TEXAS REGISTER

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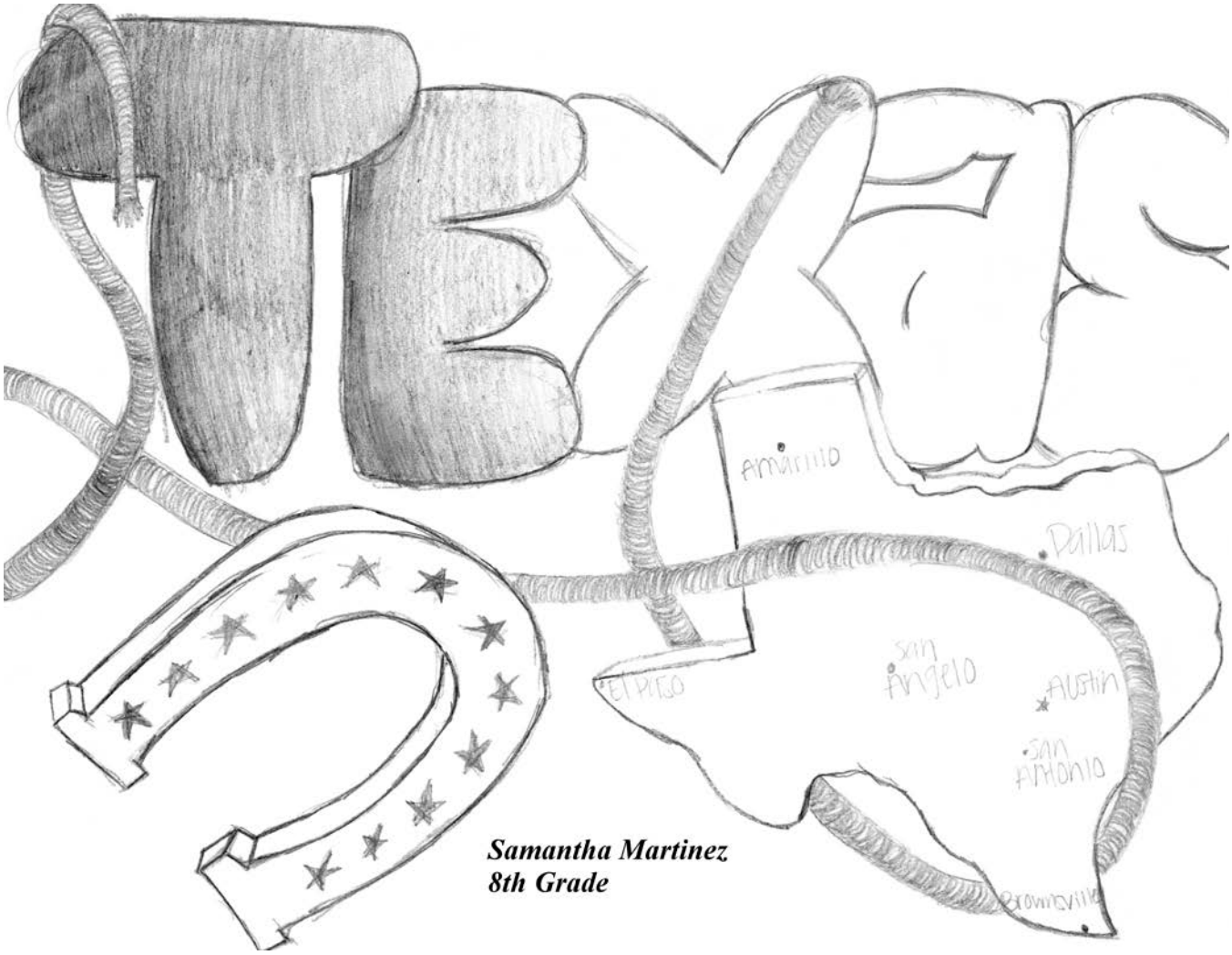

Samantha Martinez
8th Grade

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

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

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In This Issue

THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. GA-1071

The Honorable Royce West

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

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

SUMMARY

We cannot definitively advise you whether a court would determine that the Parkland Center for Clinical Innovation, created under section 281.0565 of the Health and Safety Code, is a political corporation or subdivision subject to article III, section 52(a) of the Texas Constitution.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201403431

Katherine Cary

General Counsel

Office of the Attorney General

Filed: July 29, 2014

♦ ♦ ♦

Angela Araiza
6th 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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 93. TRADEMARKS

The Office of the Secretary of State proposes to revise Chapter 93, concerning trademarks, by proposing amendments to §§93.122, 93.131, and 93.132. The amendments to Chapter 93 are proposed to conform to the statutory revisions to Chapter 16 of the Business and Commerce Code, enacted by the 83rd Legislature, Regular Session, in Senate Bill 1033, effective September 1, 2013 (hereinafter referred to as "SB 1033").

The following specific changes are proposed.

Section 93.122 of the proposed rules sets forth the period of time a registrant has to renew a registered mark. Pursuant to SB 1033, a registered mark may only be renewed during the six months immediately preceding expiration of the current registration.

Section 93.131 and §93.132 are updated to include the requirement that certain information necessary for the Secretary of State to issue an updated certificate of registration be included with an assignment of registration or an instrument relating to a transfer of ownership or name change, when an amended certificate of registration is requested.

FISCAL NOTE

Briana Godbey, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no significant fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Godbey 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 as proposed will be to clarify the renewal period and to specify by rule the information required to be submitted with an application for assignment or transfer of ownership. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

COMMENTS

Comments on the proposed amendments to the rules may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Business and Public Filings Division, P.O. Box 13697, Austin, Texas 78711-3697 or bgodbey@sos.texas.gov. Comments must be received not later than 12:00 noon, September 8, 2014.

SUBCHAPTER L. TERM AND RENEWAL

1 TAC §93.122

STATUTORY AUTHORITY

The amendment of §93.122 is proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business and Commerce Code.

No other codes or statutes are affected by the proposed amendments.

§93.122. Renewal Period.

(a) A registered mark may be renewed during the six months immediately preceding the expiration date of the current registration.

[~~(a) The renewal period for a registered mark begins one year before the expiration date of the current registration and lasts for six months.~~]

[~~(b) If not submitted during the renewal period, an application for renewal will be considered timely if received during the six-month grace period immediately preceding the expiration date of the current registration.~~]

(b) [~~(c)~~] An application for renewal may only be submitted during the renewal period [~~or during the six-month grace period~~]. An application for renewal submitted before the renewal period begins or after the current term of registration of the mark expires will be rejected.

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 July 25, 2014.

TRD-201403385
Briana Godbey
Attorney, Business and Public Filings Division
Office of the Secretary of State
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 463-5590

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SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECORDATION OF OTHER INSTRUMENTS

1 TAC §93.131, §93.132

STATUTORY AUTHORITY

The amendment of §93.131 and §93.132 is proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business and Commerce Code.

No other codes or statutes are affected by the proposed amendments.

§93.131. Requirements for Assignments.

(a) Assignments of registered marks may be recorded with the Secretary of State. An assignment may be recorded if it meets the following requirements:

(1) it is a written instrument executed by the registrant (assignor);

(2) it identifies the certificate of registration by registration number and date of registration (this information may be submitted as a separate statement if it is not contained within the assignment document);

(3) it is in English or, if not in English, it is accompanied by a translation signed by the translator; and

(4) it contains the name and address of the assignee (this information may be submitted as a separate statement if it is not contained within the assignment document).

(b) The original or a copy of the assignment should be submitted with the filing fee to the Secretary of State.

(c) If the original registration for the mark was filed before September 1, 2012, the assignment must include the information required by §93.31(b)(1) - (8) of this title (relating to Application Requirements), as well as a drawing sheet that complies with Subchapter E of this chapter (relating to the Drawing).

(d) [~~(c)~~] Upon compliance with provisions of this section, the Secretary of State also will issue the assignee a new certificate of registration issued in the assignee's name for the remainder of the mark's term of registration, or the remainder of the mark's last term of renewal.

§93.132. Requirements for Recordation of Other Instruments.

(a) An instrument relating to the transfer of ownership of a mark or pending application (such as a certificate of merger or conversion) or a document effecting a name change (other than a change of entity), may be recorded with the Secretary of State. Each document may be recorded if it meets the following requirements:

(1) it is an instrument authorized by law to be recorded or filed and in fact is recorded or filed in a public office and the copy of the instrument is certified by the appropriate official or authority;

(2) the instrument is not authorized by law to be recorded or filed, but is the type of instrument which would be recorded and filed in the records of the Secretary of State if the business entity were a corporation;

(3) the certified copy of the instrument is in English or, if not in English, it is accompanied by a translation signed by the translator; and

(4) the certified copy is accompanied by a cover sheet, signed by the registrant or transferee or an agent of the registrant or transferee, which includes the following information:

(A) an identification of the mark, including the certificate of registration number and date of registration;

(B) the name of the registrant/transferor conveying the interest and the name and address of the transferee receiving the interest; and

(C) a concise description of the transaction being recorded.

(b) The certified copy of the instrument and accompanying cover sheet should be submitted with the filing fee to the Secretary of State. A corporation or other business entity which has filed the instrument to be recorded with the Corporations Section of the Secretary of State may provide an additional statement on the cover sheet identifying the instrument filed and the date of its filing with the Secretary of State in lieu of a certified copy of the instrument.

(c) Upon compliance with the provisions of this section, the Secretary of State shall file the instrument, and return a filed stamped copy if a duplicate copy was provided for such purpose.

(d) Upon written request of the registrant or transferee, or an agent of the registrant or transferee, the Secretary of State will send the registrant or transferee a new certificate of registration issued in the registrant's new name or in the transferee's name for the remainder of the mark's term of registration, or the remainder of the mark's term of renewal. The request for the new certificate must be accompanied by the fee established for a new or corrected certification pursuant to §93.151 of this title (relating to Recordation Fees). For those marks originally filed before September 1, 2012, the request must also include the information required by §93.31(b)(1) - (8) of this title (relating to Application Requirements), as well as a drawing sheet that complies with Subchapter E of this chapter (relating to the Drawing).

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 July 25, 2014.

TRD-201403386
Briana Godbey
Attorney, Business and Public Filings Division
Office of the Secretary of State
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 463-5590

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.2, §255.3

The Commission on State Emergency Communications (CSEC) proposes new §255.2 and §255.3, concerning the collection and remittance of 9-1-1 service fees and equalization surcharge authorized in Health and Safety Code Chapter 771 and CSEC policy for considering requests by Emergency Communication Districts (ECDs) for equalization surcharge, respectively.

The new sections are revised and renumbered replacements for §255.7 (9-1-1 Service Fee and Surcharge Billing and Remittance Authorization) and §255.8 (9-1-1 District Funding Policy), which are being proposed for repeal in this issue of the *Texas Register.*

The proposed repeals and new rules resulted from CSEC's statutory review of its Chapter 255 rules, which is required by Government Code §2001.039 mandating that each state agency review and consider for readoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. CSEC conducts its statutory review by rule chapter. In the May 23, 2014, issue of the *Texas Register* (39 TexReg 3991), CSEC published notice of its intent to review its Chapter 255 rules.

SECTION-BY-SECTION EXPLANATION

§255.2. 9-1-1 Service Fee and Surcharge Collection and Remittance.

