4) Proximity to Waterbodies--including riparian areas and other hydrologically sensitive areas critical to streamflow and aquifer recharge; and

(5) Proximity to Watershed Outlet.

(c) Excluded Areas. Due to their sensitive nature, the following areas are automatically excluded from the analysis and are included in the not eligible zone:

(1) Areas that are designated as sensitive or critical habitat of endangered or threatened species; and

(2) Slopes greater than 16 percent.

(d) The geospatial analysis results in four brush control priority zones for each watershed: high, medium, low, and not eligible.

(e) Different ranking values may be assigned to the multiple criteria of each characteristic, based on their impacts on the target water supply and goal for the project. The intended goal of the project may be either to manage brush for infiltration enhancement of aquifers or to manage brush for runoff enhancement of surface waterbodies.

§517.39. Provisions for SWCDs to Provide Technical Assistance to Landowners for Brush Control and to Administer the Water Supply Enhancement Cost-Share Program.

(a) In order to maximize the effective and efficient use of water supply enhancement grant funds, an SWCD participating in a water supply enhancement project must choose one of two options to provide technical assistance to landowners for brush control and to administer the water supply enhancement cost-share program.

(b) Option A. Cooperative Agreement for Regional Conservation Technician. The participating SWCD agrees to allow a regional conservation technician, funded by the State Board through a different SWCD, to perform all duties and responsibilities associated with implementing a water supply enhancement project within the jurisdiction of the participating SWCD on behalf of the participating SWCD.

(1) The participating SWCD will cooperate with the regional conservation technician and the State Board to implement the water supply enhancement project.

(2) The participating SWCD will not be eligible for reimbursement of any costs associated with implementing the water supply enhancement project within the jurisdiction of the participating SWCD.

(c) Option B. Participating SWCD Provides for Technical Assistance. If a participating SWCD chooses to administer the water supply enhancement program within the jurisdiction of that SWCD, as provided for by §517.32(a) of this subchapter, then the participating SWCD agrees to employ a district conservation technician to perform all duties and responsibilities necessary to provide technical assistance and to administer the cost-share program within the jurisdiction of the participating SWCD.

(1) The State Board and regional conservation technicians will not perform duties and responsibilities associated with the provision of technical assistance or administering the cost-share program, but will provide guidance and direction to the participating SWCD on State Board rules, policies, and procedures.

(2) The participating SWCD may be reimbursed by the State Board for actual costs incurred associated with implementing the water supply enhancement program, up to 15 percent of the cost-share allocation for that water supply enhancement project.

(3) Costs incurred associated with either providing technical assistance and administering the cost-share program or administrative functions of implementing a water supply enhancement project and performed by an employee of the participating SWCD are eligible for reimbursement.

(4) The maximum pay rate adopted in State Board Technical Assistance Rule §519.8 of this title shall also apply to salary costs incurred associated with administrative functions performed by participating SWCDs.

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 May 22, 2014.

TRD-201402410
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: July 6, 2014
For further information, please call: (254) 773-2250 x252

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.3, 425.5, 425.7, 425.11

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.3, concerning Minimum Standards for Fire Service Instructor I Certification; §425.5, concerning Minimum Standards for Fire Service Instructor II Certification; §425.7, concerning Minimum Standards for Fire Service Instructor III Certification; and §425.11, concerning International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed amendments is to change a referenced section in another chapter of commission rules that was amended, to clarify qualifications for Instructor II certification, and to delete obsolete language.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is current, clear, and concise rules for individuals who seek commission certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.028, Training Programs and Instructors, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel instructors.

The proposed amendments implement Texas Government Code §419.008 and §419.028.

§425.3. Minimum Standards for Fire Service Instructor I Certification.

In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(47) [~~§421.5(46)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) possess valid documentation as a Fire Instructor I, II or III from either:

(A) the International Fire Service Accreditation Congress (IFSAC); or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2007 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(4) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.5. Minimum Standards for Fire Service Instructor II Certification.

In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title (relating to Minimum Standards for Fire Service Instructor I Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(47) [~~§421.5(46)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation as a Fire Instructor [~~I,~~] II or III from either:

(A) the International Fire Service Accreditation Congress (IFSAC); or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2007 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(4) have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.7. Minimum Standards for Fire Service Instructor III Certification.

In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite, a Fire Instructor II Certification as defined in §425.5 of this title (relating to Minimum Standards for Fire Service Instructor II Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(47) [~~§421.5(46)~~] of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(4) have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) and either:

(A) hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(B) have 60 college hours from a regionally accredited educational institution; or

(C) hold an associate's degree from a regionally accredited educational institution.

§425.11. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals who hold commission [~~held an equivalent~~] Instructor I certification prior to March 1, 2006 or individuals completing a commission approved Fire Service Instructor I training program and passing the applicable state examination [~~after the effective date of this chapter,~~] may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee.

(b) Individuals who hold commission [~~held an equivalent~~] Instructor II certification prior to March 1, 2006 or individuals holding an IFSAC Instructor I certification, completing a commission approved Fire Service Instructor II training program, and passing the applicable state examination [~~after the effective date of this chapter,~~] may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee.

(c) Individuals who hold commission [~~held an equivalent~~] Instructor III certification prior to March 1, 2006 or individuals holding an IFSAC Instructor II certification, completing a commission approved Fire Service Instructor III training program, and passing the applicable state examination [~~after the effective date of this chapter,~~] may be granted an IFSAC seal for Instructor III by making application to the commission and paying the applicable fee.

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 May 20, 2014.

TRD-201402370
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 936-3813

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 429, Minimum Standards for Fire Inspector Certification, §429.203, concerning Minimum Standards for Basic Fire Inspector Certification.

The purpose of the proposed amendments is to add an additional path for an individual who holds certification from the State Firemen's and Fire Marshals' Association in the disciplines identified to take a commission examination to become commission certified as Basic Fire Inspector; and to also delete a reference to NFA that is now obsolete.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to bridge the gap for an individual seeking to become commission certified. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§429.203. Minimum Standards for Basic Fire Inspector Certification.
In order to be certified as a basic fire inspector, an individual must:

(1) possess valid documentation as an Inspector I, Inspector II, and Plan Examiner I from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(2) complete a commission approved Basic Fire Inspector program and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) completion of the commission approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state[~~, NFA, and/~~]or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention Codes and Inspections, three semester hours;

(iii) Building Construction in the Fire Service or Building Codes and Construction, three semester hours;

(iv) Hazardous Materials I, II, or III, three semester hours (total semester hours, 12); or[~~.~~]

(D) documentation of the receipt of Fire Inspector I, Fire Inspector II, and Plan Examiner I certificates issued by the State Firemen's and Fire Marshals' Association of Texas that are deemed equivalent to a commission approved Basic Fire Inspector curriculum.

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 May 20, 2014.

TRD-201402371
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 936-3813

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 451, Fire Officer, Subchapter C, Minimum Standards for Fire Officer III, §451.303, concerning Minimum Standards for Fire Officer III Certification; and Subchapter D, Minimum Standards for Fire Officer IV, §451.403, concerning Minimum Standards for Fire Officer IV Certification.

The purpose of the proposed amendments is to delete obsolete language that provided a special temporary provision through February 2014 for an individual seeking Fire Officer III or Fire Officer IV certification, to allow an individual to take the commission examination without having to pay the customary testing fee.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage will provide a clear and concise set of rules regarding Fire Officer certification from the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.303

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§451.303. Minimum Standards for Fire Officer III Certification.

(a) In order to be certified as a Fire Officer III an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer II certification through the commission; and

(3) hold, as a minimum, Fire Service Instructor II certification through the commission; and

(4) document completion of ICS-300: Intermediate Incident Command System; and

(5) possess valid documentation as a Fire Officer III from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(6) complete a commission approved Fire Officer III program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer III program must consist of one of the following:

(A) completion of a commission approved Fire Officer III Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer III Curriculum; or

(C) successful completion of 15 college semester hours of upper level coursework from a four-year regionally accredited institution in any of the following subject areas:

(i) Administration/Management;

(ii) Budget/Finance;

(iii) Planning/Organization;

(iv) Leadership/Ethics;

(v) Risk Management;

(vi) Safety and Health; or

(vii) Community Risk Reduction.

[(7) Special temporary provision: Through February 2014, an individual is eligible to take the commission examination for Fire Officer III upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 6. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.305(b) of this subchapter (relating to Examination Requirements) must still be met.]

(7) [(8)] Special temporary provision: Through February 2015, an individual is eligible for Fire Officer III certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.

[(9) The application processing fee for the initial examination is waived for individuals in paragraphs (6) and (7) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.]

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the 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 May 20, 2014.

TRD-201402372
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 936-3813

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SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.403

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§451.403. Minimum Standards for Fire Officer IV Certification.

(a) In order to be certified as a Fire Officer IV an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer III certification through the commission; and

(3) document completion of ICS-400: Advanced Incident Command System; and

(4) possess valid documentation as a Fire Officer IV from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(5) complete a commission approved Fire Officer IV program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer IV program must consist of one of the following:

(A) completion of a commission approved Fire Officer IV Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer IV Curriculum; or

(C) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

(i) Fire Science/Administration/Management;

(ii) Emergency Management;

(iii) Public Administration;

(iv) Emergency Medicine;

(v) Business Management/Administration;

(vi) Political Science;

(vii) Human Resources Management;

(viii) Public Health;

(ix) Risk Management;

(x) Criminal Justice; or

(xi) a related management/administration/leadership degree.

[(6) Special temporary provision: Through February 2014, an individual is eligible to take the commission examination for Fire Officer IV upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 7. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.405(b) of

this subchapter (relating to Examination Requirements) must still be met.]

(6) [(7)] Special temporary provision: Through February 2015, an individual is eligible for Fire Officer IV certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 edition of the NFPA standard applicable to this discipline.

[(8) The application processing fee for the initial examination is waived for individuals in paragraphs (5) and (6) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.]

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

The agency certifies that legal counsel has reviewed the 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 May 20, 2014.

TRD-201402373
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 936-3813

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CHAPTER 453. HAZARDOUS MATERIALS SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

37 TAC §453.203

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 453, Hazardous Materials, Subchapter B, Minimum Standards for Hazardous Materials Incident Commander, §453.203, concerning Minimum Standards for Hazardous Materials Incident Commander.

The purpose of the proposed amendments is to delete obsolete language that provided a special temporary provision through February 2014 for an individual seeking Hazardous Materials Incident Commander certification, and to allow an individual to take the commission examination without having to pay the customary testing fee.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage will provide a clear and concise set of rules regarding Hazardous Materials Incident Commander certification from the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§453.203. Minimum Standards for Hazardous Materials Incident Commander.

(a) In order to be certified as Hazardous Materials Incident Commander an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Hazardous Materials Incident Commander from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements--General); or

(3) complete a commission approved Hazardous Materials Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Incident Commander program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Incident Commander curriculum as specified in Chapter 6 of the commission's Certification Curriculum Manual; or

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Hazardous Materials Incident Commander curriculum.

[(4) Special temporary provision: Through February 2014, an individual is eligible to take the commission examination for Hazardous Materials Incident Commander upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 472, Chapter 8. The documentation must be a certificate of completion from a nationally recognized training provider. During the one-year period, the commission examination shall consist of a written exam. The examination requirements in §453.205(b) of this subchapter (relating to Examination Requirements) must still be met.]

(4) [(5)] Special temporary provision: Through February 2015, an individual is eligible for Hazardous Materials Incident Commander certification upon documentation of the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engi-

neering Extension Service using the 2008 edition of the NFPA standard applicable to this discipline.

~~[(6) The application processing fee for the initial examination is waived for individuals in paragraphs (3) and (4) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.]~~

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Incident Commander) of the commission's Certification Curriculum Manual are met.

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 May 20, 2014.

TRD-201402374
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 936-3813

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §§109.205, 109.221, 109.231

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend the Chapter 109, Office for Deaf and Hard of Hearing Services (DHHS), Subchapter B, Board for Evaluation of Interpreters (BEI), Division 1, BEI Interpreter Certification, §109.205 and §109.221; and add new §109.231.

BACKGROUND AND JUSTIFICATION

Based upon a recommendation by the BEI Advisory Board, DARS DHHS proposes this change to establish a policy for BEI certificate holders who hold or have been awarded more than one BEI certificate. The goal is to streamline the renewal and recertification process by assigning a single, new five-year certification cycle that designates the same renewal and recertification date. In addition, a BEI fee schedule is being incorporated into rule. The fee amounts being proposed represent an increase in the current fees and are intended to recover some of the costs of the certification program as authorized by Texas Human Resources Code, Chapter 81, which is the program's enabling statute. DARS proposes amendments to §109.205, Definitions, and §109.221, Validity of Certificates and Recertification; and new §109.231, Schedule of Fees.

SECTION-BY-SECTION SUMMARY

DARS proposes to amend §109.205, Definitions, by adding a definition for multiple-certificate holder to establish or clarify the meaning for current and future BEI certificate holders.

DARS proposes to amend §109.221, Validity of Certificates and Recertification, by adding language to strengthen the renewal and recertification requirements for current or former certificate holders and to expand the rule to include multiple certificate holder status and its application.

DARS proposes new §109.231, Schedule of Fees, by incorporating a fee schedule for current BEI certificate holders and future test candidates or examinees for BEI certification. The proposed new rule is intended to recover some of the costs of the certification program as authorized by Texas Human Resources Code, Chapter 81, the program's enabling statute.

FISCAL NOTE

William Briggs, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposed amendments and new rule will be in effect, there are foreseeable fiscal implications to costs or revenues of state or local governments as a result of enforcing or administering the amendments and new rule. The proposed rule amendments and new rule do pose a slight fiscal impact, which is an increase in revenue of approximately $51,500 a year. The increased amount would be dependent on the tests taken and the certifications obtained. The new rule will incorporate a fee schedule for current certificate holders and future test candidates for BEI certification in an amount sufficient to recover some the costs of the certification program. In addition, the persons who must comply with the proposed amendments and new rule will be required to pay an increased amount for BEI tests and certifications.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code, §2001.022, Mr. Briggs has determined that the proposed amendments and new rule will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Briggs has determined that the proposed amendments and new rule will not have adverse economic effect on small businesses or micro-businesses because the majority of persons impacted by these rules are individuals rather than corporations or partnerships. The persons who must comply will be required to pay an increased amount for BEI tests and certifications and the increased amount would be dependent on the tests taken and the certifications obtained.

PUBLIC BENEFIT

Mr. Briggs has determined that for each year of the first five years that the proposed amendments and new rule will be in effect, the public benefit anticipated as a result of administering and enforcing the amendments and new rule will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by DARS DHHS. The proposed amendments and new rule will update DARS DHHS

rules to strengthen and expand requirements for certificate renewal and recertification of BEI certificate holders. Mr. Briggs has also determined that there is probable economic cost to persons who are required to comply with the proposal. Persons who must comply with the proposed amended and new rules will be required to pay an increased amount for BEI tests and certifications. The increased amount would be dependent on the tests taken and the certification obtained.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposed amendments and new rule may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4800 N. Lamar Blvd., Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

STATUTORY AUTHORITY

The amendments and new rule are being proposed under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§109.205. Definitions.

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

(1) (No change.)

(2) Certificates issued--

(A) - (L) (No change.)

(M) Multiple-certificate holder--A BEI certificate holder who possesses or who is awarded more than one BEI certificate.

(N) [~~(M)~~] Signing Exact English (SEE) certificate--A certificate issued by DARS to a person who has passed a skills evaluation certifying that the person can convey a message from verbal English into Signed Exact English and from Signed Exact English into verbal English.

(O) [~~(N)~~] Level I certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some daily interpreting situations where expressive skills are usually stronger than receptive skills and sign vocabulary is limited.

(P) [~~(O)~~] Level II certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey some routine interpreting situations where the person exhibits good transliterating or interpreting skills, but not both.

(Q) [~~(P)~~] Level III certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person can convey most routine interpreting situations where the person exhibits good expressive and receptive interpreting skills, displays a clear distinction between interpreting and transliterating and possess a sign vocabulary.

(R) [~~(Q)~~] Level IV certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits strong expressive and receptive interpreting skills in settings such as medical, legal and psychiatric, demonstrates excellent use of ASL grammar and ASL features, transliterating skills are strong and processing is often at the textual level.

(S) [~~(R)~~] Level V certificate--A certificate issued by DARS to a person who has passed a written test to assess understanding of Code of Ethics and a skills evaluation certifying that the person exhibits very strong expressive and receptive interpreting skills in setting such as medical, legal and psychiatric, possess an extensive vocabulary, demonstrates sophisticated use of ASL grammar as well as ASL features and transliterates conceptually accurate with appropriate mouthing.

(3) - (7) (No change.)

§109.221. Validity of Certificates and Recertification.

(a) Certificates are valid for five years, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year certification cycle [~~period~~], a certificate holder must be recertified by DARS.

(b) A certificate holder may be recertified if he or she: [~~can show documentation of having received at least the minimum number of required continuing education units, or achieves an adequate score on a specified examination. Information on current annual renewal or five-year recertification requirements may be obtained from DHHS.~~]

(1) provides written documentation of completing at least the minimum number of required continuing education units, as approved by DARS; or

(2) achieves a passing score on a specified examination; and

(3) is in compliance with all other applicable rules, including those relating to annual certificate renewal, recertification, eligibility, and qualifications.

(c) DARS may not renew or recertify a certificate holder or a former certificate holder seeking to recertify through examination until:

(1) all pending or unresolved complaints, disciplinary actions, or agency orders relating to the current or former certificate holder are resolved with DARS; and

(2) payment of any required renewal or recertification fees are received by DARS within 30 days of their due date.

(d) For multiple certificate holders possessing more than one BEI interpreter certificate, the following rules apply:

(1) When a current BEI certificate holder is awarded an additional BEI certificate, the current and new certificates are assigned a single, new five-year certification cycle that begins on the award date of the newest BEI certificate(s).

(2) The new five-year certification cycle and the annual renewal date each become due as of the award date of the newest BEI certificate.

(3) All certificates are assigned one certificate number.

(4) Any continuing education units (CEUs) earned prior to the multiple certificate award date are void.

(5) The certificate holder has five years from the multiple certificate award date to earn all required CEUs.

(e) Information on current annual certificate renewal and five-year recertification requirements may be obtained from DARS.

§109.231. Schedule of Fees.

(a) All fees paid to DARS DHHS in relation to the BEI certification program are non-refundable. DARS is authorized to collect fees for written and performance examinations, for annual certificate renewal, and for five-year recertification. The schedule of fees is as follows.

(1) Administrative, application, and examination fees:

(A) Test of English Proficiency (TEP)--$95.

(B) Basic Performance Test--$145.

(C) Advanced Performance Test--$170.

(D) Master Performance Test--$195.

(E) Oral Certificate: Basic (OC:B) Performance Test--$85.

(F) Oral Certificate: Comprehensive (OC:C) Performance Test--$105.

(G) Oral Certificate: Visible (OC:V) Performance Test--$50.

(H) Signing Exact English (SEE) Performance Test--$85.

(I) Morphemic Sign System (MSS) Performance Test--$85.

(J) Level III Intermediary Performance Test--$50.

(K) Level V Intermediary Performance Test--$50.

(L) Test of Spanish Proficiency (TSP)--$95.

(M) Advanced Trilingual Performance Test--$160.

(N) Master Trilingual Performance Test--$185.

(O) Court application administration fee--$50.

(P) Court mentor application fee--$60.

(Q) Certificate card replacement--$25.

(2) Single certificate renewal and five-year recertification fees:

(A) Annual certificate renewal (on time)--$75.

(B) Annual certificate renewal (1-90 days after expiration date)--$112.50.

(C) Annual certificate renewal (91-364 days after expiration date)--$150.

(D) Court certificate annual renewal (on time)--$35.

(E) Court certificate annual renewal (1-90 days after expiration date)--$52.50.

(F) Court certificate annual renewal (91-364 days after expiration date)--$75.

(G) Five-year recertification (on time)--$70.

(H) Five-year recertification (1-90 days after expiration date)--$105.

(I) Five-year recertification (91-364 days after expiration date)--$140.

(J) Court certificate five-year recertification (on time)--$50.

(K) Court certificate five-year recertification (1-90 days after expiration date)--$75.

(L) Court certificate five-year recertification (91-364 days after expiration date)--$100.

(3) Multiple certificate renewal and five-year recertification fees:

(A) Annual certificate renewal (on time)--$105.

(B) Annual certificate renewal (1-90 days after expiration date)--$157.50.

(C) Annual certificate renewal (91-364 days after expiration date)--$210.

(D) Five-year recertification (on time)--$100.

(E) Five-year recertification (1-90 days after expiration date)--$150.

(F) Five-year recertification (91-364 days after expiration date)--$200.

(b) Any remittance submitted to DARS DHHS in payment of a required fee shall be in the form of a personal check, certified check, or money order unless this section requires otherwise. Checks drawn on foreign financial institutions are not acceptable.

(c) An applicant whose check for the application and initial certification fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to DARS DHHS a money order or check for guaranteed funds within 30 days of the date of the receipt of the notice by DARS DHHS. Otherwise, the application and the approval shall be invalid. A penalty fee of $25, in addition to the amount of the check, must be included with the payment remitted to the DARS DHHS office.

(d) A certificate holder whose check for a renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to DARS DHHS a money order or check for guaranteed funds within 30 days of the date of receipt of the notice by DARS DHHS. Otherwise, the certificate shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration date, a late renewal penalty fee shall be assessed. A penalty fee of $25, in addition to the amount of the check, must be included with the payment remitted to the DARS DHHS office.

(e) Renewing an expired certificate within 12 months of the expiration date requires payment of the applicable renewal fee.

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 May 23, 2014.

TRD-201402426

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: July 6, 2014
For further information, please call: (512) 424-4050

TEXAS

Damon
3rd Grade

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1004

The Texas Department of Housing and Community Affairs withdraws the proposed new §10.1004 which appeared in the January 10, 2014, issue of the *Texas Register* (39 TexReg 159).

Filed with the Office of the Secretary of State on May 20, 2014.

TRD-201402375
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 20, 2014
For further information, please call: (512) 475-3959

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CHAPTER 80. MANUFACTURED HOUSING

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.3 which appeared in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8499).

Filed with the Office of the Secretary of State on May 20, 2014.

TRD-201402367
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 20, 2014
For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.32, §80.36

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendments to §80.32 and §80.36 which appeared in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8499).

Filed with the Office of the Secretary of State on May 20, 2014.

TRD-201402368
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 20, 2014
For further information, please call: (512) 475-2206

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SUBCHAPTER D. LICENSING

10 TAC §80.40, §80.41

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendments to §80.40 and §80.41 which appeared in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8499).

Filed with the Office of the Secretary of State on May 20, 2014.

TRD-201402369
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: May 20, 2014
For further information, please call: (512) 475-2206

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §183.11

Proposed amended §183.11, published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8054), 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 May 28, 2014.

TRD-201402512

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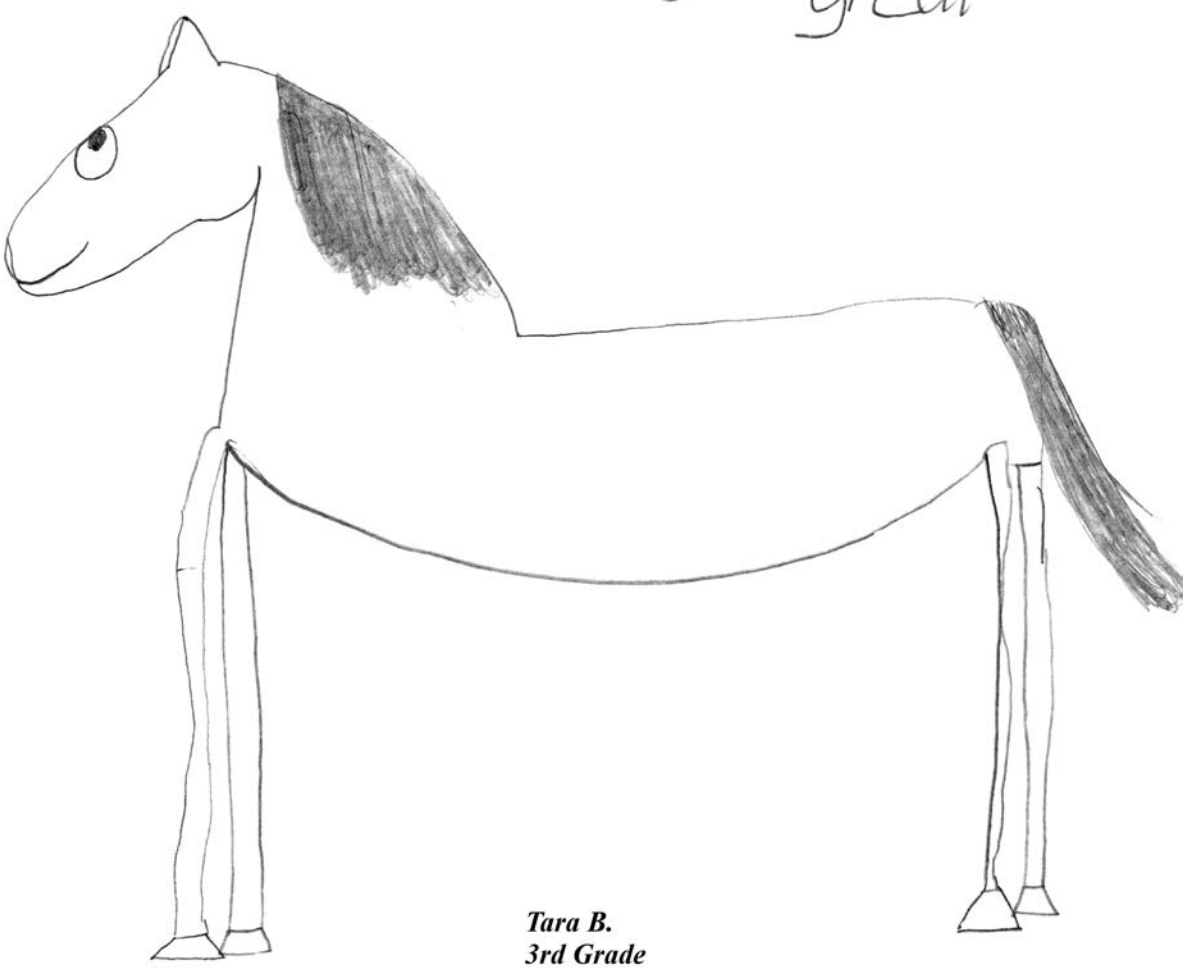
Texas is great



Tara B.
3rd Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 121. COMPREHENSIVE PLANNING AND DEVELOPMENT PROCESS

1 TAC §§121.1 - 121.5

The Texas Facilities Commission ("Commission") adopts new Chapter 121, §§121.1 - 121.5, concerning Comprehensive Planning and Development Process, without changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1558).

The new rules are adopted pursuant to the Commission's rulemaking authority found in Texas Government Code §2166.107 (Vernon Supp. 2013), which directs the Commission to adopt a comprehensive process for planning and developing state property in the commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Justification for the Rule

The new chapter provides clarification concerning the comprehensive process for planning and developing state property in the Commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 of the Texas Government Code.

Summary of Comments

The comment period ended April 7, 2014. No comments were received.

Statutory Authority

The new rules are adopted pursuant to Texas Government Code §2166.107 (Vernon Supp. 2013) which directs the Commission to adopt a comprehensive process for planning and developing state property in the commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the adopted new rules are those set forth in Texas Government Code §2166.107 (Vernon Supp. 2013).

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 May 23, 2014.

TRD-201402425
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: June 12, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 463-4257

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §§355.8201 - 355.8203

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8201, concerning Waiver Payments to Hospitals, §355.8202, concerning Waiver Payments for Physician Services, and §355.8203, concerning Waiver Payments to Other Performers, without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2647). The sections will not be republished.

Background and Justification

In 2011, the Centers for Medicare and Medicaid Services (CMS) approved the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver. Section 355.8201 and §355.8202 were adopted effective June 13, 2013, while §355.8203 was adopted effective August 16, 2013. Payments under these sections are made subject to approval by CMS of relevant protocols that are described in the waiver.

HHSC is adopting amendments to these rules to:

- include additional definitions;

- specify deadlines for affiliation and certification submissions;

- allow hospitals to request adjustments to increase their interim hospital-specific limits (HSLs) for purposes of calculating uncompensated care (UC) payments and require an additional reconciliation for hospitals submitting such requests;

- describe how advance UC payments will be calculated when a partial-year UC application was used to determine the preceding demonstration year's UC payment;

- clarify how a governmental entity must submit its intergovernmental transfers (IGT) in certain situations; and

- provide better organization and clarification, including compiling references to Delivery System Reform Incentive Payments (DSRIP) in a single rule section.

In addition, the adopted amendments eliminate references to obsolete transition payments where appropriate, clarify eligibility requirements, and make other changes to conform the rule to CMS approved waiver protocols.

Comments

HHSC conducted a public hearing to receive comment on the proposed amendments to §§355.8201, 355.8202 and 355.8203. HHSC also received one written comment on the proposed amendments. Oral and written comments were received from one individual and from the Teaching Hospitals of Texas and the Texas Hospital Association.

Summaries of the comments and HHSC's responses to the comments follow:

Comment regarding §355.8201(b)(5): One commenter wanted to know if the proposed definition of a clinic would encompass his dialysis clinic.

Response: If the dialysis clinic meets the definition of a clinic as proposed in §355.8201(b)(5) (i.e., an outpatient health care facility, other than an Ambulatory Surgical Center or Hospital Ambulatory Surgical Center, that is owned and operated by a hospital but has a nine-digit Texas Provider Identifier (TPI) that is different from the hospital's nine-digit TPI), it will be an allowable clinic for purposes of uncompensated care supplemental payments. No changes were made in response to this comment.

Comment regarding §355.8201(h)(2)(B)(i) and §355.8202(h)(2)(B)(ii): HHSC should share the reasoning behind the requirement that, in situations where a governmental entity does not transfer the full amount of IGT necessary for its affiliated providers to receive the calculated payment amounts for the payment period and notifies HHSC of the share of IGT to be allocated to each provider owned by or affiliated with that entity, the governmental entity is required to provide the non-federal share of uncompensated care payments for each entity it affiliates with in a separate IGT transaction. This commenter indicated that this requirement would make IGT transactions more complicated than they need to be.

Response: Separate IGT transactions are required in the situation described above to enable HHSC to accurately track and assign IGTs and payments to various affiliated entities. When multiple assigned IGTs are combined in a single transaction, it is more difficult for auditors and other reviewers to establish an accounting trail for tracking each individual provider's payments and associated IGTs. No changes were made in response to this comment.

Comment regarding §355.8203(h)(2)(B): HHSC should explain why "carry forward" DSRIP payments are not given priority for payment when a governmental entity does not transfer the full amount of IGT necessary for its affiliated providers to receive the calculated DSRIP payment amounts for the payment period.

Response: Under DSRIP, governmental entities are not allowed to favor some of their affiliated entities at the expense of other affiliated entities when they are unable to transfer the full amount of IGT necessary for all of their affiliated providers to receive the calculated payment amounts for the payment period. Giving priority to "carry forward" DSRIP payments could have the effect of favoring affiliated entities with "carry forward" amounts over affiliated entities without "carry forward" amounts. No changes were made in response to this comment.

Comment regarding §355.8201(b)(7) and §355.8202(b)(4): HHSC should delete the definition of DSRIP from §355.8201 and §355.8202 since the term is not used elsewhere in these rule sections.

Response: The term "DSRIP" is used in the definition of RHP plan in both §355.8201 and §355.8202. No changes were made in response to this comment.

Comment regarding §355.8201(i)(4): A hospital might have an adjusted interim HSL that is greater than its final HSL due to an error in its projections rather than through any intentional act. Such hospitals should not be penalized by being subject to an additional reconciliation as described in this paragraph.

Response: The purpose of the additional reconciliation is to ensure that hospitals that inaccurately adjust their interim HSLs do not benefit from that inaccuracy, whether the inaccuracy is intentional or unintentional. No changes were made in response to this comment.

Comment regarding §355.8201(i)(4): The additional reconciliation should be applied to adjusted interim HSLs and physician, clinic and pharmacy costs in the aggregate rather than solely to adjusted interim HSLs. This change would ensure that a provider who over-estimated its HSL adjustment but underestimated its physician, clinic and pharmacy costs is not subject to a recoupment solely based on inaccuracies in its requested HSL adjustment.

Response: The requested change could have a negative impact on a category of provider (providers who do not over-estimate their HSL adjustments but do over-estimate their physician, clinic and pharmacy costs) not originally impacted by the proposed version of the rule amendment. If such a change were to be made upon adoption of the rule, providers in this category would never have been given an opportunity to comment on the change and its negative impact on their uncompensated care payments. No changes were made in response to this comment.

Comment regarding §355.8201(i)(4): Given all of the Medicaid reimbursement policy changes made over the last few years, hospitals and the agency are having a difficult time determining the exact baseline amount of Medicaid payments. Accordingly, one change to the rule that the agency may wish to consider is not recouping any funds if a hospital still has room under its total uncompensated care limit and not focusing solely on the hospital specific limit.

Response: The purpose of the additional reconciliation is to ensure that a hospital that inaccurately adjusts its interim HSLs does not benefit from that inaccuracy regardless of whether the hospital's final uncompensated care payment is less than its uncompensated care costs. Because the uncompensated care pool is of a limited size and there is more uncompensated care

being provided by Texas Medicaid hospitals than is available in the pool, increased payments to hospitals that request HSL adjustments are financed through decreased payments to hospitals that do not request HSL adjustments. The change proposed by the commenter would not give this assurance as a hospital could gain from an inaccurate adjustment to its interim HSL by being allocated a larger amount of limited uncompensated care funds than it would have otherwise been eligible for and retain that additional funding as long as its total uncompensated care costs were greater than its uncompensated care payments. No changes were made in response to this comment.

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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 May 23, 2014.

TRD-201402453
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Effective date: June 12, 2014
Proposal publication date: April 11, 2014
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.236

The Public Utility Commission of Texas (commission) adopts amendments to §25.236, relating to Recovery of Fuel Costs, without changes to the proposed text as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 23). The amendment adds environmental consumables required to reduce emissions of pollutants and whose use is directly proportional to the fuel consumed to generate electricity, and that are properly recorded in the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts, Account 502, Steam Expenses, as eligible fuel expenses. The amendment also adds costs properly recorded in FERC Account 509, Allowances, as eligible fuel expenses, and further requires that these costs be offset by any gains properly recorded in FERC Account 411.8, Gains from Disposition of Allowances. The amendment also deletes the provision that requires that a fuel reconciliation be requested in a general rate proceeding. In addition, the amendment deletes obsolete language from the section. This amendment is adopted under Project Number 41905.

The commission received comments on the proposed amendments from El Paso Electric Company (EPE), Entergy Texas, Inc. (ETI), Office of Public Utility Counsel (OPUC), Southwestern Public Service Company (SPS), Southwestern Electric Power Company (SWEPCO), and Texas Industrial Electric Consumers (TIEC).

Subsection (a), Eligible Fuel Expenses

Subsection (a)(3) and (4)

OPUC requested that the commission not amend §25.236 (fuel rule) to include environmental consumables and allowances. OPUC stated that they agreed with comments filed by the Cities Advocating Reasonable Deregulation (CARD) in response to commission staff's strawman rule in this rulemaking project. OPUC argued that environmental consumables and allowances are largely within the control of the utility; the "special circumstances" provision in the rule already balances the interests of utilities and ratepayers; there is no sound policy reason to treat environmental costs differently from other base rate costs, such as labor and operations and maintenance (O&M) that also vary with fuel usage; and the level of environmental costs at issue are not likely to be significant until April 2015, when the new Mercury and Air Toxics Standards (MATS) rule takes effect.

OPUC stated that the volatility of fuel costs, which are particularly subject to dramatic and unforeseeable changes, is the key justification for allowing periodic adjustment of fuel costs under the fuel rule. OPUC opined that while environmental consumables and allowance costs may vary, they are not inherently volatile. OPUC stated that the costs are more comparable to a variety of other variable costs such as certain labor and O&M costs that are recovered through base rates. OPUC argued that potential variability in environmental consumables and allowances does not warrant automatic treatment as eligible fuel costs.

OPUC concluded that the special circumstances provision in the fuel rule authorizes the commission to determine on a case-by-case basis whether special circumstances warrant treating a given cost as an eligible fuel cost and that this provision could be used if there are special circumstances for treating a particular environmental consumable or allowance as an eligible fuel cost.

Consistent with the proposed amendments to the fuel rule, EPE, ETI, SPS and SWEPCO supported the proposal to add environmental consumables that are required to reduce emissions of pollutants as eligible fuel expenses. The utilities also agreed with the proposed amendments that allowances received concurrent with the monthly emission of sulfur dioxide and nitrogen oxides, offset by any gains, should be included as eligible fuel expenses.

SPS and ETI disagreed with OPUC and argued that the use of environmental consumables, as defined in subsection (a)(3) of the proposed rule, is not within the total control of the utility. SPS explained that it is not always possible or practical to switch to generation sources that do not require the use of environmental consumables and that such switching, if not done in a systematic

and thoughtful manner, is likely to increase costs. SPS stated that in 2013, coal comprised 34 percent of the statewide generation mix in Texas and 48 percent of SPS's total generation mix. SPS opined that replacing such a significant amount of generation with other fuel sources would take significant capital investments and a number of years. Therefore, incurring environmental consumable costs is likely to be a more cost-effective option for customers than reducing coal-fired generation and incurring costs related to alternate and higher-cost generation sources. ETI likewise acknowledged that a utility must prudently choose how to comply with emissions standards in the same manner that it determines its generation mix. ETI commented that the commission recognized through the fuel rule that a utility's prudent decisions on generation mix necessarily expose the utility to fuel costs that are not within the control of the utility. Similarly, ETI claimed that the proposed rule recognizes that a utility's prudent decisions on environmental consumables and emission allowances are no more within the utility's control than are fuel costs. ETI asserted that OPUC's argument that environmental consumables and allowances are largely within the control of the utility wrongly assumes that the only prudent choice is to avoid such variable costs.

SPS commented that it is appropriate for the commission to modify the fuel rule rather than relying on the special circumstances provision of the rule as suggested by OPUC. SPS noted that the EPA has already established requirements that necessitate the use of environmental consumables and it is likely that further requirements will be established. SPS asserted that requiring the use of the special circumstances provision would unnecessarily increase administrative inefficiencies on the part of all parties for matters that are ongoing and material. SPS opined that regulatory lag would also likely result, unfairly penalizing utilities that have little ability to avoid the costs.

SWEPCO stated that because environmental consumables and emissions allowances expenses are likely to be highly variable and are correlated with the burning of fuel, these costs are more appropriately recovered through eligible fuel than through base rates. SWEPCO added that these costs represent an incremental cost of generating electricity and that by including these costs in eligible fuel, their varying costs can be signaled to customers through periodic adjustment to the utility's fuel factor. SWEPCO and SPS commented that as an element of fuel cost, these costs can be tracked and reconciled, ensuring more timely and accurate recovery than would be the case in base rates.

SPS stated that the cost of environmental consumables is directly related to the amount of fuel used in generating electricity and their use is to comply with applicable state and/or federal emissions reduction statutes, orders, and regulations. SPS also asserted that the cost and quantity of chemicals used for environmental compliance is variable. SPS further stated that including such expenses in base rates, as opposed to fuel expense, exposes both the customer and the company to risk of over- or under-collecting such expenses.

SPS disagreed with OPUC's statement that there is no sound public policy reason to treat environmental consumable costs differently from other base rate costs, such as labor and O&M that also vary with fuel usage. Instead, SPS asserted that environmental consumables have a direct and clear relationship with fuel usage, while other variable expenses such as labor and certain O&M expenses vary with production but not necessarily with specific fuel type use. SPS stated that if it decreased coal production and replaced that production with natural gas, the variable O&M would remain fairly constant. However, a decrease in coal production results directly in a reduction to environmental consumable costs. Therefore, SPS argued that it is reasonable and appropriate to differentiate environmental consumables from other types of variable O&M.

In response to OPUC's comments regarding the cost of environmental consumables, SPS agreed that the current cost is relatively minor but pointed out that implementation of the EPA's MATS rule and other regulations will materially impact SPS. SPS stressed that adoption of modifications to the fuel rule is timely because the MATS rule is expected to go into effect in early 2015, not long after a final commission rule would be effective. SPS opined that delaying implementation of the rule serves no useful public policy objective.

Regarding emission allowances, SPS stated that including the allowance costs and revenues in the proposed rule ensures no over-recovery of allowance revenue or under-recovery of allowance expense, consistent with the sound regulatory practice of matching expense and revenue. SPS commented that allowing these costs, which vary based on the amount of fuel consumed and the allowance values, in fuel expenses ensures that customers do not over-pay for variable costs directly tied to fuel usage and provides for stability of utility earnings when costs are increasing. SPS added that crediting revenues from the sale of emission allowances through fuel provides the same benefits.

Commission response

The commission agrees with ETI, SWEPCO, EPE, and SPS that a utility's fuel factor is the most suitable cost recovery mechanism for environmental consumables required to reduce emissions and sulfur dioxide and nitrogen oxide allowances. There is a direct relationship between the type and amount of fuel burned and the number of emission allowances required and environmental consumable expenses incurred. These costs, which directly vary with the type and amount of fuel burned, are unlike base rate costs such as certain types of labor and other O&M expenses that vary with power produced and vary little because of specific fuel type use. Due to this direct relationship, the commission agrees with SPS and SWEPCO that environmental consumable and allowance costs are more appropriately recovered through the fuel factor as eligible fuel expenses than through base rates.

Regarding OPUC's proposal to use the special circumstances provision in the fuel rule to determine on a case-by-case basis whether special circumstances warrant treating a particular environmental consumable or allowance cost as an eligible fuel expense, the commission agrees with SPS that it is more appropriate to amend the fuel rule to include these costs as an eligible fuel expense than to rely on the special circumstances provision. The commission notes that established emission reduction requirements, which require the use of environmental consumables and allowances, already exist. In addition, compliance with the EPA's MATS rule is likely to increase the need for environmental consumables. The commission believes that relying on the special circumstances provision for recovery of these costs would result in administrative inefficiencies for costs that are ongoing and material.

In response to OPUC's comment that the cost of environmental consumables are not likely to be significant until the MATS rule takes effect in the spring of 2015, the commission agrees with SPS's observation that amendment to the fuel rule is, therefore,

timely and delaying implementation of the rule serves no useful public policy objective.

TIEC requested that reference to nitrogen oxides emission allowances be removed from proposed subsection (a)(4) because there is no mention of allowances expensed concurrently with nitrogen oxides in the description of FERC Account 509, Allowances.

EPE, ETI, SPS, and SWEPCO supported the proposed addition of subsection (a)(4), which provides that both sulfur dioxide and nitrogen oxides emissions properly recorded in FERC Account 509, Allowances, are eligible fuel expenses and recommended that the commission reject TIEC's proposal to exclude nitrogen oxides emission allowances as eligible fuel expenses. In addition, the utilities stated that the description of FERC Account 509 in its entirety includes the reference to General Instruction No. 21, which is not limited solely to sulfur dioxide emission allowances. As further evidence that nitrogen oxides allowances are properly charged to FERC Account 509, ETI attached excerpts in its reply comments from the Form 1 template provided on the FERC's website, which provides for separate reporting of sulfur dioxide and nitrogen oxides emission allowances recorded in FERC Account 158, Allowance Inventory. Identical instructions for both reports require accounting for emission allowances according to General Instruction 21, which requires that allowances be charged to FERC Account 509 when expensed. SWEPCO contended that it is not uncommon for FERC not to specify every possible example of an item that might be properly recorded in any given account or to use a term like "allowances" for general inclusion. ETI added that while FERC has not yet taken the administrative step to conform descriptions of FERC Accounts 158 and 509 to its accounting requirements, FERC clearly intends that costs associated with nitrogen oxide allowances be recorded in FERC Account 509 the same way sulfur dioxide emission allowances are. In addition, ETI stated that subsection (a) defines eligible fuel expense by reference to FERC accounts "as modified by this subsection." ETI concluded that this gives the commission discretion to include as eligible fuel expenses costs that may not explicitly fall within the description of a particular FERC account.

EPE opined that the allowance costs associated with limiting nitrogen oxides should be accounted for in the same manner as sulfur dioxide. ETI, SPS, and SWEPCO agreed and stated that from a policy perspective, there is no basis to draw a cost recovery distinction between sulfur dioxide and nitrogen oxides allowances.

Commission response

The commission declines to remove nitrogen oxides emission allowances from proposed subsection (a)(4). As noted by EPE, ETI, SPS, and SWEPCO, the description of FERC Account 509 includes a reference to General Instruction 21, which refers broadly to allowances and is not limited to sulfur dioxide emission allowances. In addition, as pointed out by the utilities, the template for reporting allowances on the FERC website provides for separate reporting of sulfur dioxide and nitrogen oxides emission allowances recorded in FERC Account 158, Allowance Inventory. Identical instructions for both pages require accounting for emission allowances according to General Instruction 21, which requires that allowances be charged to FERC Account 509 when expensed. The commission agrees with ETI's assessment that FERC clearly intends that costs associated with nitrogen oxide allowances be recorded in FERC Account 509 the same way sulfur dioxide emission allowances are. The commission concurs with ETI, SPS, and SWEPCO that, from a policy perspective, there is no basis to draw a cost recovery distinction between sulfur dioxide and nitrogen oxides allowances.

Subsection (a)(6) and (8)

ETI opined that compliance with government-mandated environmental standards should not create cost recovery risk for utilities. ETI commented that renewable energy credit (REC) costs are of the same nature as the emission reduction costs addressed by proposed subsection (a) and recommended that they be treated in the same manner. To accomplish this, ETI furnished suggested changes to subsection (a)(6) and (8) of the proposed rule. ETI commented that customers' interests would not be adversely affected by a shift in cost recovery for RECs because the fuel rule requires that only reasonable and necessary costs be recovered as fuel expense. ETI contended that RECs are intended to reduce emissions; exhibit a direct relationship to fuel and purchased energy; and present variable cost exposure for the utility.

ETI stated that the commission's adoption of §25.173, relating to Goal for Renewable Energy, instituted a REC trading program. ETI explained that the order adopting the REC trading program in Project Number 20944, *Rulemaking Relating to Renewable Energy Mandate under Section 39.904 of Utilities Code,* recognizes that a policy objective of the REC trading program is to reduce emissions. ETI stated that the order states in part: "New renewable resources, although potentially more expensive than other electric resources, are an effective means for cleaning the air. Through (Public Utility Regulatory Act (PURA)) §39.904, the legislature clearly sought to support the development of renewable resources in Texas to efficiently and economically reduce emissions from electricity generation. The demand for electricity in Texas has been and is projected to continue to increase, and the legislature mandated the use of energy derived from renewable resources in Texas so that a portion of the additional future energy generated and consumed by Texans would result in cleaner air for all Texans."

ETI argued that similar to environmental consumables and allowances that are intended to reduce emissions, REC costs are an appropriate fuel expense because they also bear a direct relationship to fuel. ETI stated that the number of RECs a utility is obligated to acquire each year is determined based on the consumption of energy by the utility's retail customers in proportion to total statewide consumption. ETI commented that a utility incurs REC costs to provide energy to serve customers just as they incur environmental consumable and allowance costs to provide energy to serve customers. ETI opined that the fact that REC costs are more a function of energy consumed by customers versus the fuel consumed by the utility is not a basis for distinction in cost recovery.

ETI contended that the utility has no control over REC costs. ETI reiterated that a utility's REC responsibility will change each compliance period because a utility's retail sales, total statewide sales and their proportional relationship changes over time. Additionally, ETI commented that the mandate in PURA §39.904(a) that gave rise to the REC trading program places an escalating obligation on utilities through 2025. ETI also stated that the cost of the REC is market-driven and subject to the forces of supply and demand that can cause price volatility.

TIEC recommended that ETI's proposal to shift REC cost recovery to the fuel factor from base rates be rejected. TIEC compared

ETI's proposal to its request for a REC rider in Docket Number 39896, *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment,* that was denied by the commission. TIEC stated that the proposal for decision (PFD) rejected ETI's argument that REC costs are volatile and should be recovered similarly to fuel because the contention was not supported by substantial evidence. TIEC stated that the commission adopted the PFD and also denied ETI's REC rider on the basis that it constituted piecemeal ratemaking with no express statutory authorization. TIEC recommended that the commission reject ETI's request to include REC costs as an eligible fuel expense for the same policy and statutory grounds that it denied ETI's proposed REC rider in Docket Number 39896.

TIEC opined that ETI's proposal would result in improper piecemeal ratemaking and claimed that REC costs belong in base rates. TIEC stated that to determine whether changes in a utility's REC costs justify an overall rate increase, the commission must examine the utility's overall costs and revenues at once, as required by PURA §36.051.

In addition, TIEC contended that because RECs are substantively dissimilar to fuel costs or emissions costs, it would be inappropriate to include REC costs as eligible fuel expense. TIEC explained that REC costs are essentially the renewable capacity component of renewable generating plant or purchased power agreements. TIEC stated that PURA §39.904 makes it clear that REC purchases are to satisfy renewable capacity requirements and are therefore not analogous to fuel purchases. TIEC continued that while renewable energy that generates RECs may displace emissions from fossil-fuel resources, a REC is a capacity purchase just like a generating plant or purchased power agreement. TIEC stated that acquiring a REC is fundamentally the same as purchasing renewable resources. Because of this, TIEC claimed that RECs should be treated in the same manner as other resource costs, which are collected in base rates and not as an eligible fuel expense.

Commission response

The commission declines to change the proposed rule to include REC costs as an eligible fuel expense. Under §25.173(h)(2), the number of RECs that an entity is required to purchase is a function of the total RECs required to be purchased by all entities subject to the Renewable Portfolio Standard (RPS) (statewide RPS requirement). The statewide RPS requirement is a function of the renewable energy capacity goal in PURA §39.904(a) for the year at issue. The statewide RPS requirement does not vary by the total amount of energy generated, purchased, or sold by the entities subject to the RPS requirement. An entity's allocation of the statewide RPS requirement is that entity's percentage of the total Texas retail energy sales of all entities subject to the RPS requirement, subject to certain adjustments. A utility's fuel factor is designed to recover the utility's Texas retail customer costs resulting from its fuel usage and energy purchases. In contrast, a utility's RPS requirement is not a direct function of its fuel usage or energy purchases. The number of RECs that a utility is obligated to purchase may decrease even as that utility's fuel usage and energy purchases grow, or increase even as that utility's fuel usage and energy purchases decrease. The commission therefore will not include REC costs as eligible fuel expenses, because these costs are not directly tied to a utility's fuel use and energy purchases.

Subsection (a)(7)

TIEC suggested that the commission eliminate subsection (a)(7) of the proposed rule as part of this rulemaking proceeding. TIEC stated that the provision in proposed subsection (a)(7) allows an electric utility to recover as eligible fuel expenses fuel or fuel-related expenses otherwise excluded in the rule if the utility can demonstrate that special circumstances exist.

TIEC contended that the provision in the rule is broad and ambiguous, invites litigation regarding fuel or fuel-related expenses that are not otherwise eligible under the rule, and provides no guidance as to what constitutes special circumstances. TIEC opined that any fuel-related expenditure can be argued to provide increased reliability of supply. In addition, TIEC argued that the cost-effectiveness test provided in the provision is ill-defined and open-ended and that the meaning of "benefits received or expected to be received by ratepayers" is unclear. TIEC stated that the ability to prove that an expenditure is cost-effective depends in large part on the avoided costs that are assumed which, TIEC contended, are highly subjective and subject to litigation.

TIEC pointed to the commission's efforts to address litigation issues and rate case expenses and concluded that it would be appropriate to eliminate the provision. TIEC opined that while there may have been a reason in the past to include the special circumstances provision in the rule, under current commission ratemaking, there exists a host of cost-recovery mechanisms that significantly reduce the potential for regulatory lag. As an example, TIEC stated that the item most litigated over the past ten years, purchased power capacity costs, is now recoverable via the recently adopted purchased power capacity cost recovery factor (PCRF) rule. TIEC concluded that there is no longer any reason to rely on the special circumstances provision for purchased power capacity costs, and that the possibility of their inclusion under §25.236 would undermine the commission's decision on how these costs may be recovered under §25.238.

EPE, ETI, SPS, and SWEPCO disagreed with TIEC's comments and contended that the special circumstances provision should remain in the proposed rule. SPS stated that the provision does not provide for an automatic exception, but rather the utility must first request and meet the requirements in the rule to ensure customer protection before the commission grants an exception. ETI added that the cost-benefit test must first be satisfied to support a special circumstances finding in order to ensure that customers will receive benefits that exceed the costs afforded special circumstances treatment. SPS commented that the provision allows for exceptions to be granted in the event unforeseen costs would otherwise result in regulatory lag.

EPE stated that the fuel rule has contained a special circumstances provision in some form since 1986 and for the most part in its current form since 1993. EPE remarked that throughout this time period the provision has provided the commission the flexibility to respond appropriately when special circumstances have been presented.

EPE and ETI disagreed with TIEC's contention that the test to determine special circumstances is broad, ambiguous, and invites litigation. EPE stated that despite decades of experience under the rule, TIEC did not provide a single example of how the so-called broad and ambiguous language in the rule led to unnecessary litigation. ETI opined that TIEC's suggestion that the special circumstances provision be eliminated is misguided and contended that TIEC's comments propose that the best way to reduce litigation expenses is to prohibit a utility from bringing up a request for relief simply because it may be contested by another party. ETI stated that the desire to reduce the burden and

cost of regulatory litigation should focus on making processes more efficient and streamlined rather than restricting the ability to seek relief or challenge relief that is sought.

EPE, ETI, and SWEPCO stated that TIEC made similar comments concerning the special circumstances provision in the 1993 amendment to the fuel rule, Project Number 11509, *Fuel Rule Amendment,* and stated that the commission rejected TIEC's comments in its response (18 TexReg 836, 839 (February 9, 1993)). In addition, ETI and SWEPCO stated that in the order in Project Number 19865, *Review of Subst. R. 23.23 as it Relates to Electric Service Providers and Movement to Subst. R. Chapter 25,* the commission reinforced its earlier decision and stated: "The commission rejects TIEC's argument that the "special circumstances" provision of §25.236(a)(6) should be deleted. The commission believes that there are circumstances that warrant deviation from the rules and that the public interest is served when electric utilities know that such relief is available."

In response to TIEC's argument that the special circumstances provision is no longer needed because the commission has implemented various cost recovery mechanisms, in particular the PCRF, ETI disagreed and stated that although purchased power capacity costs have been the subject of special circumstances requests, it is not the sole purpose of the provision. ETI's comments referenced numerous other instances in which the special circumstances provision was granted. In addition, ETI opined that the commission should not foreclose the potential that special circumstances may exist to allow recovery of purchased capacity through fuel for a limited timeframe when a purchased power capacity recovery rider may not be justified nor should they forgo the ability to exercise discretion to apply the special circumstances provision on a case-by-case basis going forward.

ETI concluded that TIEC's arguments do not support a departure from current policy. ETI stated that the commission has a well-established history of applying the standards set out in the rule in a practical and conservative manner in order to identify special circumstances that justify a departure from the otherwise applicable fuel cost recovery rules. SWEPCO added that the provision complements sound long-term decision making by the utility and constitutes good public policy.

Commission response

The commission concurs with EPE, ETI, SPS, and SWEPCO's contention that the special circumstances provision should remain in the rule. In response to similar arguments by TIEC in Project Number 11509, *Fuel Rule Amendment,* the commission stated: "The commission is persuaded that the published language should be adopted. It presents an appropriate balance between the need for flexibility to meet the unexpected circumstances with the need for certainty in order to reduce disputes and litigation. TIEC's proposed additions largely remove the availability of the clause, which the commission believes should remain."

The commission acknowledges that the provision may increase the complexity of a fuel reconciliation proceeding. However, special circumstances are granted only in situations where the commission determines that the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay. The commission, therefore, believes that the benefit to customers in retaining the special circumstances provision outweighs the increased complexity the provision may add to a fuel reconciliation proceeding.

TIEC stated that over the past ten years special circumstance requests have dealt primarily with issues related to purchased power costs, which are now covered by §25.238, the PCRF rule. However, the long list of filings detailed in ETI's comments confirm that the special circumstances provision has been used for numerous other issues, including the recovery of natural gas call options, recovery of consulting fees incurred to obtain a refund of natural gas taxes paid, and recovery of legal and consulting costs incurred for negotiation and litigation related to fuel and transportation costs. The special circumstances provision provides a utility a stronger incentive to take actions for the benefit of its customers. The commission, therefore, rejects TIEC's request to remove the special circumstances provision.

Subsection (a)(9)

EPE requested that the commission consider revising the percentage of margins retained by the utility as a result of off-system sales. EPE stated that while off-system sales can potentially offer substantial benefits to customers and the utility, the current rule provision allows the utility to retain only 10% of the margins. EPE contended that this percentage is a minimal amount and provides little cushion for the risks and costs associated with off-system sales. EPE urged the commission to explore the possibility of increasing the percentage of margins retained by the utility and to consider whether this would also benefit customers by providing the utility a greater incentive to engage in off-system sales transactions. EPE suggested that the commission also consider whether off-system sales margins should be limited to sales from rate-based generation or whether a different sharing percentage should apply to non-rate-based generation or to margins earned on arbitrage transactions where a purchase of energy is made in order to make an off-system sale. In addition, EPE requested that the commission consider the proper treatment of purchases or sales of spinning reserves.

TIEC recommended that the commission reject EPE's proposal. TIEC stated that the margin sharing already in place is generous and does not need to be revisited. TIEC explained that it does not support rewarding a utility for fulfilling its statutory obligation to serve customers at just and reasonable rates. TIEC stated that this obligation includes providing sufficient service at the lowest reasonable cost and selling energy off-system when it is economical to do so. TIEC stated that allowing utilities to charge ratepayers 100% of their fuel costs while retaining 10% of the profits from re-selling power creates an arbitrage opportunity. TIEC contended that any further increase in the sharing of margins would exacerbate the problem and result in a windfall opportunity for utilities.

TIEC opposed EPE's suggestion to consider whether off-system sales margins should be limited to sales from rate-based generation or whether a different sharing percentage should apply to non-rate-based generation. TIEC opined that this distinction is not meaningful for traditional off-system sales of utility-owned generation. TIEC commented that if a utility's rates are set at a level that allows it to continue to earn a reasonable rate of return, the utility may not need to include a new generation plant or purchased power contracts in its rate base. TIEC concluded that the idea that margin sharing should differ based on whether or not the generation is in the rate base is flawed and should be rejected.

In regard to other activities that generate margins, TIEC remarked that the current rule does not prevent a utility from proposing a different sharing mechanism. As an example, they referred to Docket Number 40824, *Application of Southwestern Public Service Co. for Authority to Change Rates and to Reconcile Fuel and Purchased Power Costs for the Period January 1, 2010 through June 30, 2012,* where SPS proposed different sharing mechanisms for wholesale commodity trading.

Commission response

The commission concurs with EPE's position that off-system sales can potentially offer substantial benefits to customers and the utility. However, in regard to EPE's request that the commission consider increasing the percentage of margins retained by the utility in order to provide the utility with a greater incentive to engage in off-system sales, the commission believes that the percentage currently allowed under the rule is adequate and declines to make a change. As noted by TIEC, utilities have a statutory obligation to serve customers at just and reasonable rates. This includes providing service to their customers at the lowest reasonable cost. Achieving the lowest reasonable cost requires utilizing generating plants in an economical manner, which includes making off-system sales when it is beneficial to do so. The commission believes, therefore, that profits from off-system sales, less the percentage of margins the rule currently allows the utilities to retain, should be credited to customers.

Regarding EPE's request to consider whether off-system sales margins should be limited to sales of rate-based generation or whether a different sharing percentage should apply to non-rate-based generation or to margins earned on arbitrage transactions, the commission agrees with TIEC's argument that this distinction is not meaningful for traditional off-system sales of utility-owned generation. The commission concurs with TIEC that if a utility's rates are set at a level that allows it to continue to earn a reasonable rate of return, the utility may not need to include a new generation plant or purchased power contracts in its rate base. The commission, therefore, declines to address this issue any further.

EPE identified the proper treatment of purchases or sales of spinning reserves as an issue that could be addressed in this project. However, EPE did not provide an explanation or detailed support for such a change and, further, EPE did not propose any specific rule language. Because EPE merely identified this as an issue that could be addressed, without sufficient explanation or support, the commission declines to examine the issue in this rulemaking.

Subsection (b), Reconciliation of Fuel Expenses

ETI and SPS stated that the fuel rule should not be amended to require separate fuel reconciliation proceedings. Both utilities stated that while there may be instances where a separate fuel reconciliation is beneficial to customers and/or the utility, there are also instances where it may make sense to couple the two cases to more effectively address issues concerning whether costs should be treated as fuel expenses or base-rate costs. SPS opined that without an opportunity for a combined filing, customers and utilities may be unfairly at risk. Both ETI and SPS suggested rule language that would allow the utility the option to file a fuel reconciliation with a general rate proceeding. TIEC agreed with the comments of the utilities and is not opposed to the SPS's suggested rule language.

Commission response

The current fuel rule generally requires that a utility petition to reconcile eligible fuel expense every one to three years, which usually results in a stand-alone fuel reconciliation. However, under the current rule, a utility must include a fuel reconciliation in a base-rate proceeding, even if the time period covered is less than a year. The current fuel rule allows a fuel reconciliation to be severed from a base-rate proceeding upon a showing of good cause, but in that case a utility will have already incurred the expense of including the fuel reconciliation as part of the base-rate proceeding. Requiring a short time period for a reconciliation in a base-rate proceeding is inefficient, which results in additional rate-case expenses. The proposed rule deletes the provisions that couple a fuel reconciliation with other rate proceedings.

Excluding fuel reconciliations from base-rate proceedings improves the commission's workload management. Even without a fuel reconciliation, a base-rate proceeding initiated by a utility is a very time-intensive proceeding that has a timeline that is grounded in the 185-day benchmark arising from PURA §36.102 and §36.108. In contrast, the fuel rule generally requires a one-year deadline for a separate fuel reconciliation, thereby avoiding the time crunch of including the reconciliation in a base-rate proceeding. This deadline is generally appropriate because completion of a fuel reconciliation is less urgent, as the utility has already recovered through its fuel factor the costs being reconciled. In addition, a reconciliation can be time consuming because it can involve, among other things, hundreds of millions of dollars and large numbers of fuel and purchased power transactions. Recognizing that multiple fuel reconciliations can be initiated close in time to each other, subsection (f) of the fuel rule has an additional provision to address workload management for separate fuel reconciliations: "However, if the deadlines result in a number of electric utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed."

ETI and SPS stated that there may be instances where it may make sense to couple a fuel reconciliation with a base-rate proceeding to more effectively address issues concerning whether costs should be treated as fuel expenses or base-rate costs. ETI cited *Application of Entergy Gulf States, Inc. for Authority to Change Rates and Reconcile Fuel Costs,* Docket Number 34800, Order at finding of fact 43 (addressing fuel cost recovery for emission allowance costs and revenues). That finding stated in relevant part: "The signatories agree to adopt Commission Staff's position on the following resolution of fuel-related matters set out in Commission Staff's pre-filed direct testimony: (a) recovery of sulfur dioxide (SO_2) and nitrous oxide (NO_x) emissions revenues recorded in Account 411.8 and expenses recorded in Account 509 will be allowed as eligible fuel expense going forward until further order of the Commission realigning such costs...." However, this finding addresses prospective recovery of the expenses as eligible fuel expense, whereas a fuel reconciliation covers costs that have already been incurred.

The commission declines to adopt ETI's and SPS's proposal to give a utility the discretion to include a fuel reconciliation in a base-rate proceeding. Inclusion of a fuel reconciliation in a base-rate proceeding could be unnecessarily burdensome on the commission, commission staff, and intervenors. Under ETI's and SPS's proposal, commission staff and intervenors would have the burden of filing and prevailing on a motion to sever the fuel reconciliation from the base-rate proceeding, which could be

disruptive to the base-rate proceeding and put substantial time pressures on commission staff and intervenors. The commission can foresee few, if any, situations where it is desirable to include a fuel reconciliation in a base-rate proceeding. Under the proposed amendment, a utility nevertheless can obtain consolidation of a fuel reconciliation with a base-rate proceeding if it can meet the standards of §22.34(a) (procedural rule addressing consolidation of proceedings). Therefore, the commission adopts the amendments to subsection of the fuel rule as proposed.

Subsection (d), Fuel Reconciliation Proceedings

ETI proposed that the commission amend subsection (d)(2) to specify that line loss factors that are used to reconcile fuel expense should be the same commission-approved loss factors that were used in the utility's applicable fixed or interim fuel factor as required for inter-class allocations of refunds and surcharges in subsection (e)(3). ETI stated that in the Order on Rehearing in Docket Number 39896, *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs and Obtain Deferred Accounting Treatment,* the commission ruled that the most recent available line loss factors should have been used to reconcile ETI's fuel costs as opposed to the line loss factors used to determine the fuel factor rate charged to customers to collect fuel expense. ETI recognized that Docket Number 39896 presented a set of circumstances wherein the fuel factor formula used to set the company's fuel factor rate specified use of line loss factors from the late 1990s. ETI stated that the commission, obviously concerned with the age of the loss factors used to collect fuel expense during the reconciliation period, addressed the situation in Docket Number 40654, *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket Number 32915,* by approving new loss factors for use in ETI's fuel factor formula going forward. ETI opined that the commission's ruling in Docket Number 39896 has had the unintended consequence of setting the foundation in future fuel reconciliations for impermissible windfalls by the utility or its customers as well as winners and losers among customer classes due to the effect of loss factors on the allocation of fuel costs.

ETI contended that the retroactive use of new loss factors to calculate the company's fuel over/under-recovery balance after the fact in a fuel reconciliation will result in a mismatch between revenues recovered under the fuel factor and the costs billed and allocated to the various customer classes. ETI stated that costs would be billed to customers based on one set of line loss factors but reconciled based on a different set of line loss factors. ETI claimed that the result of retroactive application of line loss factors is that the utility will recover either too little fuel expense or will overcharge fuel expense creating windfalls for utilities or customers.

ETI expressed concern that it would also create winners and losers in the interclass allocation of refunds and surcharges. ETI stated that if the total fuel balance is determined based on the retroactive application of new line loss factors and the utility has either an over- or under-recovery, application of subsection (e)(3) requires that: "Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor." ETI concluded that the effect is that each class would receive a portion of the refund allocated to it on a basis other than what was used to determine its responsibility for total fuel costs.

Commission response

The commission declines to change subsection (d)(2) as proposed by ETI. In a fuel reconciliation proceeding, the values of the line loss factors used in the reconciliation is an issue that may affect the determination of the appropriate amount of fuel expenses allocable to Texas retail ratepayers. This is separate from the inter-class allocation of any refund or surcharge balance among the Texas retail rate classes addressed in subsection (e)(3). ETI's proposed change would inappropriately limit the scope of a fuel reconciliation proceeding, which involves a final determination of the appropriate amount of fuel expenses recoverable from Texas retail ratepayers during the reconciliation period.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the utility division of the State Office of Administrative Hearings; and PURA §36.203(e), which provides for the reconciliation of a utility's fuel costs on a timely basis.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 36.203(e).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2014.

TRD-201402404
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: June 10, 2014
Proposal publication date: January 3, 2014
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.3

The State Board of Dental Examiners (Board) adopts amendments to §101.3, concerning Licensure by Credentials, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2230).

The amendment to §101.3 clarifies the Board's requirements and procedures when reviewing an application for licensure by credentials.

The Board received no written comments regarding this rule amendment.

The amendment of §101.3 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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 May 22, 2014.

TRD-201402421
Sarah Carnes-Lemp
General Counsel
State Board of Dental Examiners
Effective date: June 11, 2014
Proposal publication date: March 28, 2014
For further information, please call: (512) 475-0977

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The State Board of Dental Examiners (Board) adopts an amendment to §108.8, concerning the records of the dentist, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2231).

The amendment to §108.8 clarifies the record retention requirements of dentists.

The Board received no written comments regarding this rule amendment.

The amendment of §108.8 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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 May 22, 2014.

TRD-201402422
Sarah Carnes-Lemp
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Effective date: June 11, 2014
Proposal publication date: March 28, 2014
For further information, please call: (512) 475-0977

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22 TAC §108.12

The State Board of Dental Examiners (Board) adopts new §108.12, concerning the dental treatment of sleep disorders, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2231).

The new rule defines the scope of practice of a dentist in the treatment of sleep disorders.

The Board received several written comments regarding this new rule. The Texas Medical Association (TMA) submitted a written comment in opposition to the proposed rule on the basis that the treatment of sleep disorders is the practice of medicine and exceeds the scope of dentistry. TMA states that only a licensed physician is qualified to identify the cause of sleep apnea, monitor potential complications, and prescribe the appropriate treatment. Specifically, TMA requests that: (1) subsection (a) track the statutory language; (2) that subsections (b)(1), (b)(2), (c)(1), (c)(2), (e), (f), and (g) be eliminated; (3) subsection (c)(3) and (c)(4) be amended to only permit a dentist to fabricate an oral appliance after referral by a physician and only in collaboration with a physician. The physician must perform all clinical follow-up and make all further treatment decisions.

The Board agrees that only a licensed physician can diagnose sleep apnea, monitor potential complications and prescribe appropriate treatment. Section 108.12 allows dentists to screen a dental patient for benign snoring and obstructive sleep apnea (OSA) for the sole purpose of identification of contraindications to dental treatment and identification of benign snoring and obstructive sleep apnea. The Board summarized the law into §108.12(a) and feels that the addition of language is unnecessary. The Board agrees that a dentist may only fabricate an oral appliance to treat obstructive sleep apnea with the prescription of a licensed physician and that a licensed physician must perform all clinical follow-up and further treatment decisions regarding obstructive sleep apnea. The Board does not feel that subsections (b)(1), (b)(2), (c)(1), (c)(2), (e), (f), and (g) should be deleted. The purpose of this rule is to hold dentists accountable for practicing outside the scope of dentistry. The Board feels that this rule allows dentists to practice dentistry, and to limit their scope when it comes to treating sleep disorders.

The Texas Academy of General Dentistry (TAGD) submitted a written comment in support of the proposed rule but suggesting several revisions. Specifically, TAGD requested that: (1) that the words "Texas licensed" be added to subsection (c)(4); (2) the word "adequate" be removed and that "orthotics" be replaced with "oral appliance"; (3) that the CE requirement be changed from 3 hours every year to 8 hours every 3 years; and (4) that the Board grandfather in dentists who have already received 12 hours of continuing education.

The Board has already added the words "Texas licensed" to subsection (c)(4). The Board will consider continuing education taken prior to the adoption of this rule but the dentist must be able to provide proof of the 12 hours of continuing education to the Board. The term "adequate" used in subsection (d) refers to the limited scope of the follow-up visit required. The dentist will still be held to the standard of care required by the Dental Practice Act. The Board feels the word "orthotic" is more comprehensive of possible treatments than "oral appliance". The Board's current requirements regarding continuing education are that it is completed on a yearly basis. In an effort to keep the Board's

processes unilateral, we feel that a yearly requirement of continuing education is appropriate. The Board will consider the idea of grandfathering dentists who have an appropriate amount of education.

Dr. Jerald Simmons submitted a written comment requesting revisions which essentially require a dentist to determine whether a patient has a significant degree of obstructive breathing and then consider referral to a Texas licensed physician for further evaluation. This comment also revises subsection (c)(2) to permit a dentist to independently treat and monitor a patient for benign snoring using an oral appliance only after a Texas physician interprets a sleep study that rules out the presence of significant obstructive respiration. The comment revises subsection (c)(3) to prohibit a dentist from treating or monitoring "sleep related breathing disturbances" without collaboration with a Texas licensed physician if a physician has interpreted a sleep study indicating that the patient has significant obstructive respiration during sleep. The comment revises subsection (g) to increase the CE requirement to 16 hours and specifies what topics should be included in those 16 hours.

The Board feels that a licensed physician must diagnose obstructive sleep apnea. The Board feels that the scope of dentistry limits a dentist to only screening dental patients for benign snoring and obstructive sleep apnea for the sole purpose of identification of contraindications to dental treatment and identification of benign snoring and obstructive sleep apnea. The Board feels that 12 hours of yearly continuing education is adequate to train and keep dentists informed of current treatment and procedures available.

Dr. Keith Thornton and Dr. Saskia C. Vaughan, DDS, MAGD, submitted a written comment in support of proposed rule.

The American Academy of Sleep Medicine (AASM) submitted a written comment objecting to the proposed rule. Specifically, AASM objected to dentists using sleep studies as a screening tool stating that sleep studies are diagnostic and must be ordered and interpreted by a physician. AASM objects to subsection (b)(2), stating that screening is an assessment of risk and not a process of identification and that identifying benign snoring is a diagnosis, and therefore requires a comprehensive evaluation from a physician. AASM also objects to the "consideration of referral" language, stating that referral should be mandatory to determine whether snoring is benign or symptomatic of OSA, considering that OSA and snoring are classified as medical diagnoses. AASM also objects to the continuing education requirement as inadequate, stating that AASM/AADSM's Joint Policy Statement requires that dentists providing oral appliance therapy should complete at least 30 hours of continuing education every three years.

The Board agrees that only a licensed physician can diagnose obstructive sleep apnea, and therefore only a licensed physician can interpret a sleep study. However, the Board does feel that it is within the scope of a dentist to screen a dental patient and refer them to a physician if that screening shows that the patient is suffering apneic episodes. The Board is limiting screenings for purposes of identification only so that a proper referral can be made, and the Board does not feel that it is allowing dentists to practice medicine. The Board feels it is within the scope of practice of a dentist to treat benign snoring. There are no laws or rules within the practice of medicine stating that treatment of benign snoring can only be done by a licensed physician. The Board feels that 12 hours of yearly continuing education is adequate to train and keep dentists informed of current treatment and procedures available.

Paul Levine, DDS; Ashwin Gowda, MD; Gonzalo Diaz, MD; H. Kenneth Fisher, MD; Raghavendra V. Ghuge, MD, DABSM, FAASM; Bhupesh Dihenia, MD, PA; Noel Lopez, MD, FAAFP, and James C. Martin, Jr., MD submitted identical written comment in opposition to the proposed rule. These comments are similar to AASM's comment (see above) and state that the proposed rule violates the Texas Medical Practice Act. The comments also state that only a licensed physician is qualified to identify the cause of sleep-disordered breathing, monitor potential complications, and prescribe appropriate treatment.

The Board agrees that only a licensed physician can diagnose obstructive sleep apnea, and therefore only a licensed physician can interpret a sleep study. However, the Board does feel that it is within the scope of a dentist to screen a dental patient and refer them to a physician if that screening shows that the patient is suffering apneic episodes. The Board is limiting screenings for purposes of identification only so that a proper referral can be made. The Board does not feel that it is allowing dentists to practice medicine. The Board feels it is within the scope of practice of a dentist to treat benign snoring. There are no laws or rules within the practice of medicine stating that treatment of benign snoring can only be done by a licensed physician. The Board feels that 12 hours of yearly continuing education is adequate to train and keep dentists informed of current treatment and procedures available.

Dr. Gerlach submitted a written comment in support of the rule but requested that a fixed number of continuing education be spread over 3 years. The Board's current requirements regarding continuing education are that it is completed on a yearly basis. In an effort to keep the Board's processes unilateral, we feel that a yearly requirement of continuing education is appropriate.

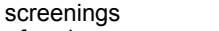
New §108.12 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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 May 22, 2014.

TRD-201402423
Sarah Carnes-Lemp
General Counsel
State Board of Dental Examiners
Effective date: June 11, 2014
Proposal publication date: March 28, 2014
For further information, please call: (512) 475-0977



22 TAC §108.14

The State Board of Dental Examiners (Board) adopts new §108.14, concerning pediatric and special needs case management and protective stabilization, with changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2232). The rule text will be republished.

This new rule will define the scope of practice of a dentist in the treatment of pediatric and special needs patients.

The Board received three written comments regarding this new rule from the Texas Dental Association (TDA), the Texas Academy of Pediatric Dentistry (TAPD), and South Texas Dental. South Texas Dental wrote in support of the proposed rule. In addition to several clarification suggestions, TAPD and TDA requested: (1) that staff assisting the dentist also be required to take courses pertaining to protective stabilization; (2) that written informed consent for protective stabilization be obtained separately from informed consent for other procedures and include the signatures of dentists, assistants and third parties; (3) allowing the use of protective stabilization when a patient becomes uncooperative only until the dentist reaches a safe stopping point; and (4) more specific documentation requirements. TAPD also recommended that protective stabilization be contraindicated for all non-emergent treatment needs. TDA also requested: (1) increasing the CE hours from 8 to 12; (2) specifying that informed consent be obtained each time treatment is performed; and (3) requiring that the dentist consider referral to a specialist when treatment is deferred.

The Board has included TDA and TAPD's non-substantive revisions. The Board does not agree that staff should be required to take protective stabilization courses as the dentist should be able to adequately direct his or her staff in the use of protective stabilization. The Board does not agree that written informed consent should be required to be obtained separately from other informed consent or that anyone other than the patient or patient's guardian should be required to sign informed consent pursuant to §108.7--patient or guardian consent is all that is required and a separate form is not necessary. In addition, §108.7 and §108.8 already require written informed consent each time treatment is rendered. The Board has drafted a revised proposal of this rule including the requirement that dentists stop using protective stabilization once they reach a safe stopping point for uncooperative patients. The Board will vote to either adopt this version or the revised version of the rule. The Board does not agree that protective stabilization is contraindicated for all non-emergent treatment needs as it could be appropriate in very limited non-emergent treatment. The Board does not agree with the suggested increased documentation requirements. Section 108.8 already requires documentation of treatment provided and requiring documentation of why other treatment was contraindicated is not necessary and is not required for any other type of dental treatment. The Board does not agree with the recommended language concerning referrals to a specialist as the minimum standard of care dictates whether or not a dentist should refer patients to a specialist. The Board also believes that requiring a minimum of 8 hours of continuing education is sufficient.

New §108.14 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

§108.14. Pediatric and Special Needs Case Management; Protective Stabilization.

(a) The Texas State Board of Dental Examiners utilizes the "Guideline on Protective Stabilization for Pediatric Dental Patients" published in the American Academy of Pediatric Dentistry in determining the standard of care for protective stabilization used in dentistry.

(b) Pediatric and special needs patients may require specialized case management to prevent injury and protect the health and safety of the patient, practitioner, and staff. The goals of patient management are to establish communication throughout dental care; alleviate fear and anxiety; deliver quality dental care; build a trusting relationship between the patient, parent or guardian and the dental professionals; and promote the patient's positive attitude toward dental care. In addition to patient management, it may be necessary to use protective stabilization for treatment involving pediatric and special needs patients.

(c) Protective Stabilization.

(1) Protective stabilization is considered an advanced behavior guidance technique in dentistry.

(2) Protective stabilization is any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body or head freely. Two types of protective stabilization are:

(A) active stabilization, which involves restraint by another person, such as the parent, dentist, or dental auxiliary; and

(B) passive immobilization, which utilizes a restraining device.

(3) Protective stabilization shall cause no serious consequences, such as physical or psychological harm, loss of dignity, or violation of the patient's rights.

(4) Training Requirements. A dentist utilizing protective stabilization shall have completed advanced training either through:

(A) an accredited post-doctoral program or pediatric dentistry residency program that provides clinical and didactic education in advanced behavior management techniques; or

(B) an extensive and focused continuing education course of no less than 8 hours in advanced behavior management that includes both didactic and clinical education pertaining to Protective Stabilization.

(5) Practitioner Supervision. The dentist shall not delegate the use of protective stabilization to the dental staff, but they may assist the dentist as necessary.

(6) Consent. Protective stabilization requires written informed consent from the parent or guardian which should be obtained separately from consent for other procedures to ensure parent awareness of the procedure. Informed consent shall include an explanation of the benefits and risks of protective stabilization, alternative behavior guidance techniques, and a clear explanation of the anticipated restraining devices.

(7) Parental or Guardian Presence. Practitioners should consider allowing parental or guardian presence in the operatory or direct visual observation of the patient during use of protective stabilization unless the health and safety of the patient, parent, guardian, or dental staff would be at risk. If parents or guardians are denied access, they must be informed of the reason with documentation of the explanation in the patient's chart.

(8) Pre-Stabilization Considerations. Prior to utilizing protective stabilization, the dentist shall consider the following:

(A) alternative behavior management methods;

(B) the dental needs of the patient and the urgency of the treatment;

(C) the effect on the quality of dental care during stabilization;

(D) the patient's comprehensive, up-to-date medical history;

(E) the patient's physical condition, such as neuromuscular or skeletal disorders; and

(F) the patient's emotional development.

(9) Equipment. The restraining devices used for dental procedures should include the following characteristics:

(A) ease of use;

(B) appropriately sized for the patient;

(C) soft and contoured to minimize potential injury to the patient;

(D) specifically designed for protective stabilization; and

(E) ability to be disinfected.

(10) Indications. Protective stabilization is indicated when:

(A) a patient requires immediate diagnosis and/or urgent limited treatment and cannot cooperate due to emotional and cognitive developmental levels, lack of maturity, or medical and physical conditions;

(B) emergent care is needed and uncontrolled movements endanger the patient, staff, or dentist;

(C) treatment is initiated without protective stabilization and the patient becomes uncooperative, causing uncontrolled movements that endanger the patient, staff, or dentist;

(D) a sedated patient becomes uncooperative during treatment; or

(E) a patient with special health care needs for whom uncontrolled movements would be harmful or significantly interfere with the quality of care.

(11) Contraindications. Protective stabilization is contraindicated for:

(A) cooperative, non-sedated patients;

(B) patients who cannot be immobilized safely due to associated medical, psychological, or physical conditions;

(C) patients with a history of physical or psychological trauma due to restraint; and

(D) patients with non-emergent treatment needs in order to accomplish full mouth or multiple quadrant dental rehabilitation.

(12) Documentation. In addition to the record requirements in §108.8 of this title (relating to Records of Dentist), the patient records shall include:

(A) indication for stabilization;

(B) type of stabilization;

(C) informed consent for protective stabilization;

(D) reason for parental exclusion during protective stabilization (when applicable);

(E) the duration of application of stabilization;

(F) behavior evaluation/rating during stabilization;

(G) any adverse outcomes, such as bruising or skin markings; and

(H) management implications and plans for future appointments.

(d) Deferred Treatment. Treatment deferral or discontinuance shall be considered in cases when treatment is in progress and the patient's behavior becomes hysterical or uncontrollable. In such cases, the dentist shall halt the procedure; discuss the situation with the parent or guardian; and either select another approach for treatment or defer treatment based upon the dental needs of the patient. Upon the decision to defer treatment, the dentist shall immediately complete the necessary steps to bring the procedure to a safe conclusion before ending the appointment. A recall schedule shall be recommended after evaluation of the patient's risk, oral health needs, and behavior abilities.

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 May 22, 2014.

TRD-201402424
Sarah Carnes-Lemp
General Counsel
State Board of Dental Examiners
Effective date: June 11, 2014
Proposal publication date: March 28, 2014
For further information, please call: (512) 475-0977

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.2

The Texas Optometry Board adopts amendments to §271.2, concerning Applications, without changes to the proposed text as published in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2025).

The amendments clarify the procedure for submitting required fingerprints when making an application for license, clarify the form of remittance required with the application submission, and clarify the deadlines to apply for reexamination and to submit all the documents required for licensure.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.252, and 351.254. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.252 and §351.254 as setting the requirements for the application and license, including the Board's authority to designate documents as necessary for a completed application.

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 May 22, 2014.

TRD-201402406

Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: June 11, 2014
Proposal publication date: March 21, 2014
For further information, please call: (512) 305-8502

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.62

The Texas State Board of Public Accountancy adopts an amendment to §501.62, concerning Other Professional Standards, with changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2736). The text will be republished.

The amendment will add two additional AICPA standards.

Two comments were received regarding the adoption of the amendment.

Comment: A commenter suggested that the first paragraph introducing the listed standards also recognize the addition of the standards. The commenter suggested adding the term "financial planning or valuation services" to follow the term "tax services" in the first paragraph of the rule.

Response: The Board is in agreement that there would be a benefit to adding language referencing the standards but decided upon using the term "financial advisory" services instead. The Public Accountancy Act (Act) uses the term financial advisory services in its definition of the Practice of Public Accountancy in defining these services and use of that term would track the language of the Act.

Comment: A second commenter suggested that the proposed rule revision imposes duplicative and inconsistent requirements because personal financial planning services are already subject to comprehensive regulation. In a subsequent related comment, the commenter stated that there is no apparent reason why CPAs require a greater degree or different type of regulation than non-CPAs.

Response: Whether the Board amends the rule or not the American Institute of Certified Public Accountants (AICPA) standard is already required by the existing rule because the rule requires that CPAs comply with all AICPA standards. The two standards are being listed only for the purpose of clarification to the reader.

In addition, the Board recognizes that securities-related activities are subject to regulation by the Securities and Exchange Commission (SEC) and the Texas State Securities Board. The Board also recognizes that CPAs representing themselves as CPAs when providing the securities-related services do so in order to be recognized by the public as possessing specialized education, competence, integrity and experience. The public relies upon these qualities in all of its dealings with CPAs. (See §901.005, Act). Based upon that representation, the public has an expectation of those standards and as a result often chooses a CPA over a non-licensee. We believe that the commenter employs CPAs, at least in part, to attract clients seeking a higher skill level and expertise than the non-licensee and in turn attract clients.

Comment: The second commenter also stated that the statement is overbroad and exceeds the Board's mandate.

Response: The Board disagrees with this comment. Section 901.002 of the Act defines professional accounting services or professional accounting work as providing management or financial advisory or consulting services. In addition, §901.003 of the Act defines the practice of public accountancy to mean providing management or financial advisory or consulting services. Both definitions describe the securities-related activities of the CPA when *consulting* with their client and *advising* them on securities to purchase for the *management* of their client's affairs.

Comment: The commenter further stated that the Board should explain why it is necessary or advisable to adopt the statement.

Response: The proposed rule revision is for the purpose of clarity only. There is no substantive change in the rule because the rule already provides that CPAs must comply with AICPA standards. The specific identification of these two standards and the insertion of the term "financial advisory services" is an effort to assist Texas licensees in understanding that all AICPA professional standards are applicable to Texas licensees.

The following may be helpful in explaining why the Board and other states have chosen the AICPA to provide professional standards for CPAs.

The Board and the profession made the determination many years ago that the professional standards applicable to CPAs practicing public accountancy in this country would be developed by the AICPA. Doing so creates national standards that promote the free flow of commerce throughout the country. If the Board and other states cherry-picked which AICPA professional standards the state chose to apply, then CPAs practicing in more than one state would have at least a difficult if not impossible task of knowing which professional standards to apply. Practicing accountancy in multiple states would require multiple reports, multiple reviews and different advice depending solely upon geography. The Board has adopted the AICPA's standards because they provide uniformity of application and they are reputable standards that best provide the public's protection.

Comment: The commenter stated that the Board is attempting to expand fiduciary duties of Broker Dealers.

Response: The Board is not attempting to expand the fiduciary duties of Broker Dealers. The Board is requiring CPAs to comply with a CPA's responsibility to his client. Once again this is not new to the accounting profession. CPAs have a higher standard of responsibilities to their clients than do non-CPAs.

Comment: The commenter stated that disclosure and documentation requirements conflict with existing securities regulations.

Response: The comment title states that the standards conflict but the commenter's narrative doesn't discuss any conflict but only that the AICPA professional standards impose additional compliance regulations. As stated previously it is not unusual for a CPA to be held to a higher or additional standard than a non-CPA. It is for this reason that the public oftentimes choose a CPA over a non-CPA to provide professional services and

the Board suspects that oftentimes the public chooses the commenter's CPAs over non-CPAs.

Comment: The commenter stated that the regulation of SEC-registered investment adviser is preempted by federal law.

Response: Federal law preempts state law when the state law prevents the implementation of the federal law. None of the comments suggest that the AICPA standards prevent the administration of a federal standard.

Comment: The commenter stated that statements disclosure requirements are bad policy.

Response: The Board disagrees. The Board believes that the public is better served by having CPAs required to comply with higher standards than non-CPAs and for the Board to administer uniform national standards for all CPAs.

Comment: The commenter stated that the Board must comply with the Administrative Procedure Act.

Response: The Board agrees with the statement but disagrees that it has not followed the Administrative Procedure Act. The commenter suggests that an economic impact statement and a regulatory flexibility analysis must be prepared by the Board because commenter believes that the proposed rule amendment will adversely affect small or micro businesses. As previously discussed, the professional standards that commenter is objecting to will apply to commenter's industry whether the Board amends the rule or not. The rule amendment could be withdrawn and it would not affect the requirement that commenter's industry comply with AICPA standards.

Comment: The commenter stated that the Board should exempt CPAs affiliated with a federally registered broker-dealer or investment adviser.

Response: The Board does not believe that it is in the best interest of the public or the integrity of the profession to exempt CPAs from professional standards. The professional standards are needed to hold CPAs to a higher standard than non-CPAs and provide the additional public protection expected by the public when employing a licensed CPA.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§501.62. Other Professional Standards.

A person in the performance of consulting services, accounting and review services, any other attest service, financial advisory services, or tax services shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be interpreted by:

(1) AICPA issued standards, including but not limited to:

(A) Statements on Standards on Consulting Services (SSCS);

(B) Statements on Standards for Accounting and Review Services (SSARS);

(C) Statements on Standards for Attestation Engagements (SSAE);

(D) Statements on Standards for Tax Services (SSTS);

(E) Statements on Standards for Financial Planning Services (SSFPS); or

(F) Statements on Standards for Valuation Services (SSVS).

(2) pronouncements by other professional entities having similar national or international authority recognized by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2014.

TRD-201402411
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 305-7842

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CHAPTER 513. REGISTRATION

SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.10

The Texas State Board of Public Accountancy adopts an amendment to §513.10, concerning Eligibility for Firm License, with changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2736). The text will be republished.

The amendment will clarify that a licensee may not use the CPA title in the name of an unlicensed firm.

One comment was received regarding adoption of the amendment.

Comment: suggesting that neither §901.351(a) of the Act nor the proposed revision to §513.10 restricts firms from using the title CPA without a firm license and that existing §501.81(a) does. The commenter suggested referencing §501.81(a) in the interpretive comment to help clarify the rules.

Response: Staff disagrees with the commenter's reading of §901.351(a) of the Act and the proposed revision to §513.10. Both restrict firms from using the title CPA without a firm license as does Board §501.81(a). An interpretive comment in subsection (f) is adopted to clarify the intent of the rules and the Act.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§513.10. Firm License.

(a) Except as provided for in §501.81(d) of this title (relating to Firm License Requirements), a firm providing attest services or using the titles CPAs, CPA Firm, Certified Public Accountants, Certified Public Accounting Firm, Auditing Firm, or a variation of any of those titles shall do so only through a licensed firm.

(b) To be eligible for a firm license, the firm must show:

(1) that a majority of the ownership of the firm, in terms of both financial interests and voting rights, belongs to individuals who hold certificates issued under this chapter or are licensed as a CPA in another state; and

(2) that all attest services performed in this state are under the supervision of an individual who holds a certificate issued by the board or by another state.

(c) Financial interests shall include but shall not be limited to stock shares, capital accounts, capital contributions, and equity interests of any kind. Financial interests also include contractual rights and obligations similar to those of partners, shareholders or other owners of an equity interest in a legal entity.

(d) Voting rights shall include but shall not be limited to any right to vote on the firm's ownership, business, partners, shareholders, management, profits, losses and/or equity ownership.

(e) Interpretive comment: A licensee offering services as defined in §901.005 of the Act (relating to Findings; Public Policy; Purpose) through an unlicensed firm in accordance with §501.81(d) of this title may not use the CPA designation in the unlicensed firm's name. For example: John Smith may not use the firm name "John Smith, CPA" unless the firm is licensed by the board.

(f) Interpretive comment: §901.351(a) of the Act (relating to Firm License Required), §501.81(a) of this title and subsection (a) of this section require a firm license in order to use the title CPA except as provided for in §501.81(d) of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2014.

TRD-201402412
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Effective date: June 11, 2014
Proposal publication date: April 11, 2014
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22 TAC §513.15

The Texas State Board of Public Accountancy adopts an amendment to §513.15, concerning Firm Offices, with changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2737). The text will be republished.

The amendment will clarify that in order to qualify as the resident manager of a CPA firm the resident manager must be a resident of Texas except when the resident manager resides outside of Texas but is able to be in the office a majority of the work week.

One comment was received regarding adoption of the amendment.

Comment: A comment was received expressing concern that a licensee residing in Texarkana, Arkansas could own a firm a few blocks from the Texarkana, Texas firm and would not qualify as a Texas resident of the Texas CPA firm.

Response: Staff is in agreement with the comment and suggests additional language to the proposed rule that would except from the Texas residency requirement licensees routinely commuting to the office of the Texas firm. The purpose of the requirement is to assure that the public has a resident manager routinely in the CPA firm office that the public can meet and communicate with in person.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§513.15. Firm Offices.

(a) A certified public accountancy firm must hold a license for each office located in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager who is a resident of Texas. Exempted from the requirement of Texas residency is a resident manager who spends a majority of the work week on-site in the office for which the licensee is the firm resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise.

(d) A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision.

(e) Interpretive comment: The exemption provided for in subsection (b) of this section is intended to address licensees residing outside of Texas but are able to commute to the Texas office for which the licensee is the firm resident manager on a routine and regular basis.

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 May 22, 2014.

TRD-201402413
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General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 305-7842

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CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.3

The Texas State Board of Public Accountancy adopts new §525.3, concerning Criminal Background Checks, with changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2738). The text will be republished.

The new rule will allow the Board to require a criminal history background check of Federal Bureau of Investigation (FBI) records databases on all applicants to take the Uniform CPA Examination (UCPAE).

One comment was received regarding adoption of the proposal.

Comment: A comment was received stating that the words data base should be one word and not two.

Response: Staff agrees with the comment and has made that change.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the new rule.

§525.3. Criminal Background Checks.

(a) The board may require a Federal Bureau of Investigation criminal history records background check on all applicants to become licensed, registered, or certified in Texas at any stage in the application process.

(b) Applicants required to provide the Federal Bureau of Investigation criminal history records background check will be responsible for the cost of searching the database.

(c) Applicants will be provided with information on how to obtain the Federal Bureau of Investigation criminal history records background check through the Texas Department of Public Safety, and the Texas Department of Public Safety will provide the records directly to the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2014.

TRD-201402414
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Effective date: June 11, 2014
Proposal publication date: April 11, 2014
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149, 5.4164

INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amendments to 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164, to implement HB 3, 82nd Legislature, First Called Session, 2011. Sections 5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149, and 5.4164 are adopted with changes to the proposed text as published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 867).