The proposal makes clear (1) the obligation of service providers to collect and remit the fees and surcharge established in Health and Safety Code Chapter 771; (2) the obligation to collect the fees/surcharge in the same manner charges for services are collected; and (3) to preclude a service provider from failing to collect or remit the fees/surcharge on account of failing to comport with the billing requirements in Chapter 771.

§255.3. Emergency Communication District Equalization Surcharge Funding Policy.

The proposal establishes the Commission's policy on considering requests for equalization surcharge from Emergency Communication Districts that operate independently of the regional plan for their area, as authorized by Health and Safety Code §771.072(d).

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that new §255.2 and §255.3 are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Ms. Merriweather has determined that for each year of the first five years the new sections are in effect, the public benefits anticipated as a result of the proposed revisions will be added clarity and certainty for service providers regarding their obligations to collect and remit the state's 9-1-1 fees and equalization surcharge, and for state's Emergency Communication Districts regarding their authorization to request equalization surcharge.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedure Act §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses and micro-businesses as the rules being proposed affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATEMENT OF AUTHORITY

The new sections are proposed pursuant to Health and Safety Code Chapter 771, §§771.051, 771.071, 771.0711, 771.0712, 771.072, 771.073, 771.0735, 771.074, and 771.077.

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

§255.2. 9-1-1 Service Fee and Surcharge Collection and Remittance.

(a) Service providers shall collect and remit the 9-1-1 service fees authorized by Health and Safety Code §§771.071, 771.0711, and 771.0712 (collectively, 9-1-1 fees) and the equalization surcharge authorized by Health and Safety Code §771.072 (the surcharge) from their customers in accordance with Health and Safety Code Chapter 771. Customers includes subscribers, end-users, and any other person or entity not expressly exempted from the 9-1-1 fees or surcharge by Health and Safety Code §771.074.

(b) A service provider shall collect the 9-1-1 fees and surcharge in the same manner it collects those charges for service, except that the service provider is not required to take legal action to enforce the collection of the fees or surcharges. Service providers have no authority to cease collecting and remitting 9-1-1 fees and surcharges for any non-exempt customer unless and until formally authorized to do so by the Commission.

(c) A service provider that fails to separately state the 9-1-1 fees or surcharge on a customer's bill or combined in an appropriately labeled single line item on the customer's bill is not exempt from the requirements of this section.

§255.3. Emergency Communication District Equalization Surcharge Funding Policy.

The Commission will consider requests for equalization surcharge (the surcharge) funding assistance from Emergency Communication Districts as authorized by Health and Safety Code §771.072. Funding requests will be evaluated and considered for approval based upon the Commission's established statewide funding priorities and needs, available surcharge appropriations, and consistency with funding policies regarding the financial needs of regional 9-1-1 plans.

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 July 23, 2014.

TRD-201403369
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 305-6930

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1 TAC §§255.5, 255.7, 255.8

(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 Commission on State Emergency Communications or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission on State Emergency Communications (CSEC) proposes to repeal §§255.5, 255.7 and 255.8, concerning Optional Use of an Uncollectible Factor, 9-1-1 Service Fee and Surcharge Billing and Remittance Authorization, and 9-1-1 District Funding Policy, respectively.

Government Code §2001.039 requires each state agency to review and consider for readoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. In the May 23, 2014, issue of the *Texas Register* (39 TexReg 3991), CSEC published notice of its intent to review its Chapter 255 rules.

SECTION-BY-SECTION EXPLANATION

§255.5. Optional Use of an Uncollectible Factor.

CSEC proposes to repeal §255.7 because the Comptroller of Public Accounts, rather than CSEC, has authority over the collection and remittance of fees and surcharges under Health and Safety Code Chapter 771.

§255.7. 9-1-1 Service Fee and Surcharge Billing and Remittance Authorization.

The repeal is proposed in order to publish for comment a renumbered rule that is numerically consistent with the remaining rules in Chapter 255. (Proposed new, renamed, and renumbered §255.2 is published in this issue of the *Texas Register.)*

§255.8. 9-1-1 District Funding Policy.

The repeal is proposed in order to publish for comment a renumbered rule that is numerically consistent with the remaining rules in Chapter 255. (Proposed new, renamed, and renumbered §255.3 is published in this issue of the *Texas Register.)*

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that repealed §§255.5, 255.7 and 255.8 are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Ms. Merriweather has determined that for each year of the first five years the repeals and new sections are in effect, the public benefits anticipated as a result of the proposed revisions will be additional clarity and consistency in utilizing and applying CSEC rules.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedure Act §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses and micro-businesses as the proposal affects only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATEMENT OF AUTHORITY

The repeals are proposed pursuant to Health and Safety Code Chapter 771, §§771.071, 771.0711, 771.0712, 771.072, 771.073, 771.075, and 771.0751.

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

§255.5. Optional Use of an Uncollectible Factor.
§255.7. 9-1-1 Service Fee and Surcharge Billing and Remittance Authorization.
§255.8 9-1-1 District Funding Policy.

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

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403368
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 305-6930

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §36.1, relating to Possession and Sale of Firearms on Licensed Premises, to cite statutory authority, to provide definitions, and to revise standards both for off-premises and on-premises locations generally, and for gun shows, historical reenactments and ceremonial display specifically.

The proposed amendments introduce new subsections and therefore the proposed subsections do not match existing subsections covering the same general topics.

Proposed subsection (a) is new and cites statutory authority, states the general prohibition on a permittee or licensee knowingly allowing a person to possess a firearm in a building on a licensed premises, and references the exceptions to that general prohibition.

Proposed subsection (b) is new and defines "firearm" and "licensed premises".

Proposed subsection (c) is new and cites the specific provisions of the Alcoholic Beverage Code that provide exceptions to the general prohibition referenced in proposed subsection (a) of this section, and references the proposed subsections dealing with certain firearms sales, firing ranges and gun shows at on-premises locations.

Proposed subsections (d) - (f) address on-premises locations that are currently addressed in subsection (c). Proposed subsection (f) specifically addresses gun shows, which are currently addressed in subsection (a).

Proposed subsection (d) provides the requirements for a location that has a license or permit authorizing the on-premises consumption of alcoholic beverages and that allows the routine sale of firearms as part of its daily business operations. It requires that the location has a firearms license and secures the firearms. It allows for the sale or possession of firearms only in a portion of the location that has been excluded from the licensed premises.

Proposed subsection (e) provides the requirements for a location that has a license or permit authorizing the on-premises consumption of alcoholic beverages and that allows the operation of a firing range at the location. It requires that the location meet all applicable federal, state and local requirements for the operation of a firing range, and that it establishes and enforces safety guidelines regarding the use of firearms. The areas where firearms are possessed or discharged and where alcoholic beverages are sold or possessed must be separate.

Proposed subsection (f) provides the requirements for a location that has a license or permit authorizing the on-premises consumption of alcoholic beverages and that allows a gun or firearms show or display. The location must be owned or leased by a governmental entity or a nonprofit civic, religious, charitable, fraternal or veterans organization. The location may be used for a gun or firearms display or show only on an occasional basis, and a written agreement between the permittee and the operator of the show or display containing certain provisions must be approved by the commission 30 days prior to the event.

Proposed subsection (g) addresses off-premises locations that are currently addressed in subsection (b). It requires the license or permit holder to have a federal firearms license, provides that the firearms be secured, and does not allow the sale of alcoholic beverages in an area where the firearms for sale are readily accessible.

Proposed subsection (h) contains the same conditions for historical reenactments that are currently addressed in subsection (d).

Proposed subsection (i) addresses ceremonial displays, which are currently addressed in subsection (c). The proposal provides that a firearm may be ceremonially displayed on a licensed premises only if it is in the possession of the permittee or licensee, the firearm is disabled, and there is no live ammunition for the firearm on the licensed premises.

Section 36.1 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

It is unclear if the proposed amendments will have any fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. It is possible that some locations that are required to segregate firearms and alcohol, but do not already do so, may incur some costs to come into compliance. However, segregating alcohol and firearms in those situations is actually required by Alcoholic Beverage Code §11.61(e) and §61.71(f), which require the commission to cancel the permit or license if the permittee or licensee knowingly allows a person to possess a firearm on the licensed premises.

There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Tuesday, August 19, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 11.61 and 61.715.38 and Government Code §2001.039.

§36.1. Possession and Sale of Firearms on Licensed Premises.

(a) This section relates to Alcoholic Beverage Code §§5.31, 11.61(e), (f) and (i), and 61.71(f), (g) and (j). Pursuant to Alcoholic Beverage Code §11.61(e) and §61.71(f) and except as allowed by those sections of the Code or by this section, a permittee or licensee may not knowingly allow a person to possess a firearm in a building on a licensed premises.

(b) As used in this section, "firearm" has the meaning given in Penal Code §46.01(3), and "licensed premises" means a premises that has a permit or license authorizing the sale, service or consumption of alcoholic beverages.

(c) Except as allowed under the exemptions in Alcoholic Beverage Code §11.61(e)(1) - (4) or §61.71(f)(1) - (4), the possession or sale of firearms at a location that has a license or permit authorizing the on-premises consumption of alcoholic beverages is allowed only under the conditions prescribed in subsection (d), (e) or (f) of this section. Firearms sales at such locations are addressed in subsection (d), firing ranges are addressed in subsection (e), and gun or firearms shows are addressed in subsection (f).

(d) A location that has a license or permit authorizing the on-premises consumption of alcoholic beverages may only allow the routine sale of firearms as part of its daily business operations if:

(1) the location has a federal firearms license;

(2) the firearms for sale are possessed and sold only on or in a portion of the grounds, buildings or appurtenances of the location that have been excluded from the licensed premises by designation in a diagram that has been approved by the commission under Alcoholic Beverage Code §11.49(b); and

(3) the firearms for sale are either:

(A) disabled and not readily convertible for use; or

(B) are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(e) A location that has a license or permit authorizing the on-premises consumption of alcoholic beverages may only allow the operation of a firing range at the location if:

(1) the location meets all applicable federal, state and local requirements for the operation of a firing range;

(2) firearms are possessed or discharged only in a portion of the grounds, buildings or appurtenances of the location that have been excluded from the licensed premises by designation in a diagram that has been approved by the commission under Alcoholic Beverage Code §11.49(b);

(3) alcoholic beverages are not sold or possessed in any area where firearms are readily accessible; and

(4) the owner or operator of the location establishes and enforces safety guidelines involving the use of firearms, including but not limited to a requirement that firearms may not be possessed or discharged at the location after the consumption of alcoholic beverages on the licensed premises.

(f) A location that has a license or permit authorizing the on-premises consumption of alcoholic beverages may only allow a gun or firearms show or display at the location if:

(1) the location is owned or leased by a governmental entity or nonprofit civic, religious, charitable, fraternal, or veterans' organization;

(2) the location is used for a gun or firearms show or display only on an occasional basis; and

(3) a written agreement between the operator of the show or display and the permittee or licensee is filed at the commission's district office and approved by the commission 30 days prior to the gun or firearms show or display and the agreement includes the following:

(A) a requirement that prohibits live ammunition in the building or the facility where the licensed premises is located;

(B) a requirement that firearms be disabled and not readily convertible for use as a firearm; and

(C) a requirement that prohibits the delivery of any firearm inside the building or facility where the licensed premises is located.