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement HB 3 to provide loss funding for the Texas Windstorm Insurance Association in the event of a catastrophe. These sections concern funding losses and operating expenses in excess of the association's premium and other revenue under Insurance Code Chapter 2210, Subchapters B-1, J, and M. These sections will be incorporated into the association's plan of operation. Matters addressed in the plan of operation amendments include: (i) the catastrophe reserve trust fund; (ii) financing arrangements; (iii) issuance of public securities; (iv) use of public securities proceeds; and (v) payment of public security obligations. In conjunction with this adoption, the department is also adopting the repeal of 28 TAC §5.4131 and §5.4132 separately and also published in this issue of the *Texas Register.*

The department accepted written comments on the loss funding and premium surcharge rule proposals from February 14, 2014, through March 10, 2014, and heard testimony at three public hearings in Beaumont, Austin, and Corpus Christi. During the comment period, the department received approximately 340 comments, both in writing and at the public hearings.

In considering all of the comments and in adopting the rules, the department is constrained by two things: 1) the association's funding structure under existing law; and 2) the Legislature's finding in Insurance Code §2210.001 that, "the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded."

The association is the insurer of last resort for windstorm and hail insurance coverage in the catastrophe area along the coast. The association provides insurance coverage to those who are unable to obtain wind and hail insurance in the private market. The catastrophe area includes the 14 first-tier coastal counties and parts of Harris County. The association's largest risk exposure is catastrophic losses from hurricanes.

The Texas Legislature enacted HB 4409, 81st Legislature, Regular Session, 2009, which substantially changed how the association paid for losses that exceeded its premium, other revenue, and amounts available in the catastrophe reserve trust fund (CRTF). HB 4409 amended Insurance Code Chapter 2210 to provide for three classes of public securities to pay for excess losses in the event of a catastrophe. In 2011, HB 3 amended the association's loss funding provisions to authorize the association to request the issuance of class 1 public securities prior to a catastrophic event, and to permit the association to request the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority (TPFA) is unable to issue all or any portion of the class 1 public securities. Class 1 public securities must be issued when losses in a catastrophe year exceed the association's premium, other revenue, available reserves, and amounts in the CRTF. Class 1 public securities are to be paid with the association's net premium and other revenue. Losses not paid by class 1 public securities are to be paid by the proceeds of class 2 and class 3 public securities.

Insurance Code §2210.613 describes how the association must pay class 2 public securities. HB 4409 required that class 2 public securities be paid with member insurer assessments and a premium surcharge on coastal policyholders. Thirty percent of the cost of class 2 public securities was to be paid by member insurer assessments. Seventy percent of the cost of class 2 public securities was to be paid by premium surcharges assessed on all policyholders who resided or had operations in, or whose insured property was located in the catastrophe area. HB 3 amended Insurance Code §2210.613 so that 70 percent of the cost of class 2 public securities is to be paid by premium surcharges assessed on all policyholders of policies that cover insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area. Member insurer assessments must still pay 30 percent of the cost of class 2 public securities. HB 3 also amended Insurance Code §2210.613 to specify the lines of insurance to which the premium surcharges apply. Before the enactment of HB 3, the premium surcharges in Insurance Code §2210.613 applied to "all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance." After HB 3, Insurance Code §2210.613 states that the premium surcharge applies to "all policies of insurance written under the following lines of insurance: fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial automobile liability and physical damage insurance."

If the comments are any indication, the adopted rules will displease many, and for different reasons. Coastal residents, businesses, and local governments expressed concern over premium surcharges. Some who have no connection to the association wondered why they might have to pay surcharges on their property and casualty insurance premiums to pay for the association's losses. Many on the coast asked why the cost of windstorm insurance on the coast cannot be shared with the rest of the state. In addressing these comments, the department is constrained by the association's funding structure under existing law.

Since HB 4409 was enacted in 2009, Texas law has stated that if the association cannot pay its policyholders' claims from its premium and other revenue, and amounts in the CRTF, the association must issue public securities that are paid for, in part, by premium surcharges on coastal property and casualty insurance policies, including auto policies. The department adopted rules on premium surcharges consistent with HB 4409. The enactment of HB 3 made the department's rules implementing the premium surcharge required under Insurance Code §2210.613 obsolete. The adopted amendments conform the premium surcharge rules to the current §2210.613. Premium surcharges make up part of the association's funding structure, regardless of the department's rules. The department's rules are necessary to enable the association to effectively implement the funding structure it is given under statute to pay its policyholders' claims.

The insurance industry and other observers expressed concern that the loss funding rules are without statutory authority. Some industry members wrote of the costs they will incur in repaying premium surcharges to policyholders. In addressing these comments, the department is constrained by the need to implement Insurance Code §2210.6136 so that the association can pay claims, while still paying for its share of public securities under that statute. The adopted rules implement §2210.6136 so that the association can issue marketable public securities with which it can pay claims. Leaving the association unable to pay claims does not comport with the Legislature's intent that the Texas coast have adequate windstorm and hail insurance. The repayment requirements the industry objects to in comments about the rules comply with the Legislature's intent that the association, and not all coastal property and casualty insurance policyholders, pay for a specified portion of the public securities issued under §2210.6136.

Where possible, the department changed the proposed rules in response to comments to make them friendlier to consumers and less cumbersome for insurers. For example, the adopted rules require insurers to collect premium surcharges from policyholders in the manner that the insurer collects premium. This gives policyholders the same flexibility in paying premium surcharges that they have in paying premium. The adopted rules contain several changes in consideration of the characteristics of the surplus lines industry.

This order summarizes all of the comments the department received on the proposed rules. Although the department is constrained in the actions it may take to address the comments, the Legislature does not have the same limitations. The comments are presented here in the hope that the Legislature will consider them should it revisit the statutes these adopted rules implement.

In response to comments on the published proposal, the department has adopted changes to the proposed text in §§5.4102, 5.4125, 5.4126, and 5.4127. The department has adopted nonsubstantive changes to the proposed text in §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149, and 5.4164 to conform to agency style guidelines. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The following explains adopted §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149, and 5.4164 in greater detail.

§5.4101. Applicability. As previously discussed, the association operates under a plan of operation. Section 5.4101(a) has been amended to provide that the adopted new sections in this division will be part of the association's plan of operation, and will control over any conflicting provision in §5.4001 of this title. Section 5.4001 contains the association's plan of operation, but over time that plan has been augmented by the adoption of other sections. The department also made nonsubstantive changes to the proposed text to conform to agency style.

§5.4102. Definitions. Amended §5.4102 defines terms used in this division. The defined terms are derived from Insurance Code Chapter 2210 and information and terminology that TPFA provided to the department. New terms that are defined in this section include: class 1 payment obligation, earned premium, member assessment trust fund, net premium, obligation revenue fund, premium, premium surcharge and member assessment repayment obligation, premium surcharge trust fund, public security administrative expenses, and repayment obligation trust fund. Other terms are amended based on changes in the statute as a result of HB 3, and nonsubstantive changes have been made to the text in the proposal for clarity and to conform to agency style.

§5.4121. Financing Arrangements. Insurance Code §2210.072 and §2210.612 provide that the association may enter into financing arrangements directly with a market source to enable the association to pay losses or obtain public securities under

Insurance Code §2210.072. Amended §5.4121(b)(1) provides that the association may pay for the financing arrangement with net premium that is not required for the payment of class 1 public securities, or the repayment of premium surcharge or member assessment repayment obligations. HB 3 revised Insurance Code §2210.612 to define the revenue stream available to fund class 1 public security obligations and public security administrative expenses as "net premium" rather than "premium." Insurance Code §2210.609 establishes a priority for the use of net premium to fund class 1 public security obligations and public security administrative expenses. Section 5.4121(b)(1) reflects that the use of net premium and other revenue for the payment of financing arrangements is subordinate to the payment of class 1 public security obligations under §5.4126 and §5.4141 and Insurance Code §2210.612 and §2210.6136. The amendment to §5.4121(c) states the collateral assignment applies to "any class of public security issued under Insurance Code Chapter 2210" rather than listing each class.

§5.4123. Public Securities Request, Approval, and Issuance. Before public securities may be issued, Insurance Code §2210.604 requires the association to submit a request for the issuance of public securities. The commissioner must approve that request before TPFA may issue public securities on behalf of the association. Under the statute, class 1 public securities may be issued before or after a catastrophic event, and class 2 and class 3 public securities may be issued only after a catastrophic event.

This section allows the association to request public securities as often as necessary and at any time. This means that the association can submit a request for the issuance of post-event public securities to the commissioner for approval prior to a catastrophe, but the public securities may be issued only after a catastrophe occurs. The department drafted this provision to allow TPFA the opportunity to review and prepare for the issuance of public securities prior to an event without actually issuing the securities. TPFA has informed the department that it cannot begin preparation for the issuance of public securities until it has a request for issuance from the association that is approved by the commissioner. By allowing the association to submit requests for commissioner approval prior to a catastrophe, TPFA can prepare for the issuance of public securities so that, in the event of a catastrophe, TPFA can more expediently issue public securities.

The adopted rule establishes the supporting documentation that must be included in the association's request and provides that the commissioner may request additional information. The association must provide to the department any requested information concerning public securities or the pending issuance of public securities. It is important that this information be accessible to maintain effective regulation of the association. The commissioner may deny the association's request. If a request is denied, the association may submit another request for the commissioner's consideration. When the association's request is approved, the department must provide the commissioner's written approval to the association and the TPFA.

The procedures established by this section apply to the issuance of public securities and the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities Before a Catastrophic Event. HB 3 amended Insurance Code §2210.072 to authorize the issuance of class 1 public securities before a catastrophic event. The association's board of directors must request the issuance of the public securities, and the commissioner must approve the board's request before TPFA can issue the class 1 public securities. This rule establishes specific requirements for a request to issue class 1 public securities before a catastrophic event. This rule establishes the method for calculating the amount of class 1 public securities issued before a catastrophic event that the association may request. This rule also details the information the association must submit with its request to the commissioner, including a cost-benefit analysis required by Insurance Code §2210.604(a) for all public security requests. The contents of the cost-benefit analysis are set out in §5.4135 of this adoption. Additionally, the association must submit a three-year pro forma financial statement reflecting the financial impact to the association if class 1 public securities are issued before a catastrophic event.

The association may submit one or more requests to issue class 1 public securities before a catastrophic event under this section. Section 5.4124(d) establishes the method of calculating the amount of class 1 public securities issued before a catastrophic event that the association may request. Insurance Code §2210.072(b) limits the amount of outstanding class 1 public securities issued before a catastrophic event to $1 billion, regardless of the calendar year when the class 1 public securities were issued. Insurance Code §2210.072(e) states that the association must deplete the proceeds of outstanding class 1 public securities issued before a catastrophic event before the proceeds of class 1 public securities issued after a catastrophic event may be used. Insurance Code §2210.072(f) states that the proceeds of outstanding class 1 public securities issued before a catastrophic event count against the $1 billion catastrophe year limit set out in Insurance Code §2210.072(b). These provisions authorize the association to issue class 1 public securities before a catastrophic event in an outstanding aggregate principal amount of up to $1 billion. If the proceeds of the class 1 public securities issued before a catastrophic event must be depleted, those proceeds are applied to that catastrophe year cap, but do not count against the aggregate principal amount cap for class 1 public securities issued before a catastrophic event. This will enable the association to continue to use class 1 public securities issued before a catastrophic event for liquidity in years following a catastrophic event.

§5.4125. Issuance of Public Securities after a Catastrophic Event. This section establishes specific requirements for the association's request to issue class 1, class 2, and class 3 public securities following a catastrophic event and the method for calculating the authorized principal amount of public securities that TPFA may issue. As previously discussed, the statute limits when the public securities can be issued, not when the public securities may be requested. Requests for issuance of public securities may be submitted prior to a catastrophe even though the public securities may not be issued until after a catastrophe. The association may submit a request for the issuance of public securities after a catastrophe for commissioner's approval at any time, although TPFA will not actually issue the public securities until a catastrophic event has occurred.

Section 5.4125(b) lists the information the association must provide to the commissioner to support its request, including a cost-benefit analysis. Section 5.4125(c) establishes the method of calculating the authorized principal amount of public securities that can be requested for issuance. Section 5.4125(d) clarifies that for each catastrophe year, the association must request the statutorily authorized principal amount of each class of public securities before it can request the next class of public securities. Section 5.4124(e) provides that the association may make

one or more requests to issue public securities under this section and clarifies that the association need not exhaust all proceeds from a class of public securities before it requests issuance of the next class of public securities. Depending on the severity of a catastrophic event, the association may need additional loss funding from one or more classes of public securities. TPFA has informed the department that it measures the process of issuing public securities from the request to obtaining the proceeds in months. This rule section allows the association to request more than one class of public securities so the association may have adequate proceeds available as timely as possible for prompt payment of claims.

§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities. Insurance Code §2210.073 provides that class 2 public security proceeds are to pay for losses that have not been paid by class 1 public security proceeds. This raises an issue of providing adequate loss funding for the association if the entire $1 billion authorized amount of class 1 public securities cannot be issued due to market conditions. Class 1 public securities are to be repaid with the association's net premium under Insurance Code §2210.612. A catastrophic event may result in losses that exceed the association's revenue and impair its ability to repay class 1 public securities. If the association's class 1 public securities are not marketable, Insurance Code §2210.6136 allows the commissioner to authorize the issuance of class 2 public securities. Section 5.4126 implements the procedure for the association to request issuance of class 2 and 3 public securities under Insurance Code §2210.6136 when all or any portion of class 1 public securities cannot be issued.

Section 5.4126(a) establishes that the purpose of this section is the issuance of class 2 and class 3 public securities if TPFA cannot issue on behalf of the association all or any portion of the authorized principal amount of class 1 public securities. Section 5.4126(b) lists the information that the association must provide to the commissioner in support of its request for issuance of class 2 or class 3 public securities. Section 5.4126(c) requires that the association must first request the authorized principal amount of class 1 public securities, as determined under §5.4125(c) of this title, before the association may request class 2 public securities under this alternative issuance procedure. The association is not required to have requested the maximum authorized principal amount of class 1 public securities because the catastrophic event may not reach that level of loss. The amount of the request under this section will be based on the amount of class 1 public securities that TPFA cannot issue on behalf of the association to fund the catastrophic loss.

The commissioner may issue an order authorizing TPFA to issue class 2 public securities in an amount that does not exceed the authorized principal amount as determined under §5.4125(c) of this title. The principal amount is further limited by the amount the association needs to fund the excess losses. The commissioner may rely on information from any source in ordering the issuance of class 2 public securities. Subsection (e) sets forth the required contents of a commissioner's order authorizing the issuance of class 2 public securities under §5.4126(d). Subsection (f) allows the commissioner to revise the order as necessary because the association has paid excess amounts towards repayment of the premium surcharges and member assessments, or the association's financial situation has changed, necessitating a change in the repayment schedule. As discussed in §5.4127(d), the priority of the repayment obligation is subordinate to the payment of the class 1 public securities.

TPFA may issue the class 2 public securities authorized in the commissioner's order. TPFA may elect to issue the class 2 public securities in separate series. Section 5.4126(h) clarifies that the association may request and the commissioner may approve the issuance of class 3 public securities prior to the issuance of class 2 public securities under this section and Insurance Code §2210.6136. TPFA cannot issue the class 3 public securities until after TPFA has issued $1 billion in class 2 public securities on behalf of the association for that catastrophe year.

§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments. The Legislature enacted Insurance Code §2210.6136 for funding excess losses when a sufficient amount of class 1 public securities cannot be issued. HB 3 does not express any legislative intent that the association is to stop paying claims based on its inability to market class 1 public securities, which are paid from the association's net premium and other revenue. Insurance Code §2210.6136 allows TPFA to issue class 2 public securities if it cannot issue all or any portion of the total authorized principal amount of class 1 public securities. Class 2 public securities are repaid by a combination of member assessments and premium surcharges under Insurance Code §2210.613.

Insurance Code §2210.6136 specifies that if class 2 public securities are issued under that section, then the class 2 public securities must be repaid by the association's net premium and other revenue in an amount equal to the lesser of $500 million or the portion of class 1 public securities that cannot be issued. This has the effect of treating class 2 public securities issued under Insurance Code §2210.6136 as class 1 public securities, which are repayable by premium and revenue. This is inconsistent with the purpose of Insurance Code §2210.6136 to provide for the issuance of class 2 public securities because class 1 public securities cannot be issued. If a hurricane occurs that results in excess losses, the fully authorized amount of class 1 public securities may not be available to pay for those losses because those securities are based on the association's premium and revenue. The fully authorized amount of class 1 public securities may not be marketable because the association's net premium and other revenue may not be a large enough to secure the full $1 billion in class 1 public securities. In the event of catastrophic losses, the association is obligated to pay claims. If class 1 public securities are not marketable and cannot be issued, then class 2 public securities and class 3 public securities must be issued.

This means that under Insurance Code §2210.6136, the association must then repay the principal, interest, and other costs of class 2 public securities with premium surcharges and member assessments. This is the only reasonable reading of Insurance Code §2210.6136 that is consistent with Government Code §311.021. If a catastrophe occurs that results in losses in excess of funding authorized under Insurance Code §2210.072, and the association cannot issue all or any portion of class 1 public securities, then class 2 public securities may be issued under Insurance Code §2210.6136. Under the plain language of Insurance Code §2210.6136, the association must issue $500 million in class 2 public securities that are to be repaid by the association's premium and other revenue. Under this provision, class 2 public securities are repaid from the same source of revenue used to pay class 1 public securities. If the association can issue class 2 public securities that are to be repaid by premium, then this means the association is capable of issuing class 1 public securities. This eliminates the need for having an alternative to

issuing class 2 public securities when class 1 public securities cannot be issued. It is not feasible to read the statute to require TPFA to issue all of the class 1 public securities it can based on the association's net premium and other revenue, and then expect TPFA to issue additional public securities using the same funding sources simply because the name of the public security has changed. Such a reading would render Insurance Code §2210.6136 meaningless. The statute does not require the association to borrow additional amounts. The statute requires the association to repay the costs incurred on some of the class 2 public securities. The association must repay the premium surcharges and member assessments to fulfill that requirement.

Section 5.4127 implements the repayment scheme in Insurance Code §2210.6136. Section 5.4127(a) requires the association to pay class 2 public securities issued under §5.4126 of this title using premium surcharges and member assessments. Section 5.4127(a)(1) and (2) clarify that the definition of insurer and the procedures for collecting premium surcharges and member assessments under this section are the same as those used for class 2 public securities that will be issued under §5.4125. Section 5.4127(b) provides the method of determining the costs of the class 2 public securities that the association must repay. Section 5.4127(c) clarifies that the requirement is to repay premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.

Section 5.4127(d) describes the primary sources of funding for repayment of the premium surcharges and member assessments. These sources are net premium and other revenue that is not contractually pledged to class 1 payment obligations and amounts released from the obligation revenue fund as described in §5.4142. This means, as §5.4127(e) states, that the association must collect premium and other revenue in an amount sufficient to make the repayments and to pay for outstanding class 1 payment obligations. Section 5.4127(f) describes the methods the association may use to make the repayment and addresses the situation when the association has sufficient funds to pay class 2 obligations, which will eliminate or reduce the need to collect premium surcharges and member assessments. The association will make deposits necessary to make this payment in the appropriate trust funds. This may result in savings on administrative costs for the association caused by a reduction in the amount of premium surcharge repayments the association must track. Association policyholders may also benefit from prepayment of premium surcharges, because association insurance coverage is subject to the premium surcharge. Section 5.4127(f)(2) requires the association to deposit funds in a repayment obligation trust fund to repay the premium surcharges and member assessments. The funds will later be distributed to insurers for repayment in compliance with the commissioner's order. Together, through prepayment or repayment, the association must fulfill its obligation under this section and Insurance Code §2210.6136.

Subsection (g) requires the association to track receipts of premium surcharges and member assessments. Subsection (h) provides that insurers may pay, on behalf of their policyholders, the premium surcharges that will be subject to repayment under Insurance Code §2210.6136(b)(1). The insurer will then collect the repayment when made, as described in §5.4128(c) of this division.

§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers. Section 5.4128 addresses the repayment procedures the association and insurers must use to repay premium surcharges and member assessments. The association must specify the surcharge and assessment period being repaid. Subsection (b) establishes when the repayments must begin, and subsection (c) establishes requirements for insurers making repayments to their policyholders. The repayment to each policyholder must be proportional to the amount the policyholder paid for that period. If an insurer paid all or a portion of the premium surcharge on behalf of its policyholders during the period, the insurer may recoup it, but may not claim a greater share of the premium surcharge than the portion it paid on behalf of its policyholders. Member assessments will be returned to the insurer or insurance group that paid the member assessment.

§5.4133. Public Security Proceeds. The public security proceeds are held in trust with the trust company for the benefit of the association and may only be used for certain purposes specified by statute. This section establishes the procedure for the association to request that the trust company disburse funds. HB 3 amended Insurance Code §2210.608 to specifically allow two additional uses of public security proceeds and prohibit the association from using the proceeds of public securities issued before a catastrophic event to purchase reinsurance. The amendment to §5.4133 removes the reference to using public security proceeds and points to Insurance Code §2210.608 for the authorized uses of public security proceeds.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. This section discusses the marketability of public securities and sets out factors that may be considered in determining the marketability of class 1 public securities. Subsection (a) defines "marketable public securities." Subsection (b) establishes factors the association must consider in determining whether class 1 public securities are not marketable. This information is necessary for the determination of issuing class 2 public securities under §5.4126. Subsection (c) addresses the factors the association must consider in determining market conditions and requirements under §5.4135(b). Subsection (d) requires the association to submit a cost-benefit analysis as required by Insurance Code §2210.604(a) and lists the information the cost-benefit analysis must include.

§5.4136. Association Rate Filings. HB 3 amended Insurance Code §2210.355 to clarify that association rates must consider class 1 public security obligations and contractual coverage amounts that the association determines to be required for the issuance of marketable public securities. This section restates the statutory requirement and clarifies that it also applies to repayment amounts owed under §5.4127(b), which are repaid from the same sources of funds as class 1 public securities. This section establishes how the association must comply with this requirement.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund. HB 3 amended Insurance Code §2210.609 to direct the association to deposit its net premium and other revenue collected under Insurance Code §2210.612 in the obligation revenue fund for the payment of class 1 public securities. The department amended subsection (a) of §5.4141 to be consistent with this requirement. The amendment replaces the reference to "net revenue" with "net premium and other revenue." The association must deposit net premium in the amounts and for the periods required in the class 1 public security agreements. The intent is to allow greater

flexibility in establishing payment schemes while the association continues to operate.

Insurance Code §2210.609(c) requires that all revenue collected under Insurance Code §§2210.612, 2210.613, and 2210.6135 be deposited in the appropriate public security obligation revenue fund. The department amended subsection (b) of §5.4141 to provide the association flexibility to transfer funds from any operating reserve fund or other association held funds into the obligation revenue fund to pay class 1 public securities.

§5.4142. Excess Obligation Revenue Fund Amounts. From time to time, the association may need to disburse funds in the obligation revenue fund, including the contractual coverage amount. Section §5.4142 provides that excess revenue collected in the obligation revenue fund is an asset of the association and may be disbursed for any purpose authorized by Insurance Code §2210.056, including the repayment of premium surcharge and member assessments under §5.4127. If the association elects to repay class 1 public securities early, commissioner approval is required under Insurance Code §2210.072. Although the funds in the obligation revenue fund consist of net premium and other revenue, excess funds released under §5.4142 do not apply to class 1 public security payment obligations. Distribution of the excess revenue in the obligation revenue fund does not affect the amounts due under Insurance Code §2210.6136 or §5.4126 of this title. The distribution provides the association with additional funds that can be used for prepaying the amounts due under Insurance Code §2210.6136 or §5.4126 of this title. The adoption does not require prepayment because it is impossible to determine what the association's financial position will be at the time of the distribution or what will be the best use of the distribution.

§5.4143 and §5.4146. Trust Funds for the Payment of Class 2 and Class 3 Public Securities and Member Assessment Trust Fund for the Payment of Class 3 Public Securities. Insurance Code §2210.613 provides for the payment of class 2 public security obligations with premium surcharges on property and automobile insurance policies in the catastrophe area and member insurer assessments. Insurance Code §2210.6135 provides for the payment of class 3 public security obligations with association member insurer assessments. The procedure for establishing, assessing, collecting, reporting, accounting for, and transmitting the premium surcharges and member assessments to the association are currently set out in §§5.4161 - 5.4167, 5.4171 - 5.4173, and 5.4181 - 5.4192 of this title. HB 3 amended Insurance Code §2210.613 to specify the lines of insurance subject to the premium surcharge. Rules implementing the premium surcharge are addressed in a separate rule adoption published in this issue of the *Texas Register.*

Section 5.4143 and §5.4146 concern how amounts collected from premium surcharges and member assessments are deposited. The association is required to deposit the collected revenue in the appropriate trust fund. The amendments to these sections reflect HB 3 changes to Insurance Code §2210.609, which created distinct revenue trust accounts for the premium surcharges and member assessments. Additionally, the adoption requires the association to transfer the collected money into the trust funds on receipt. The rules also allow the option for insurers to direct deposit the funds electronically into the appropriate funds. If insurers are required by the financial agreements to direct deposit, the association must send notice to the insurers with direct deposit information. Finally, the amended sections limit the use of these funds. The deposited funds may only be used to fund the appropriate public security obligation or as authorized in this title, which includes the use of excess funds under §§5.4144, 5.4145, and 5.4147 as authorized by Insurance Code §2210.611.

§§5.4144, 5.4145, and 5.4147. Excess Class 2 Premium Surcharge Revenue, Excess Class 2 Member Assessment Revenue, and Excess Class 3 Member Assessment Revenue. The revenue funds may have excess funds. HB 3 amended Insurance Code §2210.611 to include procedures for handling both excess premium surcharge and member assessment revenue. The amendments to these sections conform to the existing provisions of Insurance Code §2210.611, as amended.

§5.4148 and §5.4149. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127 and Excess Repayment Obligation Trust Fund Amounts. Insurance Code §2210.6136 requires the association to collect net premium and other revenue for the repayment of premium surcharges and member assessments in the manner described by Insurance Code §2210.612, which states that the collected net premium and other revenue are to be deposited in the revenue obligation fund. Section 5.4148 creates procedures for a designated repayment obligation trust fund held by the trust fund or a trustee. Section 5.4148 provides that the purpose of these funds is the payment of class 2 public securities subject to repayment under §5.4127(b) of this title, and the repayment of all amounts owed under §5.4127(b). To the extent funds in this account are distributed, the funds must repay class 2 public securities first. Once the association has paid those amounts, excess funds will be disbursed to the association.

§5.4164. Payment of Assessment. Section 5.4164 is revised to allow insurers to deposit member assessments directly into the member assessment trust fund. The department made changes to this section to provide that insurers may be required to deposit assessments directly into the member assessment trust fund instead of remitting assessments to the association.

The department also makes nonsubstantive changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice or raise new issues.

In response to comments, the department changes proposed §5.4102(35), which defines "premium surcharge and member assessment repayment obligation." The department amends §5.4102(35) to clarify the length of time the association has to complete repayments.

In response to comments, the department changes proposed §5.4102(40), which defines "repayment obligation trust fund." The department amends §5.4102(40) to remove the reference to the trust company.

In response to comments, the department changes proposed §5.4125. The department modifies §5.4125(c)(2) to more clearly identify the amount referred to in that paragraph.

In response to comments, the department changes proposed §5.4126. The department modifies §5.4126(e) to clarify that the subsection refers to a commissioner's order issuing class 2 public securities under §5.4126(d).

In response to comments, the department changes proposed §5.4127. The department modifies §5.4127(h)(2) and (3) to clarify that if an insurer elects to pay, on behalf of its policyholders, all or part of a premium surcharge that is subject to repayment, the insurer must pay equally for all policyholders who are subject to that surcharge.

In response to comments, the department changes proposed §5.4148. The department modifies §5.4148 to require the association to either enter into trust agreements with the trust company or with a trustee selected by the association and approved by the commissioner.

The department makes other nonsubstantive changes to the proposed rule text for improved clarity and consistency with agency style. These changes do not affect persons not previously on notice or raise new issues.

HOW THE SECTIONS WILL FUNCTION.

§5.4101. Applicability. This section states the applicability of the subchapter.

§5.4102. Definitions. This section states the defined terms used in the division. Amendments change previous definitions and add new definitions for "class 1 payment obligation," "earned premium," "member assessment trust fund," "net premium," "obligation revenue fund," "premium," "premium surcharge and member assessment repayment obligation," "premium surcharge trust fund," "public security administrative expenses," and "repayment obligation trust fund."

§5.4121. Financing Arrangements. This section provides how the association may enter into financing arrangements directly with a market source to enable the association to pay losses or obtain public securities.

§5.4123. Public Securities Request, Approval, and Issuance. This section establishes procedures for the association to request public securities. The section also establishes the supporting documentation that must be included in the association's request and provides that the commissioner may request additional information. The procedures established by this section apply to the issuance of public securities and the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities Before a Catastrophic Event. This section establishes specific requirements for a request to issue class 1 public securities before a catastrophic event and the method for calculating the outstanding aggregate principal amount of class 1 public securities issued before a catastrophic event.

§5.4125. Issuance of Public Securities After a Catastrophic Event. This section establishes specific requirements for the association's request to issue class 1, class 2, and class 3 public securities following a catastrophic event and the method for calculating the authorized principal amount of public securities that TPFA may issue. This rule section allows the association to request more than one class of public securities so the association may have adequate proceeds available as timely as possible for prompt payment of claims.

§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities. This section establishes the requirements and procedures for the issuance of class 2 and class 3 public securities if TPFA cannot issue on behalf of the association all or any portion of the authorized principal amount of class 1 public securities.

§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments. This section implements the repayment scheme in Insurance Code §2210.6136.

§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers. This section addresses the repayment procedures the association and insurers must use to repay premium surcharges and member assessments.

§5.4133. Public Security Proceeds. This section establishes the procedure for the association to request the trust company to disburse funds for use.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. This section discusses the marketability of public securities and sets out factors that may be considered in determining the marketability of class 1 public securities.

§5.4136. Association Rate Filings. This section establishes how the association must comply with the statutory requirement and clarifies that it also applies to repayment amounts owed under §5.4127(b), which are repaid from the same sources of funds as class 1 public securities.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund. This section provides for the deposit of net premium and other revenue for the payment of class 1 public securities.

§5.4142. Excess Obligation Revenue Fund Amounts. This section provides that excess revenue collected in the obligation revenue fund is an asset of the association and may be disbursed for any purpose authorized by Insurance Code §2210.056, including the repayment of the premium surcharge and member assessments under §5.4127.

§5.4143 and §5.4146. Trust Funds for the Payment of Class 2 and Class 3 Public Securities and Member Assessment Trust Fund for the Payment of Class 3 Public Securities. These sections concern how the amounts collected from premium surcharges and member assessments are deposited.

§§5.4144, 5.4145, and 5.4147. Excess Class 2 Premium Surcharge Revenue, Excess Class 2 Member Assessment Revenue, and Excess Class 3 Member Assessment Revenue. These sections concern procedures for handling both excess premium surcharge and member assessment revenue.

§5.4148 and §5.4149. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127 and Excess Repayment Obligation Trust Fund Amounts. Section 5.4148 creates procedures for a designated repayment obligation trust fund. Section 5.4149 provides that excess amounts in the repayment obligation trust fund are disbursed to the association and become an asset of the association.

§5.4164. Payment of Assessment. This section specifies how insurers may deposit member assessments directly into the member assessment trust fund.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment on §5.4102(40): A commenter suggests that the department confirm with the Texas Comptroller of Public Accounts that the Texas Safekeeping Trust Company has the authority to hold the repayment obligation trust fund, which is not explicitly created by statute.

Agency Response: The department has modified proposed §5.4102(40) to remove the reference to the trust company from the definition of the repayment obligation trust fund. The department has also modified proposed §5.4148 to require that the association enter into trust agreements with the trust company or with a trustee selected by the association and approved by

the commissioner. The adopted §5.4148 also provides that trust agreements with the latter are subject to prior approval by the commissioner.

Comment on §5.4121(b): A commenter suggests that the department not add the term "net premium" to §5.4121(b)(1). The commenter states that the intent of the statute is to accommodate financing arrangements that are not necessarily class 1 public securities. The commenter further states that Insurance Code §2210.612(b) expressly authorizes financing arrangements to obtain public securities but does not limit those arrangements to only obtaining public securities. If commercial paper is issued before a loss and not used to obtain class 1 public securities, the commercial paper should not be restricted to repayment from only "net premium."

Agency Response: The department agrees that financing arrangements are not necessarily class 1 public securities and, unlike class 1 public securities, repayment of those financing arrangements is not limited to "net premium and other revenue." However, the department disagrees with the suggestion to change "net premium" to "premium" in adopted §5.4121(b)(1).

In the context of the adopted rules, "net premium" is defined under §5.4102(28). This paragraph defines "net premium" as "gross premium less unearned premium." Both "gross premium" and "unearned premium" are defined in the adopted rules. Section 5.4102(22) defines "gross premium" as "the amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies." Section 5.4102(45) defines "unearned premium" as "that portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect." Using the word "premium" instead of "net premium" in §5.4121(b)(1) could permit the association to use funds that do not belong to the association to repay financial arrangements. Using the term "net premium" prohibits the association from repaying financing arrangements from funds owed policyholders for return premiums or from premiums that the association has not earned. Additionally, the rules do not limit the repayment of financing arrangements to "net premium and other revenue." The association may also repay financing arrangements with: (i) reinsurance proceeds under §5.4121(b)(2); (ii) the proceeds of any financing arrangement under §5.4121(b)(3); (iii) the proceeds of any class of public security under §5.4121(b)(4); and (iv) any other asset of the association under existing §5.4121(b)(5).

Comment on §5.4121(b)(4): A commenter writes that under §5.4124(b)(4) (initially identified as §5.4124(b)(4), later clarified as §5.4121(b)(4)), the association may pay a financing arrangement with proceeds from, among other sources, any class of public security issued under Insurance Code Chapter 2210. The commenter states that Insurance Code §2210.608(a)(6) allows public security proceeds to "pay private financial agreements entered into by the association as temporary sources of payment of losses and operating expenses of the association." The commenter states that the Texas Office of the Attorney General will need to concur with how the word "temporary" is interpreted in the future.

Agency Response: The adopted rules are intended to operate consistently with Insurance Code §2210.608. The department appreciates the comment.

Comment on §5.4126(d): A commenter asks that §5.4126(d) be amended to provide additional protections to lenders providing financing arrangements that are backed by public securities under §5.4121. Specifically, the commenter asks that §5.4126(d) be amended to require the commissioner to order the issuance of class 2 public securities when securities are necessary but class 1 public securities cannot be issued. The commenter asks that the amendment require the issuance of class 2 public securities in an amount no less than "the lesser of the amount in which the financing arrangements are so secured" and the authorized amount of public securities as determined in §5.4125(c).

The commenter states that this amendment is justified because Insurance Code §2210.6136 states that the commissioner may cause the issuance of public securities "by rule or order," and that an amendment requiring the issuance in certain circumstances is an example of the former. The commenter states that the requested amendment is necessary to "provide lenders the certainty they would need in order to offer a financing arrangement pursuant to §5.4121."

Agency Response: TDI declines to make the requested amendment to §5.4126(d). The language in §5.4126(d) as proposed and adopted follows the language of Insurance Code §2210.6136(a), which provides that if all or any portion of the total principal amount of class 1 public securities authorized to be issued cannot be issued, the commissioner may cause the issuance of class 1 public securities.

Comment on §5.4126(e): A commenter suggests that §5.4126(e) be amended to clarify that the subsection refers to an order of the commissioner under §5.4126(d).

Agency Response: The department agrees with the suggested change.

Comment on §5.4126(f): A commenter notes that under §5.4126(f), the commissioner may revise the order issued under §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). The commenter states that, "any revisions to the order cannot affect the security provided to the owners of the class 1 and class 2 public securities as provided in the public securities financing documents." The commenter also states that, according to the commenter's prior discussions with the Texas Office of the Attorney General, the OAG prefers that any repayment obligations to nonassociation policyholders and member insurers under Insurance Code §2210.6136 be subordinate to the payment of class 1 public security obligations.

Agency Response: As proposed and as adopted, §5.4126(f) does not impair the security of owners of class 1 and class 2 public securities. Under §5.4126(f), the commissioner may revise the order to issue class 2 public securities in the event that all or a portion of the authorized amount of class 1 public securities cannot be issued. This order is described in §5.4126(d) and (e) and addresses the association's repayment of premium surcharges and member assessments under Insurance Code §2210.6136. Any revisions to this order will not change the fact that under §5.4127(a), the security for class 2 public securities issued under §2210.6136 are the premium surcharges and member assessments described in §2210.613. Further, any revisions to this order will not change the fact that under §5.4127(d), the only funds the association can use to repay the surcharges and assessments are: (1) its net premium and other revenue not pledged to class 1 payment obligations; and (2) excess amounts released from the class 1 obligation revenue fund.

Comment on §5.4126(g): A commenter suggests that §5.4126(g) be amended to state that TPFA must issue class 2 public securities authorized by the commissioner's order under

§5.4126(d), rather than that TPFA "may" issue class 2 public securities authorized by the order.

Agency Response: The department cannot adopt rules ordering another state agency to take action. Amending the rule as the commenter suggests would not provide any further assurance that TPFA would issue the class 2 public securities. Insurance Code §2210.604(a) already states that "at the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue class 1, class 2, or class 3 public securities." If TPFA were to refuse to issue class 2 public securities after the commissioner issued an order authorizing them, TPFA would be in violation of the Insurance Code.

Comment on §5.4127(h): Three commenters state that §5.4127(h) is confusing and ask for clarification. One of the commenters asks whether the intent of §5.4127 is to allow insurers to receive premium surcharge repayments from the association without having to return them to policyholders and, if so, whether the rest of the rules are consistent with that intent.

Two of the commenters ask for clarification on proposed §5.4127(h)(2). Section 5.4127 permits an insurer to pay on behalf of its policyholders all or part of a premium surcharge that the section requires the association to repay. As proposed, paragraph (2) required an insurer that pays on behalf of its policyholders to pay the premium surcharges for all of its policyholders "subject to the premium surcharge equally." The commenters ask whether this means an insurer that chooses to pay on behalf of one group of policyholders must pay on behalf of all its policyholders, an "all or nothing election" as one commenter puts it, or whether the insurer must pay on behalf of all policyholders within a specific line of coverage.

One of the commenters asks how the surcharge is reflected on the policy declaration page if an insurer elects to pay all or part of a premium surcharge on behalf of its policyholders.

One of the commenters asks how an insurer's election would be reported in quarterly and annual financial statements, in light of the fact that Insurance Code §2210.613(d) states that premium surcharges are not subject to premium tax or commissions. The commenter asks whether the association's ability to repay would be counted as an admissible asset on the financial statements of insurers electing to pay on behalf of their policyholders.

One of the commenters asks how long the association has to make repayments, and the consequences of the association's failure to make the repayments.

Agency Response: The intent of §5.4127(h) is to allow insurers to pay, on behalf of their policyholders, all or part of the premium surcharges that will be subject to repayment under Insurance Code §2210.6136(b), and then receive premium surcharge repayments from the association without having to return them to policyholders. Section 5.4127(h) requires an insurer that has chosen to pay the portion of the premium surcharges subject to repayment by the association (or a part of them), on behalf of its policyholders, to pay equally for all of its policyholders who are subject to the premium surcharge. "All policyholders" is without qualification. The commenter's first interpretation is correct. The department has modified §5.4127(h)(2) and (3) in the adoption order to make this more clear. The loss funding and premium surcharge rules are consistent with the intent of §5.4127(h). For example, §5.4185(a), which originally prohibited insurers from paying premium surcharges instead of surcharging their policyholders, now permits it, as provided by §5.4127(h).

The notification insurers must give policyholders receiving a premium surcharge that their policy contains a premium surcharge, including what insurers must show on the declarations page, is addressed in §5.4189. If a policyholder will not receive a premium surcharge subject to repayment under Insurance Code §2210.6136 because his or her insurer has elected to pay all of it, the notification requirements of §5.4189 do not apply to that premium surcharge. The notification requirements of §5.4189 do apply to a premium surcharge the policyholder will receive, such as one not subject to repayment under §2210.6136, or part of a premium surcharge that is subject to repayment under §2210.6136, but that the insurer has not elected to pay on the policyholder's behalf. The language of proposed and adopted §5.4189, including the required notice language contained in §5.4189(a), addresses premium surcharges actually charged to policyholders, not premium surcharges that theoretically would have been charged to policyholders had the insurer not elected to pay a portion of the premium surcharge on the policyholders' behalf.

The NAIC has published its Accounting Practices and Procedures Manual, and with a few exceptions that manual has been adopted under §7.18. Premium surcharges that an insurer opts to pay on behalf of its policyholders are analogous to assessments used to pay for public securities, except there would be an offsetting receivable for the amount the association must repay the insurer under adopted §5.4127(b). Statement of Statutory Accounting Principles (SSAP) No. 35-Revised ("Guaranty Fund and Other Assessments") governs the accounting treatment for assessments. In addition, SSAP Nos. 4 and 20 govern when an insurer must consider an asset, including a "bill receivable not for premium," a nonadmitted asset.

In response to the comment on the length of time the association has to complete repayments, the department has amended proposed §5.4102(35), which defines premium surcharge and member assessment repayment obligation. The adopted paragraph makes clear that the order the commissioner issues under §5.4126 must specify the length of time the association has to repay the ordered amount of premium surcharges and member assessments. The adopted paragraph also states that the commissioner may order varying periodic payments. Like proposed §5.4126(f), adopted subsection (f) states that the commissioner may revise an order issued under §5.4126 as necessary to account for amounts the association prepays or to maintain the association's ability to fund class 1 payment obligations or other obligations, including losses.

If the association fails to make the repayments, the association will be in violation of a commissioner's order and subject to any applicable sanctions under Insurance Code Chapter 82.

Comment on §5.4127 and §5.4128: Four commenters state that the department's interpretation of Insurance Code §2210.6136 is without statutory authority. The commenters state that the requirements of §5.4127 and §5.4128, which provide that the association must collect premium surcharges and member assessments to pay for public securities issued under §2210.6136, and then repay a statutorily prescribed amount of those surcharges and assessments to insurers, are not referenced in the Insurance Code.

Three commenters state that §2210.6136(b)(2) requires that premium surcharges and member assessments be used to pay for class 2 public securities only after the association has paid for its specified portion under §2210.6136(b)(1), using net premium and other revenue.

The commenters differ on the amount that §2210.6136 requires the association to pay from premium and other revenue. Two commenters state that the amount the association must pay first, from net premium and other revenue, is the lesser of $500 million, without any of the costs associated with it, or the amount of class 1 public securities that could not be issued, plus the costs associated with that amount. The two commenters state that the maximum amount that §2210.6136 requires the association to pay for class 2 public securities is $500 million. A third commenter states the association must pay for "no more than $500 million plus costs." The fourth commenter makes no statement on the matter.

Two of the commenters state that the department's interpretation of §2210.6136 is incorrect because it assumes that the association would not be able to repay class 2 public securities from premium and other revenue over a period of years. The commenters state that §2210.6136 does not set a deadline by which the association must repay its share of the class 2 public securities. One of the commenters states that it is unknown what interest rate would apply to those securities. This commenter states that Insurance Code §2210.611 contemplates that revenues from assessments and surcharges in a calendar year may exceed the public security obligations and expenses payable in that calendar year. Under §2210.611, the association may use those excess revenues to pay public security obligations payable in the subsequent calendar year, to redeem or purchase outstanding public securities, or deposit the excess revenues in the CRTF. The commenter states that under §2210.452(c), the "net profit," which the association may use to purchase reinsurance, deposit in the CRTF, or both, is calculated after payments of public security obligations and administrative expenses. The commenter states that these statutes show that the Legislature recognized that the association might have funds available to pay for class 2 public securities directly.

One of the commenters states that when the Legislature drafted §2210.6136, it was aware of any difficulty that the association might have in issuing class 2 public securities that would be paid back from the same source as class 1 public securities, whose unmarketability had triggered the issuance of the class 2 public securities. The commenter states that the department should bring concerns about §2210.6136 to the Legislature, and not rewrite the statute through rulemaking.

Two of the commenters state that the repayment system in §5.4128, under which insurers must return premium surcharges to policyholders, after having received them from the association, is not mentioned in statute and not required to give effect to §2210.6136. Under §5.4128(c), insurers must return premium surcharges to policyholders within 90 days of receiving them from the association. The two commenters ask how insurers must allocate piecemeal payments from the association and what an insurer must do if it cannot relocate the recipient of a repayment. The two commenters state that locating former policyholders to return the surcharges within 90 days after the insurer receives them from the association will create expensive logistical challenges. The two commenters disagree with the department's estimate of the cost to insurers to comply with §5.4128, stating that the association's expected costs of implementation will be much lower than those of insurers writing multiple lines and types of property and casualty insurance.

One of the commenters proposes an alternate implementation of §2210.6136. The commenter proposes that on issuance of class 2 public securities under §2210.6136, the commissioner order the association to pay the lesser of the amount of authorized class 1 public securities that has not been issued, plus any costs associated with that amount, or $500 million. Based on information from TPFA on the structure of the class 2 public securities, the commissioner would determine how much the association would need to pay each year for up to 10 years. If, in a given year, the association did not have the funds it was required to pay that year, the commissioner would determine the premium surcharges and member assessments necessary in the next calendar year to make up the difference. Thus, the association's share would be secured by premium surcharges and member assessments. The commissioner would also set premium surcharges and member assessments each year in an amount sufficient to pay all debt service and other costs not paid by the association. Under the commenter's interpretation of §2210.6136, bondholders would receive payment for the association's share of the class 2 public securities issued under §2210.6136 from the association itself, provided the association could make the payments. This interpretation eliminates the need for the association to pay its share by repaying premium surcharges and assessments to insurers. It also eliminates the need for insurers to return premium surcharges to policyholders.

One of the commenters repeats points from the loss funding rule proposal, published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 867), regarding the effect of reading §2210.6136 to require that the association pay for class 2 public securities issued under that statute in the same manner as class 1 public securities. The commenter states that, "if the class 1 bonds won't sell because lenders don't trust TWIA policyholders to have the money to amortize the bonds, it is unlikely that they will trust "Class 2 Alternative' bonds that have exactly the same payment source." The commenter calls this effect a "paradox."

The commenter states that requiring the association to pay for class 2 public securities issued under §2210.6136 in the same manner as class 1 public securities may have another effect on the association's ability to obtain funding. Under §2210.6136, TPFA, on behalf of the association, must issue $1 billion in class 2 public securities for a catastrophe year before it may issue any class 3 public securities. Thus, if class 2 public securities cannot be issued under §2210.6136 because they are not marketable, the association will also lose access to the $500 million authorized through the sale of class 3 public securities.

The commenter states that the proposed rule amendments "potentially rescue TWIA policyholders from disaster." The commenter states that the proposed amendments entirely undo §2210.6136. The commenter states that the Legislature was alerted to the ineffectiveness of the section and chose to do nothing about it during the 83rd Legislative Session. The commenter cites cases in which courts have insisted on interpreting statutes by their plain meaning unless the context shows a contrary intention or the plain meaning would lead to absurd results. The commenter cites a 1930 case from the U.S. Supreme Court stating that even absurd consequences do not justify a court's changing the meaning of a statute.