(g) The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store permit or a package store permit may only allow the sale or offer for sale of firearms at the licensed location if:

(1) the license or permit holder also holds a federal firearms license;

(2) alcoholic beverages are not being sold in any area where the firearms for sale are readily accessible; and

(3) the firearms for sale are either:

(A) disabled and not readily convertible for use as a firearm; or

(B) secure from the general public and only accessible by employees of the person or entity offering the firearms for sale.

(h) Pursuant to Alcoholic Beverage Code §11.61(i) and §61.71(j), a historical reenactment utilizing firearms may only be conducted on a licensed premises if:

(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded only with blank ammunition firing no projectile;

(4) such firearms are handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(5) persons engaged in reenactments maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(6) the permittee adopts safety rules to be employed during the reenactment and such rules are read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(7) the permittee provides notice of the reenactment to the relevant commission office at least three business days before the event.

(i) Pursuant to Alcoholic Beverage Code §11.61(f) and §61.71(g), a firearm may be ceremonially displayed on a licensed premises only if:

(1) the firearm is in the possession of the permittee or licensee;

(2) the firearm is disabled and not readily convertible for use as a firearm while on the premises; and

(3) there is no live ammunition for the firearm on the premises.

[~~(a) Gun Shows. A permittee/licensee may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed premises for the use of gun shows if the permittee/licensee:~~]

[~~(1) suspends all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and~~]

[~~(2) operates its licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity or legally formed and duly recognized civic, religious, charitable, fraternal or veterans organization.~~]

[(b) Off-Premise Retailers and Gun Sales. The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:]

[(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and]

[(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.]

[(c) On-Premise Possession of Firearms. Firearms may be possessed on premises licensed for on-premise consumption if:]

[(1) the firearm is in the possession of the permittee/licensee; or]

[(2) the firearm is:]

[(A) possessed for ceremonial and/or display purposes;]

[(B) disabled from use as a firearm while on the licensed premises;]

[(C) is possessed on the licensed premises in connection with charitable fundraising; and]

[(D) remains in the possession, control or supervision of person or persons acting on behalf of the charitable organization sponsoring the fundraising activity.]

[(d) Historical Reenactments. Pursuant to §11.61(i) of the Texas Alcoholic Beverage Code, a historical reenactment utilizing firearms maybe conducted on the premises of a permit or license if:]

[(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;]

[(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;]

[(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;]

[(4) such firearms shall be handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;]

[(5) persons engaged in reenactments shall maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;]

[(6) the permittee shall adopt safety rules to be employed during the reenactment and such rules shall be read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and]

[(7) the permittee provides the relevant Commission District Office or outpost notice of the reenactment at least three business days before the event.]

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 July 23, 2014.

TRD-201403367

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 206-3489

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.5

Introduction. The Texas Board of Nursing (Board) proposes an amendment to §215.5, concerning Philosophy/Mission and Objectives/Outcomes. The amendment is proposed under the authority of the Occupations Code §301.157 and §301.151 and is necessary to correct a typographical error in the title of the Differentiated Essential Competencies of Graduates of Texas Nursing Programs (DECs).

Section by Section Overview.

Proposed amended §215.5(b) correctly references the "Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010 (DECs)".

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment is in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of grammatically correct requirements.

Potential Costs of Compliance. The Board does not anticipate any associated costs of compliance with the proposed amendment, as the proposal does not include any substantive changes that would impose new costs of compliance on any person subject to the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

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 September 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 Janice Hooper, PhD, RN, Lead Education Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to janice.hooper@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 amendment is proposed under the Occupations Code §301.157 (relevant subsections) and §301.151.

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.157(d) provides that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (1) is approved by the Board; (2) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board, subject to subsection (d-4).

Section 301.157(d-4) states that the Board may recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (1) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (2) require the approval process identified under subdivision (1) to precede the approval process conducted by the Board; and (3) be made available on the Board's Internet website and in a written form.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

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.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.157 and §301.151.

§215.5. Philosophy/Mission and Objectives/Outcomes.

(a) (No change.)

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational [~~Professional~~] (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(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 July 22, 2014.

TRD-201403341
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 305-8101

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1

Introduction. The Texas Board of Nursing (Board) proposes amendments to §217.1, concerning Definitions. The amendments are proposed under the authority of the Occupations Code §§301.002(2) and (5), 301.261(e), and 301.151 and are necessary to eliminate obsolete provisions from the rule and

update references to the "Texas Board of Nursing". The current definitions of "professional nursing practice" in §217.1(31) and "vocational nursing practice" in §217.1(50) contain a reference to "compensation". However, the reference to "compensation" was removed from the definition of "professional nursing" in the Nursing Practice Act (NPA) in 2005 [See SB 1000 (79th R.S.), effective May 20, 2005]. The definition of "vocational nursing" was also amended by SB 1000 in 2005 and does not include a reference to "compensation". Further, the current definitions of "registered nurse, retired" in §217.1(37) and "vocational nurse, retired" in §217.(47) include a reference to age 65 or older. However, the NPA eliminated age restrictions for retired status in 2011 [See SB 193 (82nd R.S.), effective September 1, 2011]. The proposed amendments are necessary for consistency with the updated provisions of the NPA.

Section by Section Overview.

Proposed amended §217.1(6) correctly references the "Texas Board of Nursing".

Proposed amended §217.1(27) eliminates an outdated reference to the Board of Nurse Examiners for the State of Texas.

Proposed amended §217.1(31) eliminates reference to "compensation" and includes citation to the definition of professional nursing, as found in the Occupations Code §301.002(2).

Proposed amended §217.1(37) eliminates the reference to age 65 or older and corrects typographical errors in the paragraph.

Proposed amended §217.1(47) eliminates the reference to age 65 or older and corrects typographical errors in the paragraph.

Proposed amended §217.1(50) eliminates reference to "compensation" and includes citation to the definition of vocational nursing, as found in the Occupations Code §301.002(5).

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of updated requirements that are consistent with the provisions of the NPA.

Potential Costs of Compliance. The Board does not anticipate any associated costs of compliance with the proposed amendments, as the proposal does not include any substantive changes that would impose new costs of compliance on any person subject to the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

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 September 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 Kristin Benton, MSN, RN, Director of Nursing, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to kristin.benton@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 amendments are proposed under the Occupations Code §§301.002(2) and (5), 301.261(e), and 301.151.

Section 301.002(2) defines "professional nursing" as the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves: (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes; (B) the maintenance of health or prevention of illness; (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist; (D) the supervision or teaching of nursing; (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures; (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; (G) the performance of an act delegated by a physician under §§157.0512, 157.054, 157.058, or 157.059; and (H) the development of the nursing care plan.

Section 301.002(5) defines "vocational nursing" as a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Vocational nursing involves: (A) collecting data and performing focused nursing assessments of the health status of an individual; (B) participating in the planning of the nursing care needs of an individual; (C) participating in the development and modification of the nursing care plan; (D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual; (E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and (F) engaging in other acts that require education and training, as prescribed by board rules and policies, commensurate with the nurse's experience, continuing education, and demonstrated competency. Section 301.261(e) provides that the Board, by rule, shall permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired,"

"L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the Board. 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.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §§301.002(2) and (5), 301.261(e), and 301.151.

§217.1. Definitions.

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

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

(6) Board--The Texas Board of Nursing [~~Board of Nurse Examiners for the State of Texas~~].

(7) - (26) (No change.)

(27) Peer assistance program--An approved program designed for nurses whose nursing practice is or may be impaired by chemical dependency on drugs and/or alcohol or certain mental illnesses and which meets the minimum criteria established by the Texas Commission on Alcohol and Drug Abuse and the additional criteria established by the Board [~~of Nurse Examiners for the State of Texas~~].

(28) - (30) (No change.)

(31) Professional nursing practice--As defined in the Occupations Code §301.002(2). [~~The performance for compensation of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing.~~]

(32) - (36) (No change.)

(37) Registered nurse, retired--An individual on inactive status[~~, 65 or older,~~] who has met the requirements for using the title as stated in §217.9[~~(b)~~] of this title (relating to Inactive and Retired Status).

(38) - (46) (No change.)

(47) Vocational nurse, retired--An individual on inactive status[~~, 65 or older,~~] who has met the requirements for using the title as stated in §217.9[~~(b)~~] of this title; includes individuals formerly classified as Vocational nurse, emeritus.

(48) - (49) (No change.)

(50) Vocational Nursing Practice--As defined in the Occupations Code §301.002(5). [~~The performance of services for compensation appropriate for Licensed Vocational Nurses employed in roles which fall within the scope of the definition of vocational nursing.~~]

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 July 22, 2014.

TRD-201403337

Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 305-6822

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CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The amendments are proposed under the authority of the Occupations Code §301.155 and §301.151 and eliminate unnecessary and obsolete provisions from the rule text. Although the Board continues to print replacement "wall" certificates, the Board no longer issues duplicate or substitute licenses, as licensees are now able to print licensure verification and copies directly from the Board's website. Further, the Board no longer utilizes docketing fees in non-disciplinary matters. As such, the proposed amendments remove these provisions from the rule text and renumber the remaining provisions accordingly.

Section by Section Overview.

Proposed amended §223.1(a)(6) eliminates the fee for duplicate or substitute licenses from the rule.

Proposed amended §223.1(a)(16) eliminates docketing fees in non-disciplinary matters from the rule.

The remaining proposed amendments renumber the paragraphs of the subsection appropriately.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of updated requirements that are consistent with the current practices of the Board.

Potential Costs of Compliance. The Board does not anticipate any associated costs of compliance with the proposed amendments, as the proposal does not include any substantive changes that would impose new costs of compliance on any person subject to the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

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 September 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 Mark Majek, Director of Operations, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@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 amendments are proposed under the Occupations Code §301.155 and §301.151.

Section 301.155(a) provides that, the Board, by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

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.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.155 and §301.151.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

[~~(6) duplicate or substitute license: $25;~~]

(6) [~~(7)~~] duplicate or substitute permanent certificate: $25;

(7) [~~(8)~~] issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit: $25;

(8) [~~(9)~~] approval of new nursing education programs: $2,500;

(9) [~~(10)~~] verification of licensure: $5;

(10) [~~(11)~~] verification of records: $25;

(11) [~~(12)~~] bad checks: $30;

(12) [~~(13)~~] Advanced Practice Nurse initial credentials: $100;

(13) [~~(14)~~] declaratory order of eligibility: $150;

(14) [~~(15)~~] eligibility determination: $150;

[~~(16) docketing fee in non disciplinary matters: $600;~~]

(15) [~~(17)~~] Licensed Vocational Nurse, Retired; Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP): $10;

(16) [~~(18)~~] Advanced Practice Nurse renewal: $60;

(17) [~~(19)~~] Initial Prescriptive Authority: $50;

(18) [~~(20)~~] outpatient anesthesia registry renewal: $35;

(19) [~~(21)~~] outpatient anesthesia inspection and advisory opinion: $625;

(20) [~~(22)~~] fee for Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants as determined by fees imposed by the Criminal Justice Information Services (CJIS) Division and the Texas Department of Public Safety;

(21) [~~(23)~~] Disciplinary monitoring fees as stated in a Board order;

(22) [~~(24)~~] Nursing Jurisprudence Examination fee: not to exceed $25;

(23) [~~(25)~~] approval of remedial education course: $300 per course;

(24) [~~(26)~~] renewal of remedial education course: $100 per course; and

(25) [~~(27)~~] approval of a nursing education program outside Texas' jurisdiction to conduct clinical learning experiences in Texas: $500.