The commenter states that under the rule amendments, premium surcharges may be necessary to pay for 70 percent of $1 billion in class 2 public securities issued under §2210.6136, whereas without the rule amendments they would only be necessary to pay for up to $500 million. The commenter states that the rules may face legal challenge from policyholders on the coast, and that the possibility of such a challenge may damage the marketability of any class 2 public securities under §2210.6136.

The commenter suggests that the commissioner of insurance ask the governor to call a special session of the Legislature to address §2210.6136, before the 2014 hurricane season begins.

Agency Response: The department declines to change the implementation of Insurance Code §2210.6136 described in the amended rules. The department has reviewed §2210.6136 in the context of Insurance Code Chapter 2210 and concluded that the Legislature did not intend that the association stop paying claims if it is unable to market the fully authorized amount of class 1 public securities.

Insurance Code §2210.001(a) sets out the association's primary purpose, which is "the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state." The Legislature has determined that the provision of windstorm and hail insurance is necessary for the economic welfare of the state and its inhabitants and that the lack of such insurance in the state's seacoast territories would severely impede the orderly growth and development of the state.

Persons seeking insurance coverage from the association are unable to obtain comparable insurance coverage in the voluntary insurance market. The ability to obtain insurance coverage is crucial to the financial welfare of persons living and working in the designated catastrophe area, and its absence results in the lack of an important element for economic stability in the region.

Insurance coverage is meaningless if the insurer providing it cannot pay claims. This is why the Legislature provided a funding mechanism for the association, in the event it could not pay claims from premium and other revenue. Section 2210.6136 enables the association to access funding from the proceeds of class 2 and class 3 public securities, while still paying for those proceeds from the sources specified elsewhere in the chapter.

As noted in the rule proposal, the association may not be able to market all or part of the authorized $1 billion in class 1 public securities, which, under Insurance Code §2210.612, the association must pay for with its net premium and other revenue. In this event, §2210.6136 enables the association to issue class 2 public securities, which, under §2210.613, are paid for with a 70/30 percent combination of premium surcharges and assessments on association member insurers. However, the association must repay up to $500 million of those class 2 public securities, plus costs, so that they return to the coastal policyholders and member insurers who initially paid for them.

Section 2210.6136 reflects the Legislature's intent that the association be responsible for repaying between $500 million and $1 billion of the first layer of public securities, whether those public securities are class 1 or class 2, even if TPFA is unable to market the fully authorized amount of class 1 public securities because the revenues described under §2210.612 are insufficient.

Contrary to one of the comments, coastal policyholders are not responsible for paying 70 percent of up to $1 billion plus associated costs through premium surcharges. Following repayment by the association, coastal policyholders are responsible for 70 percent of the difference between the amount of class 2 public securities issued under §2210.6136(a) (at most $1 billion), and the amount of class 2 public securities repaid by the association under §2210.6136(b)(1) (at most $500 million, plus associated costs). In short, following repayment by the association, coastal policyholders are responsible for 70 percent of the amount of class 2 public securities described under §2210.6136(b)(2).

If §2210.6136 means what the commenters say, the association must pay bondholders for up to $500 million in class 2 public securities from the same source of revenue as class 1 public securities. As noted in the rule proposal, if the association can do this, TPFA can issue the class 1 public securities, which eliminates the need for a statute under which TPFA can issue class 2 public securities when class 1 public securities cannot be issued. It is not feasible to read §2210.6136 to require TPFA to issue all of the class 1 public securities it can based on the association's net premium and other revenue, and then expect TPFA to issue additional public securities using the same funding source simply because the name of the public security has changed. Such a reading renders §2210.6136 meaningless. Such a reading also, as one of the commenters notes, prevents the issuance of class 3 public securities, because under §2210.6136(c), class 3 public securities may be issued only after class 2 public securities are issued in the maximum amount authorized.

Given the importance the Legislature has placed on the availability of adequate windstorm and hail insurance on the Texas coast elsewhere in Chapter 2210, it is unlikely the Legislature expected §2210.6136 to function as the commenters describe.

The department understands the commenters' concerns about the challenges insurers will face in returning premium surcharges to policyholders. The department considered the proposal for implementing §2210.6136 offered by one of the commenters, which would have spared insurers these challenges. However, the department rejects the proposal for reasons that fall into two main groups. First, the commenter's proposed implementation plan does not comply with the plain language of the statute; and second, the realities of marketing public securities would make §2210.6136 unworkable.

The commenter's proposal states that under §2210.6136(b), the maximum amount the association must pay for class 2 public securities is $500 million, and that the phrase, "plus any costs associated with that portion," at the end of §2210.6136(b)(1)(B) refers only to the portion in that subparagraph, not to the $500 million. However, §2210.6136(b)(2) states that premium surcharges and member assessments must be used to pay the difference between the principal amount of class 2 public securities issued and the amount the association pays under §2210.6136(b)(1), "plus any costs associated with that amount." It is not clear whether this phrase refers to the difference or the amount the association pays. "That amount" is singular. If the phrase refers to the difference, then the statute does not identify who will pay the costs associated with the amount the association pays under §2210.6136(b)(1), if those costs plus the amount of class 2 public securities exceed $500 million. If the phrase refers to the amount the association pays under §2210.6136(b)(1), then the statute does not identify who will pay for costs associated with the difference. The solution is to read the phrase, "any costs associated with that amount," in §2210.6136(b)(2) as referring to the difference between the principal amount of class 2 public securities issued under §2210.6136(a) and the amount the association pays under §2210.6136(b)(1). The solution also requires reading the phrase, "any costs associated with that portion," in §2210.6136(b)(1)(B) as referring to both the $500 million in subparagraph (b)(1)(A) and the amount in subparagraph (b)(1)(B). Contrary to the commenter's proposal, §2210.6136 does not cap the amount of class 2 public securities that the association must pay for with net premium and other revenue at $500 million.

The commenter's proposed implementation does not comply with the "after payment" language in §2210.6136(b)(2). Under the commenter's proposal, the association must attempt to pay for an ordered amount of class 2 public securities in a given year, but that amount will be paid the next year through premium surcharges and member assessments if the association does not have sufficient funds. The commenter's proposal only complies with the "after payment" language on a year-to-year basis, in that each year premium surcharges and member assessments pay what the association did not. It is not as though the association completes payment for all of its portion before assessments and surcharges are used.

Most importantly, under the commenter's proposed implementation of §2210.6136, it is possible that the association would pay less than the legally-required minimum for class 2 public securities. This would occur if the end of the ordered payment period arrived without the association having caught up for years during which it had insufficient funds to pay the required amount. Under Insurance Code §2210.611, the association controls what happens to excess premium surcharges and assessments. The association might not have the funds to pay for public securities in a given year, but could then decide to take excess premium surcharges and assessments received in a subsequent year and deposit those funds into the CRTF rather than using those funds to reduce future surcharges and assessments. Under the adopted rule amendments, this possibility does not exist.

The commenter's proposed implementation of §2210.6136 raises a second group of issues that involves public security marketability. The department consulted with TPFA on the marketability of class 2 public securities under the commenter's proposal.

Investors may not want public securities backed by the association's net premium and other revenue, even if that net premium and other revenue are combined with premium surcharges and assessments. Based on Insurance Code Chapter 2210, the bond market would expect class 1 public securities to be backed by net premium and other revenue and class 2 public securities to be backed by premium surcharges and assessments. Under the commenter's proposal, class 2 public securities could be backed by the association's net premium and other revenue, or by surcharges and assessments, or both. This could lead to confusion in the market as to which class of public securities is really being sold.

The class of public securities being sold is important not only because the source of payment might vary by class, but because the public securities' tax status does as well. It is unclear what the tax status of class 2 public securities issued under the commenter's interpretation of §2210.6136 would be.

Insurers must allocate piecemeal, or partial, repayments from the association as described in adopted §5.4128(c), which provides that "premium surcharge repayments must be proportional to the amount of premium surcharge each policyholder paid in the period the association specified in its repayment." For example, if an insurer has two policyholders, and during the period specified by the association in its repayment, one policyholder paid $200 in premium surcharges that were subject to repayment by the association and the other policyholder paid $100, then of a repayment of $100 from the association, the first policyholder would get $66.67 and the second policyholder would get $33.33.

The adopted rules require insurers to repay premium surcharges, unless the insurers elected to pay premium surcharges on policyholders' behalf. Insurers should handle unpaid amounts belonging to policyholders whom they cannot locate as they would any other amount that statute requires them to return. The department may adopt rules if situations requiring clarification arise in the future.

The department based its estimate of the cost of compliance on the association's estimated costs, and added to the association's costs to take into account the expenses of a multi-line insurer.

Comment on §5.4135(b): A commenter suggests adding a 12th factor to those the association must consider in determining the amount of class 1 public securities that can and cannot be issued, which is "the commercial reasonableness of the terms of the class 1 public securities that could be issued." The commenter expresses concern that class 2 public securities might not be issued under §5.4126 based on "some hypothetical class 1 public securities, the terms of which the association could not reasonably approve."

Agency Response: The department declines to make the suggested changes because they do not appear to be necessary. Under the adopted rules, the association must already consider 11 factors in determining the amount of class 1 public securities that can be issued, including "market conditions and requirements necessary to sell marketable public securities" and state debt issuance policies. It is not clear what might constitute commercially unreasonable terms and it is not clear why an investor would offer to purchase class 1 public securities at terms that the investor did not think the association could reasonably meet.

General Comments

Comment: A commenter points out that the rules are silent as to the use of proceeds from class 2 and class 3 public securities to refinance or to pay debt service on the repayment obligations for class 1 public securities.

Agency Response: Insurance Code §2210.614 allows the association to request that TPFA refinance class 1, 2, or 3 public securities, "with public securities payable from the same sources as the original public securities." Chapter 2210 does not allow the association to use proceeds from other public securities to refinance or to pay debt service on the repayment obligations for class 1 public securities.

Comment: Many commenters state that the proposed rules are unnecessary. Several commenters suggest that the financial position of the association has improved significantly, and that the balance of the CRTF has increased. Other commenters state that premium surcharges are not necessary because there has not been a hurricane on the Texas gulf coast in four years, and no hurricane in Corpus Christi in more than 30 years. Other commenters suggest that the association has settled most of its Hurricane Ike-related claims and raised rates, and is on a positive financial path.

Agency Response: The department disagrees that the financial condition of the association eliminates the need for these adopted rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The rule amendments conform the

department's premium surcharge and loss funding rules to current law, and provide an orderly process for the association to obtain public securities if it needs these funds to pay its policyholders' claims. While improvements in the association's financial condition reduces the possibility the association will have to rely on public securities to pay its policyholders' claims, it does not *eliminate* this possibility. For example, even if TWIA were to add $200 million to the CRTF through a net gain in operations, TWIA would still need to obtain public securities if a 1-in-50 year event hit the Texas coast during the 2014 hurricane season, which would cause $2.8 billion in insured property damage to TWIA's policyholders.

Comment: Several commenters suggest that the legislation, which the rules implement, is flawed and that the only authority that can address the legislation is the Texas Legislature.

Agency Response: The rule amendments reflect the Legislature's intent to create a mechanism to allow for the issuance of public securities. The purpose of Insurance Code Chapter 2210 reflects the Legislature's findings that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and that without that insurance, the orderly growth and development of this state would be severely impeded. When the department first proposed the rule amendments in 2012, the department received requests to postpone adopting the amendments until the 83rd Legislature had an opportunity to address TWIA's funding. As a result, the rules were withdrawn by operation of law on December 27, 2012. Because the 83rd Legislature did not address TWIA's funding, the department resumed its proposal of these rule amendments.

The 2014 hurricane season begins June 1. The potential harm in delaying TWIA's access to additional financial resources outweighs the benefits of further study on the potential economic impact of premium surcharges created by HB 4409 and amended by HB 3. The department will monitor TWIA and will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that the statute does not set a deadline for the department to adopt rules, and that there is no reason to adopt rules at this time. One commenter asks why the rules are needed now, if the statute authorized rules several years ago. Several commenters suggest that the rules be withdrawn so that the 84th Legislature can address TWIA in 2015. These commenters say elected officials, not a regulatory agency, should propose and adopt legislation to meet the needs of the proposed rules. Another commenter states one option is for the department to do nothing. Another commenter states that the language of the statute that relates to the implementation of the rules is permissive and not mandatory.

Agency Response: The department disagrees that the rule amendments are not needed. The department first adopted premium surcharge and loss funding rules effective February 3, 2011, to implement HB 4409. Since that time, the Legislature enacted HB 3, which amended TWIA's funding provisions. The department previously proposed amendments to its loss funding rules in the June 22, 2012, issue of the *Texas Register.* The department postponed consideration of these proposed rule amendments to give the 83rd Legislature an opportunity to address TWIA's funding. As a result, the proposed rule amendments were withdrawn by operation of law on December 27, 2012. Because the 83rd Legislature did not address TWIA's funding, the department resumed its proposal of amendments to its loss funding and premium surcharge rules.

The 2014 hurricane season begins June 1. TWIA's financial condition and that of the CRTF have improved, but catastrophic weather events could harm TWIA's ability to fulfill its obligations to policyholders. Adopting these rules provides an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. Doing nothing could result in public securities that are not marketable, which would deprive TWIA of the resources it needs to pay its policyholders' claims. TWIA may simultaneously pursue other funding or risk reduction strategies including procuring a line of credit, assessments, reinsurance, catastrophe bonds, and depopulation. Adopting rules will help TWIA test the marketability of any public securities authorized by Insurance Code Chapter 2210. Also, the Legislature may benefit from studying whether implementation of Chapter 2210 is successful, and how well the public securities authorized by the chapter strengthen TWIA's claims-paying ability.

Comment: A commenter states that assessing premium surcharges at this time is not actuarially necessary, and therefore discriminatory. The commenter urges TDI and TWIA to order the approximately $400 million in assessments, proposed but not approved by TWIA's board in September 2008, before considering premium surcharges.

The commenter recounts how, following Hurricane Ike, in September 2008, the TWIA board voted against assessing member insurance companies the full amount proposed under former Insurance Code §2210.058. The commenter states that since January 2009, TWIA policyholders have paid millions more in premiums than they would have had the board members representing TWIA-member insurance companies not voted against assessing the full amount proposed.

The commenter argues that imposing premium surcharges, before the possibility of assessing the insurance industry for Hurricane Ike losses has been exhausted, is discriminatory under Insurance Code §544.002. This section prohibits insurers from discriminating against individuals on the basis of, among other factors, geographic location. The commenter advises that Insurance Code §544.003 states that an insurer does not violate §544.002 if the insurer's action is based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience. The commenter states that imposing premium surcharges is discriminatory because, until TWIA members are assessed for Hurricane Ike losses, premium surcharges are not based on sound actuarial principles.

Agency Response: Many commenters have urged the department to assess TWIA member insurers under former Insurance Code §2210.058. However, foregoing or delaying adoption of the amendments to the premium surcharge and loss funding rules while TWIA assesses member insurers is not an option for the department, for two reasons.

First, the department does not have and never has had the authority to assess TWIA member insurance companies. Former Insurance Code §2210.058, which provided for the assessment of TWIA members when, in a calendar year, losses and operating expenses exceeded premium and other revenue, did not contemplate department assessment of TWIA member companies. Under the version of §5.4001 in effect in 2008, the TWIA board must determine the necessity of an assessment and then order TWIA to make the assessment.

Second, existing Insurance Code statutes already require insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its premium surcharge rules. See Insurance Code §§2210.609, 2210.613, and 2210.6136. Existing department rules provide for premium surcharges. The department adopted its current rules on loss funding and premium surcharges to implement HB 4409, 81st Legislature, 2009, which established TWIA's current funding structure. The question relevant to the adoption of the proposed amendments to the rules is not whether coastal policyholders will be subject to premium surcharges if the need arises, because current law already establishes this requirement. Instead, the question relevant to the adoption of the proposed rule amendments is whether the premium surcharges will be administered under the rules the department adopted in 2011 to implement HB 4409, or under amended rules that are consistent with current law. Note that some of the adopted amendments make the premium surcharge rules more consumer-friendly. As amended, §5.4184 requires insurers to refund premium surcharges when a midterm policy change or post-expiration policy change decreases the premium. This amendment reflects the fact that HB 3 removed the prohibition on making premium surcharges refundable.

Even if it were in the department's power to assess TWIA member insurers under former Insurance Code §2210.058, the additional funds provided to TWIA through an assessment would not eliminate the need for the department's rules to be consistent with current law. Further, while an assessment of approximately $400 million would result in an additional $400 million in the CRTF, it would not eliminate the possibility that TPFA may need to issue class 2 public securities to help TWIA pay its policyholders' claims. Even if TWIA added $400 million to the CRTF, TPFA may still need to issue class 2 public securities in order for TWIA to have sufficient funds to cover its policyholders' claims should a major hurricane hit the Texas coast. For example, a 1-in-50 year catastrophic event for TWIA would result in approximately $2.8 billion in insured damage to TWIA's policyholders.

Finally, a discussion of unfair discrimination under Insurance Code §544.002, in the context of premium surcharges under Insurance Code §2210.613 or §2210.6136, is misplaced. Section 544.002 prohibits an insurer from, among other acts, charging an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual's geographic location. As the commenter points out, §544.003(b) provides an exception: an insurer does not unfairly discriminate if the different rate charged due to geographic location is actuarially justified. Premium surcharges are not insurance rates and cannot be judged based on standards that apply to insurance rates. Unlike insurance rates, premium surcharges are not designed to reflect the cost of insuring a particular risk. Instead, premium surcharges are designed to pay debt service and related expenses on public securities. See Insurance Code §2210.613(b).

Comment: Many commenters suggest that instead of adopting the proposed rules, TWIA should assess insurers for Hurricane Ike-related insurance claims. A commenter specifically asks why the department cannot require TWIA to assess insurers, if the department has oversight over TWIA. Several commenters suggest that assessments are a faster method to improve TWIA's reserves than the bond approval process. Several commenters suggest that the TWIA board, as currently structured, makes it unlikely that the board would vote to assess.

Agency Response: The department declines to withdraw the proposed rule amendments. The department disagrees that the possibility of assessing insurers eliminates the need to adopt these rule amendments. A decision to assess insurers is not mutually exclusive with a request to issue public securities. TPFA may still need to issue class 2 public securities in order for TWIA to have sufficient funds to cover its policyholders' claims should a major hurricane hit the Texas coast, even if TWIA were to assess its member insurers for Hurricane Ike-related claims. The future financial circumstance of TWIA is unknowable, and the purpose of the rules is to conform the department's premium surcharge and loss funding rules to current law, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims.

The current administrative oversight the department has over TWIA is limited. The department does not directly manage TWIA and does not make operational decisions for TWIA. The board of directors of TWIA has the discretion to request an assessment under former Insurance Code §2210.058. Existing statute does not give the department or TWIA the authority to assess TWIA's member insurers to pay TWIA policyholder claims resulting from future catastrophic events, except to pay for class 2 and class 3 public securities as provided in §§2210.613, 2210.6135, and 2210.6136.

The department acknowledges that the bond approval process may take time. The final adoption of rules prior to a windstorm event will allow TWIA and TPFA to study and review bond issuance-related matters before public securities are required. Delaying or withdrawing the rules would increase the solvency risk to TWIA and its policyholders.

The department does not have the power to change the structure of the association's board of directors. The composition of the board is specified in Insurance Code §2210.102. The board is composed of nine voting members and one nonvoting member, four of whom are representatives of the insurance industry. The statute establishes other requirements, including a minimum number of representatives that must live in first tier coastal counties. The primary objectives of the board are specified in Insurance Code §2210.107.

Comment: Several commenters requested a hearing in Cameron County.

Agency Response: The department declines to extend the rule comment period in order to hold a rule hearing in Cameron County. The department has held hearings in Austin, Beaumont, and Corpus Christi. The department received numerous written comments from interested parties at those hearings. Because TWIA may require additional resources if the 2014 hurricane season results in a need for TWIA to obtain funds through the issuance of public securities, delaying the rules to hold more hearings may be detrimental to TWIA and its policyholders. However, in response to the comment, the commissioner did hold a meeting in Cameron County on April 16, 2014, to allow the public and elected officials in attendance to voice concerns on TWIA and windstorm coverage, generally.

Comment: Several commenters state that the fiscal note in the proposed rules did not adequately address the true cost of the rules to state and local government. Several commenters suggest that the department was wrong to assert in the proposed rules that there will be no measurable effect on local employment

or the local economy as a result of the proposal. One commenter requested that the department perform an analysis of the economic impact on the coastal counties before enacting the rule.

Agency Response: The adopted rule amendments do not create premium surcharges. The premium surcharges were created by the enactment of HB 4409. Any impact that possible premium surcharges may have on the coastal economy are a direct or indirect result of the statute and not the rule amendments. The department understands the economic concerns coastal residents and businesses have about the premium surcharges created by HB 4409, but declines to revise or withdraw its proposed rule amendments for this reason. The adopted rules do not impose any requirement on coastal policyholders that is not already required by statute, and the rules do not directly affect TWIA's rates. The department declines to perform additional economic analyses prior to adopting the proposed rule amendments. The potential harm in delaying TWIA's access to additional financial resources outweighs the benefits of further study on the potential economic impact of the law. The department will monitor TWIA and will keep the Legislature informed about the impact of implementing the use of public securities required under HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that the rules would create uncertainty over future rate or surcharge increases. One commenter states that there is no way to know how much the premium surcharges would be. The commenters ask if any actuarial calculations have been made to show what the impact of the rules will be on the 14 coastal counties. Another commenter states that the rules do not specify the amount or duration of the surcharge, and create uncertainty in the affected region. Another commenter suggests that the unknown nature of the surcharge is detrimental in bringing new business and industry to the 14 coastal counties.

Agency Response: The proposed rule amendments implement the Legislature's intent in Insurance Code Chapter 2210. The department understands the concerns raised, but declines to revise or withdraw the proposed rule amendments. The calculation of the premium surcharge depends on a number of factors that neither the department, TWIA, nor TPFA will know until, and if, the class 2 public securities are issued. These factors include the amount of class 2 public securities TWIA needs to pay its policyholders' claims, the term of the public securities, the interest rate on the public securities, and other bondholder requirements necessary to sell the public securities. Because of these factors, the surcharges cannot be known precisely until the class 2 public securities are issued.

Comment: Several commenters suggest that the surcharge would be poorly timed. The surcharges would occur after a hurricane damaged property, just as policyholders would be recovering from a storm. One commenter states that the premium surcharges would compound the financial burden faced by coastal residents. Another commenter states that post-event bonds are a crippling punishment for homeowners and business owners on the coast.

Agency Response: The department declines to withdraw the proposed rule amendments. Insurance Code §2210.613 states that the commissioner must make the surcharge effective on or after the 180th day after the date the commissioner issues notice of the approval of the public securities. Statute requires at least a six-month delay after the event, before the surcharges can be collected. The timing of the premium surcharge must be within the period set by statute. The department has very limited flexibility to delay the premium surcharge for class 2 public securities.

Comment: Many commenters state that the premium surcharges are unfair to the residents of the 14 coastal counties. Several commenters suggest that the people of the 14 tier one counties are being treated differently than the people in the other 240 counties in Texas. One commenter suggests that the proposed rules effectively "redline" the 14 tier one counties. The commenter states that the premium surcharges would be predatory and discriminatory in an area that already pays more to insure their property than the rest of the state. One commenter states that the premium surcharges on the 14 tier one counties constitutes discrimination based on geographic location. Another commenter states that because assessments may be available, the premium surcharge is not actuarially necessary and, therefore, discriminatory. One commenter suggests that the exclusion of most of Harris County illustrates how corrupt the current windstorm system is.

Several commenters suggest that the proposed rules may be discriminatory on racial grounds. The commenters suggest that the effect of the proposed rules would be harshest toward minorities and others who live and work along the Texas coast. One commenter states that they believe that the premium surcharges are contrary to the principles of the United States Constitution and the Texas Constitution. Another commenter states that the proposed rules are discriminatory under Texas Insurance Code Chapters 544 and 560.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to current law, and they provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rule amendments do not impose any requirement on coastal policyholders that is not already required by the statute, and the amendments do not directly affect TWIA's rates.

A discussion of unfair discrimination under Insurance Code §544.002, in the context of premium surcharges under Insurance Code §2210.613 or §2210.6136, is misplaced. Section 544.002 prohibits an insurer from, among other acts, charging an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual's geographic location. As another commenter points out, §544.003(b) provides an exception: an insurer does not unfairly discriminate if the different rate charged due to geographic location is actuarially justified. But premium surcharges are not rates and cannot be judged by whether they are actuarially justified. Premium surcharges are, unlike rates, not designed to reflect the cost of insuring a particular risk, premium surcharges are designed to pay debt service and related expenses on public securities. See Insurance Code §2210.613(b).

Comment: One commenter states that the surcharge contradicts the legislative intent that rates not increase by more than 5 percent per year. Section 32 of HB 4409, codified as §2210.351, states that TWIA may use a filed rate without prior approval if it does not exceed 105 percent of the existing rate. Section 33 of the bill has a similar limitation for the required annual manual rate filings. The commenter suggests that premium surcharges would increase rates by more than 5 percent.

Agency Response: The department declines to revise or withdraw the proposed rule amendments. The premium surcharges required under Insurance Code §2210.613 are distinct from TWIA's rates. TWIA's premium rates are designed to cover TWIA's cost to insure a particular risk. Unlike TWIA's rates, the premium surcharges are designed to pay debt service and related expenses on public securities. In addition, Insurance Code §2210.613 requires that the commissioner set the surcharge in an amount sufficient to pay, for the duration of the public securities, 70 percent of all debt service not already covered by TWIA's available funds.

Comment: Many commenters suggest that the proposed rules are illogical in their application. One commenter states that those with second homes on the coast may benefit, while coastal residents may have to pay for premium surcharges. A commenter also asks how commercial fleet vehicles or rental car companies will be impacted. Several commenters suggest those businesses may relocate to areas outside the premium surcharge area.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The statute provides that the premium surcharges would apply to policies insuring second homes that are located in the catastrophe area but that may be owned by non-coastal residents. Premium surcharges would also apply to policies covering automobiles principally garaged in the catastrophe area. The adopted rules conform the department's premium surcharge and loss funding rules to current law, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, states that the premium surcharges "... shall be assessed on all policyholders of policies that cover insured property that is *located in a catastrophe area, including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that premium surcharges on automobile insurance are not fair. Several commenters suggest that automobile coverage is not logically related to TWIA. One commenter states that connecting premium surcharges for TWIA to automobiles creates a bad precedent. Another commenter states the automobile insurance premium surcharge is illogical because coastal residents would not drive their personal automobiles during a storm. Another commenter states that TWIA does not pay for automobile claims, and suggests that it is inappropriate to assess windstorm related claims to automobile policies. One commenter suggests that the premium surcharges are a transparent ploy to make money for rich insurance companies.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. HB 3 amended Insurance Code §2210.613 to provide that the premium surcharges "... shall be assessed on *all* policyholders of policies that cover insured property that is located in a catastrophe area, *including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted amendments do not impose requirements on coastal policyholders that are not already required by the statute and the amendments do not directly affect TWIA's rates. The premium surcharges are not designed to reflect the cost of insuring a particular risk. Instead, the premium surcharges are designed to pay debt service and related expenses on public securities. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: One commenter suggests that the detrimental impact of the proposed rules would have negative geopolitical implications. The commenter explains that Texas coastal exports of natural gas can help western Europe reduce its reliance on Russian natural gas. The commenter states that the premium surcharges would cripple the ability for coastal industry to expand the supply and export of liquid natural gas.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters state that the rules will harm the coastal economy. Several commenters suggest that the rules will have an adverse economic impact on the state as a whole. Many commenters suggest that the proposed rules will increase the cost of doing business in Texas. Many commenters explain how critical the economic contribution of the coast is to Texas, stating that the coast is home to key industries, it facilitates trade, and it provides goods and energy necessary for commerce.

Many commenters express concern over the impact of the rules on the state's workforce. Several commenters suggest that the premium surcharges will drive away workers. One commenter states that the rule would cut off coastal business from its most important resource: people. Several commenters suggest that industrial development in the coastal region depends on workers who must pay for TWIA insurance. If workers leave the coastal area, the remaining workforce would be insufficient to support industry. Several commenters suggest that the high cost of insurance negatively impacts the real estate market. One commenter states that home buyers already experience sticker shock for insurance costs. Several commenters suggest that coastal communities will be at a disadvantage when competing against non-coastal communities. Other commenters suggest that coastal communities in other states may compete for and attract business away from the area, and that the proposed rules may place

Texas coastal communities at a disadvantage. Another commenter suggests the uncertainty of the additional costs is a negative impact for economic competition. Another commenter suggests that it will be difficult to explain to relocating persons that property in addition to their home may face premium surcharges. Another commenter states that in commercial real estate, increased costs are difficult to incorporate due to the long lease terms.

Several commenters state that they live on a fixed income and cannot afford increased insurance costs. Many commenters suggest that insurance costs in coastal communities are already too high. Several commenters state that the 14 tier one coastal counties are some of the nation's poorest, and they are home to people who can least afford to pay premium surcharges.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

The purpose of Insurance Code Chapter 2210 reflects the Legislature's findings that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance the orderly growth and development of this state would be severely impeded. Insurance Code Chapter 2210 provides a method to obtain adequate windstorm and hail insurance. Subchapter B-1 of Chapter 2210 provides that TWIA must pay its policyholders' claims in part through the issuance of class 1, class 2, and class 3 public securities. Subchapter M of Chapter 2210 provides that if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds, then 70 percent of those obligations must be paid through coastal premium surcharges and the remaining 30 percent paid through assessments to TWIA's insurer members.

Comment: Several commenters suggest that the premium surcharges will harm local governments. Several commenters suggest that the proposed rules will make it more difficult for local governments to fund services. One commenter states that the proposed rules would kill any reason to build or keep property in the 14 tier one counties. Another commenter states that economic diversity is required for a community to exist. One commenter gave the example of the increasing costs of premium depreciating the value of a home from $200,000 to $150,000. Another commenter states that municipalities may be negatively impacted twice: first by the extra premiums, and then by the reduced ad valorem tax base. The net result is that tax revenues would decline, jeopardizing communities' ability to provide transportation, safety, emergency response, and public water infrastructure.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rules. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that coastal residents already pay high insurance premiums. One commenter states that not only have windstorm insurance costs increased in many areas, but flood insurance premiums have increased. Many commenters suggest that the high and rising costs of insurance may force them to relocate.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conforms the department's premium surcharges and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that premium surcharges on automobile insurance may increase the number of uninsured motorists on Texas roads. Commenters state that the additional cost of insurance will cause motorists to drop their insurance because they may be unable to afford the premiums.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, states that the premium surcharges"... shall be assessed on all policyholders of policies that cover insured property that is located in a catastrophe area, *including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders'

claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that the expiration of WPI-8 certificates will harm coastal residents. One commenter expressed frustration with their problems in getting a WPI-8 certificate, and the process for engineering oversight. Several commenters state that the lack of grandfathering provisions or full disclosures negatively impacts persons affected by storms.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rule amendments do not address WPI-8 certificates or provisions related to grandfathering WPI-8 certificates.

Comment: Several commenters suggest that the potential for premium surcharges is unfair because TWIA's problems are the result of mismanagement by TWIA. One commenter suggests that the premium surcharges, including surcharges on automobile policies, are intended to shore up the state-run financial mismanagement of TWIA. Another commenter suggests that it should not be coastal residents who have to pay for the mismanagement of TWIA.

Agency Response: The department understands concerns relating to TWIA management, but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3 and provide an orderly process for TWIA to obtain public securities should they be needed. The need to conform the department's rules to existing statute and to provide an orderly process for TWIA to obtain funds should they become necessary exists regardless of TWIA's financial condition. Delay or withdrawal of the proposed rules could harm TWIA's policyholders. The department will monitor complaints and insurer compliance.

Comment: Several commenters suggest that coastal windstorm coverage should be available through other insurers. One commenter states that the department can get insurance companies to return to selling windstorm coverage.

Agency Response: The department understands concerns relating to competition in the property market along the coast, but declines to revise or withdraw the proposed rule amendments. Implementing statutes designed to ensure funding for TWIA's policyholders is a separate issue from that of the availability of private market insurance along the coast. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect insurance market competition. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that the department needs to explore alternate funding sources to spread the cost and risk of a catastrophic event across the state. One commenter states that the department should study what other states have done to address coastal windstorm coverage. Many commenters state that residents across Texas should contribute to the cost of windstorm insurance on the coast. Commenters suggest that the purpose of insurance is to pool risks.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The Insurance Code does not authorize the department to require insurers to surcharge statewide policyholders. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, requires that the premium surcharges "... be assessed on all policyholders of policies that cover insured property that *is located in a catastrophe area,* including automobiles principally garaged *in a catastrophe area."* (emphasis added). The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that coastal residents are subsidizing other parts of the state. Several commenters suggest that recent property losses from wildfires, tornados, hailstorms, and severe freezes have been paid for by coastal policyholder premiums. Several commenters suggest that the insurance risks for coastal property is not different than the risks faced in other parts of the state.

Agency Response: The department understands the concerns but declines to revise or withdraw the rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3. The Insurance Code does not authorize the department to require insurers to surcharge statewide policyholders. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, requires that the premium surcharges "... be assessed on all policyholders of policies that cover insured property that *is located in a catastrophe area,* including automobiles principally garaged *in a catastrophe area."* (emphasis added). The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest alternative funding methods. One commenter states that the easiest way to do that is to ask the insurance companies to purchase the bonds in the event of a storm. Several commenters suggest that residents in all of the United States should contribute to the costs of insuring risks anywhere in the United States. Another commenter suggests a similar federal mechanism involving other states that share coastal windstorm risks. Another commenter suggests that the funding for the public securities should come from the insurance premium taxes that are based on the admitted and nonadmitted carriers operating in Texas. One commenter suggests that insurance companies should be asked to fund the cost of reinsurance and let them spread those costs throughout the state. Another commenter suggests that funding should come from forcing all home and building owners to pay a prorated premium rate that is based on the value of the homes or buildings. One commenter

suggests that if TWIA needs more money, it ought to raise the rates of current TWIA policyholders. Another commenter suggests an additional hotel tax on visitors to the coastal areas.

Many commenters suggest other methods to insure the coast or to mitigate the need for TWIA. Many commenters state that the premium surcharge should apply statewide. One commenter states that the solution to the TWIA problem is the removal of all new homes and homes built to code from the TWIA pool. Another commenter states that if the Uniform Building Codes were enforced across the state, property damage would be mitigated. Several commenters state that the department should require insurance companies to write insurance in all of Texas. One commenter suggested that all property and casualty insurance companies that do business in Texas offer windstorm coverage statewide, at a rate not to exceed 1 percent of the insured value of the property. One commenter suggests that tort reform would be helpful. Another suggests a consumer and user tax on products specifically earmarked for the windstorm fund. One commenter suggests that the department look to federal flood insurance for a viable funding method. Another commenter suggests that the department require better underwriting rules, adequate rates, liability limits, other funding strategies, and encourage the private insurance market. Another commenter suggests encouraging underwriting flexibility to encourage insurance companies to write coverage on the coast. One commenter suggests that TWIA policies should only cover named storms. One commenter states that the premium surcharge should be 3 percent on the coast and 1 percent everywhere else. One commenter suggests that rates should vary by wind maps and that the department should conduct further study to produce wind maps that provide a reasonable measure of the degree of risk across Texas. Another commenter states that all beach property and property within two miles of the beach should pay the premium surcharge. Another commenter suggests expanding the list of counties to any county where the wind speed maps show that wind may exceed 90 miles an hour. The commenter states that expanding the coastal zone would include 50 more counties than the 14 specified tier one counties. One commenter suggests that TWIA coverage should be more like flood insurance, and premium should be 100 percent earned when written. Then the only way a policy can be canceled is if the homeowner sells their property. Several commenters suggest funding solutions relating to imposing a tax or surcharge on goods that are produced or transported from the coast to other areas of the state. Another commenter suggests that the state should cover any shortcomings in the association's ability to pay claims. Several commenters suggest that the state's rainy day funds be available for windstorm costs.

Agency Response: The department declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The statute prescribes the method for financing public securities. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary. The authority of the department is limited to the statutory methods that the Legislature has created. The department will continue to do what it can to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of TWIA as a means to obtain insurance, as required by Insurance Code §2210.009. During the next legislative session, the department will serve as a resource for the Legislature, should the Legislature address TWIA's funding structure.

Comment: One commenter suggests that residents on the coast should not have two different deductibles, and that the standard TWIA policy should cover all hazards the same way.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The authority of the department is limited to the regulatory authority specified in Chapter 2210, TWIA's governing statute. Chapter 2210 prescribes the type of coverage that TWIA may provide. The adopted rules do not address the type of coverage that TWIA may provide or the contractual language in a TWIA policy.

Comment: Several commenters suggest TWIA should depopulate and cover less property in order to remove some of the risk. One commenter suggests that the statutory language imposes a requirement on the department to develop incentives. The commenter states that the department should push incentives even if insurance companies do not like the incentives. Another commenter suggests that TWIA is not interested in depopulation.

Agency Response: The department agrees that reducing TWIA's risk, including TWIA depopulation strategies, should be pursued. However, the department declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The department is continuing its administrative oversight of TWIA. The department will continue to do what it can to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of TWIA as a means to obtain insurance, as required by Insurance Code §2210.009.

Comment: One commenter states that the department should look into dissolving TWIA. The commenter states that TWIA should not be allowed to continue making mistakes that cost taxpayers and citizens.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The department does not have authority to change TWIA's statutory structure, which the Legislature enacted. The department is continuing its administrative oversight of TWIA.

Comment: Several commenters suggest that they support the proposed rules in general. Supportive commenters also offer similar constructive comments to those suggested by commenters not in support of the rules.

Agency Response: The department appreciates the supportive comments.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Two individuals.

For with changes: American Insurance Association, Association of Fire and Casualty Companies of Texas, Bank of America Merrill Lynch, Insurance Council of Texas, JP Morgan Chase, Texas Public Finance Authority, Texas Surplus Lines Association.

Against: One U.S. congressman; three state senators; 11 state representatives; five mayors; four county commissioners; one city secretary; 13 city councilpersons; three county judges; Associated General Contractors of Southeast Texas; Beaumont Board of Realtors; Beaumont Chamber of Commerce; Braselton Homes; Brownsville Chamber of Commerce; Builders Association of Corpus Christi; Catholic Charities of Southeast Texas; Coastal Windstorm Task Force; Corpus Christi Association of Realtors; Corpus Christi Chamber of Commerce; Del Mar College; Hamilton Real Estate; Island Retreat Condominiums; League of United Latin American Citizens of Corpus Christi; Mr. Sidings, Windows, and Sunrooms; Padre Island Chamber of Commerce; Padre Isles Property Owners Association; Port Aransas Chamber of Commerce and Tourist Bureau; Port of Corpus Christi Authority; Port Royal Ocean Resort; Regional Economic Development Initiative; Salter Insurance Agency; South Padre Island Chamber of Commerce; Southeast Texas Plan Managers Forum; Terry Cauthen Insurance; Texas Association of Realtors; Texas Watch; Thurmen-Fonden Glass; TPCO America Corporation; and 238 individuals.

STATUTORY AUTHORITY. The amendments and new sections are adopted under Insurance Code §§36.001, 2210.008, 2210.056, 2210.071, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.604, 2210.608, 2210.609, 2210.611, 2210.612, 2210.613, 2210.6135, and 2210.6136.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes the allowable uses for the association's assets. Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1.

Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.071. Section 2210.072 also authorizes the association to enter into financing arrangements with any market source so that the association can pay losses and obtain public securities.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association to use the proceeds of class 3 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.073, and establishes the maximum principal amount of class 3 public securities.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation to provide Texas windstorm and hail insurance coverage in the catastrophe area by rule. Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that the department considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds. Section 2210.609 provides that the association must repay all public security obligations from available funds, and if those funds are insufficient, from revenue collected under Insurance Code §§2210.612, 2210.613, 2210.6135, and 2210.6136. Section 2210.609 further provides that the association must deposit all revenue collected under §§2210.612, 2210.613, and 2210.6135 in the obligation revenue fund, premium surcharge obligation revenue fund, and the member assessment obligation revenue fund.

Section 2210.611 establishes that for class 2 public securities, the association may use premium surcharge revenue and member assessment revenue, collected under Insurance Code §2210.613, in any calendar year that exceeds the amount of the class 2 public security obligations and public security administrative expenses payable in that calendar year, and interest earned on those funds to: (i) pay the applicable public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the CRTF. Section 2210.611 further establishes that the association may handle member assessment revenue collected under Insurance Code §2210.6135 in any calendar year that exceeds the amount of the class 3 public security obligations and public security administrative expenses payable in that calendar year, and interest earned on those funds in the same manner as the excess class 2 amounts.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue. Section 2210.613 provides that the association must collect premium surcharges and member assessments to pay class 2 public securities issued under §2210.073. Section 2210.6135 provides that the association collect member assessments to pay class 3 public securities issued under Section 2210.074.

Section 2210.6136 provides that if all or any part of the class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities. Section 2210.6136 further provides that the commissioner will order the association to repay the premium surcharges and member assessments used to pay the cost of a portion of the class 2 public securities issued under this section.

§5.4101. Applicability.

(a) Sections 5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4128, 5.4133 - 5.4136, and 5.4141 - 5.4149 of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the

accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department regulatory oversight of the association.

§5.4102. Definitions.

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

(1) Association--Texas Windstorm Insurance Association.

(2) Association program--The funding of any or all of the purposes authorized to be funded with the Public Securities under Insurance Code Chapter 2210, Subchapter M.

(3) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.

(4) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.

(5) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.

(6) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.

(7) CRTF--Catastrophe Reserve Trust Fund. A statutorily-created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

(8) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(9) Catastrophic losses--Losses resulting from a catastrophic event.

(10) Class 1 payment obligation--The contractual amount of net premium and other revenue that the association must deposit in the obligation revenue fund at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(11) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(12) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(13) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.074 and Insurance Code Chapter 2210, Subchapter M.

(14) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(15) Commissioner--Commissioner of Insurance of the State of Texas.

(16) Comptroller--Comptroller of the State of Texas.

(17) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security obligation revenue fund, premium surcharge trust fund, or member assessment trust fund as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(18) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may issue as authorized under Insurance Code Chapter 2210, Subchapter M.

(19) Department--Texas Department of Insurance.

(20) Earned premium--That portion of gross premium that the association has earned because of the expired portion of the time for which the insurance policy has been in effect.

(21) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(22) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(23) Investment income--Income from the investment of funds.

(24) Letter of instruction--The commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(25) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

(26) Member assessment trust fund--A dedicated trust fund established by TPFA and held by the trust company in which the association or assessed insurers must deposit member assessments collected under Insurance Code §2210.613 and §2210.6135. The member assessment trust fund may be segregated into separate funds, accounts, or subaccounts, including for the purpose of segregating class 2 and class 3 public security member assessments.

(27) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess revenues from the obligation revenue fund and the repayment obligation trust fund that are in excess of incurred losses, operating expenses, reinsurance premium, current year financial arrangement obligations, current year class 1 payment obligations, current year public security administrative expenses, and premium surcharge and member assessment repayment obligations.

(28) Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium is pledged for the payment of class 1 payment obligation.

(29) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less class 1 payment obligation for that calendar year, less premium surcharge and member assessment repayment obligation for that calendar year, and less amounts necessary to fund or replenish any operating reserve fund.

(30) Obligation revenue fund--The dedicated trust fund established by TPFA and held by the trust company in which the associ-

ation must deposit net premium and other revenue for the payment of class 1 payment obligation.

(31) Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(32) Other revenue--Revenue of the association from any source other than premium. Other revenue includes investment income on association assets. Other revenue does not include premium surcharges and member assessments collected under Insurance Code §§2210.259, 2210.613, 2210.6135, and 2210.6136 and interest income on those amounts.

(33) Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.

(34) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.613, and 2210.6136.

(35) Premium surcharge and member assessment repayment obligation--The amount of premium surcharge and member assessment that the commissioner has ordered the association to repay over a specified number of years under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). This may involve varying periodic payments equaling the total required repayment amount.

(36) Premium surcharge trust fund--The dedicated trust fund established by TPFA and held by the trust company in which the association or insurers must deposit premium surcharges collected under Insurance Code §2210.613.

(37) Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(38) Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(39) Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

(40) Repayment obligation trust fund--The dedicated trust fund into which the association deposits, in amounts necessary to comply with the commissioner's order under §5.4126 of this division for payment of the premium surcharge and member assessment repayment obligation, net premium and other revenue that is not contractually required for the class 1 payment obligation.

(41) Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(42) Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(43) Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(44) TPFA--Texas Public Finance Authority.

(45) Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4121. Financing Arrangements.

(a) The association may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under Insurance Code §2210.072, or

(B) obtain public securities under Insurance Code §2210.072; and

(2) be approved by the association's board of directors before the association enters into the financing arrangement.

(b) The association may pay a financing arrangement with any or all:

(1) net premium and other revenue of the association that is not required for payment of class 1 payment obligations or premium surcharge and member assessment repayment obligations;

(2) reinsurance proceeds;

(3) the proceeds of any financing arrangement;

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or

(5) any other association asset.

(c) As collateral security for such financial arrangements, including interest bearing loans or other financial instruments, the association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the association's assets, including without limitation, all or any portion of the association's right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210.

§5.4123. Public Securities Request, Approval, and Issuance.

(a) The association's board of directors must request the issuance of public securities as prescribed in §§5.4124 - 5.4126 of this division (relating to Issuance of Class 1 Public Securities Before a Catastrophic Event; Issuance of Public Securities After a Catastrophic Event; and Alternative for Issuing Class 2 and Class 3 Public Securities).

(1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §§5.4124 - 5.4126 of this division.

(2) The association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The association's board of directors may submit a request for the issuance of public securities to be issued after a catastrophic event at any time. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.

(b) The commissioner must approve the request before TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.

(2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, and any other related or supporting information from any source, including from the general manager of the association and from TPFA and its consultants and legal counsel.

(3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.

(4) The department must provide the commissioner's written approval of the request to the association and TPFA.

(c) Following the commissioner's written approval of the request, TPFA may issue public securities and credit agreements on behalf of the association, as authorized in Insurance Code Chapter 2210 and §§5.4124 - 5.4126 of this division, for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

(d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the association.

(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flows, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed $1 billion outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event and that have been used to pay for insured losses or expenses will not continue to count against the combined $1 billion aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed available money in the CRTF and available reinsurance proceeds, and that the public security proceeds are necessary to fund the catastrophic losses; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF;

(C) amounts available from other financing arrangements, and the association's obligations for other financing arrangements, including whether such amounts must be repaid from public security proceeds or from other means; and

(D) available reinsurance proceeds;

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the commissioner.

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event) that were available for a catastrophic event at the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) The association must request, in aggregate for each catastrophe year:

(1) the statutorily authorized principal amount of class 1 public securities before class 2 public securities may be requested; and

(2) the statutorily authorized principal amount of class 2 public securities before class 3 public securities may be requested.

(e) The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 public security proceeds.

§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities.

(a) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the commissioner may order the issuance of class 2 and class 3 public securities as provided in this section.

(b) In its request to the commissioner to order issuance of public securities under this section, the association must submit the following information:

(1) the information required by §5.4125(b) of this division; and

(2) information based on the analyses described in §5.4135 of this division;

(3) the amount of class 1 public securities that can be issued;

(4) the amount of class 1 public securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(c) The association must request that TPFA issue the authorized principal amount of class 1 public securities that can be issued under §5.4125(c) of this division before class 2 public securities may be issued under this section.