(b) (No change.)

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

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403342
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 305-6822

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.11

The Texas State Board of Plumbing Examiners (Board) proposes an amendment to §363.11 that sets forth the criteria for the Water Supply Protection Specialist endorsement examination pursuant to a petition submitted by Mr. Mark Roberts of the International Code Council.

Background and Justification:

Mr. Roberts has petitioned the Board to propose an amendment to 22 TAC §363.11(c)(1) to include the International Plumbing Code's rainwater harvesting provisions to be used with or in addition to other code related materials in the 24 hour Water Supply Protection Specialist endorsement training program and the endorsement examination. The inclusion of the International Plumbing Code's rainwater harvesting provisions as reference and study material in the Water Supply Protection Specialist endorsement training will help Water Protection Specialist candi-

dates apply a wider range of reference materials to be used to safely install rainwater harvesting systems in compliance with state and municipal codes.

The rule amendments are also necessary to provide greater clarity and to correct a typographical error in 22 TAC §363.11(c)(1).

Fiscal Note:

Lisa Hill, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit:

Ms. Hill has concluded that for each year of the first five years after the rule is amended, the rule will be clearer to those in the plumbing profession and to members of the public.

Public Comment:

The Texas State Board of Plumbing Examiners invites comments on the proposed amendments from any member of the public within 30 days. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.texas.gov.

Statutory Authority:

The amendment is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the proposed amendments.

§363.11. Endorsement Training Programs.

(a) General requirements for Course Providers and Course Instructors

(1) Any person who seeks to provide a training program as a prerequisite for qualifying to take an examination to obtain any endorsement issued by the Board may apply to the Board for approval as a Course Provider.

(2) Any person who seeks to provide instruction of such training programs must be employed by an approved Course Provider. He or she may apply to the Board through an approved Course Provider to be approved as a Course Instructor.

(A) Each Course Instructor must be:

(i) a licensed Journeyman or Master Plumber and hold the particular endorsement relevant to the training program that the Course Instructor will teach; or

(ii) a licensed Plumbing Inspector who has completed the training and examination requirements required to obtain the particular endorsement relevant to the training program that the Course Instructor will teach.

(B) Each Course Instructor will be required to successfully complete a Board approved instructor training program of 160 hours which meets the following criteria:

(i) 40 hours to provide the instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs;

(ii) 40 hours to provide the instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(iii) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community; and

(iv) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(C) To maintain status as an approved Course Instructor of an endorsement training program, the Course Instructor shall undergo one of the instructor training programs required under subparagraph (B) of this paragraph every twelve (12) months such that the entire training (160 hours) is completed within four years.

(3) Course Providers and Course Instructors shall adhere to the instruction criteria approved by the Board in this section, and ensure that only students who receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by this section.

(4) The training required by this section may be provided in increments, as appropriate, and the Course Provider or Course Instructor shall provide a certificate of completion to the student, upon completion of the training.

(A) The certificate of completion shall state:

(i) the title of the training program related to the particular endorsement;

(ii) the names of the Course Provider and Course Instructor;

(iii) the name and license number of the student; and

(iv) the date that the instruction was completed.

(B) The Course Provider shall maintain a record of the information contained on each certificate of completion for at least two years.

(5) Each Course Provider shall notify the Board at least seven (7) days before conducting training programs or electronically post notice of the class schedule on the provider's website at least seven (7) days before conducting a class. The notice shall contain the date(s), time(s) and place(s) where the class(es) will occur.

(6) Each Course Provider shall perform self-monitoring to ensure compliance with this section and reporting as required by the Board.

(7) The Board may monitor endorsement training programs to ensure compliance with this section.

(8) Any failure on the part of a Course Provider or Course Instructor to abide by the requirements of this section may result in the denial, probation, suspension, or revocation of Board approval as a Course Provider or Course Instructor.

(b) The following are requirements for the Medical Gas Piping Installation Endorsement training programs:

(1) Before a Plumbing Inspector, Journeyman, or Master Plumber may qualify to take the Medical Gas Piping Installation endorsement examination, the applicant must complete a training program approved by the Board which pertains to subject matter applicable to the installation of medical gas piping systems. As a minimum, the training course shall be based on the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99 Health Care Facilities Code.

(2) Course Providers shall provide lesson plans for Board approval. Approved Course Providers of medical gas training shall furnish a program consisting of a classroom presentation of course material, a test of the enrollee's comprehension of the matter, a shop demonstration of the proper brazing procedures by the Course Instructor, and the enrollee's final brazing evidence to the instructor of an accepted vertical and horizontal practice coupon.

(A) A minimum of 24 hours shall be assigned for the classroom presentation and testing.

(B) In addition, a minimum of four (4) hours shall be assigned to the brazing demonstrations. The student enrolled in medical gas training will have completed a minimum of eight (8) hours of practice brazing coupons in an equipped shop. These coupons will be presented to the Course Instructor for grading.

(C) The aforementioned hours represent the minimum requirements only; additional time may be included in each segment of the program.

(c) The following are requirements for the Water Supply Protection Specialist Endorsement training programs:

(1) Before a Journeyman or Master Plumber may qualify to take the Water Supply Protection Specialist endorsement examination, the applicant must complete a training program approved by the Board, which pertains to subject matter applicable to the protection of public and private potable water supplies, as required by the plumbing codes, laws and regulations of this state. A portion of the training program shall include information specific to rainwater harvesting as outlined in the latest edition of the Texas Water Development Board's Rainwater Harvesting Manual. A portion of the training program may also include [~~and~~] the latest edition of the Uniform Plumbing Code (UPC) Rainwater Harvesting Seminar Manual, or the latest edition of the International Plumbing Code (IPC) or the International Green Construction Code (IgCC).

(2) Any person wishing to offer a Board approved training program in Water Supply Protection Specialist Endorsement to the public must submit a course outline, together with the number of hours of instruction, to the Board for approval.

(3) The training program must be at least 24 hours with a maximum of eight (8) hours of instruction per day and comply with the following minimum guidelines:

(A) a six (6) hour review of the significance of cross-connections, the principles of back pressure and back siphonage, thermal expansion, the acceptable devices and/or requirements for a public water supply system including, but not limited to, approved backflow protection devices, shut-off valves, water meters, and containment vessels;

(B) a two (2) hour review of the applicable standards, codes, and laws, including but not limited to the Plumbing License Law, Board rules, the Texas Commission on Environmental Quality rules relating to a public water supply and water reuse, as described in the Texas Water Development Board's Rainwater Harvesting Manual, and the Texas A&M AgriLife Extension Service recommendations;

(C) a four (4) hour review of the specific parts and terminology, and the concepts and components of a rainwater harvesting system, including proper sizing for all water reuse systems;

(D) an eight (8) hour review of the acceptable type, material, location, limitation, and correct installation of equipment related to the treatment and reuse of water;

(E) four (4) hours devoted to the elements of a proper customer service inspection as required by the Texas Commission on Environmental Quality;

(4) Board approved Course Providers and Course Instructors who are approved to provide and instruct Continuing Professional Education (CPE) courses, under Board Rule §365.14 (relating to Continuing Professional Education Programs), may utilize another governmental or industry recognized entity to provide a portion of the course instruction.

(5) The Board may require resubmission for approval of any previously approved Water Supply Protection Specialist endorsement training program to ensure that the program meets current requirements of the plumbing codes, laws, and regulations of the state which pertain to the protection of public and private potable water supplies.

(d) The following are requirements for the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training programs:

(1) Before a Plumbing Inspector, Journeyman or Master Plumber may qualify to take the Multipurpose Residential Fire Protection Sprinkler System Inspector examination or Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination, the applicant must complete a training program which pertains to subject matter applicable to a multipurpose dwelling fire sprinkler system, as required by the National Fire Protection Association Standard 13D.

(2) The training program must incorporate the training criteria included in the American Society of Sanitary Engineering Series 7000, as it relates to plumbing-based residential fire protection systems installers for one and two family dwellings.

(3) The training program must be at least 24 hours in length, using the following minimum guidelines:

(A) one (1) hour to review applicable standards, codes, and laws, including the Plumbing License Law, Board Rules and the fire sprinkler rules, 28 TAC §§34.701 et seq., and their integration and identifying the enforcing authorities;

(B) four (4) hours to study definitions, to identify as a minimum the various types, specific parts, specific terminology and concepts of the system;

(C) four (4) hours to learn the acceptable type, material, location, limitation and correct installation of equipment including but not limited to pipe, fittings, valves, types of sprinkler heads, supports, drains, test connections, automatic by-pass valve, smoke alarm devices, other appurtenances;

(D) two (2) hours to learn the acceptable type, configuration, and material which may or may not be required for a water supply including but not limited to backflow preventers, shut off valves, water meters, water flow detectors, tamper switches, test connections, pressure gages, minimum pipe sizes, storage tanks, and wells including the ability to perform a water flow test of a city water supply;

(E) eight (8) hours to learn which rooms require sprinklers and the correct positioning of a sprinkler head based on its type, listing, temperature rating, and the building structure including but not limited to understanding the concepts of the area of coverage, spacing,

distance from walls and ceilings, listing limitations, dead air pockets, manufacturer's requirements and obtaining knowledge of how structural features such as flat, sloped, pocket, or open joist ceilings, close proximity to heat sources and other obstructions such as ceiling fans, surface mounted lights, beams, and soffits may adversely influence the location of a sprinkler head;

(F) three (3) hours to learn critical hydraulic concepts for the installer that may adversely affect the original design plan due to field construction changes including but not limited to remote area sprinkler operation, flow versus pressure, elevation pressure loss, sprinkler K-factors, fixture units, minimum pipe diameters, additional pipe lengths and understand which household water appliances affect or do not affect the sprinkler hydraulics/performance; and

(G) two (2) hours to learn the required testing, maintenance and documentation including but not limited to the final inspection and tests normally required by the local fire official (AHJ), when permits, working plans, as-built plans or hydraulic calculations are required and who provides for the system maintenance and instructions.

(4) Any person who holds a valid Master or Journeyman Plumber license issued by the Board and a valid RME-General or RME-Dwelling license issued by the State Fire Marshal's Office, Texas Department of Insurance, is exempted from completing the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program described by this section prior to taking the Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination.

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 July 23, 2014.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: October 13, 2014
For further information, please call: (512) 936-5224

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22 TAC §363.13

The Texas State Board of Plumbing Examiners (Board) proposes an amendment to §363.13 which sets forth the criteria and requirements of the Responsible Master Plumber 24 hour training program. The amendment to §363.13(d)(2) is proposed in response to a petition for rule change submitted by Debbie A. Murphy.

Background and Justification:

The amendment addresses who may take the course to become a Responsible Master Plumber. The amendment would permit any individual to take the Responsible Master Plumber training class regardless of whether he or she has met the requirements to become a Responsible Master Plumber. This would permit any individual who is not a Responsible Master Plumber to take a Responsible Master Plumber training course at any point in his or her career. Permitting individuals to take this course fulfills the agency's mission to educate those interested in plumbing about the industry and how to properly operate a plumbing business.

Fiscal Note:

Lisa G. Hill, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the amended rule is in effect there will be no fiscal impact on state and local government, as a result of enforcing or administering the amended section. Because, the Board licenses only individuals and not businesses, there should be no significant fiscal impact to small businesses.

Public Benefit:

Ms. Hill also has determined that for each year of the first five years after the amended section is in effect the public benefit anticipated as a result of enforcing the rule will be to provide greater educational opportunities to individuals by permitting them to take the Responsible Master Plumbing course at any point in their careers.

Public Comment:

The Texas State Board of Plumbing Examiners invites comments on the proposed amendments from any member of the public within 30 days. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.texas.gov.

Statutory Authority:

The amendment is proposed pursuant to the Texas Occupations Code and is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article or code is affected by this proposed rule amendment.

§363.13. Training Program for Responsible Master Plumber Applicants.

(a) Before a Master Plumber acts as a Responsible Master Plumber, the Master Plumber must complete a Board approved training program which includes laws and rules applicable to the operation of a plumbing business in this state, as required by §1301.3576 of the Plumbing License Law.

(1) The requirements of this section do not apply to a Responsible Master Plumber who, on or before January 1, 2012, provides the Board with a Certificate of Insurance that meets the requirements of Board Rule §367.3 (relating to Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance); and

(2) that is effective on January 1, 2012.

(b) The training program required under subsection (a) of this section, must be a minimum of 24 hours in length and include instruction in the following subjects applicable to the operation of a plumbing business in this state:

(1) finance;

(2) legal;

(3) local, state and federal rules and regulations;

(4) insurance/bonds, including workman's compensation insurance;

(5) Occupational Safety and Health Administration (OSHA) requirements awareness; and

(6) customer service.

(c) The Board will approve only Course Providers and Course Instructors who are approved to provide and instruct Continuing Professional Education (CPE) courses, under Board Rule §365.14 (relating to Continuing Professional Education Programs), to provide and instruct the classroom training required by this section, except that an approved Course Provider may utilize another government and/or education entity to provide the instruction through the approved Course Provider.

(d) Course Providers and Course Instructors may be approved to provide the classroom training required under this section without submitting a separate application in addition to the application required to be approved to provide and instruct CPE, under Board Rule §365.14.

(1) Any Course Provider or Course Instructor whose approval to provide or instruct CPE courses under Board Rule §365.14 is suspended or revoked for any reason, is not approved to provide or instruct the classroom training required under this section.

(2) Course Providers and Course Instructors shall adhere to the instruction criteria in subsections (a) and (b) of this section, and ensure that any individual [~~only Master Plumbers~~] who receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by this section.

(3) Course Providers or Course instructors shall provide notice of intent to conduct training required by this section, in the same manner required by Board Rule §365.14(b)(10).

(4) Course Instructors shall abide by the same standards of conduct described in Board Rule §365.14(c), when providing the training required by this section.

(5) Course providers shall limit the number of students of any class to forty-five (45).

(e) The training required by this section may be provided in increments, as appropriate, and the Course Provider or Course Instructor shall provide a certificate of completion to the individual [~~Master Plumber~~] for each increment completed.

(1) The certificate of completion shall state:

(A) the names of the Course Provider and Course Instructor;

(B) the name and license number of the individual [~~Master Plumber~~];

(C) the specific instruction and number of hours completed; and

(D) the date that the increment of instruction was completed.

(2) The Course Provider shall maintain a record of the information contained on each certificate of completion for at least six years.

(f) Prior to the date that the Master Plumber begins acting as a Responsible Master Plumber, the Master Plumber shall submit to the Board:

(1) a certificate or certificates of completion of the training required by this section; and

(2) a Certificate of Insurance as required by Board Rule §367.3.

(g) Providing false certificates of completion or any other false information to the Board may result in disciplinary action, as provided by the Plumbing License Law, Board Rules or other laws 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.

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Lisa Hill
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Texas State Board of Plumbing Examiners
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22 TAC §363.14

The Texas State Board of Plumbing Examiners (Board) proposes new §363.14, relating to guidelines to determine the fitness of a person who has been convicted of a crime.

Background and Justification:

These guidelines are issued by the Board to determine the fitness of a person who has been convicted of a felony or misdemeanor to perform the duties and discharge the responsibilities of registered and licensed individuals who perform plumbing and plumbing inspections. Under the authority of Chapters 53 and 1301 of the Texas Occupations Code, the Board may suspend, probate a suspension of, or revoke a registration, license, or endorsement, or deny a person the opportunity to take a licensing or endorsement examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of registered or licensed individuals performing plumbing and plumbing inspections.

Fiscal Note:

Lisa G. Hill, Executive Director, has determined that for the first five-year period the new rule is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the new section. Ms. Hill has determined that there will be an economic cost to some individuals, but only those who have been convicted of a crime of a sexual nature who, under 22 TAC §363.2, are required to obtain and provide to the Board the written results of a recently performed standard, nationally recognized testing and evaluation of the applicant performed by a licensed professional therapist or counselor who is certified as a registered sex offender treatment provider in the State of Texas. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit:

Ms. Hill has concluded that for each year of the first five years the new rule is in effect, the anticipated public benefit is to provide the Board with greater enforcement authority and protect the health, safety, and welfare of the public.

Public Comment:

The Texas State Board of Plumbing Examiners invites comments on this proposed new rule from any member of the public within 30 days. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.texas.gov.

Statutory Authority:

The new rule is proposed under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code. Further, each licensing agency shall issue guidelines relating to the practice of the licensing authority pursuant to §53.025 of the Texas Occupations Code.

No other statute, article, or code is affected by this proposed new rule.

§363.14. Criminal Conviction Guidelines.

(a) Pursuant to Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and §363.2 of the rules of the Texas State Board of Plumbing Examiners (Board), these guidelines are issued by the Board to be used, in conjunction with Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and Board Rule §363.2, by the Board's Enforcement Committee to determine the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections.

(b) Licensed individuals are usually required to perform plumbing or plumbing inspections without direct supervision of any other person and must be trusted to carry out their duties and responsibilities without risking the health, safety, welfare and property of the public. Plumber's Apprentices are usually required to be supervised by a licensed plumber. However, it is estimated that the majority of Plumber's Apprentices are working towards licensure, therefore, the same factors must be considered for registrants. The duties and responsibilities of individuals performing plumbing or plumbing inspections include, but are not limited to:

(1) entering persons' homes and places of business to perform or inspect plumbing work including, but are not limited to:

(A) private residences;

(B) apartment complexes;

(C) schools;

(D) child care facilities;

(E) elder care facilities;

(F) medical care facilities;

(G) financial institutions; and

(H) businesses where valuable merchandise is stored and sold.

(2) making personal contact with persons who have requested plumbing work to be performed or inspected, including elderly persons and minor children of the persons who have made the request;

(3) engaging in contractual and financial transactions with persons who have requested plumbing work to be performed;

(4) being entrusted by employers to be responsible for the employers' vehicles and tools necessary to perform plumbing or plumbing inspections.

(5) ensuring safety when working with hazardous, explosive or volatile materials;

(6) complying with laws, rules, ordinances and codes that regulate plumbing; and

(7) working with officials who are carrying out their duties to enforce laws, rules, ordinances and codes that regulate plumbing including:

(A) Field Representatives of the Board;

(B) Plumbing Inspectors; and

(C) other law enforcement officers.

(c) Due to the nature of the duties and responsibilities stated in subsection (a)(1) - (7), the Board has determined that the holder of any registration or license issued by the Board would have an opportunity to commit certain crimes while performing plumbing or plumbing inspections. The Board has determined that the following crimes directly relate to the duties and responsibilities of all individuals registered or licensed by the Board (list is not all inclusive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure, including:

(A) Aggravated Sexual Assault (victim of any age);

(B) Aggravated Rape (victim of any age);

(C) Sexual Assault (victim of any age);

(D) Rape (victim of any age);

(E) Statutory Rape;

(F) Indecency With a Child (including exposure);

(G) Prohibited Sexual Conduct;

(H) Sexual Performance by a Child;

(I) Possession or Promotion of Child Pornography;

(J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature);

(K) Kidnapping (with the intent to commit an illegal act of a sexual nature);

(L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature);

(M) Burglary (with the intent to commit an illegal act of a sexual nature);

(N) Indecent Exposure;

(O) Public Lewdness;

(P) Improper Photography or Visual Recording.

(2) Any crime of a sexual nature listed in subsection (b)(1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure;

(3) Capital Murder;

(4) Murder;

(5) Criminal Negligent Homicide;

(6) Manslaughter;

(7) Aggravated Kidnapping;

(8) Kidnapping;

(9) Unlawful Restraint;

(10) Injury to a Child, Elderly Individual or Disabled Individual;

(11) Burglary of a Habitation;

(12) Burglary of a Building;

(13) Burglary of an Automobile;

(14) Robbery;

(15) Theft (felony);

(16) Fraud (felony);

(17) Forgery (felony);

(18) Arson;

(19) Aggravated Assault of a Police Officer (or other public official);

(20) Aggravated Assault;

(21) Assault;

(22) Illegal Drug Related Crimes (felony);

(23) Terroristic Threat;

(24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(d) The Enforcement Committee shall use the following established levels of risks in determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in the order of highest to lowest. The Enforcement Committee shall consider those applicants with convictions of a sexual nature or first degree felony to be the highest risk and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application to be the lowest risk.

(1) Level One - Applicants who have a conviction of a sexual nature listed in subsection (b)(1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure.

(2) Level Two - Applicants who have a conviction for a first-degree or second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed less than five years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed more than five years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(e) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(f) The Enforcement Committee shall use these guidelines and follow the requirements of Board Rule §363.2 when reviewing applications for registration, examination and renewal of registrations, licenses and endorsements, to determine the fitness of applicants.

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

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.14

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.14, which sets forth the criteria adopted by the Board for Plumber's Continuing Professional Education (CPE) programs for the renewal of licenses and registrations issued by the Board.

Background and Justification:

The amendments to §365.14 are proposed to implement new procedures to ensure that the CPE materials are approved by the Board in: (1) an expedited manner by eliminating a second proofing of the CPE materials by the Board and (2) by allowing the submittal of the completed CPE materials for proofing in an electronic format.

Fiscal Note:

Lisa Hill, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amended section. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit:

Ms. Hill has determined that the public will benefit because CPE providers can provide approved educational materials to plumbers in a more efficient and expedited manner.

Public Comment:

The Texas State Board of Plumbing Examiners invites comments on the proposed amendments to this rule from any member of the public within 30 days. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.texas.gov.

Statutory Authority:

The amendment is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the proposed amendments.

§365.14. Continuing Professional Education Programs.

(a) Course Materials--In preparation for the Continuing Professional Education course year, which begins on July 1, of each year,

the Board will annually approve Course Materials to be used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. The CPE required for the renewal of the aforementioned licenses, shall be accepted by the Board as the mandatory training required under §1301.404 of the Plumbing License Law for the renewal of Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. The Course Materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the Licensees and Registrants for use in the classroom, correspondence courses and future reference by the Licensees and Registrants (students). The provider of Course Materials, Course Provider and Course Instructor shall encourage the student to retain the Course Materials for future reference and shall not purchase the used Course Materials from the student or otherwise offer any incentive to the student to not retain the Course Materials. Board approval of Course Materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Materials:

(1) The Course Materials will provide the basis for a minimum of six classroom hours of study. Three of the six hours will be in the subjects of health protection, energy conservation and water conservation, with the remaining three hours covering subjects which shall include information concerning the Act, Board Rules, current industry practices and codes, and subjects from lists of approved subjects published by the Board.