(d) The commissioner may rely on information provided to the commissioner under this section, §5.4125 of this division, and from any other source, including information and advice provided by the association, TPFA, TPFA consultants, and TPFA legal counsel. If the commissioner finds that all or any portion of the authorized amount of class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities in an amount that does not exceed the authorized principal amount of class 2 public securities as determined in §5.4125(c) of this division.

(e) An order of the commissioner issued under subsection (d) of this section must specify:

(1) the maximum principal amount of class 2 public securities that are to be issued;

(2) the information and amount required under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments);

(3) the maximum term of the class 2 public securities;

(4) when the association is to begin collecting funds under this section for deposit in the repayment obligation trust fund;

(5) the premium surcharge and member assessment repayment obligation; and

(6) the year repayment begins under §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers).

(f) The commissioner may revise an order issued under this section as necessary if the association prepays amounts due or to maintain the association's ability to fund the class 1 payment obligations or other association obligations, including losses.

(g) TPFA may issue the class 2 public securities authorized by the commissioner's order under this section. TPFA may issue the class 2 public securities that are subject to §5.4127(b) of this division as a separate series from other class 2 public securities.

(h) If class 2 public securities are issued in the manner authorized under this section, class 3 public securities may be issued only after class 2 public securities have been issued in the statutorily-authorized principal amount of $1 billion for that catastrophe year. Despite the restriction on issuing class 3 public securities in this subsection, the association may request, the commissioner may approve, and TPFA may prepare for the issuance of class 3 public securities before the issuance of all class 2 public securities. Class 3 public securities must be requested as provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and §5.4125 of this division.

§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.

(a) All public security obligations and public security administrative expenses for class 2 public securities issued under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) must be paid 30 percent from member assessments and 70 percent from premium surcharges on those catastrophe area insurance policies subject to premium surcharge under Insurance Code §2210.613.

(1) For purposes of the premium surcharge, in this section and §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers), the term "insurer" has the meaning that is defined in §5.4172 of this division (relating to Premium Surcharge Definitions).

(2) The association must collect and deposit the member assessments and premium surcharges as directed in §§5.4143 - 5.4146 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities; Excess Class 2 Premium Surcharge Revenue; Excess Class 2 Member Assessment Revenue; and Member Assessment Trust Fund for the Payment of Class 3 Public Securities).

(b) The commissioner's order described in §5.4126(d) and (e) of this division must require the association to repay the cost of the class 2 public securities issued under subsection (a) of this section in an amount equal to the lesser of:

(1) $500 million total principal amount, plus any costs associated with that amount; or

(2) that portion of the total principal amount of class 1 public securities authorized to be issued as described in §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) that cannot be issued, plus any costs associated with that portion.

(c) The association must repay the costs under subsection (b) of this section by repaying the amount of premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.

(d) The sources of funds for the repayment required under subsection (b) of this section include:

(1) the association's net premium and other revenue that is not contractually pledged to class 1 payment obligations; and

(2) excess amounts released from the obligation revenue fund that are released as described in §5.4142 of this division (relating to Excess Obligation Revenue Fund Amounts).

(e) In addition to premium and other revenue amounts that the association must collect to pay for outstanding class 1 payment obligations, the association must collect premium and other revenue in an amount sufficient to repay the premium surcharge and member assessment repayment obligation owed under the commissioner's order in subsection (b) of this section.

(f) Using either or both of the following methods, the association must repay the amounts required under the commissioner's order in subsection (b) of this section.

(1) To reduce the need for collecting premium surcharges and member assessments, the association may deposit funds described in subsection (d) of this section in the premium surcharge trust fund, member assessment trust fund, or both funds, before the collection of any premium surcharges or member assessments.

(2) The association may deposit funds described in subsection (d) of this section in the repayment obligation trust fund for repayment of class 2 premium surcharges and member assessments already collected.

(g) For each year in which the association owes funds to repay member assessments or premium surcharges used to pay debt service for public securities described under subsection (b) of this section, the association must record the following information:

(1) the amount of premium surcharges the association owes to each insurer for that year; and

(2) the amount of member assessments the association owes to each insurer for that year.

(h) Despite any other requirement in this division, an insurer may pay on behalf of its policyholder all or any part of a premium surcharge that is subject to repayment under this section. If the insurer makes the payment under this subsection, the insurer is entitled to repayment of that amount when the association repays it. The insurer:

(1) may only pay the premium surcharge to pay the amounts owed for the payment of class 2 public security obligations and public security administrative expenses associated with the amount to be repaid under the commissioner's order in subsection (b) of this section;

(2) must pay the premium surcharges equally for all policyholders of that insurer who are subject to the premium surcharge; and

(3) must maintain records that track the amount of premium surcharges paid to their policyholders and the amount not paid.

§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.

(a) When providing a repayment to insurers for amounts paid for class 2 premium surcharges and member assessments, the association must specify the surcharge and assessment period being repaid.

(b) Beginning with the year designated in the commissioner's order described in §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), not later than March 1 of each year, the association must direct payment of the funds held in the repayment obligation trust fund to the insurer or insurance group to which the funds are owed for repayment of premium surcharges or member assessments.

(c) Within 90 days of receipt of a premium surcharge repayment from the association, insurers must repay to the policyholders who made the payments all amounts received from the association. Premium surcharge repayments must be proportional to the amount of premium surcharge each policyholder paid in the period the association specified in its repayment. To the extent that the insurer paid all or any portion of the premium surcharge for its policyholders as provided under §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the insurer may recoup the amount it paid for the period refunded from the association repayment as if the insurer were the policyholder to whom the repayment was owed.

§5.4133. Public Security Proceeds.

(a) As necessary, the association must make written requests to TPFA for the disbursement of public security proceeds for the association program, including:

(1) for the payment of incurred claims and operating expenses of the association; or

(2) other amounts as authorized in Insurance Code §2210.608.

(b) The association's written request must specify:

(1) the amount of the request; and

(2) the purpose of the request.

(c) To facilitate timely payment of losses, the association may request funds to be disbursed to the association before the settlement of incurred claims.

(d) The association must account for the receipt and use of public security proceeds separately from all other sources of funds. The association may hold public security proceeds in the manner authorized by the association's plan of operation or as required by agreement with TPFA.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can and cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(3) the association's obligations for outstanding class 1 public securities, including contractual coverage requirements and public security administrative expenses;

(4) the estimated premium surcharge and member assessment repayment obligations;

(5) the association's outstanding premium surcharge and member assessment repayment obligations;

(6) the association's obligations for other financing arrangements;

(7) any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(8) TPFA administrative rules;

(9) applicable State of Texas debt issuance policies;

(10) administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(11) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe related public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally-recognized investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. A cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as:

(i) purchasing additional reinsurance for similar funding at a similar level;

(ii) providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; or

(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4136. Association Rate Filings.

While there are outstanding class 1 public securities, or there are repayment obligations under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the association:

(1) must consider its obligations for the payment of class 1 public securities and the repayment of class 2 public securities, including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:

(A) the expected operating costs of the association, including expected nonhurricane wind and hail losses and loss adjustment expenses; and

(B) the expected payment of class 1 public security obligations and the expected repayment of class 2 public securities, including any contractual coverage amount the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

(3) must include a cost component in the rates sufficient to at least provide for the expected payment of class 1 payment obligations and the expected repayment of premium surcharge and member assessment repayment obligations during the period in which the rates will be in effect.

§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund.

(a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the obligation revenue fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation.

(b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public securities obligation revenue fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association held funds to the obligation revenue fund to make the payment.

§5.4142. Excess Obligation Revenue Fund Amounts.

(a) Excess revenue collected in the obligation revenue fund that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, including as provided in §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), or deposited in the CRTF.

(b) As specified in Insurance Code §2210.072(a), class 1 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.

§5.4143. Trust Funds for the Payment of Class 2 Public Securities.

(a) As required by any agreements between the association, TPFA, and the trust company, insurers may be required to deposit premium surcharges and member assessments directly into the premium surcharge trust fund and member assessment trust fund, respectively.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice to the commissioner and insurers:

(1) for premium surcharges, no later than 60 days before the insurers must implement the surcharge; and

(2) for member assessments, with the notice required under §5.4163 of this division (relating to Notice of Assessments).

(c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.

(d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the association under §5.4164 of this division (relating to Payment of Assessment) and §5.4186 of this division (relating to Remittance of Premium Surcharges).

(e) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected premium surcharges and association member assessments on receipt into the appropriate accounts as required under agreements with TPFA and the trust company. The association may not directly or indirectly use, borrow, or in any manner pledge or encumber premium surcharges and association member assessments collected, or to be collected, by the association under Insurance Code §2210.613, except for the payment of class 2 public security obligations and as otherwise authorized in this title.

(f) The trust company must deposit any investment income earned on the premium surcharges or member assessments into the appropriate trust fund accounts while these amounts are on deposit.

§5.4144. Excess Class 2 Premium Surcharge Revenue.

(a) Revenue collected in any calendar year from premium surcharges under Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the premium surcharge trust fund deposits may, at the discretion of the association, be:

(1) used to pay class 2 public security obligations payable in the following calendar year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 2 public securities; or

(3) deposited in the CRTF.

(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.

§5.4145. Excess Class 2 Member Assessment Revenue.

(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 2 public securities deposits may, at the discretion of the association, be:

(1) used to pay class 2 public security obligations payable in the following calendar year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 2 public securities; or

(3) deposited in the CRTF.

(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.

§5.4146. Member Assessment Trust Fund for the Payment of Class 3 Public Securities.

(a) As required by any agreement between the association, TPFA, or the trust company, insurers may be required to direct deposit member assessments into the member assessment trust fund.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice of the direct deposit requirement to the commissioner and insurers with the notice required under §5.4163 of this division (relating to Notice of Assessments).

(c) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected member assessments on receipt in the member assessment trust fund. The deposits must be made as required under agreements with TPFA and the trust company.

(d) The trust company must deposit in that member assessment trust fund any investment income earned on the member assessments while these amounts are held on deposit in the member assessment trust fund. The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association member assessments collected, or to be collected, by the association under Insurance Code §2210.6135, except for the payment of class 3 public security obligations and as otherwise authorized by this title.

§5.4147. Excess Class 3 Member Assessment Revenue.

(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.6135 that exceeds the amount of class 3 public security obligations and class 3 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 3 public securities deposits may, in the discretion of the association, be:

(1) used to pay class 3 public security obligations payable in the following calendar year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 3 public securities; or

(3) deposited in the CRTF.

(b) As specified in Insurance Code §2210.074(a), class 3 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed under §5.4127.

(a) As required by the commissioner's order under §5.4126(d) of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), the association must deposit funds collected under §5.4127(d)(2) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) in the repayment obligation trust fund. The association must enter into trust agreements with the trust company or with a trustee selected by the association and approved by the commissioner. The trust agreements between the association and a trustee other than the trust company are subject to prior approval by the commissioner. Any investment income earned on funds in the repayment obligation trust fund become repayment obligation trust funds.

(b) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber repayment obligation trust funds held by the repayment obligation trust fund trustee except as authorized under Insurance Code Chapter 2210 and this division.

§5.4149. Excess Repayment Obligation Trust Fund Amounts.

Following the payment of all class 2 public securities subject to repayment under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) and the repayment of all amounts owed under §5.4127(b) of this division, any funds remaining in the repayment obligation trust fund must be disbursed to the association as an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056.

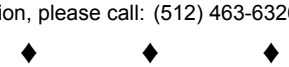
§5.4164. Payment of Assessment.

Except as provided by §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4146 of this division (relating to Member Assessment Trust Fund for the Payment of Class 3 Public Securities), each member must remit to the association payment in full of its assessed amount of any assessment levied by the association within 30 days of receipt of notice of assessment.

The agency certifies that legal counsel has reviewed the 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 May 23, 2014.

TRD-201402438
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: June 12, 2014
Proposal publication date: February 14, 2014
For further information, please call: (512) 463-6326



28 TAC §5.4131, §5.4132

The commissioner of insurance adopts the repeal of 28 TAC §5.4131, Issuance of Public Securities, and the repeal of 28 TAC §5.4132, Texas Public Finance Authority Responsibility Concerning Issuance of Public Securities. The repeals are adopted without change to the proposals published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 885). The repeals are related to a separate rule adoption published

in this issue of the *Texas Register* concerning the association's loss funding and issuance of public securities.

REASONED JUSTIFICATION. Repeal of §5.4131, Issuance of Public Securities, is necessary to implement HB 3, 82nd Legislature, First Called Session, 2011. Section 11 of HB 3 amended Insurance Code §2210.072 to authorize the Texas Public Finance Authority to issue class 1 public securities prior to a catastrophe. Section 52 of HB 3 added Insurance Code §2210.6136, to authorize the issuance of class 2 and 3 public securities if the Texas Public Finance Authority cannot issue all or any portion of class 1 public securities. Section 5.4131 is outdated because it does not address either of the new circumstances added by HB 3 that authorize issuance of public securities. Repeal of §5.4132, Texas Public Finance Authority Responsibility Concerning Issuance of Public Securities, is necessary because the section does not establish any responsibilities for the Texas Public Finance Authority, but simply restates the statutory obligations of Insurance Code, Chapter 2210, Subchapter M.

HOW THE SECTIONS WILL FUNCTION. Adoption of the proposed repeals will eliminate out-of-date rule provisions and redundant rule language that do not implement HB 3. Repeal of the sections will also facilitate reorganization of Loss Funding rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI received no comments on the published proposal.

STATUTORY AUTHORITY. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code §2210.008 provides that the commissioner may issue orders and adopt rules in the manner prescribed by Insurance Code §36.001, as reasonable and necessary to implement Chapter 2210.

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 May 23, 2014.

TRD-201402436
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: June 12, 2014
Proposal publication date: February 14, 2014
For further information, please call: (512) 463-6326

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28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, 5.4189 - 5.4192

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192 to implement HB 3, 82nd Legislature, 1st Called Session, 2011. Sections 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192 are adopted with changes to the proposed text published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 886).

REASONED JUSTIFICATION. The amendments are necessary to establish procedures for making and assessing premium surcharges under Insurance Code Chapter 2210, Subchapter M. Premium surcharges are required to repay class 2 public securities issued in the event of a catastrophe that results in losses that exceed the Texas Windstorm Insurance Association's premium, other revenue, available reserves, and amounts available in the catastrophe reserve trust fund (CRTF). In conjunction with this adoption, the department is also adopting the repeal of existing 28 TAC §5.4183 in a separate order, also published in this issue of the *Texas Register.* This rule adoption also relates to a separate rule adoption concerning loss funding, which is also published in this issue of the *Texas Register.* In that adoption, the department adds new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amends 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164 to implement HB 3.

The department accepted written comments on the loss funding and premium surcharge rule proposals from February 14, 2014, through March 10, 2014, and heard testimony at three public hearings in Beaumont, Austin, and Corpus Christi. During the comment period, the department received approximately 340 comments, both in writing and through oral comments at the public hearings.

In considering all of the comments and in adopting the rules, the department is constrained by two things: (1) the association's funding structure under existing law; and (2) the Legislature's statement in Insurance Code §2210.001 that, "the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded."

The association is the insurer of last resort for windstorm and hail insurance coverage in the catastrophe area along the coast. The association provides insurance coverage to those who are unable to obtain wind and hail insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris County. The association's largest risk exposure is catastrophic losses from hurricanes.

In 2009, the Texas Legislature enacted HB 4409, 81st Legislature, Regular Session, which substantially changed how the association paid for losses that exceeded its premium, other revenue, and amounts available in the CRTF. HB 4409 amended Insurance Code Chapter 2210 to provide for three classes of public securities to pay for excess losses in the event of a catastrophe. In 2011, HB 3 amended the association's loss funding provisions again to authorize the association to request the issuance of class 1 public securities prior to a catastrophic event, and to permit the association to request the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority (TPFA) is unable to issue all or any portion of the class 1 public securities. Class 1 public securities must be issued when losses in a catastrophe year exceed the association's premium, available revenue, and amounts in the CRTF. Class 1 public securities are to be paid with the association's net premium and other revenue. Losses not paid by class 1 public securities are to be paid by the proceeds of class 2 and class 3 public securities.

Insurance Code §2210.613 describes how the association must pay class 2 public securities. HB 4409 required that class 2 public securities be paid with member insurer assessments and a premium surcharge on coastal policyholders. Thirty percent of the cost of class 2 public securities was to be paid by member insurer assessments. Seventy percent of the cost of class 2 public

securities was to be paid by premium surcharges assessed on all policyholders who resided or had operations in, or whose insured property was located in the catastrophe area. HB 3 amended Insurance Code §2210.613 so that 70 percent of the cost of class 2 public securities is to be paid by premium surcharges assessed on all policyholders of policies that cover insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area. Member insurer assessments must still pay 30 percent of the cost of class 2 public securities. HB 3 also amended Insurance Code §2210.613 to specify the lines of insurance to which the premium surcharge applies. Before the enactment of HB 3, the premium surcharge in Insurance Code §2210.613 applied to "all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance." After HB 3, Insurance Code §2210.613 states that the premium surcharge applies to "all policies of insurance written under the following lines of insurance: fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial automobile liability and physical damage insurance."

If the comments are any indication, the adopted rules will displease many, and for different reasons. Coastal residents, businesses, and local governments expressed deep concern over premium surcharges. Some who have no connection to the association wondered why they might have to pay surcharges on their property and casualty insurance premiums to pay for the association's losses. Many on the coast asked why the cost of windstorm insurance on the coast cannot be shared with the rest of the state. In addressing these comments, the department is constrained by the association's funding structure under existing law.

Since HB 4409 was enacted in 2009, Texas law has stated that if the association cannot pay claims using the premium its policyholders pay and other revenue, the association must issue public securities that are paid for, in part, by premium surcharges on coastal property and casualty insurance policies, including auto policies. The department adopted rules on premium surcharges consistent with HB 4409. The enactment of HB 3 made the department's rules implementing the premium surcharge required under Insurance Code §2210.613 obsolete. The adopted amendments conform the premium surcharge rules to the current §2210.613. Premium surcharges make up part of the association's funding structure, regardless of the department's rules. The department's rules are necessary to enable the association to effectively implement the funding structure it is given under statute to pay claims.

The insurance industry and other observers expressed concern that the loss funding rules are without statutory authority. Some industry members wrote of the costs they will incur in repaying premium surcharges to policyholders. In addressing these comments, the department is constrained by the need to implement Insurance Code §2210.6136 so that the association can pay claims, while still paying for its share of public securities under that statute. The adopted rules implement §2210.6136 so that the association can issue marketable public securities with which it can pay claims. Leaving the association unable to pay claims following a catastrophic event does not comport with the Legislature's intent that the Texas coast have adequate windstorm and hail insurance. The repayment requirements the industry objects to in comments about the rules comply with the Legislature's intent that the association, and not all coastal property and casualty insurance policyholders, pay for a specified portion of the public securities issued under §2210.6136.

Where possible, the department changed the proposed rules in response to comments to make them friendlier to consumers and less cumbersome for insurers. For example, the adopted rules require insurers to collect premium surcharges from policyholders in the manner that the insurer collects premium. This gives policyholders the same flexibility in paying premium surcharges that they have in paying premium. The adopted rules contain several changes in consideration of the characteristics of the surplus lines industry.

This order summarizes all of the comments the department received on the proposed rules. Although the department is constrained in the actions it may take to address the comments, the Legislature does not have the same limitations. The comments are presented here in the hope that the Legislature will consider them should it revisit the statutes the adopted rules implement.

In response to comments on the published proposal, the department has adopted changes to the proposed text of §§5.4184 - 5.4186, 5.4189, and 5.4190. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The following explains adopted §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, and 5.4189 - 5.4192 in greater detail.

§5.4171. Premium Surcharge Requirement. This section concerns the premium surcharge that insurers must assess if the association issues class 2 public securities under Insurance Code §2210.613. The department amends this section to conform it to other adopted rule amendments and to changes HB 3 made to Insurance Code §2210.613. Subsection (a) is amended for agency style and to clarify that the premium surcharge applies to covered insured property including automobiles principally garaged in the catastrophe area. Subsection (b) is amended to specify the lines of insurance that are subject to the premium surcharge consistent with Insurance Code §2210.613.

§5.4172. Premium Surcharge Definitions. The department amends the definition of insured property to clarify that it includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy. The department adds residential property insurance as a defined term for clarity, and removes the definitions for operations and premises consistent with HB 3.

§5.4173. Determination of the Surcharge Percentage. The department amends this section for agency style and to conform it to other adopted amendments. To conform the section to Insurance Code §2210.613, the department also amends the section to require that the premium surcharge date specified by the commissioner be at least 180 days after the commissioner approves issuance of class 2 public securities.

§5.4181. Premiums to be Surcharged. The department amends this section to clarify that the premium surcharge applies to premium subject to surplus lines premium tax and premium subject to independently procured premium tax.

§5.4182. Method for Determining the Premium Surcharge. The department amends this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also amends this section to allow insurers to determine the premium surcharge for certain composite-rated policies based on the insured address. For these policies, if the insured address is

not within a designated catastrophe area, no premium surcharge applies to that policy.

§5.4184. Application of the Surcharges. The department amends this section to require the refund of premium surcharges to policyholders if a policy subject to a premium surcharge is canceled or a midterm or postexpiration change results in a premium decrease. The amended rule requires that insurers, with the exception of affiliated surplus lines insurers and surplus lines agents permitted to credit or refund surcharges on their behalf, credit or refund the excess surcharge within 20 days of the date of the transaction. Affiliated surplus lines insurers and surplus lines agents must credit or refund excess surcharges not later than the last day of the month following the month in which the corresponding transaction was effective. These changes are consistent with the fact that the surcharges may be refunded under Insurance Code §2210.613. The department also deletes references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is repealed in a separate rule adoption.

§5.4185. Mandatory Premium Surcharge Collection. This section concerns how insurers collect premium surcharges. The department amends the section to require an insurer to collect the premium surcharge proportionately as it collects premiums from the policyholder. This means that if an insurer allows policyholders to pay premiums in installments, policyholders will pay the premium surcharges in the same way.

§5.4186. Remittance of Premium Surcharges. This section provides the procedures for how insurers are to remit the premium surcharges to the association. The department amends this section to conform it to the amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4185 (relating to Mandatory Premium Surcharge Collection).

§5.4187. Offsets. The department amends this section to make it consistent with the amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases and to conform the section to the amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4189. Notification Requirements. The department amends this section to make the premium surcharge notice that insurers must give policyholders consistent with the amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases. The department also amends this section to provide a separate deadline by which affiliated surplus lines insurers and surplus lines agents must provide the notice.

§5.4190. Annual Premium Surcharge Report. This section concerns the annual premium surcharge report that insurers must submit to the association. The department amends this section based on changes to Insurance Code §2210.613 resulting from HB 3. The department also amends subsection (f) to conform the section to the amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4191. Premium Surcharge Reconciliation Report. The department amends this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also amends this section to make it consistent with the amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases.

§5.4192. Data Collection. This section concerns data that the department may collect from insurers to determine the applicable premium surcharge percentage. The department amends this section to conform it to other amendments relating to the lines of insurance specified in HB 3. The department also deletes references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is repealed in a separate rule adoption.

The department makes changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice, nor does it raise new issues.

As a result of comments, the department changed proposed §5.4184 to allow surplus lines agents to refund or credit excess surcharges on behalf of affiliated surplus lines insurers. Two new subsections make clear that affiliated surplus lines insurers are still responsible for implementing premium surcharges, and set the deadline by which the insurers and their agents must refund or credit excess surcharges to policyholders.

As a result of comments, the department changed proposed §5.4185(b) to require insurers to collect premium surcharges proportionately as they collect premium on the corresponding policy. The department has also removed §5.4185(c) from the adopted rule. Because the adopted rule requires that all insurers collect premium surcharges proportionately as they collect premium, rather than giving them a choice between two collection methods as the proposal did, there is no need to specify that insurers must apply the same method to all policyholders.

As a result of comments, the department changed proposed §5.4186 to remove a reference to the association establishing reporting requirements for surplus lines agents remitting premium surcharges on behalf of surplus lines insurers.

As a result of comments, the department changed proposed §5.4189 to permit affiliated surplus lines insurers to allow surplus lines agents to give policyholders the written notice required in the section. The department has also modified the proposed §5.4189 to add subsection (e), which states that the department may hold liable an affiliated surplus lines insurer that allows an agent to provide notice of premium surcharges on its behalf for the failure of its agent to comply with the section.

As a result of comments, the department changed proposed §5.4190 to conform it to adopted §5.4185. Because adopted §5.4185 requires that all insurers collect premium surcharges proportionately as they collect premium, rather than giving them a choice between two collection methods as the proposal did, there is no need for insurers to specify the collection method in the annual premium surcharge report.

The department has made other changes to text for clarity and consistency with agency style.

HOW THE SECTIONS WILL FUNCTION.

§5.4171. Premium Surcharge Requirement. This section specifies the premium surcharge that insurers must assess if the association issues class 2 public securities under Insurance Code §2210.613.

§5.4172. Premium Surcharge Definitions. This section provides definitions for the surcharge-related portions of the subchapter.

§5.4173. Determination of the Surcharge Percentage. This section specifies how the surcharge percentage is determined.

§5.4181. Premiums to be Surcharged. This section specifies how the surcharge percentage is applied.

§5.4182. Method for Determining the Premium Surcharge. This section provides the method for determining the premium surcharge, and specifies to what types of policies the premium surcharge applies.

§5.4184. Application of the Surcharges. This section provides for the application of premium surcharges, including requirements relating to exceptions to surcharges, refunding, and midterm policy changes.

§5.4185. Mandatory Premium Surcharge Collection. This section concerns how insurers collect premium surcharges.

§5.4186. Remittance of Premium Surcharges. This section provides the procedures for how insurers are to remit the premium surcharges to the association.

§5.4187. Offsets. This section provides how insurers or agents may credit a premium surcharge on the next remission to the association.

§5.4189. Notification Requirements. This section specifies the premium surcharge notice that insurers must give policyholders.

§5.4190. Annual Premium Surcharge Report. This section concerns the annual premium surcharge report that insurers must submit to the association.

§5.4191. Premium Surcharge Reconciliation Report. This section specifies how an insurer must reply to a department request for a premium surcharge reconciliation report.

§5.4192. Data Collection. This section concerns data that the department may collect from insurers to determine the applicable premium surcharge percentage.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

Comments by Section

Comment on §5.4173(a) and (b): A commenter suggests removing the requirement that the association determine whether it can satisfy the estimated amount of class 2 public securities obligations and administrative expenses with available funds before it asks the commissioner to approve a premium surcharge under Insurance Code §2210.613. The commenter states that the requirement is inconsistent with §2210.613 and proposed §5.4184(e) (later clarified as §5.4127(e)) because those sections require that 30 percent of class 2 public securities be paid through member assessments and 70 percent through premium surcharges, as described in §2210.613(c).

Agency Response: The department declines to make changes based on the comment. Insurance Code §2210.609 governs the repayment of public security obligations under §§2210.612, 2210.613, 2210.6135, and 2210.6136. Section 2210.609(a) states, "If the association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, the association shall pay those expenses in accordance with Sections 2210.612, 2210.613, 2210.6135, and 2210.6136 as applicable." The statute clearly provides that TWIA must exhaust its "available funds" before it pays public security obligations and administrative expenses from the sources described in those sections.

Comment on §5.4173(c): Under proposed §5.4173(c), the policies subject to premium surcharges will be those in effect on a date specified by the commissioner. This date must be at least 180 days after the commissioner issues an order approving class 2 public securities. A commenter states that proposed §5.4173(c) should state that the policies subject to premium surcharges will be those in effect on or after 180 days after the date of the commissioner's order approving class 2 public securities and establishing the premium surcharges. The commenter states that, as written, proposed §5.4173(c) does not comply with Insurance Code §2210.613.

Agency Response: The department respectfully disagrees with the comment. Following the comment could create an absurd result in situations in which the commissioner approves class 2 public securities before a catastrophic event, which the association, under §5.4125(a)(2), may request. The issuance of class 2 public securities, the issuance of the commissioner's order establishing premium surcharges, and even the catastrophic event, could occur over 180 days after the commissioner's order approving the class 2 public securities. Under the commenter's suggestion, premium surcharges could apply to policies in effect before any of these events took place. This is not consistent with §2210.613.

Making premium surcharges apply to policies in effect on a date the commissioner specifies, which is at least 180 days after the date of the commissioner's order approving class 2 public securities, is consistent with §2210.613(b). The requirement that "[insurers] shall assess, as provided by this section, a premium surcharge to each policyholder of a policy that is in effect on or after the 180th day after the date the commissioner issues notice of the approval of the public securities," is preceded by the phrase "on approval by the commissioner." This gives the commissioner the ability to determine the effective date of the surcharges, as long as it is at least 180 days after the date of the order.

Comment on §5.4184: A commenter asks that affiliated surplus lines insurers be given 90 days to credit or refund excess surcharges if a midterm policy change decreases the premium, instead of the 20 days afforded insurers under §5.4184. The commenter also asks that surplus lines agents, who affiliated surplus lines insurers allow to credit or refund surcharges on their behalf, also be given 90 days to do so. In the alternative, the commenter asks that, for affiliated surplus lines insurers or surplus lines agents acting on their behalf, the deadline for crediting or refunding excess surcharges be extended to the last day of the second month following the month in which the transaction changing the policy occurred. The commenter states that when midterm changes occur in policies written by affiliated surplus lines insurers, the changes are usually related to individually rated and underwritten coverages, and the affiliated surplus lines insurer or surplus lines agent cannot rely on automation as admitted insurers normally can. The commenter notes that Insurance Code §542.055 and §542.057 give affiliated surplus lines insurers more time than admitted insurers to acknowledge receipt of a claim and to pay a claim, respectively.

Agency Response: The department has modified the proposed §5.4184 in response to the comment. The department acknowledges that affiliated surplus lines insurers may find it practical to allow surplus lines agents to refund or credit excess surcharges on their behalf. The department also acknowledges that affiliated surplus lines insurers may require more time than admitted insurers to calculate a change in premium and then to calculate the amount of premium surcharge to refund or credit the policyholder. Accordingly, adopted §5.4184 permits affiliated surplus lines insurers to allow surplus lines agents to refund or credit excess surcharges, not only for premium changes resulting from midterm policy changes, but also from exposure or premium

audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration.

Adopted §5.4184 also requires affiliated surplus lines insurers or surplus lines agents to credit or refund excess surcharges not later than the last day of the month following the month in which the corresponding transaction was effective. The department chose the adopted language because, as the commenter points out, it tracks the language used in §5.4186(b), which sets the deadline for remittance of premium surcharges. The department declines the commenter's request to give affiliated surplus lines insurers or surplus lines agents until the "last day of the second month following the month" in which the corresponding transaction occurred. Instead, the adopted language provides the same length of time as §5.4186(b), which sets the remittance deadline at "not later than the last day of the month following the month in which the corresponding written premium transaction was effective." The department expects that an identical formula for calculating deadlines for remittance, crediting and refunding, and giving notice under §5.4189(c) (see comment on §5.4189 below) will simplify these processes for affiliated surplus lines insurers and surplus lines agents.

The department has also modified the proposed §5.4184 to add subsection (h), which states that the department may hold liable an affiliated surplus lines insurer, that allows an agent to credit or refund excess surcharges on its behalf, for the failure of its agent to comply with the section. This is consistent with the similar provision in §5.4186(e) and consistent with the department's intent that affiliated surplus lines insurers be responsible for implementing premium surcharges.

Comment on §5.4184: A commenter asks that §5.4184 be amended to relieve insurers of the requirement of refunding excess premium surcharges under that section if the amount to be refunded is less than a certain *de minimus* amount. The commenter suggests $10, but states it is still seeking a more accurate estimate of the cost of issuing refunds. The commenter states that consumers will pay the costs of the refund process. The Legislature has supported the concept of waiving refunds of de minimus amounts in other situations. Insurance Code §651.158 and §651.162, concerning refunds of charges and unearned premiums in the context of premium financing agreements, waive an insured's right to a refund of $5 or less.

Agency Response: The department appreciates the cost to insurers, and ultimately to consumers, imposed by the refund requirement, but declines to make the suggested change. What qualifies as a *de minimus* amount relative to different policies varies widely. While $10 may be *de minimus* in the context of a commercial insurance policy with a premium in the tens of thousands of dollars, it would not be *de minimus* in the context of a 30-day auto policy.

Comment on §5.4185(b) and (c): A commenter states that §5.4185 should allow an insurer to collect a premium surcharge using the same billing method and frequency that it uses to collect a policyholder's premium. This commenter and a second commenter point out that under the proposed rule, a policyholder may have to pay a premium surcharge all at once, but pay the premium in installments. This may add to insurers' billing expenses and may confuse policyholders. Another commenter suggests that the proposed rule would place the insurer in an awkward situation with respect to the collection of the premium surcharge. The commenter states that the proposed rule would make paying the premium surcharge difficult for consumers.

Agency Response: The department agrees that under the proposed rule, a policyholder might have to pay a premium surcharge all at once, while paying the premium in installments, if that policyholder's insurer elected to collect surcharges on the effective date of the corresponding written premium transaction.

The department has changed §5.4185(b) to require insurers to collect premium surcharges proportionately as they collect premium on the corresponding policy. This way policyholders who have chosen to pay premiums in installments will not be forced to pay premium surcharges all at once because their insurer has elected that collection method. Policyholders who pay premiums at the beginning of the policy term will pay premium surcharges the same way. The department hopes that requiring insurers to collect surcharges proportionately as they collect premium will reduce expenses for insurers and make payment simpler for policyholders.

The department has removed §5.4185(c) from the adopted rule. Because the adopted rule requires that all insurers collect premium surcharges proportionately as they collect premium, rather than giving them a choice between two collection methods as the proposal did, there is no need to specify that insurers must apply the same method to all policyholders. The department has also made a conforming change to adopted §5.4190 (relating to Annual Premium Surcharge Report). Because there is only one method, the reports need not specify the method used to collect premium surcharges.

Comment on §5.4186(a) and (f): As proposed, §5.4186(f) gives TWIA the authority to establish reporting requirements for surplus lines agents remitting premium surcharges on behalf of affiliated surplus lines insurers. A commenter states that the department does not have statutory authority to authorize the association to impose reporting requirements on surplus lines agents. The commenter also complains that the existing language in §5.4186(a), which references "procedures established by the Association relating to premium surcharge remissions from surplus lines agents," is without statutory authority.

The commenter disagrees with the estimates in the rule proposal's cost note regarding the costs surplus lines agents would incur in programming their accounting and billing systems to comply with association-imposed requirements. Finally, the commenter disagrees with the cost note's statement that a surplus lines agent can avoid any reporting requirement the association might establish by deciding not to remit premium surcharges on the surplus lines insurer's behalf. The commenter states that market forces will leave surplus lines agents no choice but to collect and remit premium surcharges in the same way they collect and remit premium and premium taxes.

The commenter asks the department to remove references to the association's authority to impose remitting and reporting requirements on surplus lines agents from the adopted rules. The commenter also asks the department to develop new rules for affiliated surplus lines insurers and surplus lines agents on premium surcharge collecting, remitting, and reporting that reflect "the complexity of the surplus lines insurance market and regulatory structure."

Agency Response: The adopted rules do not give the association the authority to impose reporting requirements on surplus lines agents. The adopted §5.4186 contains no reference to association-imposed reporting requirements on surplus lines agents.

The department declines to remove the sentence from §5.4186(a) that relates to surplus lines agents remitting premium surcharges to the association "in compliance with any procedures established by the Association relating to premium surcharge remissions from surplus lines agents." This sentence is in the existing rule and the department proposed no substantive change to it. The association's plan of operations gives its board general powers to make and change regulations for the management of the business affairs of the association and to perform "all other duties reasonably necessary to accomplish the purposes of the Act." 28 TAC §5.4001(b)(2)(L)(i) and (x). It is important that the association be able to establish procedures for premium surcharge remissions from surplus lines agents because they are the only licensed agents the rules allow to remit premium surcharges. All other remissions would be from insurers. As the commenter points out, it is not uncommon for surplus lines agents to have contracts with as many as 50 affiliated surplus lines insurers. The association will need a uniform method by which each surplus lines agent identifies the insurer on whose behalf the agent is remitting a particular surcharge.

The department also declines to adopt new rules on premium surcharge collecting, remitting, and reporting exclusively for the surplus lines market. Although the surplus lines market differs from the admitted market, the association will need the same information from both markets to determine compliance with the premium surcharge rules. The need to ensure collection, remission, or deposit of the correct premium surcharge does not depend on whether a given policy is sold by an admitted carrier. This is why, under the adopted rules, affiliated surplus lines insurers are still responsible for the annual premium surcharge reports in §5.4190, as they are under the existing rules. If the association needs to reconcile amounts reported by affiliated surplus lines insurers with amounts remitted or deposited by surplus lines agents, the department can use its authority under Insurance Code §38.001 to obtain information directly from surplus lines agents.

Comment on §5.4189: A commenter asks that affiliated surplus lines insurers be given 90 days to provide written notice to policyholders of a midterm change in the premium surcharge, instead of the 20 days afforded insurers under §5.4189. The commenter also asks that surplus lines agents, who affiliated surplus lines insurers allow to give notice on their behalf, also be given 90 days to do so. In the alternative, the commenter asks that, for affiliated surplus lines insurers or surplus lines agents acting on their behalf, the deadline for providing written notice be extended to the last day of the second month following the month in which the transaction changing the policy occurred. The commenter states that when midterm changes occur in policies written by affiliated surplus lines insurers, the changes are usually related to individually rated and underwritten coverages and the affiliated surplus lines insurer or surplus lines agent cannot rely on automation as admitted insurers normally can. The commenter notes that Insurance Code §542.055 and §542.057 give affiliated surplus lines insurers more time than admitted insurers to acknowledge receipt of a claim and to pay a claim, respectively.

Agency Response: The department has modified the proposed §5.4189 in response to the comment. The department acknowledges that affiliated surplus lines insurers may find it practical to allow surplus lines agents to provide written notice of premium surcharges on their behalf. The department also acknowledges that affiliated surplus lines insurers may require more time than admitted insurers to calculate a change in premium and then to calculate a change in the premium surcharge and notify the policyholder. Adopted §5.4189(d) permits affiliated surplus lines insurers to allow surplus lines agents to give policyholders the written notice required in the section. Adopted §5.4189(d) also requires affiliated surplus lines insurers or surplus lines agents to provide the notice not later than the last day of the month following the month in which the corresponding transaction was effective. The department chose the adopted language because, as the commenter points out, it tracks the language used in §5.4186(b), which sets the deadline for remittance of premium surcharges. The department declines the commenter's request to give affiliated surplus lines insurers or surplus lines agents until the "last day of the second month following the month" in which the corresponding transaction occurred. Instead, the adopted language provides the same length of time as §5.4186(b), which sets the remittance deadline at "not later than the last day of the month following the month in which the corresponding written premium transaction was effective." The department expects that an identical formula for calculating deadlines for remittance, crediting and refunding, and giving notice under §5.4189(c) will simplify these processes for affiliated surplus lines insurers and surplus lines agents.

The department has also modified the proposed §5.4189 to add subsection (e), which states that the department may hold an affiliated surplus lines insurer that allows an agent to provide notice of premium surcharges on its behalf liable for the failure of its agent to comply with the section. This is consistent with the provision in §5.4186(e) and consistent with the department's intent that affiliated surplus lines insurers be responsible for implementing premium surcharges.

Comment on §5.4190(d) and (e) and §5.4192(c): A commenter acknowledges the department's and the association's need for data on policies and premium surcharges to ensure that the surcharges are correctly applied, but the commenter states that due to the characteristics of the surplus lines market, affiliated surplus lines insurers may not have all the data that they must provide under §5.4190 (relating to Annual Premium Surcharge Report) or under §5.4191 (relating to Premium Surcharge Reconciliation Report). Surplus lines agents may have some of the data and some data may not be obtainable for surplus lines policies under "current information collection and reporting systems." The commenter states that the cost of applying the requirements of §5.4190 to affiliated surplus lines insurers is prohibitive. According to the commenter, the Surplus Lines Stamping Office of Texas is best suited to provide the data the rules require.

The commenter recommends that subsections (d) and (e) of §5.4190 be revisited, streamlined, and simplified to accommodate the special facts and circumstances of surplus lines insurance. The commenter also recommends that §5.4192 (relating to Data Collection), subsection (c) be revised to require the department to request the information required for annual premium surcharge reports under §5.4190 and premium surcharge reconciliation reports under §5.4191 from the stamping office, before requesting it from individual affiliated surplus lines insurers.

Agency Response: The department declines to revise §5.4190(d) and (e) and §5.4192(c). The requirements for §5.4190 have been in place since the rule became effective on February 3, 2011. Although the proposed §5.4190(e) contained a new requirement that insurers report the method they used to collect premium surcharges, that requirement is not in the adopted rule because adopted §5.4185(b) (relating to Manda-

tory Premium Surcharge Collection), provides for only one method of collecting premium surcharges. The only adopted changes to §5.4190 conform the section to the changes HB 3 made to Insurance Code §2210.613(c), regarding the lines of insurance subject to premium surcharges. Adopted §5.4190 does not add any new reporting requirements for insurers. It reduces the lines of insurance for which insurers must report.

The requirements for §5.4191 vary little from those in place since the rule's adoption in January 2011. The adopted §5.4191 differs from the previous version in that it requires information related to refunding premium surcharges and conforms to HB 3's changes regarding the lines of insurance subject to premium surcharges. The premium surcharge reconciliation reports described in §5.4191 are not required annually. Instead, the section puts insurers on notice that the department may request the information.

Section 5.4192(c) already provides that the department will, when possible and practical, obtain information necessary to determine the premium surcharge percentage from the Surplus Lines Stamping Office of Texas before requesting it from affiliated surplus lines insurers.

General Comments

Comment: A commenter appreciates that the proposed rules place responsibility for collecting premium surcharges and collecting and reporting surcharge data on affiliated surplus lines insurers, but is concerned that contracts between surplus lines agents and affiliated surplus lines insurers will shift the responsibility to the agents. The commenter suggests adding the following to an appropriate section of the rules, "An Affiliated Surplus Lines Insurer remains responsible for the performance of any duty of the Insurer under this division which is delegated to a surplus lines agent, except as otherwise provided by Chapter 981, Insurance Code, or this division."

Agency Response: The department considers the suggested change unnecessary. The comment itself alludes to §5.4171(a), which places responsibility for assessing premium surcharges on affiliated surplus lines insurers. Section 5.4186(e) states that the department may hold an affiliated surplus lines insurer liable for the failure of its agent to remit or timely remit premium surcharges. Nothing in the adopted rules states that agents may be held responsible.

Comment: One commenter states that there are still unanswered questions as to what lines of insurance the premium surcharges apply.

Agency Response: The department declines to revise proposed §5.4172 or §5.4184. Section 2210.613 states what lines of insurance the premium surcharge apply to and the types of policies affected. Section 5.4172 defines insured property. The application of the surcharges specified in §5.4184 implements Insurance Code §2210.613(c).

Comment: Many commenters state that the proposed rules are unnecessary. Several commenters suggest that the financial position of the association has improved significantly, and that the balance of the CRTF has increased. Other commenters state that premium surcharges are not necessary because there has not been a hurricane on the Texas gulf coast in four years, and no hurricane in Corpus Christi in more than 30 years. Other commenters suggest that the association has settled most of its Hurricane Ike-related claims and raised rates, and it is on a positive financial path.

Agency Response: The department disagrees that the financial condition of the association eliminates the need for these adopted rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The rule amendments conform the department's premium surcharge and loss funding rules to current law, and provide an orderly process for the association to obtain public securities if it needs these funds to pay its policyholders' claims. While improvements in the association's financial condition reduces the possibility the association will have to rely on public securities to pay its policyholders' claims, it does not *eliminate* this possibility. For example, even if TWIA were to add $200 million to the CRTF through a net gain in operations, TWIA would still need to obtain public securities if a 1-in-50 year event hit the Texas coast during the 2014 hurricane season, which would cause $2.8 billion in insured property damage to TWIA's policyholders.

Comment: Several commenters suggest that the legislation, which the rules implement, is flawed and that the only authority that can address the legislation is the Texas Legislature.

Agency Response: The rule amendments reflect the Legislature's intent to create a mechanism to allow for the issuance of public securities. The purpose of Insurance Code Chapter 2210 reflects the Legislature's findings that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and that without that insurance, the orderly growth and development of this state would be severely impeded. When the department first proposed the rule amendments in 2012, the department received requests to postpone adopting the amendments until the 83rd Legislature had an opportunity to address TWIA's funding. As a result, the rules were withdrawn by operation of law on December 27, 2012. Because the 83rd Legislature did not address TWIA's funding, the department resumed its proposal of these rule amendments.

The 2014 hurricane season begins June 1. The potential harm in delaying TWIA's access to additional financial resources outweighs the benefits of further study on the potential economic impact of premium surcharges created by HB 4409 and amended by HB 3. The department will monitor TWIA and will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that the statute does not set a deadline for the department to adopt rules, and that there is no reason to adopt rules at this time. One commenter asks why the rules are needed now, if the statute authorized rules several years ago. Several commenters suggest that the rules be withdrawn so that the 84th Legislature can address TWIA in 2015. These commenters say elected officials, not a regulatory agency, should propose and adopt legislation to meet the needs of the proposed rules. Another commenter states one option is for the department to do nothing. Another commenter states that the language of the statute that relates to the implementation of the rules is permissive and not mandatory.

Agency Response: The department disagrees that the rule amendments are not needed. The department first adopted premium surcharge and loss funding rules effective February 3,

2011, to implement HB 4409. Since that time, the Legislature enacted HB 3, which amended TWIA's funding provisions. The department previously proposed amendments to its loss funding rules in the June 22, 2012, issue of the *Texas Register.* The department postponed consideration of these proposed rule amendments to give the 83rd Legislature an opportunity to address TWIA's funding. As a result, the proposed rule amendments were withdrawn by operation of law on December 27, 2012. Because the 83rd Legislature did not address TWIA's funding, the department resumed its proposal of amendments to its loss funding and premium surcharge rules.

The 2014 hurricane season begins June 1. TWIA's financial condition and that of the CRTF has improved, but catastrophic weather events could harm TWIA's ability to fulfill its obligations to policyholders. Adopting these rules provides an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. Doing nothing could result in public securities that are not marketable, which would deprive TWIA of the resources it needs to pay its policyholders' claims. TWIA may simultaneously pursue other funding or risk reduction strategies including procuring a line of credit, assessments, reinsurance, catastrophe bonds, and depopulation. Adopting rules will help TWIA test the marketability of any public securities authorized by Insurance Code Chapter 2210. Also, the Legislature may benefit from studying whether implementation of Chapter 2210 is successful, and how well the public securities authorized by the chapter strengthen TWIA's claims-paying ability.

Comment: A commenter states that assessing premium surcharges at this time is not actuarially necessary, and therefore discriminatory. The commenter urges TDI and TWIA to order the approximately $400 million in assessments, proposed but not approved by TWIA's board in September 2008, before considering premium surcharges.

The commenter recounts how, following Hurricane Ike, in September 2008, the TWIA board voted against assessing member insurance companies the full amount proposed under former Insurance Code §2210.058. The commenter states that since January 2009, TWIA policyholders have paid millions more in premiums than they would have had the board members representing TWIA-member insurance companies not voted against assessing the full amount proposed.

The commenter argues that imposing premium surcharges, before the possibility of assessing the insurance industry for Hurricane Ike losses has been exhausted, is discriminatory under Insurance Code §544.002. This section prohibits insurers from discriminating against individuals on the basis of, among other factors, geographic location. The commenter advises that Insurance Code §544.003 states that an insurer does not violate §544.002 if the insurer's action is based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience. The commenter states that imposing premium surcharges is discriminatory because, until TWIA members are assessed for Hurricane Ike losses, premium surcharges are not based on sound actuarial principles.