(2) The Board will periodically publish lists of approved subjects.

(3) The Course Materials must be presentations of relevant issues and changes within the subject areas as they apply to the plumbing practice in the current market or topics which increase or support the Licensee's development of skill and competence.

(4) The provider of the Course Materials must provide the Course Materials, as needed, in correspondence course form to comply with §1301.404(e) of the Act and subsection (b)(15)(L) of this section, which are to be made available for at least three (3) years or as necessary for renewal of an expired license.

(5) The Course Materials may not advertise or promote the sale of goods, products or services.

(6) The draft version of the Course Materials must be submitted electronically to the Board for approval. Upon Board approval the final copies must be printed and distributed to students in a bound version meeting [~~printed and bound and, with the exception of the draft versions, must meet~~] the following minimum technical specifications for printing and production:

(A) Binding--Perfect or Metal Coiled,

(B) Ink--Full Bleed Color,

(C) Cover Material--80 Pound Gloss Paper,

(D) Page Material--70 Pound

(7) Course Materials will provide information stating that the most current Board forms used for doing business with licensees, registrants, and the public are available on the Board's website or by mail upon request.

(8) All Course Materials must have the following characteristics:

(A) Correct grammar, spelling and punctuation,

(B) Appropriate illustrations and graphics to show concepts not easily explained in words, and

(C) In depth and comprehensive presentation of subject matter which increases or supports the skills or competence of the Licensees and Registrants.

(9) The provider of Course materials must have legal ownership of or an appropriate license for the use of all copyrighted material included within the Course materials. Board approved Course materials will contain a prominently displayed approval statement in 10 point bold type or larger containing the following language: "THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE TEXAS STATE BOARD OF PLUMBING EXAMINERS FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS OF THE COURSE MATERIAL. FURTHER, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS IS NOT MAKING ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE TEXAS STATE BOARD OF PLUMBING EXAMINERS."

(10) The provider of Course Materials will conduct instructor training in the use of Course Materials.

(11) The provider of Course Materials will be required to have distribution facilities that will ensure prompt distribution of course materials, facsimile ordering and a statewide toll free telephone number for placing orders. The provider of Course Materials must ship any ordered material within ten business days after the receipt of the order and payment for the course materials.

(12) The Board shall annually approve only individuals, businesses or associations to provide Course Materials. Any individual, business or association who wishes to offer to provide Course Materials shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality Course Materials as required in this section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) fees to be charged for Course Materials,

(F) taxpayer identification number,

(G) name, telephone number and electronic mail address of the individual who is designated by the provider of Course

Materials to be responsible for answering inquiries and receiving notifications from the Board.

(13) If the provider of Course Materials sells Course Materials to Course Providers, Registrants and Licensees, the Course Provider must sell the Course Materials at the same price as stated in the application.

(14) The Board may refuse to accept any application for approval as a provider of Course Materials that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section; or

(B) inadequate coverage of the materials required to be included in Course Materials.

(15) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(16) A provider's authority to offer the Course Materials for which CPE credit is given begins on July 1, of the calendar year of approval and continues until the Course Materials are no longer required for the renewal of an expired license or registration. When requested in writing, the Board may authorize the use of these Course Materials prior to July 1, for industry related programs.

(17) An electronic copy [~~All providers of Course Materials must meet the following time schedule each year for approval of Course Materials:~~]

[~~(A)~~] [~~At least 15 copies each of the draft version of the~~] of the Course Materials must accompany the Course Material Provider application and be submitted to the Board's office no later than November 15 for Board approval at its January Board meeting.

[~~(B) At least 15 copies each of the revised version of the Course Materials must be submitted to the Board's office no later than March 15, for Board approval at its April Board meeting.~~]

[~~(C) At least 15 copies each of all Course Materials that are approved at the Board's April Board meeting shall be provided to the Board's office in completed form no later than July 1 at no cost to the Board.~~]

(18) A provider's failure to comply with this section constitutes grounds for disciplinary action against the provider or for disapproval of future applications for approval as a provider of Course Materials.

(b) Course Providers--The Board will annually approve only individuals, businesses or associations as Course Providers. Course Providers will offer classroom and correspondence instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of all licenses and applicable registrations issued under the Act. Board approval of Course Providers will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Providers:

(1) CPE courses shall be presented in one of the following formats:

(A) Six classroom hours presented on one day

(B) Two sessions of three classroom hours each presented within a seven day period or

(C) An approved correspondence course.

(2) Not less than three hours of the classroom course will be in the subjects of health protection, energy conservation and water conservation.

(3) Presentations must be based on the Course Materials and any other materials approved by the Board.

(4) In addition to Course Materials, presentations may include videos, films, slides or other appropriate types of illustrations and graphic materials related to the Course Materials.

(5) Course Providers shall limit the number of students for any CPE class to forty-five (45). Course Providers may allow a Course Instructor to admit additional students in excess of forty-five (45) who apply to the Course Instructor for admittance to the class on the day of the class, only if the additional students:

(A) are currently on active duty as members of the United States armed forces, a reserve component of the United States armed forces or the state military forces; and

(B) present valid identification to the Course Instructor which indicates the additional students' status under subparagraph (A) of this paragraph.

(6) A Course Provider may not advertise or promote the sale of any goods, products or services between the opening and closing hours of any CPE class.

(7) Each Course Provider shall furnish a Certificate of Completion of CPE to each Licensee and Registrant who completes its CPE course. The Certificate of Completion shall state the name of the Course Provider, the name of the student, the course year and the date the CPE course was completed.

(8) Each Course Provider shall, at its own expense and in a format approved by the Board, electronically transmit to the Board certification of each Licensee's and Registrant's completion of CPE requirements within forty-eight hours of completion.

(A) The Board may provide training to the Course Provider in the method for electronic transmittal.

(B) The Board may charge a fee to recover its costs for computer software and training in the use of the software to the Course Provider.

(9) Each Course Provider shall be reviewed annually by the Board to ensure that classes have been provided equitably across the state of Texas, except as provided in paragraph (15)(J) of this subsection.

(10) Each Course Provider must notify the Board at least 7 days before conducting a class or electronically post notice of the class schedule on the Course Provider's website at least 7 days before conducting a class.

(A) The notice shall contain the time(s) and place(s) where the classes will occur, and the name of the Course Instructor scheduled for each class.

(B) The notice shall be provided to the Board, whether or not the class is open to all licensees and registrants or limited to only a specific group or organization.

(C) The Course Provider shall provide a method to receive immediate notification from the scheduled Course Instructor, in the event that the Course Instructor is unable to provide instruction for the scheduled class; and

(i) the Course Provider shall make every effort to provide a substitute Course Instructor in order to avoid cancelling the scheduled class.

(ii) If cancellation of the class is unavoidable for any reason, the Course Provider shall make every effort to immediately notify each student affected by the cancellation; and

(iii) reschedule the cancelled class as soon as possible; and

(iv) notify the Board of the cancellation within 72 hours.

(11) Each Course Provider will perform self-monitoring of its classes and Course Instructors to ensure compliance with the Act and Board rules and reporting as required by the Board.

(12) Each Course Provider shall use only Course Instructors that have been approved by the Board. Each Course Provider shall annually submit to the Board's office a list of Course Instructors it employs and the instructors' credentials for approval no later than March 15 for approval by the Board at its April Board meeting. The Board may approve additional Course Instructors who meet the requirements of subsection (c) of this section, at any regularly scheduled Board meeting.

(13) Prior to allowing Course Instructors to teach CPE, Course Providers must provide documentation to the Board showing the instructor's successful completion of Course Materials training.

(14) Course Instructors must comply with subsection (c) of this section. Course Providers shall notify the Board within 10 days of any change of an instructor's employment status with the Course Provider.

(15) Any individual, business or association who wishes to be a Course Provider shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality instruction in the Course Materials as required in this section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) taxpayer identification number,

(F) facsimile number, statewide toll free telephone number, Internet web site and electronic mail address,

(G) fees to be charged to Licensees for attending the course, considering the following:

(i) If the Course Provider is not also a provider of Course Materials and will purchase Course Materials, the Course Provider may not charge the Licensees or Registrants more than its actual cost for the Course Materials supplied to the Licensees and Registrants by the Course Provider.

(ii) The fees charged to the Licensees and Registrants for attending the course will be determined by the Course Provider.

(H) an example of a Licensee's and Registrant's Certificate of Completion of CPE,

(I) CPE class scheduling plan,

(J) plan for providing courses equitably across the state. The following individuals or businesses will not have to comply with this subparagraph:

(i) Employers applying to be approved as Course Providers for the purpose of providing CPE courses only to the employers' employees, and

(ii) Individuals who will not employ Course Instructors other than themselves,

(K) method for compiling statistical data regarding the number of CPE classes conducted, students instructed and similar data required to be submitted to the Board, in accordance with the following:

(i) Course Providers shall provide quarterly reports no later than December 15, March 15, June 15 and September 15, for the first year in which the Course Provider provides CPE courses;

(ii) Renewing Course Providers shall provide only annual reports, no later than September 15 of each year, for the preceding CPE course year.

(L) method for ensuring that only Licensees and Registrants who meet one or more of the following requirements may receive CPE credit for taking an CPE correspondence course:

(i) any Licensee or Registrant that lives outside of the State of Texas, or

(ii) lives in a county that does not have a city with a population in excess of 100,000, or

(iii) who has an expired license or registration that requires a CPE course that is no longer available in the classroom, or

(iv) who submits written proof to the Board from a physician stating the medical reason that the licensee or registrant is unable to attend a CPE class;

(M) identification of the Course Materials which will be used by the Course Provider; and

(N) the name, telephone number and electronic mail address of the individual who is designated by the Course Provider to be responsible for answering inquiries and receiving notifications from the Board.

(16) The Board may refuse to accept any application for approval as a Course Provider that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section; or

(B) inadequate instruction of the materials required to be included in Course Materials.

(17) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(18) A Course Provider's authority to offer instruction in the Course Materials for which CPE credit is given, begins on July 1, of the calendar year of approval and expires on June 30, of the following calendar year after approval.

(19) All Course Provider applications must be submitted to the Board office no later than December 1, each year for approval at the Board's January meeting.

(20) The Board shall review Course Providers for quality in instruction. The Board shall also investigate and take appropriate action, up to and including revocation of authority to provide CPE, regarding complaints involving approved Course Providers.

(21) A provider's failure to comply with this section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a Course Provider.

(c) Course Instructors--The Board will annually approve Course Instructors to provide the classroom instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses and Drain Cleaner, Drain Cleaner-Restricted Registrant and Residential Utilities Installer registrations. Board approval of Course Instructors will be subject to all of the terms and conditions of this Section. Course Providers must submit the application of an individual who wishes to be approved by the Board as a Course Instructor, as provided by subsection (b)(12) and (13) of this section. The following minimum criteria will be used by the Board in considering approval of Course Instructors:

(1) Instructors must be licensees of the Board and attend and successfully complete a Course Instructor Certification Workshop each year conducted by the Board (the Board will charge a fee to recover its costs for conducting the Course Instructor Certification Workshop).

(2) Instructors will be required to successfully complete a Board approved program of 160 clock hours which meets the following criteria. The Board will allow credit for approved courses.

(A) 40 hours to provide the Instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs.

(B) 40 hours to provide the Instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs.

(C) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community.