Agency Response: Many commenters have urged the department to assess TWIA member insurers under former Insurance Code §2210.058. However, foregoing or delaying adoption of the amendments to the premium surcharge and loss funding rules while TWIA assesses member insurers is not an option for the department, for two reasons.

First, the department does not have and never has had the authority to assess TWIA member insurance companies. Former Insurance Code §2210.058, which provided for the assessment of TWIA members when, in a calendar year, losses and operating expenses exceeded premium and other revenue, did not contemplate department assessment of TWIA member companies. Under the version of §5.4001 in effect in 2008, the TWIA board must determine the necessity of an assessment and then order TWIA to make the assessment.

Second, existing Insurance Code statutes already require insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its premium surcharge rules. See Insurance Code §§2210.609, 2210.613, and 2210.6136. Existing department rules provide for premium surcharges. The department adopted its current rules on loss funding and premium surcharges to implement HB 4409, 81st Legislature, 2009, which established TWIA's current funding structure. The question relevant to the adoption of the proposed amendments to the rules is not whether coastal policyholders will be subject to premium surcharges if the need arises, because current law already establishes this requirement. Instead, the question relevant to the adoption of the proposed rule amendments is whether the premium surcharges will be administered under the rules the department adopted in 2011 to implement HB 4409, or under amended rules that are consistent with current law. Note that some of the adopted amendments make the premium surcharge rules more consumer-friendly. As amended, §5.4184 requires insurers to refund premium surcharges when a midterm policy change or postexpiration policy change decreases the premium. This amendment reflects the fact that HB 3 removed the prohibition on making premium surcharges refundable.

Even if it were in the department's power to assess TWIA member insurers under former Insurance Code §2210.058, the additional funds provided to TWIA through an assessment would not eliminate the need for the department's rules to be consistent with current law. Further, while an assessment of approximately $400 million would result in an additional $400 million in the CRTF, it would not eliminate the possibility that TPFA may need to issue class 2 public securities to help TWIA pay its policyholders' claims. Even if TWIA added $400 million to the CRTF, TPFA may still need to issue class 2 public securities in order for TWIA to have sufficient funds to cover its policyholders' claims should a major hurricane hit the Texas coast. For example, a 1-in-50 year catastrophic event for TWIA would result in approximately $2.8 billion in insured damage to TWIA's policyholders.

Finally, a discussion of unfair discrimination under Insurance Code §544.002, in the context of premium surcharges under Insurance Code §2210.613 or §2210.6136, is misplaced. Section 544.002 prohibits an insurer from, among other acts, charging an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual's geographic location. As the commenter points out, §544.003(b) provides an exception: an insurer does not unfairly discriminate if the different rate charged due to geographic location is actuarially justified. Premium surcharges are not insurance rates and cannot be judged based on standards that apply to insurance rates. Unlike insurance rates, premium surcharges are not designed to reflect the cost of insuring a particular risk. Instead, premium surcharges are designed to pay debt service

and related expenses on public securities. See Insurance Code §2210.613(b).

Comment: Many commenters suggest that instead of adopting the proposed rules, TWIA should assess insurers for Hurricane Ike-related insurance claims. A commenter specifically asks why the department cannot require TWIA to assess insurers, if the department has oversight over TWIA. Several commenters suggest that assessments are a faster method to improve TWIA's reserves than the bond approval process. Several commenters suggest that the TWIA board, as currently structured, makes it unlikely that the board would vote to assess.

Agency Response: The department declines to withdraw the proposed rule amendments. The department disagrees that the possibility of assessing insurers eliminates the need to adopt these rule amendments. A decision to assess insurers is not mutually exclusive with a request to issue public securities. TPFA may still need to issue class 2 public securities in order for TWIA to have sufficient funds to cover its policyholders' claims should a major hurricane hit the Texas coast, even if TWIA were able to assess its member insurers for Hurricane Ike-related claims. The future financial circumstance of TWIA is unknowable, and the purpose of the rules is to conform the department's premium surcharge and loss funding rules to current law, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims.

The current administrative oversight the department has over TWIA is limited. The department does not directly manage TWIA and does not make operational decisions for TWIA. The board of directors of TWIA has the discretion to request an assessment under former Insurance Code §2210.058. Existing statute does not give the department or TWIA the authority to assess TWIA's member insurers to pay TWIA policyholders' claims resulting from future catastrophic events, except to pay for class 2 and class 3 public securities as provided in §§2210.613, 2210.6135, and 2210.6136.

The department acknowledges that the bond approval process may take time. The final adoption of rules prior to a windstorm event will allow TWIA and TPFA to study and review bond issuance-related issues before public securities are required. Delaying or withdrawing the rules would increase the solvency risk to TWIA and its policyholders.

The department does not have the power to change the structure of the association's board of directors. The composition of the board is specified in Insurance Code §2210.102. The board is composed of nine voting members and one nonvoting member, four of whom are representatives of the insurance industry. The statute establishes other requirements, including a minimum number of representatives that must live in first tier coastal counties. The primary objectives of the board are specified in Insurance Code §2210.107.

Comment: Several commenters requested a hearing in Cameron County.

Agency Response: The department declines to extend the rule comment period in order to hold a rule hearing in Cameron County. The department has held hearings in Austin, Beaumont, and Corpus Christi. The department received numerous written comments from interested parties at those hearings. Because TWIA may require additional resources if the 2014 hurricane season results in a need for TWIA to obtain funds through the issuance of public securities, delaying the rules to hold more hearings may be detrimental to TWIA and its policyholders. However, in response to the comment, the commissioner did hold a meeting in Cameron County on April 16, 2014, to allow the public and elected officials in attendance to voice concerns on TWIA and windstorm coverage, generally.

Comment: Several commenters state that the fiscal note in the proposed rules did not adequately address the true cost of the rules to state and local government. Several commenters suggest that the department was wrong to assert in the proposed rules that there will be no measurable effect on local employment or the local economy as a result of the proposal. One commenter requested that the department perform an analysis of the economic impact on the coastal counties before enacting the rule.

Agency Response: The adopted rule amendments do not create premium surcharges. The premium surcharges were created by the enactment of HB 4409. Any impact that possible premium surcharges may have on the coastal economy are a direct or indirect result of the statute and not the rule amendments. The department understands the economic concerns coastal residents and businesses have about the premium surcharges created by HB 4409, but declines to revise or withdraw its proposed rule amendments for this reason. The adopted rules do not impose any requirement on coastal policyholders that is not already required by statute, and the rules do not directly affect TWIA's rates. The department declines to perform additional economic analyses prior to adopting the proposed rule amendments. The potential harm in delaying TWIA's access to additional financial resources outweighs the benefits of further study on the potential economic impact of the law. The department will monitor TWIA and will keep the Legislature informed about the impact of implementing the use of public securities required under HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that the rules would create uncertainty over future rate or surcharge increases. One commenter states that there is no way to know how much the premium surcharges would be. The commenters ask if any actuarial calculations have been made to show what the impact of the rule will be on the 14 coastal counties. Another commenter states that the rules do not specify the amount or duration of the surcharge, and create uncertainty in the affected region. Another commenter suggests that the unknown nature of the surcharge is detrimental in bringing in new business and industry to the 14 coastal counties.

Agency Response: The proposed rule amendments implement the Legislature's intent in Insurance Code Chapter 2210. The department understands the concerns raised, but declines to revise or withdraw the proposed rule amendments. The calculation of the premium surcharge depends on a number of factors that neither the department, TWIA, nor TPFA will know until, and if, the class 2 public securities are issued. These factors include the amount of class 2 public securities TWIA needs to pay its policyholders' claims, the term of the public securities, the interest rate on the public securities, and other bondholder requirements necessary to sell the public securities. Because of these factors, the surcharges cannot be known precisely until the class 2 public securities are issued.

Comment: Several commenters suggest that the surcharge would be poorly timed. The surcharges would occur after a hurricane damaged property, just as policyholders would be recovering from a storm. One commenter states that the premium surcharges would compound the financial burden faced by coastal residents. Another commenter states that postevent

bonds are a crippling punishment for homeowners and business owners on the coast.

Agency Response: The department declines to withdraw the proposed rule amendments. Insurance Code §2210.613 states that the commissioner must make the surcharge effective on or after the 180th day after the date the commissioner issues notice of the approval of the public securities. Statute requires at least a six-month delay after the event, before the surcharges can be collected. The timing of the premium surcharge must be within the period set by statute. The department has very limited flexibility to delay the premium surcharge for class 2 public securities.

Comment: Many commenters state that the premium surcharges are unfair to the residents of the 14 coastal counties. Several commenters suggest that the people of the 14 tier one counties are being treated differently than the people in the other 240 counties in Texas. One commenter suggests that the proposed rules effectively "redline" the 14 tier one counties. The commenter states that the premium surcharges would be predatory and discriminatory in an area that already pays more to insure their property than the rest of the state. One commenter states that the premium surcharges on the 14 tier one counties constitutes discrimination based on geographic location. Another commenter states that because assessments may be available, the premium surcharge is not actuarially necessary and, therefore, discriminatory. One commenter suggests that the exclusion of most of Harris County illustrates how corrupt the current windstorm system is.

Several commenters suggest that the proposed rules may be discriminatory on racial grounds. The commenters suggest that the effect of the proposed rules would be harshest toward minorities and others who live and work along the Texas coast. One commenter states that they believe that the premium surcharges are contrary to the principles of the United States Constitution and the Texas Constitution. Another commenter states that the proposed rules are discriminatory under Texas Insurance Code Chapters 544 and 560.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to current law, and they provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rule amendments do not impose any requirement on coastal policyholders that is not already required by the statute, and the amendments do not directly affect TWIA's rates.

A discussion of unfair discrimination under Insurance Code §544.002, in the context of premium surcharges under Insurance Code §2210.613 or §2210.6136, is misplaced. Section 544.002 prohibits an insurer from, among other acts, charging an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual's geographic location. As another commenter points out, §544.003(b) provides an exception: an insurer does not unfairly discriminate if the different rate charged due to geographic location is actuarially justified. But premium surcharges are not rates and cannot be judged by whether they are actuarially justified. Premium surcharges are, unlike rates, *not* designed to reflect the cost of insuring a particular risk; premium surcharges are designed to pay debt service and related expenses on public securities. See Insurance Code §2210.613(b).

Comment: One commenter states that the surcharge contradicts the legislative intent to not have rates go up by more than 5 percent per year. Section 32 of HB 4409, codified as §2210.351, states that TWIA may use a filed rate without prior approval if it does not exceed 105 percent of the existing rate. Section 33 of the bill has a similar limitation for the required annual manual rate filings. The commenter suggests that by imposing the premium surcharges the rates would exceed the 5 percent rate increase.

Agency Response: The department declines to revise or withdraw the proposed rule amendments. The premium surcharges required under Insurance Code §2210.613 are distinct from TWIA's rates. TWIA's premium rates are designed to cover TWIA's cost to insure a particular risk. Unlike TWIA's rates, the premium surcharges are designed to pay debt service and related expenses on public securities. In addition, Insurance Code §2210.613 requires that the commissioner set the surcharge in an amount sufficient to pay, for the duration of the public securities, 70 percent of all debt service not already covered by TWIA's available funds.

Comment: Many commenters suggest that the proposed rules are illogical in their application. One commenter states that those with second homes on the coast may benefit, while coastal residents may have to pay for premium surcharges. A commenter also asks how commercial fleet vehicles or rental car companies will be impacted. Several commenters suggest those businesses may relocate to areas outside the premium surcharge area.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The statute provides that the premium surcharges would apply to policies insuring second homes that are located in the catastrophe area but that may be owned by non-coastal residents. Premium surcharges would also apply to policies covering automobiles principally garaged in the catastrophe area. The adopted rules conform the department's premium surcharge and loss funding rules to current law, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, states that the premium surcharges "... shall be assessed on all policyholders of policies that cover insured property that is *located in a catastrophe area, including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that premium surcharges on automobile insurance are not fair. Several commenters suggest that automobile coverage is not logically related to TWIA. One commenter states that connecting premium surcharges for TWIA to automobiles creates a bad precedent. Another commenter states the automobile insurance premium surcharge is illogical since coastal residents would be evacuating their personal automobiles away from a storm. Another commenter states that TWIA does not pay for automobile claims, and suggests that it is inappropriate to assess windstorm related claims to automobile policies. One commenter suggests that

the premium surcharges are a transparent ploy to make money for rich insurance companies.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. HB 3 amended Insurance Code §2210.613 to provide that the premium surcharges "... shall be assessed on *all* policyholders of policies that cover insured property that is located in a catastrophe area, *including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted amendments do not impose requirements on coastal policyholders that are not already required by the statute and the amendments do not directly affect TWIA's rates. The premium surcharges are not designed to reflect the cost of insuring a particular risk. Instead, the premium surcharges are designed to pay debt service and related expenses on public securities. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: One commenter suggests that the detrimental impact of the proposed rules would have negative geopolitical implications. The commenter explains that Texas coastal exports of natural gas can help western Europe reduce its reliance on Russian natural gas. The commenter states that the premium surcharges would cripple the ability for coastal industry to expand the supply and export of liquid natural gas.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters state that the coastal economy will be adversely impacted. Several commenters suggest that the rules will have an adverse economic impact on the state as a whole. Many commenters suggest that the proposed rules will increase the cost of doing business in Texas. Many commenters explain how important and critical the economic contribution of the coast is to Texas, stating that the coast is home to key industries, it facilitates trade, and it provides goods and energy necessary for commerce.

Many commenters express concern over the impact of the rules on the state's workforce. Several commenters suggest that the premium surcharges will drive away workers. One commenter states that the rule would cut off business from its most important resource: people. Several commenters suggest that industrial development in the coastal region depends on workers who must pay for TWIA insurance. If workers leave the coastal area, the remaining workforce would be insufficient to support industry. Several commenters suggest that the high cost of insurance negatively impacts the real estate market. One commenter states that home buyers already experience sticker shock for insurance costs. Several commenters suggest that coastal communities will be at a disadvantage when competing against noncoastal communities. Other commenters suggest that coastal communities in other states may compete for and attract business away from the area, and that the proposed rules may place Texas coastal communities at a disadvantage. Another commenter suggests the uncertainty of the additional costs is a negative impact for economic competition. Another commenter suggests that it will be difficult to explain to relocating persons that property in addition to their home may face premium surcharges. Another commenter states that in commercial real estate, increased costs are difficult to incorporate due to the long lease terms.

Several commenters state that they live on a fixed income and cannot afford increased insurance costs. Many commenters suggest that insurance costs in coastal communities are already too high. Several commenters state that the 14 tier one coastal counties are some of the nation's poorest, and they are home to people who can least afford to pay premium surcharges.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will monitor complaints and insurer compliance, and it will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

The purpose of Insurance Code Chapter 2210 reflects the Legislature's findings that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance the orderly growth and development of this state would be severely impeded. Insurance Code Chapter 2210 provides a method to obtain adequate windstorm and hail insurance. Subchapter B-1 of Chapter 2210 provides that TWIA must pay its policyholders' claims in part through the issuance of class 1, class 2, and class 3 public securities. Subchapter M of Chapter 2210 provides that if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds, then 70 percent of those obligations must be paid through coastal premium surcharges and the remaining 30 percent paid through assessments to TWIA's insurer members.

Comment: Several commenters suggest that the premium surcharges will harm local governments. Several commenters suggest that the proposed rules will make it more difficult for local governments to fund services. One commenter states that the proposed rules would kill any reason to build or keep property

in the 14 tier one counties. Another commenter states that economic diversity is required for a community to exist. One commenter gave the example of the increasing costs of premium depreciating the value of a home from $200,000 to $150,000. Another commenter states that municipalities may be negatively impacted twice: first by the extra premiums, and then by the reduced ad valorem tax base. The net result is that tax revenues would decline, jeopardizing communities' ability to provide transportation, safety, emergency response, and public water infrastructure.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rules. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that coastal residents already pay high insurance premiums. One commenter states that not only have windstorm insurance costs increased in many areas, but flood insurance premiums have increased. Many commenters suggest that the high and rising costs of insurance may force them to relocate.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Existing Insurance Code §2210.613 already requires insurers to surcharge their coastal policyholders (and TWIA to assess its member insurers) if TWIA cannot pay its class 2 public security obligations and administrative expenses from available funds. This requirement exists even if the department does not adopt any amendments to its loss funding or premium surcharge rules. The adopted rule amendments conforms the department's premium surcharges and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that premium surcharges on automobile insurance may increase the number of uninsured motorists on Texas roads. Commenters state that the additional cost of insurance will cause motorists to drop their insurance because they may be unable to afford the premiums.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, states that the premium surcharges "... shall be assessed on all policyholders of policies that cover insured property that is located in a catastrophe area, *including automobiles principally garaged in a catastrophe area."* (emphasis added). The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The adopted rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect TWIA's rates. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Several commenters suggest that the expiration of WPI-8 certificates will harm coastal residents. One commenter expressed frustration with their problems in getting a WPI-8 certificate, and the process for engineering oversight. Several commenters state that the lack of grandfathering provisions or full disclosures negatively impacts persons affected by storms.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rule amendments do not address WPI-8 certificates or provisions related to grandfathering WPI-8 certificates.

Comment: Several commenters suggest that the potential for premium surcharges is unfair because TWIA's problems are the result of mismanagement by TWIA. One commenter suggests that the premium surcharges, including surcharges on automobile policies, are intended to shore up the state-run financial mismanagement of TWIA. Another commenter suggests that it should not be coastal residents who have to pay for the mismanagement of TWIA.

Agency Response: The department understands concerns relating to TWIA management, but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3 and provide an orderly process for TWIA to obtain public securities should they be needed. The need to conform the department's rules to existing statute and to provide an orderly process for TWIA to obtain funds should they become necessary exists regardless of TWIA's financial condition. Delay or withdrawal of the proposed rules could harm TWIA's policyholders. The department will monitor complaints and insurer compliance.

Comment: Several commenters suggest that coastal windstorm coverage should be available through other insurers. One commenter states that the department can get insurance companies to return to selling windstorm coverage.

Agency Response: The department understands concerns relating to competition in the property market along the coast, but declines to revise or withdraw the proposed rule amendments. Implementing statutes designed to ensure funding for TWIA's policyholders is a separate issue from that of the availability of private market insurance along the coast. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an

orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The rules do not impose any requirement on coastal policyholders that is not already required by the statute, and the rules do not directly affect insurance market competition. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that the department needs to explore alternate funding sources to spread the cost and risk of a catastrophic event across the state. One commenter states that the department should study what other states have done to address coastal windstorm coverage. Many commenters state that residents across Texas should contribute to the cost of windstorm insurance on the coast. Commenters suggest that the purpose of insurance is to pool risks.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The Insurance Code does not authorize the department to require insurers to surcharge statewide policyholders. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, requires that the premium surcharges "... be assessed on all policyholders of policies that cover insured property that *is located in a catastrophe area,* including automobiles principally garaged *in a catastrophe area."* (emphasis added). The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest that coastal residents are subsidizing other parts of the state. Several commenters suggest that recent property losses from wildfires, tornados, hailstorms, and severe freezes have been paid for by coastal policyholder premiums. Several commenters suggest that the insurance risks for coastal property is not different than the risks faced in other parts of the state.

Agency Response: The department understands the concerns but declines to revise or withdraw the rules. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3. The Insurance Code does not authorize the department to require insurers to surcharge statewide policyholders. Insurance Code §2210.613, as created by HB 4409 and amended by HB 3, requires that the premium surcharges "... be assessed on all policyholders of policies that cover insured property that *is located in a catastrophe area,* including automobiles principally garaged *in a catastrophe area."* (emphasis added). The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary.

Comment: Many commenters suggest alternative funding methods. One commenter states that the easiest way to do that is to ask the insurance companies to purchase the bonds in the event of a storm. Several commenters suggest that residents in all of the United States should contribute to the costs of insuring risks anywhere in the United States. Another commenter suggests a similar federal mechanism involving other states that share coastal windstorm risks. Another commenter suggests that the funding for the public securities should come from the insurance premium taxes that are based on the admitted and nonadmitted carriers operating in Texas. One commenter suggests that insurance companies should be asked to fund the cost of reinsurance and let them spread those costs throughout the state. Another commenter suggests that funding should come from forcing all home and building owners to pay a prorated premium rate that is based on the value of the homes or buildings. One commenter suggests that if TWIA needs more money, it ought to raise the rates of current TWIA policyholders. Another commenter suggests an additional hotel tax on visitors to the coastal areas.

Many commenters suggest other methods to insure the coast or to mitigate the need for TWIA. Many commenters state that the premium surcharge should apply statewide. One commenter states that the solution to the TWIA problem is the removal of all new homes and homes built to code from the TWIA pool. Another commenter states that if the Uniform Building Codes were enforced across the state, property damage would be mitigated. Several commenters state that the department should require insurance companies to write insurance in all of Texas. One commenter suggested that all property and casualty insurance companies that do business in Texas offer windstorm coverage statewide, at a rate not to exceed 1 percent of the insured value of the property. One commenter suggests that tort reform would be helpful. Another suggests a consumer and user tax on products specifically earmarked for the windstorm fund. One commenter suggests that the department look to federal flood insurance for a viable funding method. Another commenter suggests that the department require better underwriting rules, adequate rates, liability limits, other funding strategies, and encourage the private insurance market. Another commenter suggests encouraging underwriting flexibility to encourage insurance companies to write coverage on the coast. One commenter suggests that TWIA policies should only cover named storms. One commenter states that the premium surcharge should be 3 percent on the coast and 1 percent everywhere else. One commenter suggests that rates should vary by wind maps and that the department should conduct further study to produce wind maps that provide a reasonable measure of the degree of risk across Texas. Another commenter states that all beach property and property within two miles of the beach should pay the premium surcharge. Another commenter suggests expanding the list of counties to any county where the wind speed maps show that wind may exceed 90 miles an hour. The commenter states that expanding the coastal zone would include 50 more counties than the 14 specified tier one counties. One commenter suggests that TWIA coverage should be more like flood insurance, and premium should be 100 percent earned when written. Then the only way a policy can be canceled is if the homeowner sells their property.

Several commenters suggest funding solutions relating to imposing a tax or surcharge on goods that are produced or transported from the coast to other areas of the state. Another commenter suggests that the state should cover any shortcomings in the association's ability to pay claims. Several commenters suggest that the state's rainy day funds be available for windstorm costs.

Agency Response: The department declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The statute prescribes the

method for financing public securities. The department will keep the Legislature informed about the impact of implementing the use of public securities required by HB 4409 and HB 3, including the impact of any premium surcharges should they become necessary. The authority of the department is limited to the statutory methods that the Legislature has created. The department will continue to do what it can to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of TWIA as a means to obtain insurance, as required by Insurance Code §2210.009. During the next legislative session, the department will serve as a resource for the Legislature, should the Legislature address TWIA's funding structure.

Comment: One commenter suggests that residents on the coast should not have two different deductibles, and that the standard TWIA policy should cover all hazards the same way.

Agency Response: The department understands the concerns but declines to revise or withdraw the proposed rule amendments. The rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The authority of the department is limited to the regulatory authority specified in Chapter 2210, TWIA's governing statute. The type of coverage that TWIA may provide is prescribed by Chapter 2210. The adopted rules do not address the type of coverage that TWIA may provide or the contractual language in a TWIA policy.

Comment: Several commenters suggest TWIA should depopulate and cover less property in order to remove some of the risk. One commenter suggests that the statutory language imposes a requirement on the department to develop incentives. The commenter states that the department should push incentives even if insurance companies do not like the incentives. Another commenter suggests that TWIA is not interested in depopulation.

Agency Response: The department agrees that reducing TWIA's risk, including TWIA depopulation strategies, should be pursued. However, the department declines to revise or withdraw the proposed rule amendments. The adopted rule amendments conform the department's premium surcharge and loss funding rules to changes made by HB 3, and provide an orderly process for TWIA to obtain public securities if it needs these funds to pay its policyholders' claims. The department is continuing its administrative oversight of TWIA. The department will continue to do what it can to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of TWIA as a means to obtain insurance, as required by Insurance Code §2210.009.

Comment: One commenter states that the department should look into dissolving TWIA. The commenter states that TWIA should not be allowed to continue making mistakes that cost taxpayers and citizens.

Agency Response: The department understands the concerns but declines to revise or withdraw the rule amendments. The department does not have authority to change TWIA's statutory structure, which the Legislature enacted. The department is continuing its administrative oversight of TWIA.

Comment: Several commenters suggest that they support the proposed rules in general. Supportive commenters also offer similar constructive comments to those suggested by commenters not in support of the rules.

Agency Response: The department appreciates the supportive comments.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Two individuals.

For with changes: American Insurance Association, Association of Fire and Casualty Companies of Texas, Bank of America Merrill Lynch, Insurance Council of Texas, JP Morgan Chase, Texas Public Finance Authority, Texas Surplus Lines Association.

Against: One U.S. congressman; three state senators; 11 state representatives; five mayors; four county commissioners; one city secretary; 13 city councilpersons; three county judges; Associated General Contractors of Southeast Texas; Beaumont Board of Realtors; Beaumont Chamber of Commerce; Braselton Homes; Brownsville Chamber of Commerce; Builders Association of Corpus Christi; Catholic Charities of Southeast Texas; Coastal Windstorm Task Force; Corpus Christi Association of Realtors; Corpus Christi Chamber of Commerce; Del Mar College; Hamilton Real Estate; Island Retreat Condominiums; League of United Latin American Citizens of Corpus Christi; Mr. Sidings, Windows, and Sunrooms; Padre Island Chamber of Commerce; Padre Isles Property Owners Association; Port Aransas Chamber of Commerce and Tourist Bureau; Port of Corpus Christi Authority; Port Royal Ocean Resort; Regional Economic Development Initiative; Salter Insurance Agency; South Padre Island Chamber of Commerce; Southeast Texas Plan Managers Forum; Terry Cauthen Insurance; Texas Association of Realtors; Texas Watch; Thurmen-Fonden Glass; TPCO America Corporation; and 238 individuals.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§36.001, 2210.008, 2210.071, 2210.073, 2210.609, 2210.611, 2210.613, and 2210.6136.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided in Insurance Code Chapter 2210, Subchapter B-1, which includes the issuance of public securities. Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes that class 2 public securities must be repaid in the manner prescribed by Insurance Code Chapter 2210, Subchapter M.

Section 2210.609 provides that the association must repay all public security obligations from available funds, and if those funds are insufficient, then from revenue collected under Insurance Code §§2210.612, 2210.613, 2210.6135, and 2210.6136. Section 2210.611 establishes that for class 2 public securities, the association may use premium surcharge revenue and member assessment revenue collected under Insurance Code §2210.613 in any calendar year that exceeds the amount of the class 2 security obligations and public security administrative

expenses payable in that calendar year, and the interest earned on those funds to: (i) pay the applicable public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the CRTF.

Section 2210.613 provides that the association must collect premium surcharges and member assessments to pay class 2 public securities issued under §2210.073. Section 2210.613(c) establishes the lines of insurance to which the premium surcharge applies. Section 2210.6136 provides that the commissioner may order the issuance of class 2 public securities if all or any part of the class 1 public securities cannot be issued. Section 2210.6136 further provides that the commissioner shall order the association to repay the premium surcharges and member assessments used to pay the cost of a portion of the class 2 public securities issued under this section.

§5.4171. Premium Surcharge Requirement.

(a) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.613(b) and (c) on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(b) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, Surcharges Not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; and commercial automobile physical damage.

(c) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

(d) For all lines of insurance subject to this division, this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division are effective June 1, 2011.

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirement, Determination of the Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

(4) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(5) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(6) Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division.

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Surcharge Percentage.

(a) The association must review information provided by TPFA concerning the amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, to determine whether the association has sufficient available funds to pay the public security obligations and public security administrative expenses, if any, including any contractual coverage amount, or whether

a premium surcharge under Insurance Code §2210.613 is required. The association may consider all of the association's outstanding obligations and sources of funds to pay those obligations.

(b) If the association determines that it is unable to satisfy the estimated amount of class 2 public security obligations and administrative expenses with available funds, the association must submit a written request to the commissioner to approve a premium surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.613. The association's request must specify:

(1) the total amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice;

(2) the amount to be collected from insurers through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;

(3) the amount to be collected from catastrophe area policyholders through premium surcharges, which may not exceed 70 percent of the amount specified in the TPFA notice; and

(4) the date on which the premium surcharge is to commence and the date the premium surcharge for the noticed amount is to end.

(c) On approval by the commissioner, each insurer must assess a premium surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The premium surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the premium surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, and Surcharges not Subject to Commissions or Premium Taxes, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues notice of approval of the public securities.

(d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4181. Premiums to be Surcharged.

(a) The premium surcharge percentage must be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas;

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by insurers that are subject to premium taxation by the comptroller, including policy fees not reported as premium; and

(3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

§5.4182. Method for Determining the Premium Surcharge.

(a) The methods addressed in this section will apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners; homeowners; commercial multiple peril (nonliability portion); private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP), other commercial auto liability, and commercial auto physical damage; and

(2) personal and commercial risks assigned by TAIPA under Insurance Code Chapter 2151.

(b) The premium surcharge will be determined by applying the premium surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to insured property located in the catastrophe area.

(c) In cases where the policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot be reasonably determined, the insurer must determine the premium surcharge based on the insured address. If the insured address is within a designated catastrophe area, then the insurer must determine the premium surcharge by applying the premium surcharge percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated catastrophe area, then no premium surcharge applies to the policy.

§5.4184. Application of the Surcharges.

(a) When assessed under Insurance Code §2210.613, the premium surcharges must apply to all policies with insured property in the catastrophe area that are issued or renewed with effective dates in the assessment period specified in the commissioner's order, with two exceptions:

(1) insurers must not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were canceled as of the inception date of the policy; and

(2) for multiyear policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, must be applied to the 12-month premium for the applicable policy period.

(b) Premium surcharges are refundable under Insurance Code §2210.613.

(1) If the policy is canceled, an amount of the surcharge that is proportionate to the return premium must be refunded to the policyholder; however,

(2) instead of a refund of the premium surcharge, the insurer may credit the return premium surcharge against amounts due the insurer but unpaid by the policyholder; and

(3) an additional surcharge will not apply to a policy that was canceled after the effective date of the policy, and is later reinstated, if the premium surcharge was paid in full. If the policyholder did not pay the premium surcharge in full, the policyholder must pay the premium surcharge that is due but unpaid before the insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in Insurance Code §551.106.

(c) If a midterm policy change increases the premium on the policy, the policyholder must pay an additional surcharge for the increased premium attributable to insured property located in the catastrophe area, which will be determined by applying the applicable premium surcharge percentage to that portion of the additional premium attributable to insured property located in the catastrophe area.

(d) If a midterm policy change decreases the premium, the policyholder is due a refund of the surcharge for the decreased premium attributable to insured property located in the catastrophe area, which must be determined by applying the applicable premium surcharge percentage to that portion of the return premium attributable to insured property located in the catastrophe area. The insurer must credit or refund the excess surcharge to the policyholder within 20 days of the date of the transaction, except as provided by subsection (g) of this section. The insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid or credited to the policyholder to the association through the offset process described in §5.4187 of this division (relating to Offsets).

(e) Surcharges or refunds must apply to all premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy, the premium surcharge must be collected on the deposit premium paid. If, after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional surcharge must be paid. If, after exposure or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess surcharge must be refunded to the policyholder, and the insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid to the association through the offset process described in §5.4187 of this division. Additional surcharges and refunds must be determined by applying the premium surcharge percentage in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear policies, to the additional premium (or return premium) attributable to insured property located in the catastrophe area.

(f) Even if a surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multiyear policies, no additional premium surcharges or refunds will apply to premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no premium surcharge in effect.

(g) An affiliated surplus lines insurer may allow a surplus lines agent to credit or refund premium surcharges on its behalf. An affiliated surplus lines insurer, or surplus lines agent allowed to credit or refund premium surcharges on its behalf, must credit or refund the excess surcharge to the policyholder under subsections (d) and (e) of this section not later than the last day of the month following the month in which the corresponding transaction was effective.

(h) An affiliated surplus lines insurer that allows an agent to credit or refund premium surcharges on its behalf under subsection (g) of this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4185. Mandatory Premium Surcharge Collection.

(a) Except as provided in §5.4127(h) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), insurers may not pay the surcharges instead of surcharging their policyholders. However, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the premium surcharges proportionately as the insurer collects the premium.

(c) Under Insurance Code §2210.613(d), the failure of a policyholder to pay the premium surcharge constitutes failure to pay premium for the purposes of policy cancellation.

§5.4186. Remittance of Premium Surcharges.

(a) Except as provided in §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities), insurers must remit to the association the aggregate amount of surcharges as provided by this section. An affiliated surplus lines insurer may allow a surplus lines agent to remit premium surcharges to the association on its behalf in compliance with any procedures established by the association relating to premium surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit surcharges under subsection (a) of this section, must remit all surcharges not later than the last day of the month following the month in which the corresponding written premium transaction was effective.

(c) Insurers and agents may not allow or require policyholders to make separate payments for the surcharge amounts that are payable to the association or the premium surcharge trust fund.

(d) Subsection (b) of this section applies to all insurers regardless of whether the policyholder paid the premium surcharge through an agent of the insurer or the policyholder paid the premium surcharge directly to the insurer.

(e) An affiliated surplus lines insurer that allows an agent to remit premium surcharges to the association under subsection (a) of this section may be held liable by the department for the failure of its agent to remit the premium surcharges or timely remit the premium surcharges, under subsection (b) of this section.

§5.4187. Offsets.

(a) An insurer may credit a premium surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of the Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, in excess of a deposit premium as described in §5.4184 of this division.

(b) An agent may not offset payment of a premium surcharge to the insurer for any reason. However, a surplus lines agent allowed by an affiliated surplus lines insurer to remit surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Premium Surcharges), may offset as provided in this section.

§5.4189. Notification Requirements.

(a) Insurers must provide written notice to policyholders receiving a premium surcharge that their policy contains a surcharge. The notice must read: "Texas Insurance Code Sections 2210.073 and 2210.613 require a premium surcharge be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophic event. A premium surcharge {in the amount of $_____} has been added to your premium. Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will be refunded to you. Failure to pay the surcharge is grounds for cancellation of your policy."

(b) Insurers must provide written notice to policyholders of the dollar amount of the premium surcharge.

(c) Except as provided in subsection (d) of this section, notices required under subsections (a) and (b) of this section must:

(1) be provided at the time the policy is issued, in the case of new business;

(2) be provided with the renewal notice, in the case of renewal business;

(3) be provided within 20 days of the date of the transaction for any midterm change in the premium surcharge; and

(4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

(d) An affiliated surplus lines insurer, or surplus lines agent allowed to provide notices on its behalf, must provide the notice required under subsection (c)(3) of this section to the policyholder not later than the last day of the month following the month in which the transaction for any midterm change in the premium surcharge became effective.

(e) An affiliated surplus lines insurer that allows an agent to provide notices required under this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4190. Annual Premium Surcharge Report.

(a) This section applies to an insurer that, during the calendar year, wrote any of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage.

(b) No later than 90 days following the end of a calendar year in which a premium surcharge was in effect, each insurer must provide the association with an annual premium surcharge report for the calendar year unless premium surcharges were in effect for less than 45 days within the calendar year.

(c) Annual premium surcharge reports must provide information for each insurance company writing property or casualty insurance in the State of Texas, including affiliated surplus lines insurers, and affiliated insurers not authorized to engage in the business of insurance that issued independently procured insurance policies covering insured property in the State of Texas.

(d) Annual premium surcharge reports must provide information for the following annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage for which the insurer reported premium for the applicable calendar year.

(e) Annual premium surcharge reports must provide the following information:

(1) the name and contact information of the individual responsible for submitting the report;

(2) the five-digit NAIC number of the insurance company;

(3) the name of the insurance company;

(4) for policies with effective dates, or multiyear policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year for all applicable lines of business:

(A) for all policies subject to a premium surcharge:

(i) the total written premium attributable to insured property located in the catastrophe area; and

(ii) the total written premium attributable to insured property located outside the catastrophe area; and

(B) the total written premium for policies not subject to a premium surcharge because the policyholder had no insured property located in the catastrophe area;

(5) for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multiyear policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium;

(6) the total amount of premium surcharges collected during the applicable calendar year; and

(7) the total amount of premium surcharges remitted to the association during the applicable calendar year.

(f) The association must:

(1) review the reports submitted under this section as necessary to determine:

(A) the consistency of premium surcharges actually remitted to the association or deposited directly into the premium surcharge trust fund, with premium surcharges shown in the reports as collected and the premium surcharges shown in the reports as remitted to the association or deposited directly into the premium surcharge trust fund; and

(B) the consistency of premiums shown in the reports as attributable to the catastrophe area with premium surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of premium surcharges in this division;

(2) inform the department of any insurer the association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the association, provide an aggregate summary of the reports to the department.

§5.4191. Premium Surcharge Reconciliation Report.

(a) This section applies to an insurer that, during an applicable calendar year, wrote any or all of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage.

(b) On a written request from the department, an insurer must provide the department with a premium surcharge reconciliation report for the year specified by the department in its request.

(c) Reconciliation reports must be provided to the department within 15 working days after the date the request is received by the insurer.

(d) Reconciliation reports must consist of information concerning premiums written and surcharges collected, separately for each

applicable surcharge period, including periods in which no premium surcharges were in effect, within the specified year for:

(1) premium written at policy issuance for policies effective within the year, including anniversary dates within the year on multiyear policies, separately for:

(A) premium on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area; and

(B) premium on policies not subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;

(2) premium written due to midterm coverage changes occurring within the specified time period separately for:

(A) premium increases on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;

(B) premium decreases on policies subject to a refund or credit of the premium surcharge, including premium attributable to insured property located both in and outside the catastrophe area; and

(C) premium on policies not subject to a premium surcharge, including premium increases and decreases attributable to insured property located both in and outside of the catastrophe area;

(3) unearned premiums returned due to midterm cancellations occurring within the specified time period separately for:

(A) return premium on policies subject to a premium surcharge, including return premium attributable to insured property located both in and outside the catastrophe area; and

(B) return premium on policies not subject to a premium surcharge, including return premiums attributable to insured property located both in and outside the catastrophe area;

(4) total premium due to post term premium changes occurring within the specified time period, including adjustments caused by premium or exposure audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration, separately for:

(A) premium on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area; and

(B) premium on policies not subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;

(5) separately for paragraphs (1)(A), (2)(A), and (4)(A) of this subsection, the amounts of premium surcharges collected;

(6) separately for paragraphs (2)(B), (3)(A), and (4)(A) of this subsection, the amounts of premium surcharges refunded or credited to the policyholder;

(7) the total amount of premium surcharges claimed as offsets by the insurer under §5.4187 of this division (relating to Offsets); and

(8) the total amount of written premium for policies written in the State of Texas as reported in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas.

(e) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

(f) A report provided to the department under this section may be provided to the association.

§5.4192. Data Collection.

(a) The department may request from each insurer the information necessary to enable the department to determine the premium surcharge percentage applicable to policyholders with insured property located in the catastrophe area.

(b) For lines of insurance subject to this division for policies in force on or after October 1, 2011, each insurer must maintain sufficient records to report, for policies where the premium surcharge was, or would be determined under this division, the total written premium attributable to insured property located in the catastrophe area.

(c) When possible, and practical, the department will obtain information from the Texas Surplus Lines Stamping Office prior to requesting information from affiliated surplus lines insurers.

(d) Nothing in subsection (c) of this section should be read to mean that subsections (a) and (b) of this section do not apply to affiliated surplus lines insurers.

(e) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2014.

TRD-201402439
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: June 12, 2014
Proposal publication date: February 14, 2014
For further information, please call: (512) 463-6326

28 TAC §5.4183

The commissioner of insurance adopts the repeal of 28 TAC §5.4183, Allocation Method for Other Lines of Insurance, which is used to determine the premium surcharge required by 28 TAC §5.4171 for other applicable lines of insurance in the event of a catastrophe. The repeal is adopted without changes to the proposal published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 898). The repeal is related to a separate rule adoption published in this issue of the *Texas Register* concerning the association's procedures for making and assessing premium surcharges under Insurance Code Chapter 2210, Subchapter M.

REASONED JUSTIFICATION. Repeal of 28 TAC §5.4183, Allocation Method for Other Lines of Insurance, is necessary to implement HB 3, 82nd Legislature, First Called Session, 2011. Section 50 of HB 3 amended Insurance Code §2210.613(c) to specify the lines of property and casualty insurance policies. Because the amendments to §2210.613 eliminate the lines of insurance subject to the premium surcharge under §5.4183, the section is no longer necessary and should be repealed as outdated.

HOW THE SECTIONS WILL FUNCTION. Adoption of the repeal will eliminate policy premium surcharge determination requirements for lines of insurance no longer subject to premium surcharges.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI received no comments on the published proposal.

STATUTORY AUTHORITY. Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code §2210.008 provides that the commissioner may issue orders and adopt rules in the manner prescribed by Insurance Code §36.001, as reasonable and necessary to implement Chapter 2210.

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 May 23, 2014.

TRD-201402437
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: June 12, 2014
Proposal publication date: February 14, 2014
For further information, please call: (512) 463-6326

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.2, 15.3, 15.10 - 15.13

The General Land Office (GLO) adopts amendments to §§15.2, 15.3, and 15.10 - 15.13, concerning Management of the Beach/Dune System. Sections 15.2, 15.3, 15.11, and 15.13 are adopted without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2798). Section 15.10 and §15.12 are adopted with nonsubstantive changes and will be republished.

GLO adopts amendments to §15.2 (relating to Definitions) to add definitions for "all-terrain vehicle," "recreational vehicle" and "recreational off-highway vehicle," in conformance with amendments to §63.002 of the Texas Natural Resources Code under House Bill (HB) 2741 which relates to requirements for all-terrain vehicles; and "meteorological event," in conformance with House Bill 3459 which relates to the suspension of a line of vegetation determination following the obliteration of the natural line of vegetation by a meteorological event. The GLO adopts amendments to §15.3 (relating to Administration) to modify language to conform with amendments to §§61.001, 61.011, 61.016, 61.017, and 61.0185 of the Texas Natural Resources Code under HB 3459 and delete references to the Attorney General to conform to amendments in HB 1457 which modified implementation and enforcement authority under the Open Beaches Act (OBA). The GLO adopts amendments to §15.10 (relating to General Provisions) to modify language to conform to HB 3459 and delete references to the Attorney General. The GLO adopts amendments to §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach) to modify language to conform to HB 3459 and to correct and conform the language to match the language in §15.12. The GLO adopts amendments to §15.12 (relating to Temporary Order Issued by the Land Commissioner) to modify language to conform to HB 3459. The GLO adopts amendments to §15.13 (relating to Disaster Recovery Orders) to modify language to conform to HB 3459, clarify language, and to conform the language to match changes in other sections.

BACKGROUND AND REASONED JUSTIFICATION

The 83rd Legislature enacted HB 1044 (Acts 2013, 83rd Leg., Ch. 895, eff. September 1, 2013) and HB 3459 (Acts 2013, 83rd Leg., Ch. 1086, eff. September 1, 2013). The amendments to 31 TAC §§15.2, 15.3, and 15.10 - 15.13 conform 31 TAC Chapter 15 to the requirements of those statutory amendments and provide some clarification of requirements applicable to post-storm activities on the Texas coast. The amendments also delete references to the Attorney General to conform 31 TAC §15.3 and §15.10 to amendments in HB 1457 (Acts 2003, 78th Leg. Ch. 245, June 18, 2003) which modified implementation and enforcement authority under the OBA.

HB 1044 provides clarification on whether the operation of all terrain vehicles and recreational off-road vehicles is permissible on public beaches and conforms the definitions in Chapter 15 to the definitions in HB 1044. HB 3459 amended the OBA to provide for the suspension of line of vegetation (LOV) determinations after the obliteration of the LOV following a meteorological event. The amendments provide for the suspension of LOV determinations for up to three years, which allows time for the vegetation to recover and establishes a more accurate assessment of a meteorological event's impacts on the public beach easement and establishes how the LOV will be determined during such as suspension, which provides some clarity for landowners during recovery following a meteorological event that has obliterated the LOV. Amendments to Chapter 15 add definitions in §15.2, modify language related to LOV determinations in §15.3, delete language related to the Attorney General in §§15.3, 15.10, and 15.12, add language in §15.12 specifying how LOVs will be suspended by temporary order, and make conforming, clarifying, and grammatical changes to §§15.10, 15.11 and 15.13.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the thirty (30) day comment period.

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the adoption in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are adopted under the specific authority of §61.011 and do not exceed the expressed requirements of federal or state law. The amendments implement legislative amendments to TNRC §§61.001, 61.011, 61.016, 61.017, and 61.0185, relating to the protection and preservation of the public's free and unrestricted right of ingress and ingress to the public beach, and are not anticipated to adversely affect in a material

way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments are subject to the Coastal Management Program (CMP) as provided for in the Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and §505.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations and has determination that the section is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System). The amendments implement HB 3459, which provides a system of preserving, administering, and enforcing the rights beachfront property owners and the public in the absence of an LOV. The amendments are consistent with the CMP goals outlined in 31 TAC §501.12(2) and (4). These goals seek to allow for the compatible economic development and multiple uses of the coastal zone and ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. The amendments are consistent with 31 TAC §501.12(2) as they provide for the protection of coastal natural resource areas by establishing a means for the line of vegetation to recover following obliteration of the line of vegetation by a meteorological event. The amendments are consistent with 31 TAC §501.12(4) as they ensure public access and use of the coastal zone following a meteorological event that obliterates the line of vegetation in a way that is compatible with private property rights of beachfront property owners until a new line of vegetation can be established. The amendments are also consistent with CMP policies in §501.26(a)(4) (relating to Policies for Construction in the Beach/Dune System) by ensuring the ability of the public, individually and collectively, to exercise its right of use and access to and from the public beach following the obliteration of the line of vegetation by a meteorological event.

No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendments are consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY The amendments are adopted under Texas Natural Resources Code §61.011, relating to commissioner's authority to adopt rules for the temporary suspension of the determination of the line of vegetation and local government prohibition of vehicular traffic on public beaches, and §63.121, relating to the commissioner's authority to promulgate rules for the protection of critical dune areas. Texas Natural Resources Code §§61.011 - 61.026 and §§63.001 - 63.1814 are affected by the adopted amendments.

§15.10. General Provisions.

(a) Construction. A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The commissioner shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §§61.016 - 61.017 and §15.3(b) of this title (relating to Administration) and §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). The General Land Office and the local governments will consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. No person shall violate any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government and the attorney general's office 60 days prior to withdrawing General Land Office certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the attorney general's office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to this subchapter.

(j) Grandfathered plans. Nothing in the amendments shall require modifications of any dune protection and beach access plan certified on or prior to the effective date of these amendments. All permits and certificates shall be issued in accordance with the General Land

Office rules for management of the beach/dune system as described in this chapter.

§15.12. Temporary Orders Issued by the Land Commissioner.

(a) Purpose. The purpose of this section is to provide standards and procedures for the temporary suspension under §61.0185 of the Texas Natural Resources Code of enforcement of the prohibition against encroachments on and interferences with the public beach easement and suspension under §61.0171 of the Texas Natural Resources Code of line of vegetation determinations where the natural line of vegetation has been obliterated as a result of a meteorological event. This rule is promulgated under the authority of §61.011(d) of the Texas Natural Resources Code.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, and other objects, that may pose a hazard to public health and safety and/or no longer serves the purpose for which it was originally intended.