(D) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(E) To maintain his/her status as an approved Course Instructor, the Instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(3) A Course Instructor may not advertise or promote the sale of goods, products, or services between the opening and closing hours of any CPE class.

(4) As a Course Instructor and Licensee of the Board, a Course Instructor must comply with the Plumbing License Law and Board Rules, including §367.2 of this title (relating to Standards of Conduct). An Instructor has a responsibility to his students and employer to:

(A) be well versed in and knowledgeable of the Course Materials and ensure that classroom presentations are based only on the Course Materials and other materials approved by the Board,

(B) maintain an orderly and professional classroom environment,

(C) ensure that only students who receive six contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for attending the CPE class,

(D) notify the Course Provider immediately, if the Course Instructor is unable to provide instruction for a CPE class that the instructor was scheduled to instruct, to allow the Course Provider to make every effort to provide a substitute Course Instructor to avoid cancelling the class, and

(E) coordinate with the Course Provider to develop an appropriate method for handling disorderly and disruptive students. A Course Instructor shall report to the Course Provider and the Board, any non-responsive and disruptive student who attends a CPE course. The Board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

(5) The Board shall review Course Instructors for quality of instruction. The Board shall also respond to complaints regarding Course Instructors.

(6) A Course Instructor's failure to comply with this section constitutes grounds for disciplinary action against the Instructor or for disapproval of future applications for approval as a Course Instructor.

(7) At the beginning of each CPE class, the Course Instructor shall provide each individual student with a separate single page handout containing the text of paragraphs (4) - (6) of this subsection in a format provided by the Board or shall provide this information to each student printed on the inside of the front cover of the course book.

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 July 23, 2014.

TRD-201403372
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: October 13, 2014
For further information, please call: (512) 936-5224

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER P. PROVIDER NETWORK DEVELOPMENT

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§412.751 - 412.754,

412.756, 412.758, 412.760, 412.762, 412.764 and 412.766 and new §§412.751 - 412.764, concerning provider network development.

BACKGROUND AND PURPOSE

Health and Safety Code, §533.035 requires local mental health authorities (LMHAs) to assemble a network of providers and identifies LMHAs as providers of last resort. An LMHA must demonstrate to the department that it has made every reasonable attempt to solicit the development of an available and appropriate provider base, and may only serve as a provider of servicers if there is not a willing provider of the needed services available. In developing a network, the LMHA is required to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money.

Rules to implement these provisions were developed through a negotiated rulemaking process, in accordance with the requirements of Government Code, Chapter 2008, concerning Negotiated Rulemaking. The rules, adopted in 2007, established a uniform process for planning implementation that provides a framework within which each LMHA must work with stakeholders in assembling a network of providers. This approach recognized the wide variance among LMHAs in terms of the extent to which they would be able to assemble a network and how quickly such a transition could occur. The rules also defined the conditions under which LMHAs could continue to provide services. This basic framework was codified in by the 80th Legislature as Health and Safety Code, §533.03521 and §533.0358.

The purpose of this subchapter is to describe the planning, procurement, and individual choice procedures for LMHAs to use in developing local provider networks. Repeal of the existing rules is necessary due to substantial changes being made to address issues that have been identified since implementation of the initial rules in 2008.

The proposed rules specify the procedures for LMHAs to develop a plan and procure services from external providers. The plan must reflect local priorities and maximize consumer choice and access to services. The rules also specify the conditions under which an LMHA can continue its role as a direct service provider, special provisions for procurement, and requirements for the process used to obtain an individual's choice of provider. The rules provide a provider appeal process with three levels, including state review.

Significant changes to the rules include requiring LMHAs to develop a procurement plan only when a provider availability assessment identifies interested providers; provide a rationale for any provision that would limit consumer choice or prevent procurement of all available capacity offered by external providers; refrain from applying more rigorous standards to contractors than those applied internally; pay contractors a fair and reasonable rate; maintain and provide individuals with a standardized profile for each provider; and work with providers and stakeholders to establish a plan to promote transition to the external network when a new provider joins the network.

The proposed changes will reduce the time and effort required to complete the plan, particularly for LMHAs with no interested providers. If the changes are successful in accelerating network development, some LMHAs may be devoting more resources to network management. The revisions will ensure providers receive a fair rate and provide an avenue for appeal. They may also reduce potential barriers to network participation. Consumers will have more detailed information when choosing a provider.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.751 - 415.754, 412.756, 412.758, 412.760, 412.762, 412.764 and 412.766 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The new rules have been reorganized and the language simplified. Redundant provisions have been eliminated, and new definitions have been added to clarify terminology. Other changes made to the new rules include various grammatical, punctuation, and formatting changes. More specific changes are described in the following summaries.

Proposed §412.751 and §412.752 state the purpose of the subchapter and its application to providers and funds.

Proposed §412.753 defines terms used in the chapter. New definitions have been added for the following terms: critical infrastructure, discrete services, individual, licensed psychiatric hospital, LOC or level of care, Local Authority Network Advisory Committee (LANAC), network development, performance contract, Planning and Network Advisory Committee (PNAC), routine outpatient services, and specialized services.

Proposed §412.754 sets out basic requirements for network development. New language clarifies that the local network development plan involving the PNAC is not intended to limit procurement and LMHAs are expected to consider opportunities for network development that develop between planning periods.

Proposed §412.755 identifies the circumstances under which an LMHA may continue its role as a service provider. New provisions impose additional conditions for LMHAs that rely on the need to protect critical infrastructure as the reason to continue providing services directly to individuals.

Proposed §412.756 describes the functions and content of the department's website (http://www.dshs.state.tx.us/mhcommunity/LPND/default.shtm) and identifies the planning templates and schedule the department will develop in conjunction with the Local Authority Network Advisory Committee.

Proposed §412.757 describes the process for LMHAs to evaluate the potential for network development that requires an LMHA to establish a procurement plan if there is potential for network development in the local service area.

Proposed §412.758 describes the content of the plan. The revised language separates content required for all LMHAs and content required only for LMHAs with potential for network development. Previously required elements not directly related to the criteria for approval have been removed. The description of the rationale an LMHA must provide is described in more detail than in the current rule to be repealed. LMHAs must explain any proposed procurement restrictions related to the type of service to be procured, the volume of services to be procured, the geographic area in which services would be procured, and the number of providers to be accepted. An LMHA must also provide a basis for the volume of service to be provided by the LMHA.

Proposed §412.759 requires each LMHA to solicit public comment on its draft plan and to submit a summary of the input re-

ceived along with the proposed plan to the department. A new requirement is to solicit input from licensed psychiatric hospitals in the local service area.

Proposed §412.760 identifies key factors considered in reviewing local plans; individual choice and access have been added to the list. The previous requirement for the department to solicit stakeholder involvement has been revised with specific reference to the LANAC. This section also sets out the statutory criteria for approval and establishes that the department may require an LMHA to revise its plan before the department approves the plan. Finally, a new provision has been added allowing an LMHA to propose a plan amendment if it determines that it is unable to conduct the procurement as originally approved by the department. This section also includes a requirement for each LMHA to post its approved plans on its website. A list of the LMHA's contracted providers must also be posted on the website.

Proposed §412.761 describes requirements for procurement conducted by LMHAs using funds disbursed by the department, including elements that must be included in the procurement document and procedures for publication. Procurement requirements that duplicated other department rules have been removed from the proposed subchapter. This section includes several new provisions. The rule will prohibit LMHAs from applying more rigorous standards to external providers than to LMHA staff and programs, and require them to pay external providers a fair and reasonable rate in relation to the prevailing market.

Proposed §412.762 establishes a new reporting process to provide the department with information about procurement results. This replaces a previous requirement for LMHAs to amend their plans if procurement does not achieve the planned level of contracting.

Proposed §412.763 requires LMHAs to provide an appeals process for providers who submit a letter of interest or participate in a procurement process, and establishes an avenue for state review.

Proposed §412.764 sets out the procedures for giving individuals a choice of service providers. It includes a new requirement for LMHAs to maintain and provide individuals with a standardized profile for every provider in the local network. The department will establish the provider profile template, and LMHAs may request modifications to the template in their local plans. The new rule will require LMHAs to offer individuals an opportunity to choose from available providers in the LMHA's network at least once a year instead of at every treatment plan review. LMHAs will no longer be required to provide individuals with access to a telephone and the Internet. This section includes a new requirement for LMHAs to work with local stakeholders to develop and implement a plan to promote individual transition to the external network when a new provider joins the network.

FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lacefield Lewis has also determined that there will be no effect on 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. Providers who enter into contracts with LMHAs and who have not previously provided services funded by the department may need to make some initial investments to achieve compliance with existing regulations. However, participation is voluntary, and no provider is required to enter a contract that does not offer favorable terms and conditions.

There may be economic costs to some persons who are required to comply with the sections as proposed. It is anticipated that LMHAs will achieve some administrative cost savings as a result of the streamlined planning and procurement processes outlined in this proposal. However, those who are successful in expanding their provider networks may need to devote more resources to network management activities. The net fiscal impact on LMHAs will depend on a number of factors.

The size of the LMHA and the level of provider interest in the local service area. Small LMHAs and those in rural areas are unlikely to have willing providers, so the primary impact of the proposed rule changes will be a reduction in staff time and effort required to complete the network development plan. Large urban LMHAs with interested providers may be more successful in their procurement efforts, leading to an expansion of the local provider network. This could require the LMHA to devote more resources to network management activities. It is anticipated, however, that implementation of Senate Bill 58 (83rd Legislature, Regular Session, 2013) will have a significant impact on provider interest. Because mental health rehabilitation and case management services will be integrated into Medicaid managed care, it is anticipated that providers of these services will choose to participate in Medicaid managed care provider networks and will be less interested in contracting with LMHAs to provide services for the indigent population.

Current provider reimbursement rates paid by LMHAs. The revised rule requires LMHAs to pay a fair and reasonable rate in relation to the prevailing market. This requirement offers providers protection during the procurement process. It is possible that some existing contracts do not meet this standard, and that those LMHAs will have to pay a higher rate under the new rules.

Administrative efficiencies. The rules require LMHAs to maximize available service dollars by achieving administrative efficiencies, including collaborative efforts with other LMHAs. The goal of this provision is for LMHAs to allow reallocation of administrative funds to support additional network management activities that may be required to implement the rules. The ability of some LMHAs to establish collaborative arrangements might be limited by geographic and other factors. Also, LMHAs may vary in the current efficiencies of their administrative operations, which will impact their capacity to achieve further efficiencies internally.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Lacefield Lewis has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to maximize the opportunity for expansion of local networks of mental health service providers to provide individuals with more

choices. In addition, individuals will have more information available to them when selecting a provider from the network.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined 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 department 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 Tamara Allen, Program Services Section, Division of Mental Health and Substance Abuse Services, Department of State Health Services, Mail Code 2018, 909 West 45th Street, Texas 78751, (512) 206-5007 or by email to tamara.allen@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

25 TAC §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, 412.766

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; §533.035(b), which authorizes the department to disburse department federal and department state funds to a mental health authority for the provision of community mental health services in the local service area; §533.03521,which requires the department to review and approve local network development plans; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The repeals affect the Health and Safety Code, Chapters 533, 534 and 1001; and Government Code, Chapter 531.

§412.751. Purpose.
§412.752. Application.
§412.753. Definitions.
§412.754. Establishment of a Provider Network.
§412.756. Local Network Development Plan.
§412.758. LMHA Provider Status.
§412.760. Consumer Selection of Providers.
§412.762. Procurement Principles.
§412.764. Request for Proposals.
§412.766. Open Enrollment.