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration) or an order issued under this section or §15.13 of this title (relating to Disaster Recovery Orders).

(3) The Code--The Texas Natural Resources Code.

(4) Habitable--The condition of the premises which permits the inhabitants to live free of serious hazards to health and safety.

(5) House--A single or multi-family structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.

(c) Any order issued by the commissioner under subsection (d) or (e) of this section shall be:

(1) posted on the General Land Office's Internet Web Site, www.glo.texas.gov;

(2) published by the General Land Office as a miscellaneous document in the *Texas Register;* and:

(3) filed by the General Land Office in the real property records of the county in which the structure is located if the order is for suspension of enforcement under subsection (d) of this section.

(d) Orders suspending enforcement of the prohibition against encroachments on and interferences with the public beach easement.

(1) An order for temporary suspension of enforcement under §61.0185 may be issued for a period of three years. While an order issued under this section is in effect, a local government may issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable including reconnecting the house to utilities;

(B) does not increase the footprint of the house;

(C) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;

(D) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(E) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

(F) does not occur seaward of mean high water; and

(G) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create and additional obstruction to public use of and access to the beach.

(2) Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. While an order issued under this section is in effect, a local government shall coordinate with littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(3) While an order issued under this section is in effect, only beach-quality sand may be placed underneath the footprint of the house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(4) While an order issued under this section is in effect, a local government shall submit the certificate or permit application for repair of a house under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within ten working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(A) the name, address, phone number, and, if applicable, fax number or electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(B) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(C) the floor plan, footprint, or elevation view of the house identifying the proposed repairs;

(D) photographs of the site that clearly show the current conditions of the site; and

(E) an accurate map, site plan, plat, or drawing of the site identifying:

(i) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(ii) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways, and landscaping that currently exist on the tract;

(iii) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(iv) the location of the house and the distance between the house and mean high tide, and the natural line of vegetation; and

(v) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(5) While an order issued under this section is in effect, a local government is responsible for monitoring the repair of the house under this section. Any permit or certificate issued by a local government under this order expires automatically on the date the order expires. Except as provided in §15.11 of the title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), local governments may not issue permits or certificates for repairs to houses located on the public beach easement that are not subject to an order issued under this section.

(e) Orders suspending line of vegetation determinations where the line of vegetation has been obliterated as a result of a meteorological event.

(1) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event.

(2) For the duration of the order, the public beach shall not extend inland further than 200 feet from the seaward line of mean low tide as established by a licensed state land surveyor.

(3) While an order issued under this section is in effect, a local government may issue a certificate or permit based upon the boundary of the public beach, as delineated by the commissioner under §15.13 of this title.

(4) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with the Code §61.016 and §61.017, taking into consideration the effect of the meteorological event on the location of the public beach easement. The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under this subsection regarding the annual erosion rate for the area of beach subject to the order issued under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2014.

TRD-201402435
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: June 12, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.17, 71.19, 71.23, 71.29, 71.31

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §§71.17, 71.19, 71.23, 71.29, and 71.31 concerning Credit for Unused Accumulated Leave, Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS), Acceptance of Rollovers and Transfers from Other Plans, Purchase of Additional Service Credit, and Credit Purchase Option for Certain Waiting Period Service. The amendments are adopted without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2809). The amendments were approved by the ERS Board of Trustees at its May 20, 2014, meeting. These sections will not be republished.

Section 71.17 is amended to reflect that ERS may accept electronic certification of leave totals from agencies.

Section 71.19 is amended to clarify that a member who has transferred service credit under Texas Government Code, Chapter 805, may not return to service in a position covered by ERS during the month immediately after retirement from a position covered by ERS, or Teacher Retirement System (TRS) after retirement from a position with TRS.

Section 71.23 is amended to reflect that ERS may accept transfers or rollover of funds from traditional IRAs to establish service credit.

Section 71.29 is amended to allow members to purchase additional service credit in blocks smaller than 12 months if the member is attempting to become eligible for any retirement.

Section 71.29 and §71.31 are amended to provide that purchased service credit is not used to determine salary for an annuity. Section 71.29 is also amended to apply this requirement to all annuities.

Section 71.29 and §71.31 are further amended to adopt by reference the new actuarial service credit tables adopted by the ERS Board of Trustees on February 25, 2014. The new tables are necessary because of assumptions adopted by the board on February 26, 2013, following an actuarial experience study, as well as 2013 legislative changes to the retirement plans administered by ERS.

No comments were received on the proposed rule amendments.

The amendments are adopted under Texas Government Code §815.102, which authorizes the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any business of the board. Amendments are also adopted under Texas Government Code §815.105, which provides authorization for the ERS Board of Trustees to adopt mortality, service, and other tables it considers necessary for the retirement system.

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 May 21, 2014.

TRD-201402396
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: June 10, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 867-7480

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CHAPTER 73. BENEFITS

34 TAC §§73.2, 73.21, 73.25, 73.29, 73.45

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §§73.2, 73.21, 73.25, and 73.29 concerning Determination of Date of Hire for Retirement Benefit Eligibility, Reduction Factor for Age and Retirement Option, Payment to an Estate, and Spousal Consent Requirements, and adopts new §73.45 concerning Overpayment or Improper Payment of Benefits. The amendments and the new section were adopted without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2813). The amendments were approved by the ERS Board of Trustees at its May 20, 2014, meeting. These sections will not be republished.

Section 73.2 is amended to provide guidance for employees who may be affected by 2013 legislative changes that created a new benefit structure for those hired on or after September 1, 2013.

Section 73.21 is amended to adopt by reference the new actuarial service credit tables adopted by the ERS Board of Trustees on February 25, 2014. The new tables are necessary because of assumptions adopted by the board on February 26, 2013, following an actuarial experience study, as well as 2013 legislative changes to the retirement plans administered by ERS.

Section 73.25 is amended to revise references to the former Texas Probate Code, which was recodified by the legislature effective January 1, 2014, to be called the Texas Estates Code.

Section 73.29 is amended to clarify that spousal consent is required when a member elects to choose a non-spouse as the beneficiary of a proportionate retirement benefit.

Section 73.45 is added to require individuals who receive overpayments or improper payments of ERS benefits to pay interest on the overpayment or improper payment beginning 30 days after written notice by ERS of the overpayment or improper payment.

No comments were received on the proposed rule amendments.

The amendments and new section are adopted under Texas Government Code §815.102, which authorizes the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any business of the board. The amendments are also adopted under Texas Government Code §815.105, which provides authorization for the ERS Board of Trustees to adopt mortality, service and other tables it considers necessary for the retirement system.

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 May 21, 2014.

TRD-201402398
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: June 10, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 867-7480

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CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §77.11, §77.21

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §77.11 and §77.21 concerning Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II), and Purchase of Additional Service Credit, without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2815). The amendments were approved by the ERS Board of Trustees at its May 20, 2014 meeting. These sections will not be republished.

Section 77.11 and §77.21 are amended to adopt by reference the new actuarial service credit tables adopted by the ERS Board of Trustees on February 25, 2014. The new tables are necessary because of assumptions adopted by the board on February 26, 2013, following an actuarial experience study, as well as 2013 legislative changes to the retirement plans administered by ERS.

Section 77.21 is also amended to clarify that a member of the Judicial Retirement System of Texas Plan Two may purchase equivalent service credit only if the member has 180 months of service. This amendment will more closely align with the credit purchase option established in Texas Government Code §838.108 and for purposes of meeting retirement eligibility under Texas Government Code §839.101(a)(3).

No comments were received on the proposed rule amendments.

The amendments are adopted under Texas Government Code, §§815.102, 838.108(f) and 840.002, which provide authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities, to administer the credit purchase option and to administer the funds of the retirement system. The amendments are further authorized under Texas Government Code §815.105 and §840.005, which provide authorization for the ERS Board of Trustees to adopt mortality, service, and other tables it considers necessary for the retirement system.

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 May 21, 2014.

TRD-201402399
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: June 10, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 867-7480

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.7, 85.9, 85.11

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) §§85.1, 85.3, 85.7, 85.9, and 85.11, concerning Introduction and Definitions, Eligibility and Participation, Enrollment, Payment of Claims from Reimbursement Accounts, and Administration, without changes to the proposed text as published in the April

11, 2014, issue of the *Texas Register* (39 TexReg 2817). The amendments were approved by the ERS Board of Trustees at its May 20, 2014, meeting. These sections will not be republished.

Amendments to §§85.1, 85.3, 85.7, 85.9, and 85.11 are necessary to simplify plan administration and will benefit TexFlex plan participants in a manner permitted by the Internal Revenue Code.

Section 85.3 is amended to allow an employee to decrease health care reimbursement contributions to TexFlex as a result of any qualifying life event, if the decrease is consistent with the qualifying life event.

Section 85.7 is amended to provide a permissive, rather than mandatory, requirement that TexFlex participants be provided with reimbursement reports that are otherwise currently available to participants online.

Finally, §§85.1, 85.3, 85.7, 85.9, and 85.11 are amended to update the rules to benefit TexFlex participants as permitted by a recent change to the Internal Revenue Code. Currently, participants in the TexFlex health care reimbursement plan are entitled to an approximately two and one-half month grace period after the plan year ends, during which the participant can continue to submit claims for reimbursement for eligible expenses. At the end of the grace period, any remaining balance is forfeited.

IRS Notice 2013-71 now allows plans to implement an alternative to the grace period. Under this change, a plan may instead permit participants to carry over up to $500 in unspent contributions to the immediately following plan year. The amendments to these sections would implement the change beginning with the 2015 plan year, effective September 1, 2014, and will not impact individuals who previously planned to take advantage of the grace period in the current plan year, which will continue to run until November 15, 2014. The IRS will not permit both options to be utilized at the same time.

No comments were received on the proposed rule amendments.

The amendments are adopted under Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

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 May 21, 2014.

TRD-201402400
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: June 10, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 867-7480

TEXAS

Emma Blaser
3rd 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

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision, or repeal 1 TAC Chapter 203, §§203.1 - 203.3, 203.20 - 203.27, and 203.40 - 203.46, concerning Management of Electronic Transactions and Signed Records. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register.* Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201402434
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: May 23, 2014

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Candidates, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 227 are organized under the following subchapters: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility. The SBEC proposed the review of 19 TAC Chapter 227 in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2147).

Relating to the review of 19 TAC Chapter 227, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. However, the SBEC voted to propose changes to update some rules to reflect current law, clarify minimum standards for all educator preparation programs (EPPs), allow for flexibility, and ensure consistency among EPPs in the state. The proposed amendments to §§227.1, 227.5, 227.10, 227.15, 227.20, 227.103, 227.105, and 227.107 and proposed new 19 TAC §227.17 may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 227.

This concludes the review of 19 TAC Chapter 227.

TRD-201402446
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 23, 2014

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 228 in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2147).

Relating to the review of 19 TAC Chapter 228, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. However, the SBEC voted to propose changes to update some rules to reflect current law, clarify minimum standards for all educator preparation programs (EPPs), allow for flexibility, and ensure consistency among EPPs in the state. The proposed amendments to §§228.1, 228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, and 228.60 may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 228.

This concludes the review of 19 TAC Chapter 228.

TRD-201402447
Cristina de La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 23, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 229, Accountability System for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 229 in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2148).

Relating to the review of 19 TAC Chapter 229, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. However, the SBEC voted to propose changes to some rules to update and make uniform definitions, modify the standards used for enforcing the reporting of data, clarify the standards used for accountability, adjust the small group exception requirements, and establish a new process for challenging sanctions imposed on programs that fail the accountability system. The proposed amendments to §§229.2 - 229.9 may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 229.

This concludes the review of 19 TAC Chapter 229.

TRD-201402448
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 23, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 247, Educators' Code of Ethics, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 247 in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2148).

Relating to the review of 19 TAC Chapter 247, the SBEC finds that the reasons for adoption continue to exist and readopts the rules.

The SBEC received no comments related to the rule review of 19 TAC Chapter 247.

This concludes the review of 19 TAC Chapter 247.

TRD-201402449
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 23, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 250, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 250 are organized under the following subchapters: Subchapter A, Purchasing, and Subchapter B, Rulemaking Procedures. The SBEC proposed the review of 19 TAC Chapter 250 in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2148).

Relating to the review of 19 TAC Chapter 250, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. However, the SBEC voted to propose a change to §250.20 to clarify references to the Texas Education Agency and update the petition form to reflect the name of the office to which the form should be mailed. The proposed amendment to §250.20 may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 250.

This concludes the review of 19 TAC Chapter 250.

TRD-201402450
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 23, 2014

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule rule review that was published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 945), the Employees Retirement System of Texas (ERS) reviewed 34 TAC Chapter 73, Benefits, in accordance with Texas Government Code §2001.039 to determine whether the reason for adopting the rules in Chapter 73 continues to exist.

No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 73 continues to exist, and therefore the Board readopts Chapter 73. The board proposed amendments to Chapter 73 in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2813). This completes ERS' review of 34 TAC Chapter 73, Benefits.

TRD-201402401
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: May 21, 2014

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 946), the Employees Retirement System of Texas (ERS) reviewed 34 TAC Chapter 77, Judicial Retirement, in accordance with Texas Government Code §2001.039 to determine whether the reason for adopting the rules in Chapter 77 continues to exist.

No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 77 continues to exist, and therefore the Board readopts Chapter 77. The Board proposed amendments to Chapter 77 in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2815). This completes ERS' review of 34 TAC Chapter 77, Judicial Retirement.

TRD-201402402
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: May 21, 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.

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax**- Bacillus anthracis

Aujeszky's disease - Pseudorabies virus, herpesvirus suis

Leishmaniasis** - Leishmania infantum and L donavani

Foot and mouth disease - Aphthovirus, types A,O,C, SAT, Asia

Heartwater - Cowdria ruminantium

African Trypanosomosis (Nagana) - Trypanosoma brucei, T. vivax,

T. brucei

Rinderpest - Morbillivirus

Rift Valley fever - Bunya virus

Vesicular stomatitis - Rhabdovirus; 2 serotypes; New Jersey and Indiana

Screwworm - Cochliomyia hominivorax

Schmallenberg virus

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis, B. divergens*, Babesia microti

Bovine brucellosis - Brucella abortus

Bovine ephemeral fever – Rhabdovirus

Bovine trichomonosis – trichomoniasis****

Bovine tuberculosis - Mycobacterium bovis

East coast fever (Theileriosis) - Theileria parva

Malignant catarrhal fever (wildebeest associated) - Alcelaphine

herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - Mycoplasma mycoides

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy

Scabies - Sarcoptes scabiei, Psoroptes bovis, Chorioptes bovis

Cervidae

Brucellosis - Brucella abortus, Brucella suis (biotype 4)

Chronic Wasting Disease

Tuberculosis - Mycobacterium bovis

Sheep and goat diseases

Caprine and ovine brucellosis (not B. ovis infection) – Brucella melitensis

Contagious caprine pleuropneumonia - Mycoplasma capri (biotype 78)

Louping ill - Flavovirus

Nairobi sheep disease - Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox - Capripoxvirus

Scrapie

Scabies - Sarcoptes scabiei

Equine diseases

African horse sickness - Orbivirus

Contagious equine metritis - Tayorella equigenitalis

Dourine - Trypanosoma equiperdum

Epizootic lymphangitis - Histoplasma farciminosum

Equine encephalomyelitis (Eastern and Western)** - Alphavirus

Equine infectious anemia - Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - Babesia equi, B. caballi

Glanders - Pseudomonas mallei

Japanese encephalitis - Flavovirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)***

Equine Herpes Virus-1 (EHV-1)

Swine diseases

African swine fever - Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Novel Swine Enteric Coronavirus disease(s)

Swine vesicular disease - Picornavirus

Vesicular Exanthema - Calicivirus

Poultry diseases

Avian influenza - Orthomyxoviruse

Avian infectious laryngotracheitis - Orthomyxovirus, herpesvirus

Avian tuberculosis - Mycobacterium avium serovars 1,2

Duck virus hepatitis - Picornavirus

Fowl typhoid - Salmonella gallinarum

Highly pathogenic avian influenza (fowl plague) – Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - Chlamydia psittaci

Pullorum disease - Salmonella pullorum

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

**These diseases are also reportable to the Department of State Health Services (DSHS)

***This disease has reporting standards in Chapter 49, §49.4 of this title.

****Results of tests for this disease shall be reported within 48 hours of completion of the tests.

Figure: 19 TAC §229.3(f)(1)

Accountability System: Standards disaggregated by gender and ethnicity (see demographics chart)	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.4, Determination of Accreditation Status
1. Certification examinations		√	Pass Rate—As defined in 19 TAC §229.2 (24) [~~§229.2(26)~~].	Certification scores will be uploaded into the accountability system for educator preparation (ASEP) system and calculated by academic year (September 1-August 31).
2. Beginning teacher performance		√	Results of beginning teacher appraisals by school administrators.	Online survey will be completed by school administrators by June 15 of each applicable year.
3. Student achievement		√	Improvement of student performance taught by beginning teachers for the first three years.	Date and method of collection when available.
4. Ongoing support by field supervisors to beginning teachers during their first year in the classroom	√	√	Data collections regarding frequency, duration, and quality of field supervision	Educator preparation program (EPP) [~~EPP~~] will enter information in the ASEP system by September 15 of each year, documenting each field supervision contact by entering the following information: 1) teacher; 2) date of contact with teacher; 3) time of contact; and 4) documentation provided.
Annual Performance Report disaggregated by gender and ethnicity: (Appendix - demographics chart)	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.3, Required Submissions of Information, Surveys, and Other Data
1. Number of EPP applicants	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
2. Number of EPP candidates admitted	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
3. Number of candidates retained in the EPP	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.

Annual Performance Report disaggregated by gender and ethnicity: (Appendix - demographics chart)	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
4. Number of candidates completing all EPP requirements		√	Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
5. Number of EPP candidates retained in the profession		√	Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
6. Number of EPP candidates employed		√	Report included on the consumer information section of the TEA website.	TEA staff will generate a report utilizing ASEP system and Public Education Information Management System (PEIMS) data.
7. All information required by federal law	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
Consumer Information to be Posted on the TEA website:	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.3, Required Submissions of Information, Surveys, and Other Data
1. EPP status based on adherence to the standards		√	Accountability Status: standards disaggregated by gender and ethnicity. (see Appendix) To be posted on the TEA website in the consumer information section for each EPP.	All information will be posted annually on the TEA website in the consumer information section.
2. Annual Performance Report of each EPP	√	√	Seven data elements submitted by EPPs as required by TEC, §21.045(b). Information to be posted on the TEA website in the consumer information section for each EPP.	EPP will upload file or enter all elements of this section into ASEP system by September 15 for the preceding academic year. All information will be posted annually on the TEA website in the consumer information section.
3. Quality of persons admitted to the EPP:	√		To be posted on the TEA website in the consumer information section for each EPP.	All information will be posted on the TEA website in the consumer information section.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
a. Individual overall GPA	√		Required and calculated by EPP.	EPP will enter into the ASEP system by September 15 for the preceding academic year. For assistance in calculating the GPA: http://www.onlineconversion.com/grade_point_average.htm. EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
b. Individual GPA in specific subject area	√		Required and calculated for core subject areas per No Child Left Behind (NCLB) requirements.	EPP will enter into the ASEP system by September 15 for the preceding academic year. For assistance in calculating the GPA: http://www.onlineconversion.com/grade_point_average.htm.
c. Average overall GPA for the EPP		√		ASEP system will calculate the overall average GPA by EPP by September 15 for the preceding academic year.
d. Average overall GPA in subject areas by EPP		√		ASEP system will calculate the overall average GPA by EPP.
*** EPP will report ONE of the following of rows e through l for each candidate.**				
e. Individual total GRE® score and date	√		EPP will need to report the total score and the date. The GRE® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
f. Individual total SAT® score and date	√		EPP will need to report the total score and the date. The SAT® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
g. Individual ACT® score and date	√		EPP will need to report the total score and the date. The ACT® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
h. Individual Texas Academic Skills Program® (TASP®)/Texas Higher Education Assessment® (THEA®) score and date	√			EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
i. ☐ None of the above		√		EPP will enter the number of candidates who qualify under the Texas Success Initiative (Texas Education Code, §51.3062) into the ASEP system by September 15 for the preceding academic year.
j. Average total GRE® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average GRE® by date and by EPP
k. Average total SAT® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average SAT® by date and by EPP
l. Average total ACT® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average ACT® by date and by EPP
m. Average total TASP®/THEA® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average TASP®/THEA® by EPP.
4. Candidates who are counted as finishing the EPP for pass rate purposes and who are successful in obtaining teaching positions		√	To be posted on the TEA website in the consumer information section for each EPP.	TEA will report candidates by EPP who have been issued a certificate and are identified in PEIMS as teacher of record.
5. Preparation of general education and special education teachers to effectively teach:			To be posted on the TEA website in the consumer information section for each EPP.	EPP assurances of compliance and the number of training/coursework hours will be entered into the ASEP system by September 15 for the preceding academic year.
a. Students with disabilities	√			EPP will provide assurances of compliance in the ASEP system by September 15 for the preceding academic year.
b. Students of limited English proficiency	√			EPP will provide assurances of compliance in the ASEP system by September 15 for the preceding academic year.
6. Activities offered by EPP to prepare teachers:			To be posted on the TEA website in the consumer information section for each EPP.	Data will be entered annually for the preceding academic year.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
a. Integrate technology effectively into curricula and instruction including activities consistent with the principles of universal design for learning	√			EPP will provide assurances of compliance and the number of training/coursework hours in the ASEP system by September 15 for the preceding academic year.
b. Integrate technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement	√			EPP will provide assurances of compliance and the number of training/coursework hours in the ASEP system by September 15 for the preceding academic year.
7. Perseverance of beginning teachers in the profession for at least three years after certification as active members in the Teacher Retirement System of Texas (TRS)		√	To be posted on the TEA website in the consumer information section for each EPP.	TEA will obtain candidates by EPP who have been issued a certificate and are identified in PEIMS as teacher of record and the TRS. Results will be posted annually for the preceding academic year.
8. Results of exit surveys from EPP participants at the completion of the program that evaluate the program's effectiveness in preparing participants to succeed in the classroom		√	To be posted on the TEA website in the consumer information section for each EPP.	EPP participants will respond to an online survey presented at the time they apply for certification. Results will be posted annually by August 1 for the preceding academic year.
9. Results of surveys from school principals that evaluate the EPP's effectiveness in preparing participants to succeed in the classroom		√	To be posted on the TEA website in the consumer information section for each EPP.	Principals or designated administrators will complete by June 15, for the preceding academic year, individual teacher performance surveys for each beginning teacher who participated in an EPP. The online survey will be administered and collected by TEA. Results will be posted on the TEA website under consumer information.
10. Identify employment opportunities for teachers in the various regions of the state including shortage areas		√		TEA will provide employment information in various regions of Texas. TEA will identify teacher shortage areas. The information will be provided on the TEA website. Information will be updated annually for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
1. Admission Data:			EPPs report if they require the following criteria for admitting participants:	EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
a. Application	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
b. Fee/payment	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
c. Transcript	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
d. Fingerprint check	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
e. Background check	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
f. Experience in a classroom working with students	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
g. Minimum number of clock-hours completed	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
h. Minimum high school GPA	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
i. Minimum undergraduate GPA	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
j. Minimum GPA in content area coursework	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
k. Minimum GPA in professional education coursework	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
l. Minimum ACT® score	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
m. Minimum SAT® score	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
n. Minimum GRE® score	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
o. Minimum basic skills test score	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
p. Subject area/academic content test or other subject matter verification	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
q. Minimum Miller Analogies Test score	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
r. Recommenda-tion(s)	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
s. Essay or personal statement	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
t. Interview	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
u. Resume	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
v. Baccalaureate degree or higher	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
w. Job offer from school/district	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
x. Personality test (e.g. Myers-Briggs Assessment)	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
y. Other (specify:_____ _____)	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
2. EPP Website	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
3. Time when individuals are formally admitted to the initial teacher certification program (freshman, sophomore, junior or senior year)	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
4. Does your EPP conditionally admit candidates?	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
5. Number of candidates enrolled by gender and ethnicity	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
6. Supervised clinical experience:	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
a. Average number of clock-hours prior to student/clinical teaching	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
b. Number of clock-hours required for student/clinical teaching	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
c. Number of full-time equivalent faculty in supervised clinical experience during this academic year (Institution of Higher Education [~~IHE~~] and Pre K-12)	√			EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
d. Number of candidates in supervised clinical experience during the academic year	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
7. Number of candidates who have been certified as teachers by subject and certification for three years	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1. TEA will extract the data and send to the certification testing vender.
8. Total number of initial teacher certification program completers for three years	√	√		EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1. TEA will extract the data and send to the certification testing vender.
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
1. Annual quantifiable goals for increasing the number of prospective teachers trained in teacher shortage areas				EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
a. Math	√			
b. Science	√			
c. Special Education	√			
d. Instruction of limited English proficient (LEP) students	√			TEA will collect data regarding English language learner (ELL) students and also assurances of compliance. EPPs will enter this data into the ASEP system by October 1 for the preceding academic year.
e. Other (specify:_____ _____)	√			

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
2. Assurances:				
a. Training provided to prospective teachers. Responds to the identified needs of the local educational agencies or States where the institution's graduates are likely to teach, based on past hiring and recruitment trends.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
b. Training provided to prospective teachers is closely linked with the needs of schools and the instructional decisions new teachers face in the classroom.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
c. Prospective special education teachers receive coursework in core academic subjects and receive training in providing instruction in core academic subjects.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
d. General education teachers receive training in providing instruction to students with disabilities.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
e. General education teachers receive training in providing instruction to limited English proficient students.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
f. General education teachers receive training in providing instruction to students from low-income families.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the ASEP system. All data must be completed by October 1 for the preceding academic year.
g. Prospective teachers receive training on how to effectively teach in urban and rural schools, as applicable.	√			EPPs will enter data into the ASEP system by October 1 for the preceding academic year.
Section III: Pass rates and scaled scores			Based on only teacher certification tests.	
1. Assessment of pass rates for the academic year		√		Certification test vendor will provide reports by EPP.
2. Summary pass rates for three years		√		Certification test vendor will provide reports by EPP
Section IV: Statement and Designation as Low-Performing				
1. EPP approval		√	TEA will determine the status of an EPP.	TEA will determine the status of an EPP through the implementation of the standards specified in 19 TAC §229.4(a)(1)-(4). for the preceding academic year.
2. EPP accredited		√		TEA will determine the status of an EPP through the implementation of the standards specified in 19 TAC §229.4(a)(1)-(4),for the preceding academic year.
Section V: Use of Technology - Prepare teachers to:			TEA will collect data and post on the TEA website in the consumer information section of the website.	
1. Integrate technology effectively into curricula and instruction.	√	√		EPPs will enter data regarding the use of technology into the ASEP system by October 1 for the preceding academic year.
2. Use technology effectively to collect data to improve teaching and learning.	√	√		EPPs will enter data regarding the use of technology into the ASEP system by October 1 for the preceding academic year.
3. Use technology effectively to manage data to improve teaching and learning.	√	√		EPPs will enter data regarding the use of technology into the ASEP system by October 1 for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	[~~SB 174,~~] Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section V: Use of Technology - Prepare teachers to:			TEA will collect data and post on the TEA website in the consumer information section of the website.	
4. Use technology effectively to analyze data to improve teaching and learning.	√	√		EPPs will enter data regarding the use of technology into the ASEP system by October 1 for the preceding academic year.
Section VI: Teacher Training			TEA will collect data and post on the TEA website in the consumer information section of the website.	
1. Teach students with disabilities effectively.	√	√		EPPs will enter data regarding students with disabilities into the ASEP system by October 1 for the preceding academic year.
2. Participate as a member of an individualized education program team.	√	√		EPPs will enter data regarding students with disabilities into the ASEP system by October 1 for the preceding academic year.
3. Teach students who are limited English proficient effectively.	√	√		EPPs will enter data regarding the teaching of students who have limited English proficiency into the ASEP system by October 1 for the preceding academic year.
4. Teach students with disabilities effectively.	√	√		EPPs will enter data regarding teaching students who have learning disabilities into the ASEP system by October 1 for the preceding academic year.
5. Participate as a member of an individualized education program team.	√	√		EPPs will enter data regarding teaching students who have learning disabilities into the ASEP system by October 1 for the preceding academic year.
6. Teach students who are limited English proficient effectively.	√	√		EPPs will enter data regarding the teaching of students who have limited English proficiency into the ASEP system by October 1 for the preceding academic year.

Appendix
Demographics Guidelines

Starting with the 2009-2010 academic year, ASEP will collect ethnicity and race information for candidates using the 1977 categories as well as using the new federal categories developed in 1997 as required by the United States Department of Education (USDE). The new federal category system requires that ethnicity and race be collected separately. It allows individuals to select multiple races. It requires all responses to be collected, but when reporting aggregate data to the USDE, a different set of categories is used for aggregate reporting. In the 2010-2011 academic year, Educator Preparation programs will report this information using the new categories only. The new categories are as follows:

Ethnicity	Race
Hispanic or Latino	American Indian or Alaska Native
Not Hispanic or Latino	Asian
	Black or African American
	Hawaiian or other Pacific Islander
	White

Aggregate Reporting Categories
Hispanic or Latino
American Indian or Alaska Native
Asian
Black or African American
Hawaiian or Other Pacific Islander
White
Two or more races

Figure: 19 TAC §250.20(a)

STATE BOARD FOR EDUCATOR CERTIFICATION

Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

Petitions should be signed and submitted to:

Office of Educator Leadership and Quality [~~Office of Educator Certification and Standards~~]
Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Name:

Affiliation/Organization (if applicable):

Address:

Telephone: Date:

Proposed rule text (indicate words to be added or deleted from the current text):

Statutory authority for the proposed rule action:

Why is this rule action necessary or desirable?

(If more space is required, attach additional sheets.)

Petitioner's Signature

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Granted Exemptions from the Cost Rules

Government Code §552.262(a) authorizes the attorney general to adopt cost rules for governmental bodies to use in determining charges for providing public information under the Public Information Act, Chapter 552 of the Government Code. The attorney general's cost rules are found at 1 TAC §§70.1 - 70.12. Government Code §552.262(c) permits a governmental body to request that it be exempt from all or part of the attorney general's cost rules. Government Code §552.262(d) requires the attorney general to publish annually a list of the governmental bodies that are granted exemptions from the attorney general's cost rules and authorized to adopt modified rules for determining charges for providing public information. Therefore, the attorney general publishes the following table of exemptions granted for Fiscal Year 2014 (September 1, 2013, through August 31, 2014).

This agency hereby certifies that the OAG's granted exemptions from the cost rules have been reviewed by legal counsel and found to be within the agency's authority to publish.

Fiscal Year 2014 OAG's Granted Exemptions from the Cost Rules

Governmental Body	Exempted from Rule Section	Authorized Charges
Brazoria County Clerk's Office	1 TAC §70.3(b)(2)(F), (d)(1), (e)(1)	$9.00 per CD of daily images/indices $14.00 per CD of weekly images/indices $20.00 per CD of bulk (2 years) historical indices $90.00 plus cost of drive(s) (if not supplied by customer) of bulk (1826-1964) historical data on external drive
Wise County Appraisal District	1 TAC §70.3(d)(1), (h)(3)	$68.54 for a certified appraisal roll
Harris County	1 TAC §70.3(h)(3)	$49.69 per mainframe CPU minute $4.37 per midsize CPU minute
Guadalupe Appraisal District	1 TAC §70.3(h)(3)	$5.53 per clock hour for client/server time

TRD-201402533
Katherine Cary
General Counsel
Office of the Attorney General
Filed: May 28, 2014

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403; Chapter 2156, §2156.121; and Chapter 2305, §2305.037, the Texas Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office (SECO) announces its Request for Proposals No. 210b ("RFP") and invites proposals from Public Higher Education Institutions ("PHEIs") for the creation and/or expansion of Clean Energy Incubators ("CEI") for the Emerging Clean Energy Technology Program ("Program"). Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about September 1, 2014, or as soon thereafter as practical.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at http://esbd.cpa.state.tx.us on Friday, June 6, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774, (512) 305-8673.

Questions: All written inquiries must be received at the above-referenced address not later than 2:00 p.m. (CT) on Friday, June 13, 2014. Questions received after this time and date will not be considered. Prospective proposers are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, June 20, 2014, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered in the Issuing Office no later than 2:00 p.m. (CT), on Friday, June 27, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 6, 2014, after 10:00 a.m. CT; Nonmandatory Webinar - June 11, 2014; Questions Due - June 13, 2014, 2:00 p.m. CT; Official Responses to Questions posted - June 20, 2014; Proposals Due - June 27, 2014, 2:00 p.m. CT; Contract Execution - September 1, 2014, or as soon thereafter as practical; Commencement of Services - September 1, 2014.

TRD-201402508
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: May 28, 2014

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Concho Valley Workforce Development Board

Request for Proposals: Website Redesign

Concho Valley Workforce Development Board issues this request for proposals (RFP) for redesign and hosting of Workforce Solutions of the Concho Valley website. RFP details, including timelines and attachments, are available on our website at http://www.cvworkforce.org/rfp.asp.

Proposals will be accepted until 5:00 p.m. CDST, June 13, 2014, at the office of Concho Valley Workforce Development Board, 36 East Twohig, Suite 805, San Angelo, Texas 76903. Concho Valley Workforce Development Board reserves the right to accept or reject any or all proposals.

TRD-201402407
Mike Buck
Executive Director
Concho Valley Workforce Development Board
Filed: May 22, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/02/14 - 06/08/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/02/14 - 06/08/14 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 05/01/14 - 05/31/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 05/01/14 - 05/31/14 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/14 - 09/30/14 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 07/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code[1] for the period of 07/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 07/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/14 - 09/30/14 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 07/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/14 - 06/30/14 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/14 - 06/30/14 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201402503
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 27, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 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 July 7, 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: Bartley Woods Water Supply Corporation; DOCKET NUMBER: 2014-0146-MLM-E; IDENTIFIER: RN101275972; LOCATION: Fannin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272, by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code, §341.0315(c) and TCEQ AO Docket Number 2011-1104-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide two or more service pumps having a total capacity of at least 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a water level indicator; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupation Safety and Health Administration standards and is readily accessible outside the chlorination room; 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 ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: $3,018; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BLAIR WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0366-PWS-E; IDENTIFIER: RN101437044; LOCATION: Merkel, Taylor County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: $165; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: C&R DISTRIBUTING, LLC; DOCKET NUMBER: 2013-2045-PST-E; IDENTIFIER: RN102594934; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: $3,855; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: City of Anton; DOCKET NUMBER: 2014-0345-PWS-E; IDENTIFIER: RN101202448; LOCATION: Anton, Hockley County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.44(h)(4), by failing to ensure that all backflow prevention assemblies are tested upon installation by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.46(j)(1)(A) and (B), by failing to have all customer service inspections conducted by an individual that is a Plumber Inspector or Water Supply Protection Specialist licensed by the State Board of Plumbing Examiners or by a Customer Service Inspector who has completed a commission approved course, passed an examination administered by the executive director, and holds current professional certification or endorsement as a Customer Service Inspector; and 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to provide facility records to commission personnel at the time of the investigation; PENALTY: $348; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: City of New Summerfield; DOCKET NUMBER: 2014-0174-MWD-E; IDENTIFIER: RN101918282; LOCATION: New Summerfield, Cherokee 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 WQ0013585001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0013585001, Monitoring and Reporting Requirements, by failing to timely submit monitoring results; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013585001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $6,050; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Earth Promise; DOCKET NUMBER: 2014-0441-PWS-E; IDENTIFIER: RN101190197; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten 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; and 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each

quarter by the tenth day of the month following the end of the quarter and failed to provide public notices of the failure to submit a DLQOR to the executive director; PENALTY: $660; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Garland Hohertz Subdivision; DOCKET NUMBER: 2014-0663-WQ-E; IDENTIFIER: RN107131013; LOCATION: Shallowwater, Lubbock County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: Highway 90, Incorporated dba Village Food Store 1; DOCKET NUMBER: 2013-0910-PST-E; IDENTIFIER: RN101729853; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.72(3), by failing to report a suspected release to the TCEQ within 24 hours of discovery; PENALTY: $8,850; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Justin Watford and Don Watford; DOCKET NUMBER: 2014-0204-WQ-E; IDENTIFIER: RN106839343; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: private residence; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to water in the state; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: Kashiz Shah dba Vidor Superette 2; DOCKET NUMBER: 2014-0189-PST-E; IDENTIFIER: RN106065303; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the vapor recovery system; 30 TAC §115.246(a)(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: $12,844; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Kerrville Recycling #2; DOCKET NUMBER: 2014-0664-WQ-E; IDENTIFIER: RN100577030; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: Recycling; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, (325) 655-9479.

(12) COMPANY: L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility; DOCKET NUMBER: 2014-0245-PST-E; IDENTIFIER: RN100815208; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: wholesale distribution service; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b) and §37.870(a), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is identical to the UST identification number listed on the UST registration; 30 TAC §334.602(a), by failing to designate at least one Class A, Class B, and Class C operator for the facility; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves were securely anchored at the bases of the dispensers; and 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: $16,832; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Loera Home Builders Company; DOCKET NUMBER: 2014-0651-WQ-E; IDENTIFIER: RN107192528; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: Construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: MARY ANNE INCORPORATED dba US Trux Stop; DOCKET NUMBER: 2014-0190-PST-E; IDENTIFIER: RN101432938; LOCATION: Brookshire, Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Mary F. Trammell dba Trammell's Running Creek RV Park & Store; DOCKET NUMBER: 2014-0132-PWS-E; IDENTIFIER: RN106691025; LOCATION: Franklin, Robertson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1), and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit and maintain plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to maintain water system's records and provide it to commission personnel at the time of an investigation; 30 TAC §290.121(a) and (b), by failing to compile and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements

which is maintained at each treatment plant and at a central location; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's two pressure tanks; 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 §290.42(l), by failing to maintain a complete, thorough, and up-to-date plant operations manual for operator review and reference; 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; 30 TAC §290.45(c)(1)(B)(i) and THSC, §341.315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per unit; 30 TAC §290.45(c)(1)(B)(iii) and THSC, §341.315(c), by failing to provide two or more service pumps with a total capacity of 1.0 gpm per unit; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $1,400; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Mohammad Aleem dba Camden Store; DOCKET NUMBER: 2014-0091-PST-E; IDENTIFIER: RN102266442; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.242(d)(3) and (4) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; and 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system; PENALTY: $9,042; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Montgomery County Municipal Utility District 88; DOCKET NUMBER: 2014-0339-PWS-E; IDENTIFIER: RN105173751; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2013 monitoring period; and 30 TAC §290.117(i)(5) and (k), by failing to deliver the public education materials in the event of an exceedance of the lead action level and to continue the delivery of the public education materials for as long as the lead action level was not met; PENALTY: $450; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: NEW PROSPECT BAPTIST CHURCH OF NEMO, TEXAS; DOCKET NUMBER: 2014-0218-PWS-E; IDENTIFIER: RN105949184; LOCATION: Nemo, Somervell 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 initial lead and copper tap samples at the required five sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director; PENALTY: $1,337; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Prospect Oilfield Services LP; DOCKET NUMBER: 2014-0650-WR-E; IDENTIFIER: RN107155269; LOCATION: Bryson, Jack County; TYPE OF FACILITY: carrier; RULE VIOLATED: TWC, §11.081 and §11.121, by failing for impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas, 79602-7833, (325) 698-9674.

(20) COMPANY: RAINBOW CAMP, LLC dba Up the River Camp; DOCKET NUMBER: 2014-0314-PWS-E; IDENTIFIER: RN102319399; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit as-built plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.121(a) and (b), by failing to compile and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements which is maintained at each treatment plant and at a central location; 30 TAC §290.42(l), by failing to compile and maintain a complete, thorough, and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(e)(2), by failing to ensure that the disinfectant injection point is located ahead of water storage tanks if storage is provided prior to distribution; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; and 30 TAC §290.46(f)(2) and (3)(A)(ii)(I), by failing to maintain water works operation and maintenance activities records; PENALTY: $620; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Ramon C. Gonzales, Jr. dba Warren Road Subdivision Water Supply; DOCKET NUMBER: 2013-1970-PWS-E; IDENTIFIER: RN101227916; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ Default Order Docket Number 2011-1099-PWS-E, Ordering Provision Numbers 3.a.ii. and 3.e., 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), and TCEQ Default Order Docket Number 2011-1099-PWS-E, Ordering Provision Numbers 3.a.i. and 3.c.ii., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(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; 30 TAC §290.117(i)(1), by failing to provide the results of lead and copper sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of quarterly arsenic sampling to the executive director; 30 TAC §290.106(e) and TCEQ Default Order Docket Number 2011-1099-PWS-E, Ordering Provision Number 3.c.i., by failing to provide the results of quarterly nitrate sampling to the executive director; 30 TAC §§290.106(e), 290.107(e), 290.108(e), and 290.113(e), and TCEQ Default Order Docket Number 2011-1099-PWS-E, Ordering Provision Number 3.c.i., by failing to comply with TCEQ Default Order Docket Number 2011-1099-PWS-E, Ordering Provision Number 3.c.i. by failing to provide the results of triennial metals, minerals, synthetic organic chemical contaminants, volatile organic chemical contaminants, radionuclides, and Stage 1 disinfectant byproducts sampling to the executive director; 30 TAC §290.107(e), by failing to provide the results of triennial synthetic organic chemical contaminants sampling to the executive director; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees; PENALTY: $3,353; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(22) COMPANY: Richard Boyett; DOCKET NUMBER: 2014-0653-OSI-E; IDENTIFIER: RN103492021; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an On-site Sewage Facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: RIVER MART, INCORPORATED; DOCKET NUMBER: 2013-0189-PST-E; IDENTIFIER: RN103046116; LOCATION: Pharr, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $16,975; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: TEXPAK ENTERPRISES, INCORPORATED dba Circle A Food Mart 5; DOCKET NUMBER: 2012-0616-PST-E; IDENTIFIER: RN102718939; LOCATION: Sour Lake, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours after an inconclusive statistical inventory reconciliation (SIR) report for June 2010; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance after an inconclusive SIR report for June 2010; PENALTY: $2,525; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2014-0158-PWS-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: $174; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Tom Anderson; DOCKET NUMBER: 2014-0674-WOC-E; IDENTIFIER: RN107155103; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2014-0046-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; 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), Federal Operating Permit (FOP) Number O1267, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 29, and Permit Numbers 46396, PSDTX1073M1, and N044, General Conditions (GC) Number 8 and Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §§101.20(3), 101.201(b) and (c), 116.115(b)(2)(G), and 122.143(4), THSC, §382.085(b), FOP Number O1267, GTC and STC Numbers 2F and 29, and Permit Numbers 46396, PSDTX1073M1, and N044, GC Number 9, by failing to submit a final record for Incident Number 185338 no later than two weeks after the end of the emissions event; PENALTY: $14,563; Supplemental Environmental Project offset amount of $5,825 applied to City of Port Arthur; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Town of Mustang; DOCKET NUMBER: 2012-2160-MWD-E; IDENTIFIER: RN102807864; LOCATION: Corsicana, Navarro 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 WQ0011516001 Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and TWC, §7.061, by failing to pay the administrative penalty assessed in AO Docket Number 2007-0407-MWD-E; PENALTY: $25,012; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: William Marsh Rice University dba Rice University; DOCKET NUMBER: 2014-0117-AIR-E; IDENTIFIER: RN100245968; LOCATION: Houston, Harris County; TYPE OF FACILITY: cogeneration plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1806, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days of the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(c), by failing to submit a deviation report within 30 days of the end of the reporting period; PENALTY: $15,600; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: William Mjaseth; DOCKET NUMBER: 2013-2046-MSW-E; IDENTIFIER: RN106915242; LOCATION: Carthage, Panola County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid

waste; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: WTG FUELS, INCORPORATED dba Uncles 130205; DOCKET NUMBER: 2014-0293-PWS-E; IDENTIFIER: RN102252459; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-201402484
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2014

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 42040

Application. The U.S. Department of the Army, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 42040, to construct and operate a Type V municipal solid waste processing facility. The proposed facility, Fort Hood Biotreatment Facility will be located at Building 1955, approximately 900 feet northwest of the intersection of North Avenue and 37th Street in Coryell County. The Applicant is requesting authorization to process municipal solid waste which includes: soils and spill clean-up material contaminated with petroleum, oils, and lubricants; and dry sediments from Fort Hood grit chambers, oil-water separators and stormwater structures. The registration application is available for viewing and copying at the Killeen Public Library-Main Library, 205 E. Church Avenue, Killeen, Texas and may be viewed online at http://www.hood.army.mil/dpw/HTML/pnotice.aspx. 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=31.147777&lng=-97.758055&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from the U.S. Department of the Army at the address stated above or by calling Jerry Mora, Waste Program Manager at (254) 287-6499.

TRD-201402510
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 28, 2014

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Notice of Meeting on July 17, 2014, in Houston, Texas Concerning the Federated Metals State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the Federated Metals State Superfund site (the 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 Federated Metals State Superfund site. In accordance with 30 TAC §335.349(a), concerning requirements for the remedial action, and Texas Health and Safety Code (THSC), §361.187, concerning 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 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 *Houston Chronicle* newspaper on June 6, 2014.

The public meeting is scheduled July 17, 2014, at 7:00 p.m., Ebbert L. Furr High School auditorium, at 520 Mercury Drive, Houston, Texas 77013. The public meeting is legislative in nature and is not a contested case hearing under the Texas Government Code, Chapter 2001.

Federated Metals Corporation, a wholly owned subsidiary of ASARCO Master Inc., (ASARCO) operated from the 1940s to 1979. The site was proposed for listing on the state Superfund registry in the July 25, 1986, issue of the *Texas Register* (11 TexReg 3421). The site, including all land, structures, appurtenances, and other improvements, is located near the eastern boundary of the City of Houston at the southeastern corner of the intersection of East Loop (Interstate 610) and Market Street, at 9200 Market Street, Houston, Harris County, Texas. The

site is split between a northern 7.2-acre parcel (production area) and a southern 14.7-acre parcel (southern parcel). A strip of property that contains railroad lines is owned by the Union Pacific Railroad and separates the production area and the southern parcel.

The site was listed on the state Superfund registry on January 16, 1987, and ASARCO signed an Agreed Order that became effective on June 30, 1993, and was amended on December 1, 1999 to perform a remedial investigation and feasibility study. In the United States District Bankruptcy Court for the Southern District of Texas, an Agreed Order for parties to complete the remedial investigation/feasibility study and conduct the remedial design/remedial action was issued with the effective date of October 1, 2008. As of the Agreed Order's effective date, the site property and liability were transferred from ASARCO to Environmental Liability Transfer, Inc., and ELT Houston LLC.

The Agreed Order stipulated that all contaminated soil associated with the site would be removed, including radioactive materials. The soil removals were to be conducted concurrently with supplemental remedial investigation work. Removal of metals and radiologically impacted soils and waste in the southern parcel was conducted and completed when the TCEQ approved the Soil Removal Report dated December 15, 2010. Removal of metals and benzene impacted soils, solids, and surface water in the production area was conducted in February and March 2012. The production area removal is complete and the TCEQ approved the Solids, Soils, and Stormwater Removal Report in May 2014. Removal of radiologically impacted soils, solids, and surface water was conducted in 2012 and additional field work and confirmation sampling for the radionuclides of concern (ROCs) was conducted in February and March 2014 and will be presented in the report documenting removal of ROCs in the production area. This report documenting removal of media containing ROCs in the production area is pending approval.

A feasibility study, dated October 2012, screened and evaluated remedial alternatives which could be used to remediate the groundwater at the site. The feasibility study developed two alternatives for remediation of groundwater. The commission prepared the Proposed Remedial Action Document in May 2014. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standards.

The TCEQ proposes the following remedial action for the site: enhanced monitored natural attenuation (MNA) with augmented biodegradation or in-situ chemical oxidation (ISCO) for the production area chlorinated volatile organic compounds (CVOCs) plume; MNA for CVOCs in the second groundwater bearing unit of the production area; MNA for benzene in groundwater downgradient of the former underground storage tank; MNA for lead in groundwater downgradient of the stormwater retention pond; and MNA for total radium and total uranium in the southern parcel groundwater.

Natural attenuation refers to the processes that diminish the concentrations of contaminants found in groundwater including degradation by chemical and biological processes, adsorption within the groundwater flow medium, and dilution within the porous medium. MNA includes a period of groundwater monitoring designed to evaluate the attenuation of contaminants over time until the concentrations of contaminants have reduced to the remedial action goals.

Enhanced MNA incorporates additional groundwater treatment to reduce concentrations of contaminants in groundwater and facilitate MNA. The preferred treatment is an in-situ technology leading to the destruction of contaminants in the groundwater through either the enhancement of natural biological processes (biodegradation) or through direct chemical contact between a chemical reagent and the contaminants in the groundwater.

Periodic reviews of groundwater monitoring data will determine when these remediation goals have been met. Regular monitoring will continue to demonstrate that groundwater contamination is not migrating off-site. The recommended combined remedial actions are the most cost effective, reasonable and appropriate remedies to address the contamination present.

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 July 16, 2014, and should be sent in writing to Scott Settemeyer, P.G., Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on July 17, 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 Pleasantville Neighborhood Library at 1520 Gellhorn Drive, Houston, Texas 77029, phone number (832) 393-2330. Copies of the complete public record file may be obtained during 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, (800) 633-9363 or (512) 239-2900. Fees are charged for photocopying information. Parking for person with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at *http://www.tceq.texas.gov/remediation/superfund/sites/index.html.*

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5906. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Liaison, at (800) 633-9363.

TRD-201402483
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2014

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 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 July 7, 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: ABRAHAM SONS INC; DOCKET NUMBER: 2013-1784-PST-E; TCEQ ID NUMBER: RN101731305; LOCATION: 1203 South Alamo Street, 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(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system and by failing to conduct the annual piping tightness and leak line detector tests; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $5,943; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ALIMO INVESTMENTS, INC. d/b/a Shop Rite; DOCKET NUMBER: 2013-1997-PST-E; TCEQ ID NUMBER: RN101443729; LOCATION: 1905 College Street, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $9,731; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) 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 at the facility; PENALTY: $3,375; 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.

(4) COMPANY: CANYON STATE OIL COMPANY, INC. (a/k/a Pilot Logistics Services); DOCKET NUMBER: 2013-1955-PST-E; TCEQ ID NUMBER: RN105072169; LOCATION: 10925 Marconi Lane, El Paso, El Paso County; TYPE OF FACILITY: person who physically delivered regulated substances into underground storage tanks (USTs) directly from a cargo tank which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, aircraft, boat, or barge); RULES VIOLATED: TWC, §26.3467(d) and 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into a regulated UST system that was not covered by a valid and current TCEQ delivery certificate; PENALTY: $2,355; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: CARDINAL TOWING COMPANY, INC. d/b/a Cardinal Towing & Auto Repair; DOCKET NUMBER: 2013-0882-PST-E; TCEQ ID NUMBER: RN101536951; LOCATION: 113 West Euless Boulevard, Euless, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and fleet refueling facility; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with the UST system by failing to conduct the triennial piping tightness test; PENALTY: $3,891; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Mertzon; DOCKET NUMBER: 2013-1529-MWD-E; TCEQ ID NUMBER: RN101919546; LOCATION: 550 North Commerce Street, on the west side of Spring Creek and east of United States Highway 67, approximately one mile south of Farm-to-Market Road 72, Irion County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(4), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0011347001, Permit Conditions 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $2,438; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: Federal Aviation Administration; DOCKET NUMBER: 2012-2695-PST-E; TCEQ ID NUMBER: RN106588007; RN105572044; RN105572069; RN102858727; and RN102956729; LOCATION: 2800 North Terminal Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) systems for emergency generators at the Bush Intercontinental Airport; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST systems at the facilities for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $16,876; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: HDU Services, L.L.C. d/b/a Birch Creek Village Water; DOCKET NUMBER: 2013-1798-PWS-E; TCEQ ID NUMBER: RN101191708; LOCATION: 3.2 miles south of Farm-to-Market Road 60, east of Park Road 57, Burleson County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of being notified of a distribution total coliform-positive result during the month of April 2011 (Investigation 1); 30 TAC §290.106(c) and (e), and §290.107(c) and (e), by failing to collect triennial metals, minerals and volatile organic

chemical contaminants samples and provide the results to the executive director for the January 1, 2008 - December 21, 2010, monitoring period (Investigation 1); 30 TAC §290.106(c) and (e), by failing to collect annual nitrate samples and provide the results to the executive director for the 2010 (Investigation 1) and 2012 (Investigation 2) monitoring periods; 30 TAC §290.113(e), by failing to provide the results of quarterly Stage 1 disinfection byproducts sampling to the executive director for the fourth quarter of 2012 and the first quarter of 2013 (Investigation 2); and 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites and provide the results to the executive director for the July 1 - December 31, 2011, July 1 - December 31, 2012, and January 1 - June 30, 2013, monitoring periods (Investigation 2); PENALTY: $4,757; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: INS EMERALD, L.L.C. d/b/a Luna Mart; DOCKET NUMBER: 2013-1302-PST-E; TCEQ ID NUMBER: RN101562726; LOCATION: 2647 West Northwest Highway, Dallas, Dallas 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), 30 TAC §334.50(b)(1)(A), and TCEQ AO Docket Number 2011-1760-PST-E, Ordering Provision Number 2.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: $35,750; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Marine Quest-Hidden Cove, L.P.; DOCKET NUMBER: 2013-1964-MWD-E; TCEQ ID NUMBER: RN102094950; LOCATION: 20400 Hackberry Creek Park Road, approximately 1.75 miles south of Farm-to-Market Road 423, Frisco, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013785001, Monitoring and Reporting Requirements Number 1, and TCEQ AO Docket Number 2011-1955-MWD-E, Ordering Provision Number 2.a., by failing to submit a revised Discharge Monitoring Report for the monitoring period ending August 31, 2010, that includes the data for the pH monthly minimum and monthly maximum; and TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0013785001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and TCEQ AO Docket Number 2011-1955-MWD-E, Ordering Provision Number 2.c., by failing to comply with permitted effluent limits; PENALTY: $13,175; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: TOUCHDOWN TRADING, INC.; DOCKET NUMBER: 2013-0769-PST-E; TCEQ ID NUMBER: RN101774404; LOCATION: 104 South Twin City Highway, Nederland, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,629; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201402485
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2014

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 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 July 7, 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: David Sommer dba Goat Hill Country Store; DOCKET NUMBER: 2013-1794-PST-E; TCEQ ID NUMBER: RN101447084; LOCATION: 22781 Farm-to-Market Road 357, Groveton, Trinity County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the commission of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and §334.54(c)(1), by failing to assure that the out of service UST system is maintained in compliance with corrosion protection requirements; PENALTY: $5,250; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Omar Hosch dba Money Saver; DOCKET NUMBER: 2013-0390-PST-E; TCEQ ID NUMBER: RN102655602; LOCATION: 1100 Martin Luther King Jr. Boulevard, Corsicana, Navarro 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: $3,750; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: PROTON PRC, LTD. dba Texoma Beverages and dba C Store 122; DOCKET NUMBER: 2013-1146-PST-E; TCEQ ID NUMBER: RN103059218 (Facility 1) and RN103757621 (Facility 2); LOCATION: 3714 State Highway 91 North (Facility 1), and 5018 South State Highway 91 (Facility 2), Denison, Grayson County; TYPE OF FACILITY: underground storage tank (UST) systems and convenience stores 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) at both facilities; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system at both facilities; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system at both facilities; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel at Facility 2; PENALTY: $16,508; 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.

(4) COMPANY: RICK & KIM INC. dba CJ's Convenience; DOCKET NUMBER: 2013-0818-PST-E; TCEQ ID NUMBER: RN101826576; LOCATION: 2812 East Main Street, Gun Barrel City, Henderson 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; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201402486
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2014

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Notice of Water Quality Applications

The following notices were issued on May 16, 2014 through May 23, 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

CITY OF GALVESTON has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010688001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 13,000,000 gallons per day. The facility is located at 5200 Port Industrial Road in Galveston County, Texas 77551.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 285 has applied for a major amendment to TPDES Permit No. WQ0012716001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,150,000 gallons per day to an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 6436 East Sam Houston Parkway North, adjacent to the west bank of Carpenter Bayou, approximately one mile north of Wallisville Road Bridge and 2,800 feet east of East Belt Drive in Harris County, Texas 77049.

TWINWOOD US INC has applied for a renewal of TPDES Permit No. WQ0013089001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility will be located between Guyler Road and Brundrett Road, approximately 1.5 miles southwest of the City of Simonton and the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 1489 in Fort Bend County, Texas 77485.

HUNGERFORD MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0013240001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located at 307 West Live Oak Street, Hungerford, approximately 250 feet northwest of intersection of West Live Oak Road and Habermacher Street, approximately 0.5 mile north-northwest of the intersection of State Highway 60 and Farm-to-Market Road 1161 in Wharton County, Texas 77448.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013462001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 2128 North Prolongacion Gonzalez Road, Progreso, in Hidalgo County, Texas 78579.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0013743001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 2400 Wallace Pack Road, Navasota, within the Texas Department of Criminal Justice Pack Unit property, approximately 2,400 feet west-southwest of the intersection of the prison service road with Farm-to-Market Road 1227, approximately 3.5 miles south of the City of Navasota in Grimes County, Texas 77868.

CANEY CREEK MUNICIPAL UTILITY DISTRICT OF MATAGORDA COUNTY has applied for a renewal of TPDES Permit No. WQ0014177001, 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 39 County Road 204, Sargent, 650 feet south of the intersection of Dolphin Way and Old Caney Drive in Matagorda County, Texas 77414.

SOBRANTE MANAGEMENT, INC. has applied for a renewal of TCEQ Permit No. WQ0014481001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,800 gallons per day via public access subsurface drip irrigation system with a minimum area of 2.2 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater

treatment facility and disposal site are located approximately 3,000 feet north of the intersection of Morgans Point Road and Sobrante Road, at the end of Sobrante Road in the curve adjacent to Lake Belton in Bell County, Texas 76513.

CITY OF BRAZORIA has applied for a renewal of TPDES Permit No. WQ0014581001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2.25 miles southwest of the City of Brazoria and one mile west of the intersection of Farm-to-Market Road 521 and County Road 797 in Brazoria County, Texas 77422.

INTERURBAN FOREST LLP has applied for a new permit, proposed TPDES Permit No. WQ0015204001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. This facility was previously permitted under TPDES Permit No. WQ0011066001 which expired May 1, 2013. The facility is located at 5830 South Lake Houston Parkway, Houston, in Harris County, Texas 77049.

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-201402509
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 28, 2014

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Notice of Water Rights Application

Notice issued May 19, 2014.

WATER USE PERMIT NO. 5085; The City of Robinson, 111 W. Lyndale, Robinson, Texas, 76706, Applicant, seeks authorization to extend the time to begin and complete constructions of a reservoir complex in Brazos River Basin, McLennan County. Water Use Permit No. 5085 authorizes the City of Robinson to construct and maintain an off-channel reservoir complex consisting of four reservoirs, to impound not to exceed a total of 8,037 acre-feet of water and to divert and use not to exceed a total of 13,100 acre-feet of water per year from the Brazos River, Brazos River Basin for municipal purposes in McLennan County. A time limitation of the permit states that construction must begin within two years and be completed within five years from the date of issuance on April 30, 1987. The permit authorizes a beginning construction date of April 30, 1989 and a completion date of April 30, 1992. Applicant seeks authorization for an extension of time to begin and complete construction of Reservoir Nos. 2, 3, and 4 of the reservoir complex. Applicant seeks to begin construction of Reservoir No. 2 within two years from issuance of the proposed extension Order and complete construction by 2020. Applicant seeks to begin construction of Reservoir Nos. 3 and 4 by 2028 and complete construction by 2031. The application was received on June 28, 2013. Additional information and partial fees were received on November 6, 2013 and January 27, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 4, 2014. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to begin and complete construction. The application and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

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.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. 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) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting 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 Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201402511
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 28, 2014

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-5-20448

The Texas Facilities Commission (TFC), on behalf of the General Land Office (GLO), announces the issuance of Request for Proposals (RFP) #303-5-20448. TFC seeks a five (5) or ten (10) year lease of approximately 7,000 square feet of warehouse space in Corpus Christi, Nueces County, Texas.

The deadline for questions is June 23, 2014 and the deadline for proposals is July 7, 2014 at 3:00 p.m. The award date is August 20, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor

the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=111661.*

TRD-201402465
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 23, 2014

♦ ♦ ♦

Request for Proposals #303-6-20449

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety Driver's License Office (DPS), announces the issuance of Request for Proposals (RFP) #303-6-20449. TFC seeks a five (5) or ten (10) year lease of approximately 1,651 square feet of office space in Perryton, Ochiltree County, Texas.

The deadline for questions is June 24, 2014, and the deadline for proposals is July 8, 2014, at 3:00 p.m. The award date is August 20, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=111701.*

TRD-201402524
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 28, 2014

♦ ♦ ♦

Request for Proposals #303-6-20450

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-6-20450. TFC seeks a five (5) or ten (10) year lease of approximately 5,242 square feet of office space in Sherman, Grayson County, Texas.

The deadline for questions is June 16, 2014 and the deadline for proposals is July 1, 2014 at 3:00 p.m. The award date is August 20, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=111703.*

TRD-201402525
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 28, 2014

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Texas Health and Human Services Commission

Corrected Public Notice

HHSC initially posted a notice that it was renewing the current Non-emergency Medical Transportation (NEMT) waiver. The Texas Health and Human Services Commission (HHSC) will no longer be renewing the current NEMT waiver. Instead, HHSC will be requesting approval for a new waiver.

HHSC is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for a new Medicaid waiver under the authority of §1915(b) of the Social Security Act for the NEMT program. The new waiver will be effective September 1, 2014.

HHSC will apply for a new waiver for the delivery of NEMT services by Managed Transportation Organizations (MTOs). MTOs will provide the full range of NEMT services to clients in their MTO Region (e.g., mass transit, mileage reimbursement, meal and lodging, and demand response). Through this new waiver, a managed transportation delivery model will be implemented in the counties listed below. These MTOs will have the flexibility to meet client's transportation needs through direct delivery and subcontracting for transportation services. The new waiver will not change the NEMT scope of benefits for the individuals who use this service. HHSC retains sole authority to approve individual services and benefits. If approved, the new waiver will allow the MTOs to own their own vehicles, and the State will reimburse the MTOs utilizing a capitated arrangement.

The counties listed are divided into MTOs. Here is the breakdown of each MTO and county.

MTO 1 (LeFleur): Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, Yoakum.

MTO 2 (Project Amistad): Andrews, Borden, Brewster, Crane, Culberson, Dawson, Ector, El Paso, Gaines, Glasscock, Howard, Hudspeth, Jeff Davis, Loving, Martin, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, Winkler.

MTO 4 (Texhoma Area Paratransit System (TAPS)): Archer, Baylor, Clay, Collin, Cooke, Cottle, Fannin, Foard, Grayson, Hardeman, Jack, Montague, Wichita, Wilbarger, Wise, Young.

MTO 8 (LeFleur): Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Karnes, Kendall, Kerr, Medina, Wilson.

MTO 10 (LeFleur): Aransas, Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio, Starr, Webb, Willacy, Zapata.

To obtain copies of the new waiver, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201402534

Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: May 28, 2014

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-012 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Section 4742(a) of the Balanced Budget Act of 1997 eliminated certain physician qualification requirements. The proposed amendment is a technical change that would delete the State Plan's reference to the eliminated requirements. The requested effective date for the proposed amendment is April 1, 2014.

The proposed amendment is estimated to have no fiscal impact. Deleting the obsolete reference will update the State Plan in accordance with federal legislation, but is not expected to affect Medicaid utilization or cost.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201402409
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: May 22, 2014

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-013 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

As required by S.B. 58, 83rd Legislature, Regular Session, 2013, the purpose of this amendment is to restrict the limitation on provider freedom of choice in the Targeted Case Management for Individuals with Chronic Mental Illness program to recipients of fee-for-service Medicaid, allowing Managed Care Organizations to provide mental health targeted case management services utilizing other providers. The proposed amendment is effective September 1, 2014.

The proposed amendment is estimated to have no fiscal impact. Expanding the provider base for mental health targeted case management services is not estimated to change the utilization or cost of providing the services.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services

TRD-201402523
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: May 28, 2014

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a revised Quality Improvement Strategy (the Strategy) for the 1115 Texas Healthcare Transformation and Quality Improvement Program waiver (the Waiver). CMS requires the Strategy to be updated when we make certain changes to the Waiver, and requires the State to seek public input on the document. The draft Strategy was submitted to CMS in January as part of the waiver amendment package for the September 1, 2014, STAR+PLUS carve-in of the Medicaid rural service areas and acute care for individuals with intellectual or developmental disabilities.

The programs included in the Strategy are:

* STAR

* STAR+PLUS

* STAR+PLUS Home and Community-based Services

* Medicaid Dental

The Strategy outlines the quality-related responsibilities and relationships of the different HHSC divisions and the external quality review organization. The document also outlines current state quality initiatives, such as:

* Performance improvement projects

* Financial incentive programs

* Performance indicator dashboards

* Managed care organization report cards

* Potentially preventable events

After internal discussion and at the direction of CMS, the State will be amending this Strategy further to include all Texas Medicaid managed care programs, including those operating outside of the Waiver. It is the intent of the State to begin work on this comprehensive Strategy as soon as CMS approval of the Waiver-specific Strategy is received. In order to streamline the completion of the Waiver-specific Strategy and the development of the comprehensive Strategy, HHSC plans to incorporate any feedback received through this process into the comprehensive Strategy revision.

HHSC is requesting public feedback on the Strategy. You may obtain a copy of the Strategy by contacting Katherine.Layman@hhsc.state.tx.us or by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247. Please provide feedback by July 6, 2014. Comments may be sent to Katherine Layman and Katherine.layman@hhsc.state.tx.us or at the address above.

TRD-201402529
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: May 28, 2014

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of ING LIFE INSURANCE AND ANNUITY COMPANY to VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Windsor, Connecticut.

Application to change the name of ING USA ANNUITY AND LIFE COMPANY to VOYA INSURANCE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Des Moines, Iowa.

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-201402403
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 21, 2014

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Company Licensing

Application to change the name of FIRST MARINE INSURANCE COMPANY to AMERICAN MODERN PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Osage Beach, Missouri.

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-201402530
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 28, 2014

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), received a request for a public hearing on May 28, 2014. TDI-DWC will hold a public hearing on Monday, June 16, 2014, in the Tippy Foster Room at the TDI-DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin. TDI-DWC will audio stream the public hearing for persons who are unable to appear in person.

The public hearing will begin at 9:00 a.m. and TDI-DWC will take testimony on the following rules:

Chapter 152. Attorneys' Fees

§152.3. Approval or Denial of Fee by the Commission.

§152.4. Guidelines for Legal Services Provided to Claimants and Carriers.

This proposed rule is published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4121) and may be viewed on the TDI website at http://www.tdi.texas.gov/wc/rules/proposedrules/index.html. The comment period for this rule closes on Monday, June 30, 2014, at 5:00 p.m. CST. Written and oral comments presented at this hearing will be considered.

To listen to the audio stream of the public hearing, access the TDI-DWC Public Outreach Events/Training Calendar on the TDI website at http://www.tdi.texas.gov/wc/events/index.html. Then click on the "Link to Live Webcast" link for the public hearing. The applications Media Player 7 (or newer version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the public hearing begins.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two business days prior to the public hearing date.

TRD-201402531
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 28, 2014

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Texas Lottery Commission

Instant Game Number 1637 "Holiday Game Book"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1637 is "HOLIDAY GAME BOOK". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1637 shall be $20.00 per Ticket.

1.2 Definitions in Instant Game No. 1637.

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 for Game 1 (Season's Greetings), Game 2 (Happy Holidays), Game 3 (Merry Money Multiplier), Game 4 (Holiday Surprise), Game 5 (Holiday Cheer), Game 6 (Winner Wishes): $5.00, $10.00, $20.00, $25.00, $50.00, $100, $300, $500, $1,000, $10,000, $1,000,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50. An additional possible black Play Symbol for Game 1 (Season's Greetings) is CANDLE SYMBOL. Additional possible black Play Symbols for Game 2 (Happy Holidays) are: GINGERBREAD MAN SYMBOL, BELL SYMBOL, ELF HAT SYMBOL, SCARF SYMBOL, CHRISTMAS TREE SYMBOL, CANDLE SYMBOL, ICE SKATE SYMBOL, SLED SYMBOL and SWEATER SYMBOL. An additional possible black Play Symbol for Game 3 (Merry Money Multiplier) is GIFT SYMBOL. An additional possible black Play Symbol for Game 4 (Holiday Surprise) is SNOWFLAKE SYMBOL. Additional possible black Play Symbols for Game 5 (Holiday Cheer) are: STAR SYMBOL, SNOW GLOBE SYMBOL, CHRISTMAS LIGHTS SYMBOL, ANGEL SYMBOL, CHRISTMAS ORNAMENT SYMBOL, SNOWMAN SYMBOL, WREATH SYMBOL and REINDEER SYMBOL. Additional possible black Play Symbols for Game 6 (Winner Wishes) are: CANDY CANE

SYMBOL, CHRISTMAS CARD SYMBOL, HOLIDAY DRUM SYMBOL, EAR MUFFS SYMBOL, SINGLE MITTEN SYMBOL, GARLAND SYMBOL, NORTH POLE SYMBOL and SHOVEL SYMBOL.

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. 1637 - 1.2D

PLAY SYMBOLS FOR: GAME 1 (Season's Greetings), GAME 2 (Happy Holidays), GAME 3 (Merry Money Multiplier), GAME 4 (Holiday Surprise), GAME 5 (Holiday Cheer), and GAME 6 (Winner Wishes)	CAPTIONS
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$300	THR HUN
$500	FIV HUN
$1,000	ONE THOU
$10,000	10 THOU
$1,000,000	1 MILLION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	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	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY

PLAY SYMBOL FOR GAME 1 (Season's Greetings)	CAPTION
CANDLE SYMBOL	DBL

PLAY SYMBOLS FOR GAME 2 (Happy Holidays)	CAPTIONS
GINGERBREAD MAN SYMBOL	TRPL
BELL SYMBOL	BELL
ELF HAT SYMBOL	ELFHAT
SCARF SYMBOL	SCARF
CHRISTMAS TREE SYMBOL	TREE
CANDLE SYMBOL	CANDLE
ICE SKATE SYMBOL	SKATE
SLED SYMBOL	SLED
SWEATER SYMBOL	SWEATR

PLAY SYMBOL FOR GAME 3 (Merry Money Multiplier)	CAPTION
GIFT SYMBOL	DBL

PLAY SYMBOL FOR GAME 4 (Holiday Surprise)	CAPTION
SNOWFLAKE SYMBOL	DBL

PLAY SYMBOLS FOR GAME 5 (Holiday Cheer)	CAPTIONS
STAR SYMBOL	STAR
SNOW GLOBE SYMBOL	SNWGLB
CHRISTMAS LIGHTS SYMBOL	LIGHTS
ANGEL SYMBOL	ANGEL
CHRISTMAS ORNAMENT SYMBOL	ORNMT
SNOWMAN SYMBOL	SNWMN
WREATH SYMBOL	WREATH
REINDEER SYMBOL	RNDR

PLAY SYMBOLS FOR GAME 6 (WINNER WISHES)	CAPTIONS
CANDY CANE SYMBOL	CANE
CHRISTMAS CARD SYMBOL	CARD
HOLIDAY DRUM SYMBOL	DRUM
EAR MUFFS SYMBOL	EARMFS
SINGLE MITTEN SYMBOL	MITT
GARLAND SYMBOL	GARLND
NORTH POLE SYMBOL	NRTHPL
SHOVEL SYMBOL	SHOVEL

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 $20.00.

G. Mid-Tier Prize - A prize of $25.00, $40.00, $50.00, $100, $300 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $1,000,000.

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 (1637), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1637-0000001-001.

K. Pack - A Pack of "HOLIDAY GAME BOOK" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 025 will both be exposed.

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 "HOLIDAY GAME BOOK" Instant Game No. 1637 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 "HOLIDAY GAME BOOK" Instant Game GAME 1 (Season's Greetings) is determined once the latex on the Ticket is scratched off to expose 41 (forty-one) Play Symbols. GAME 1 (Season's Greetings) Play Instructions: The player scratches the entire play area to reveal 3 WINNING NUMBERS Play Symbols and 19 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "CANDLE" Play Symbol, the player wins DOUBLE the prize for that symbol instantly!

A prize winner in the "HOLIDAY GAME BOOK" GAME 2 (Happy Holidays) is determined once the latex on the Ticket is scratched off to expose 50 (fifty) Play Symbols. GAME 2 (Happy Holidays) Play Instructions: In the Main Play Area, the player scratches the entire play area to reveal 5 LUCKY NUMBERS Play Symbols and 18 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GINGERBREAD MAN" Play Symbol, the player wins TRIPLE the prize for that symbol instantly! In the Match 3 Play Area, if a player reveals 3 matching prize amounts, the player wins that amount. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS $50!

A prize winner in the "HOLIDAY GAME BOOK" GAME 3 (Merry Money Multiplier) is determined once the latex on the Ticket is

scratched off to expose 34 (thirty-four) Play Symbols. GAME 3 (Merry Money Multiplier) Play Instructions: The player scratches the entire play area. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol instantly!

A prize winner in the "HOLIDAY GAME BOOK" GAME 4 (Holiday Surprise) is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. GAME 4 (Holiday Surprise) Play Instructions: The player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "SNOWFLAKE" Play Symbol, the player wins DOUBLE the prize for that symbol instantly!

A prize winner in the "HOLIDAY GAME BOOK" GAME 5 (Holiday Cheer) is determined once the latex on the Ticket is scratched off to expose 38 (thirty-eight) Play Symbols. GAME 5 (Holiday Cheer) Play Instructions: In the Main Play Area, the player scratches the entire play area. If a player matches any of YOUR NUMBERS Play Symbols to any of the MAGIC NUMBERS Play Symbols, the player wins the prize for that number. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS $50!

A prize winner in the "HOLIDAY GAME BOOK" GAME 6 (Winner Wishes) is determined once the latex on the Ticket is scratched off to expose 47 (forty-seven) Play Symbols. GAME 6 (Winner Wishes) Play Instructions: In the Main Play Area, the player scratches the entire play area to reveal 4 WINNING NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS $100! 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. In GAME 1 (Season's Greetings) exactly 41 (forty-one) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 2 (Happy Holidays) exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 3 (Merry Money Multiplier) exactly 34 (thirty-four) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 4 (Holiday Surprise) exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 5 (Holiday Cheer) exactly 38 (thirty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 6 (Winner Wishes) exactly 47 (forty-seven) 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. GAME 1 (Season's Greetings) will have exactly 41 (forty-one) Play Symbols; GAME 2 (Happy Holidays) will have exactly 50 (fifty) Play Symbols; GAME 3 (Merry Money Multiplier) will have exactly 34 (thirty-four) Play Symbols; GAME 4 (Holiday Surprise) will have exactly 45 (forty-five) Play Symbols; GAME 5 (Holiday Cheer) will have exactly 38 (thirty-eight) Play Symbols; and GAME 6 (Winner Wishes) will have exactly 47 (forty-seven) Play Symbols. The Play Symbols will appear 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. For each of the 6 games, each of the Ticket's Play Symbols as set forth in 2.1.A.13 must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. For each of the 6 games, each of the Ticket's Play Symbols as set forth in 2.1.A.13 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 Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

GENERAL:

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A playbook will win as indicated by the prize structure.

C. The top prize can be won on any game.

D. A playbook can win up to twenty-five (25) times.

GAME 1 (Season's Greetings):

E. The play area consists of nineteen (19) YOUR NUMBERS Play Symbols, nineteen (19) Prize Symbols and three (3) WINNING NUMBERS Play Symbols.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

G. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

H. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. The three (3) WINNING NUMBERS Play Symbols will all be different.

K. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

L. The "CANDLE" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "CANDLE" Play Symbol will never appear on Non-Winning Tickets.

N. The "CANDLE" Play Symbol will win DOUBLE the PRIZE shown, as per the prize structure.

GAME 2 (Happy Holidays):

O. Main Play Area: The play area consists of eighteen (18) YOUR NUMBERS Play Symbols, eighteen (18) Prize Symbols and five (5) LUCKY NUMBERS Play Symbols.

P. Main Play Area: Tickets winning more than one (1) time will use as many LUCKY NUMBERS Play Symbols as possible to create matches.

Q. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

R. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

S. Main Play Area: On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

T. Main Play Area: The five (5) LUCKY NUMBERS Play Symbols will all be different.

U. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

V. Main Play Area: The "GINGERBREAD MAN" Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

W. Main Play Area: The "GINGERBREAD MAN" Play Symbol will never appear on Non-Winning Tickets.

X. Main Play Area: The "GINGERBREAD MAN" Play Symbol will win TRIPLE the PRIZE shown as per the prize structure.

Y. Match 3 Play Area: Players can win up to one (1) time in this play area.

Z. Match 3 Play Area: This play area consists of six (6) Prize Symbols.

AA. Match 3 Play Area: There will never be more than three (3) matching Prize Symbols.

BB. Match 3 Play Area: No more than one pair of matching non-winning Prize Symbols will appear on a winning Ticket.

CC. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

DD. BONUS Play Area: You can win up to one (1) time in this play area.

GAME 3 (Merry Money Multiplier):

EE. The play area consists of fifteen (15) YOUR NUMBERS Play Symbols, fifteen (15) Prize Symbols and four (4) WINNING NUMBERS Play Symbols.

FF. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

GG. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

HH. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

II. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

JJ. The four (4) WINNING NUMBERS Play Symbols will all be different.

KK. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

LL. The "GIFT" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

MM. The "GIFT" Play Symbol will never appear on Non-Winning Tickets.

NN. The "GIFT" Play Symbol will win DOUBLE the PRIZE shown, as per the prize structure.

GAME 4 (Holiday Surprise):

OO. The play area consists of twenty (20) YOUR NUMBERS Play Symbols, twenty (20) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

PP. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

QQ. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

RR. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

SS. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

TT. The five (5) WINNING NUMBERS Play Symbols will all be different.

UU. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

VV. The "SNOWFLAKE" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

WW. The "SNOWFLAKE" Play Symbol will never appear on Non-Winning Tickets.

XX. The "SNOWFLAKE" Play Symbol will win DOUBLE the PRIZE shown, as per the prize structure.

GAME 5 (Holiday Cheer):

YY. Main Play Area: The play area consists of fifteen (15) YOUR NUMBERS Play Symbols, fifteen (15) Prize Symbols and five (5) MAGIC NUMBERS Play Symbols.

ZZ. Main Play Area: Tickets winning more than one (1) time will use as many MAGIC NUMBERS Play Symbols as possible to create matches.

AAA. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

BBB. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

CCC. Main Play Area: On Non-Winning Tickets, a MAGIC NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

DDD. Main Play Area: The five (5) MAGIC NUMBERS Play Symbols will all be different.

EEE. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

FFF. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

GGG. BONUS Play Area: You can win up to one (1) time in this play area.

GAME 6 (Winner Wishes):

HHH. Main Play Area: The play area consists of twenty (20) YOUR NUMBERS Play Symbols, twenty (20) Prize Symbols and four (4) WINNING NUMBERS Play Symbols.

III. Main Play Area: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

JJJ. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

KKK. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

LLL. Main Play Area: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

MMM. Main Play Area: The four (4) WINNING NUMBERS Play Symbols will all be different.

NNN. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

OOO. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

PPP. BONUS Play Area: You can win up to one (1) time in this play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY GAME BOOK" Instant Game prize of $20.00, $25.00, $40.00, $50.00, $100, $300 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 $25.00, $40.00, $50.00, $100, $300 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 "HOLIDAY GAME BOOK" Instant Game prize of $1,000, $10,000 or $1,000,000, 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 "HOLIDAY GAME BOOK" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in 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 "HOLIDAY GAME BOOK" 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 "HOLIDAY GAME BOOK" 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 3,600,000 Tickets in the Instant Game No. 1637. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1637 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	360,000	10.00
$25	288,000	12.50
$40	144,000	25.00
$50	288,000	12.50
$100	71,400	50.42
$300	21,360	168.54
$500	2,820	1,276.60
$1,000	360	10,000.00
$10,000	12	300,000.00
$1,000,000	4	900,000.00

*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 3.06. 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. 1637 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. 1637, 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-201402507
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 28, 2014

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Texas Department of Public Safety

Request for Proposals

Pursuant to §2167.054, Texas Government Code, the Texas Department of Public Safety (TXDPS) announces the issuance of Request for Proposals (RFP) #405-EMD-14-19-P41820. TXDPS seeks a lease with an initial term of five (5) years for approximately 80,000 square feet of warehouse space, expandable to 160,000 square feet, in San Antonio, Texas. The awarded lease will have five (5) two (2) year options to renew.

An optional pre-proposal meeting is scheduled for June 24, 2014 in Austin and a mandatory site visit is scheduled for June 25, 2014 in San Antonio. The deadline for questions is June 27, 2014 and the deadline for proposals is July 9, 2014 at 4:00 p.m. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TXDPS to pay for any costs incurred prior to the award of a contract.

Parties interested in obtaining a hard copy of the RFP should contact Ray D. Miller, Contract Administrator, Procurement and Contract Services, TXDPS, ray.miller@dps.texas.gov, (512) 424-2205. The RFP will be released and available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us on Friday, June 6, 2014. Interested parties should periodically check the ESBD for updates to the RFP prior to submitting a response.

TRD-201402527
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: May 28, 2014

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Public Utility Commission of Texas

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 23, 2014, for an amendment to certificated service area for a service area exception within Clay County, Texas.

Docket Style and Number: Application of J-A-C Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Clay County. Docket Number 42543.

The Application: J-A-C Electric Cooperative, Inc. (JAC Electric) filed an application for a service area exception to allow JAC Electric to provide service to a specific customer located within the certificated service area of Wise Electric Cooperative, Inc. (WEC) and Oncor Electric Delivery Co., LLC (Oncor). WEC and Oncor have provided affidavits of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than June 23, 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 42543.

TRD-201402518
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 23, 2014, for an amendment to certificated service area for a service area exception within Gillespie County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Gillespie County. Docket Number 42544.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area exception to allow PEC to provide service to a specific customer located within the certificated service area of Central Texas Electric Cooperative, Inc. (CTEC). CTEC 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 June 23, 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 42544.

TRD-201402519
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on May 20, 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 Windstream for Clarification of, or in the Alternative, a Good Cause Waiver of the Requirements of P.U.C. Substantive Rule §26.402(c) Regarding the Filing of a Five-Year Plan, Docket Number 42529.

The Application: Windstream Communications Kerrville, LP, Windstream Sugar Land, Inc., and Texas Windstream, Inc., each d/b/a Windstream Communications (Windstream) requests that the Commission clarify P.U.C. Substantive Rule §26.402 to provide that price cap carri-

ers designated as ETPs and ETCs are not required to file five-year plans unless and until they are required to file such plans with the Federal Communications Commission (FCC) under 47 Code of Federal Regulations (C.F.R.) §54.202. Alternatively, Windstream requests the filing requirements in P.U.C. Substantive Rule §26.402(c) be waived for such price cap carriers unless and until they are required to file five-year plans under 47 C.F.R. §54.202.

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 42529.

TRD-201402432
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2014

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Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director

Notice is hereby given to the public of the May 22, 2014, filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of Re-Election of an Unaffiliated Director pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 2007 and Supplement 2013).

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Re-Election of Unaffiliated Director, Docket Number 42539.

The Application: On April 18, 2014, pursuant to the direction of the ERCOT Board, ERCOT issued a notice of Special Meeting of ERCOT's Corporate Membership for May 20, 2014 (Special Meeting), for the re-election of Mr. Craven Crowell as an Unaffiliated Director. Mr. Crowell received the requisite number of Corporate Member votes by ballot on May 14, 2014, in lieu of the Special Meeting, to be re-elected as an Unaffiliated Director for a second three-year term. Mr. Crowell has met all requisite qualifications for service on the ERCOT Board. ERCOT requests approval of the re-election of Mr. Crowell to serve on the ERCOT Board beginning January 1, 2015.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42539.

TRD-201402513
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director

Notice is hereby given to the public of the May 22, 2014, filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of Re-Election of an Unaffiliated Director pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 2007 and Supplement 2013).

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Re-Election of Unaffiliated Director, Docket Number 42540.

The Application: On April 18, 2014, pursuant to the direction of the ERCOT Board, ERCOT issued a notice of Special Meeting of ERCOT's Corporate Membership for May 20, 2014 (Special Meeting), for the re-election of Mr. Karl V. Pfirrmann as an Unaffiliated Director. Mr. Pfirrmann received the requisite number of Corporate Member votes by ballot on May 14, 2014, in lieu of the Special Meeting, to be re-elected as an Unaffiliated Director for a second three-year term. Mr. Pfirrmann has met all requisite qualifications for service on the ERCOT Board. ERCOT requests approval of the re-election of Mr. Pfirrmann to serve on the ERCOT Board beginning January 1, 2015.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42540.

TRD-201402514
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director

Notice is hereby given to the public of the May 22, 2014, filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of Re-Election of an Unaffiliated Director pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 2007 and Supplement 2013).

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Re-Election of Unaffiliated Director, Docket Number 42541.

The Application: On April 18, 2014, pursuant to the direction of the ERCOT Board, ERCOT issued a notice of Special Meeting of ERCOT's Corporate Membership for May 20, 2014 (Special Meeting), for the re-election of Ms. Judy W. Walsh as an Unaffiliated Director. Ms. Walsh received the requisite number of Corporate Member votes by ballot on May 14, 2014, in lieu of the Special Meeting, to be re-elected as an Unaffiliated Director for a second three-year term. Ms. Walsh has met all requisite qualifications for service on the ERCOT Board. ERCOT requests approval of the re-election of Ms. Walsh to serve on the ERCOT Board beginning January 1, 2015.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the com-

mission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42541.

TRD-201402515
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Notice of Petition of the Electric Reliability Council of Texas, Inc. for Approval of Bylaws Amendment

On May 23, 2014, the Electric Reliability Council of Texas, Inc. (ERCOT) filed with the Public Utility Commission of Texas (Commission) a Petition seeking approval of Bylaws Amendment.

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Bylaws Amendment, Docket Number 42548.

The Application: The Electric Reliability Council of Texas, Inc. (ERCOT) filed a petition seeking approval of an amendment to its Bylaws approved by the ERCOT Board of Directors and the ERCOT Corporate Members. The Bylaws change amends and restates subsection (a)(4) of §4.3, entitled "Selection, Tenure, and Requirements of Directors and Segment Alternates." The amendment includes language to expand Board member eligibility to employees of service organizations for the Industrial Consumer subsegment, the Independent Generator Segment, the Independent Power Marketer Segment, the Independent Retail Electric Provider Segment and the Investor Owned Utility Market Segment, and to allow continuation of such eligibility in certain circumstances of corporate restructuring, as described in Attachment A to the petition.

Interested parties may access ERCOT's Petition through the Public Utility Commission's web site at http://www.puc.texas.gov under Docket Number 42548.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42548.

TRD-201402506
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2014

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Notice of Strawman Rule

The Staff of the Public Utility Commission of Texas (commission) requests comments on a strawman rule making amendments to P.U.C. Substantive Rule §25.211, relating to Interconnection of On-site Distributed Generation. Project Number 42532 has been assigned to this proceeding. The proposed amendments address with whom an electric utility will execute the Agreement for Interconnection and Parallel Operation of Distributed Generation in light of the fact that certain types of distributed generation may be owned or operated by parties other than the utility's end-use customer. The draft rule is filed in the commission's Central Records and can be found on the commission's AIS system under Project Number 42532.

Commission Staff invites comments on the draft rule. In particular, Staff seeks input regarding the following question:

Should the application for interconnection and the interconnection agreement be included in their own section of the Tariff for Retail Service Delivery for transmission and distribution utilities?

These comments will be useful in developing a proposed rule (Proposal for Publication) that is expected to be published for comment. Comments on the draft rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, before 3:00 p.m. on Monday, July 7, 2014.

Comments should be organized in a manner consistent with the organization of the draft rule. All comments should refer to Project Number 42532. Questions concerning the comments or this notice should be referred to David Smithson, Infrastructure & Reliability Division, (512) 936-7156.

Commission Staff will conduct a workshop regarding this project on Monday, July 14, 2014, at 1:00 p.m. in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Persons desiring to make a presentation at this workshop should contact David Smithson at (512) 936-7156 by Friday, June 6, 2014, to be included on the agenda.

Five days prior to the workshop the commission shall make available in Central Records under Project Number 42532 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to David Smithson, Policy Analyst, Infrastructure & Reliability Division, (512) 936-7156. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201402526
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Public Notice of Request for Comments on Strawman Rule

The staff of the Public Utility Commission of Texas (commission) request comments regarding a strawman rule that would amend P.U.C. Substantive Rule §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

Project Number 42477, Rulemaking to Amend Chapter 26, P.U.C. Substantive Rules to Implement Certain Sections of Senate Bill 259, 83rd Legislative Regular Session, has been assigned to this proceeding.

The commission staff strawman rule will be filed in Central Records under Project Number 42477 by Monday, June 9, 2014. The commission requests interested persons file written comments on this strawman rule. Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 before 3:00 p.m. CST, Monday, June 23, 2014. All responses should reference Project Number 42477.

Questions concerning the comments or this notice should be referred to Meena Thomas, Competitive Markets Division, (512) 936-7344. Hear-

ing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201402532
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2014

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Texas State Soil and Water Conservation Board

Announcement of Draft 2014 Revision of the State Water Supply Enhancement Plan for Public Review and Comment

The Texas State Soil and Water Conservation Board announces the availability of the draft 2014 revision of the State Water Supply Enhancement Plan for public review and comment.

The State Water Supply Enhancement Plan serves as the State's comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem. The State Water Supply Enhancement Plan also serves as the programmatic guidance for the Texas State Soil and Water Conservation Board's Water Supply Enhancement Program. The State Water Supply Enhancement Plan is promulgated by the Texas State Soil and Water Conservation Board under the authority of Texas Agriculture Code §203.051.

The State Water Supply Enhancement Plan, formerly the State Brush Control Plan, was last updated in September 2009 and must now be updated and revised in order to continue implementing provisions of House Bill 1808 (82nd Texas Legislature). The Texas State Soil and Water Conservation Board requests that affected stakeholders review and provide comment on the draft 2014 revision of the State Water Supply Enhancement Plan.

The State Water Supply Enhancement Plan documents the goals, processes, and results the Texas State Soil and Water Conservation Board has established for the Water Supply Enhancement Program, including goals describing the intended use of a water supply enhanced by the Program and the populations that the Program will target. The State Water Supply Enhancement Plan discusses the competitive grant process, the proposal ranking criteria, factors that must be considered in a feasibility study, the geospatial analysis methodology for prioritizing acreage for brush control, how the agency will allocate funding, priority watersheds across the state for water supply enhancement and brush control, how success for the Program will be assessed and reported, and how overall water yield will be projected and tracked.

The Texas State Soil and Water Conservation Board requests that, to the extent possible, comments reference the associated page, chapter, section, and paragraph from the document.

The draft document is available online at the agency's website http://www.tsswcb.texas.gov/brushcontrol or by contacting the agency directly.

The draft document will be discussed at a public hearing scheduled for July 1, 2014 at 2:30 p.m. at the Texas State Soil and Water Conservation Board headquarters office located at 4311 South 31st Street, Suite 125, Temple, Texas 76502. At the hearing, persons may present suggestions for any changes to the proposed document.

The Texas State Soil and Water Conservation Board will be accepting written comments on the proposed document until July 7, 2014. Comments may be submitted by email to Aaron Wendt at awendt@tsswcb.texas.gov. Please reference "Public comment on State WSE Plan" in the subject line.

After the public hearing and comment period, the Texas State Soil and Water Conservation Board will address comments received and incorporate them into a final State Water Supply Enhancement Plan document that will be considered for approval in July 2014.

TRD-201402427
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: May 23, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Hereford, 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 Hereford; TxDOT CSJ No.: 1404HERFD.

Scope: Provide engineering/design services to:

1. Rehabilitate airport terminal entrance road
2. Reconstruct and mark terminal aprons (south and north)
3. Reconstruct and mark T-hangar access TXWYs
4. Reconstruct 3570' of parallel TXWY Alpha
5. Drainage inlet improvements and install TXWY signs
6. Rehabilitate terminal building parking lot

The DBE goal for the design of the current project is 7%. The goal will be re-set for the construction phase. TxDOT Project Manager is Harry Lorton.

The following is a listing of proposed projects at the Hereford Municipal Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate terminal aprons-west and south; rehabilitate and mark RW 2-20; rehabilitate T-hangar access TWs; rehabilitate parallel TXWY and stub TXWYs and mark airfield pavements, RW, TXWYs, and aprons.

The City of Hereford 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 "Hereford Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/divi-

sion/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". A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division, at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than July 1, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government 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 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 Kelle Chancey, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201402520
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 28, 2014

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Gaines County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Gaines County; TxDOT CSJ No.: 1405SEMNL.

Scope: Provide engineering/design services to:

1. Replace MIRL RW 17-35 and RW 8-26

2. Replace electrical vault, service modifications and vault equipment

3. Replace airfield signage

There is no DBE goal for the design of the current project. 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 Gaines County 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: replace perimeter fence and gates; replace PAPI-2 RW 17-35 and RW 26; replace rotating beacon and tower; reconstruct RWs 8-26 and 17-35; construct hangar access taxiway; relocate parallel TXWYS; reconstruct stub TXWYS and reconstruct terminal apron.

Gaines County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Gaines County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division, at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than July 1, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government 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 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 Kelle Chancey, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201402521
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 28, 2014

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule, or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201402522
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 28, 2014

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Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; veterans courts, excluding criminal defense; housing assistance for homeless veterans; family, child, and supportive services; legal services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has established the following priorities: widespread distribution of grants across the state; varied services in geographic areas to ensure no over-saturation or duplication of services in areas of the state; outstanding grant applications; and service categories of financial assistance and homeless/housing.

Grant Funding Period. Grants awarded will begin on January 1, 2015, and end on December 31, 2015. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be $5,000. The maximum grant award will be $500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is $5,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and recommended for funding by the FVA Advisory Committee. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://tvc.texas.gov/Apply-For-A-Grant.aspx* on or about Friday, June 6, 2014. All applications must be submitted electronically and in hard copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to *grants@tvc.texas.gov.* All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 4:00 p.m. CST on Thursday, July 31, 2014 at the William B. Travis Building, 1701 N. Congress Ave., Ste. 9-100, Austin, Texas 78701 to be considered for funding.

TRD-201402528
Kathy I. Wood
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: May 28, 2014

♦ ♦ ♦

Drew Castro
4th Grade

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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Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

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.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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