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 July 28, 2014.

TRD-201403395
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 776-6972

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25 TAC §§412.751 - 412.764

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; §533.035(b), which authorizes the department to disburse department federal and department state funds to a mental health authority for the provision of community mental health services in the local service area; §533.03521,which requires the department to review and approve local network development plans; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The new sections affect the Health and Safety Code, Chapters 533, 534 and 1001; and Government Code, Chapter 531.

§412.751. Purpose.

The purpose of this subchapter is to establish the process for a local mental health authority (LMHA) to assemble and maintain a network of service providers as required by the Health and Safety Code, §533.035(b) - (f).

§412.752. Application.

This subchapter applies to local mental health authorities (LMHAs) and their use of funds disbursed by the Department of State Health Services (department) pursuant to the Health and Safety Code, §533.035(b), which authorizes the department to distribute funds to LMHAs for mental health services.

§412.753. Definitions.

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

(1) Critical infrastructure--The resources necessary to ensure services are available without significant disruption to the individuals served by the LMHA and to allow the LMHA to fulfill its obligations under the performance contract.

(2) Department--The Texas Department of State Health Services.

(3) Discrete services--Individual services provided as part of a defined level of care.

(4) External provider--An organization that provides mental health services that is not an LMHA, or an individual who provides mental health services who is not an employee of an LMHA.

(5) Individual--An individual seeking or receiving mental health services through an LMHA, or the individual's legally authorized representative.

(6) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(7) Licensed psychiatric hospital--A hospital that is:

(A) A private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) rules; or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing) rules.

(8) LOC or level of care--A designation given to the department's standardized packages of mental health services which specify the amount, and duration of mental health services to be provided to an individual, based on the uniform assessment and utilization management guidelines referenced in §416.17 of this title (relating to Guidelines).

(9) Local Authority Network Advisory Committee (LANAC)--The committee established under Health and Safety Code, §533.0351 to advise the department on technical and administrative issues that directly affect LMHA responsibilities. The committee has equal numbers of representatives from eight stakeholder groups.

(10) Local mental health authority (LMHA)--An entity designated as a local mental health authority according to the Health and Safety Code, §533.035(a).

(11) Local service area--A geographic area composed of one or more Texas counties defining the population that may receive mental health services through an LMHA.

(12) Network development--The addition of new provider organizations, services, or capacity to an LMHA's external provider network.

(13) Performance contract--The contract between the department and an LMHA that is in effect at the time of an action required under this subchapter.

(14) Planning and Network Advisory Committee (PNAC)--The advisory committee of local stakeholders established by an LMHA as required by the performance contract.

(15) Provider or service provider--An organization or person who delivers mental health services.

(16) Qualified provider--A provider that is:

(A) a practitioner with the minimum qualifications required by the performance contract; or

(B) an organization that demonstrates the ability to provide services described in the performance contract, as specified in the department's approved procurement template.

(17) Routine outpatient services--Services available in a level of care, excluding inpatient, residential and most crisis services. Routine outpatient services include office-based crisis intervention provided as part of rehabilitation services during normal business hours but exclude all other crisis services.

(18) Service capacity--The estimated number of individuals that can be served in each level of care with available resources.

(19) Specialized services--Services that are not generally provided by the individual's treatment team, including stand-alone crisis and residential services.

§412.754. Local Network Development.

(a) Use of resources. An LMHA must maximize funds available to provide services by minimizing overhead and administrative costs and achieving purchasing efficiencies. Strategies that an LMHA must consider in achieving this objective include joint efforts with other local authorities related to authority functions, administrative activities, and service delivery.

(b) Establishing a network. Each LMHA must demonstrate a reasonable effort to establish and maintain a network of qualified providers. In developing the network, the LMHA must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and best use of public funds.

(c) Developing a plan. Each LMHA must develop a biennial (2-year) local network development plan (plan) to guide the development of the LMHA's provider network. The plan must reflect local needs and priorities and must be designed to maximize individual choice and individual access to services provided by qualified providers. The plan is a framework for network development based on a biennial assessment of provider availability and is not intended to limit procurement and contracting. LMHAs are expected to consider opportunities for network development that develop between planning periods. Such opportunities include new funding and/or services and inquiries from interested providers.

(d) Involving the PNAC. The local PNAC must be actively involved in developing the plan. The local PNAC must receive information and training related to Provider Network Development, including the provisions of this subchapter and Health and Safety Code §§533.035, 533.03521, and 533.0358.

§412.755. Conditions Permitting LMHA Service Delivery.

An LMHA may only provide services if one or more of the following conditions is present.

(1) The LMHA determines that interested, qualified providers are not available to provide services in the LMHA's service area or that no providers meet procurement specifications.

(2) The network of external providers does not provide the minimum level of individual choice. A minimal level of individual choice is present if individuals and their legally authorized representatives can choose from two or more qualified providers.

(3) The network of external providers does not provide individuals with access to services that is equal to or better than the level of access in the local network, including services provided by the LMHA, as of a date determined by the department. An LMHA relying on this condition must submit the information necessary for the department to verify the level of access.

(4) The combined volume of services delivered by external providers is not sufficient to meet 100 percent of the LMHA's service capacity for each level of care identified in the LMHA's plan.

(5) Existing agreements restrict the LMHA's ability to contract with external providers for specific services during the two-year period covered by the LMHA's plan. If the LMHA relies on this condition, the department shall require the LMHA to submit copies of relevant agreements.

(6) The LMHA documents that it is necessary for the LMHA to provide specified services during the two-year period covered by the LMHA's plan to preserve critical infrastructure needed to ensure continuous provision of services. An LMHA relying on this condition must:

(A) document that it has evaluated a range of other measures to ensure continuous delivery of services, including but not limited to those identified by the LANAC and the department at the beginning of each planning cycle;

(B) document implementation of appropriate other measures;

(C) identify a timeframe for transitioning to an external provider network, during which the LMHA shall procure an increasing proportion of the service capacity from external provider in successive procurement cycles; and

(D) give up its role as a service provider at the end of the transition period if the network has multiple external providers and the LMHA determines that external providers are willing and able to provide sufficient added service volume within a reasonable period of time to compensate for service volume lost should any one of the external provider contracts be terminated.

§412.756. Department Website.

(a) Website maintenance. The department shall maintain a website with information about network development.

(b) Planning schedule and templates. Using input from the Local Authority Network Advisory Committee, the department will develop a biennial schedule and templates for the local network development plan and provider profile. In addition, the department will work with the LANAC to develop a list of measures that may be helpful in stabilizing the provider network and ensuring continuous delivery of services.

(c) LMHA information. The department shall post minimum service requirements and service capacity information for each local service area on its website. Service capacity information includes:

(1) the performance contract targets for the number of adults and children to be served by the LMHA;

(2) the current state funding allocation for the LMHA;

(3) the number of individuals served in each level of care in the previous fiscal year; and

(4) the demographic breakout of individuals services in the previous fiscal year.

(d) List of interested provider organizations. The department shall create and maintain a list showing the provider organizations interested in contracting with each LMHA.

(1) The department's website must allow provider organizations to submit a description of their qualifications and indicate their interest in providing services in each local service area.

(2) The website also must provide a mechanism for providers to send their information directly to LMHAs.

(3) The department shall post information submitted by interested provider organizations on the department's website. The purpose of the list of interested provider organizations is to inform procurement decisions made by LMHAs, but the list may not be interpreted as conclusive evidence of the existence of interested, qualified provider organizations for purposes of determining that procurement is required.

(e) Public access to plans. The department's website must provide public access to approved plans.

§412.757. Network Development Evaluation.

An LMHA shall evaluate the potential for network development.

(1) The LMHA must seek and use available information to identify and contact potential provider organizations, including the list of interested provider organizations posted on the department's website.

(2) The LMHA must also consider current contractors, providers who have contacted the LMHA within the past two years, and other service providers in the local service area.

(3) If a provider has submitted printed or electronic documentation of interest, the LMHA may not eliminate the provider from consideration during the planning process without evidence that the provider:

(A) is no longer interested; or

(B) is clearly not qualified or capable of providing services in accordance with applicable state and local laws and regulations.

(4) The potential for network development exists if an LMHA has one or more provider organizations interested in providing routine outpatient or specialized services.

(5) If an LMHA identifies the potential for network development, it must develop a procurement plan. The plan shall include all opportunities for network development, except as limited by the conditions listed in §412.755 of this title (relating to Conditions Permitting LMHA Service Delivery). This includes opportunities to add new services, new provider organizations, and/or additional capacity. An LMHA may choose to procure discrete services if it can ensure the integrity of levels of care and effective service coordination.

§412.758. Content of the Plan.

(a) Plan preparation. An LMHA must use the results of its network development evaluation described in §412.757 of this title (relating to Network Development Evaluation) to create its draft plan.

(b) Plan content applicable to all LMHAs. All plans must include the following components.

(1) The LMHA's projected service capacity for each level of care based on service data from the previous fiscal year for services provided under the performance contract and any information about changes that will impact the service capacity.

(2) Baseline data specified by the department showing the type and quantity of services provided by the LMHA and by external providers.

(3) A description of the process the LMHA used to evaluate the potential for network development and the results of that evaluation, including any information relating to specific services or populations.

(4) A list of the LMHA's external providers, including all current contractors and any other providers with whom the LMHA had

a contract or agreement in effect during any part of the current or previous fiscal year. The list shall include the number of contracts and agreements with individual peer support providers, but not the names of individual peer support providers without their written consent.

(c) Plan content for LMHAs with potential for network development. If an LMHA identifies the potential for network development, the plan must also include the following elements.

(1) A description of the LMHA's plans for procurement, including:

(A) the adult and children's services to be procured;

(B) the capacity to be procured for each service;

(C) the geographic area(s) in which services would be procured;

(D) the procurement method(s) to be used; and

(E) the timeline(s) for conducting the procurement.

(2) The rationale for any provision that would limit individual choice or prevent procurement of all available capacity offered by external provider organizations.

(A) The rationale must address any proposed restrictions on:

(i) the type of service to be procured;

(ii) the volume of services to be procured;

(iii) the geographic area in which services would be procured; or

(iv) the number of providers to be accepted.

(B) The rationale for limiting procurement must be based on one or more of the conditions identified in §412.755 of this title (relating to Conditions Permitting LMHA Service Delivery).

(C) The rationale must provide a basis for the proposed level of restriction, including the volume of services to be provided by the LMHA. An LMHA may be required to submit additional data to support its rationale.

(3) A description of the strategies the LMHA would use to maximize funds available to provide services, as required in §412.754(c) of this title (relating to Local Network Development).

(4) A summary of procurement activities from past network and development planning cycles and the results of those efforts.

(5) If an LMHA is not procuring all available capacity offered by external provider organizations, the timeframe and steps for achieving full procurement of the external provider capacity identified in its network development evaluation, not to exceed the LMHA's capacity.

§412.759. Public Comment.

(a) Distributing the draft plan. An LMHA shall post the draft plan on its website and invite public comment for at least 30 days. The LMHA shall send notice of the opportunity for comment to key stakeholders, including local consumer and advocacy groups, all licensed psychiatric hospitals in the LMHA's service area, and all providers identified in its network development evaluation.

(b) Responding to public comment. The LMHA shall acknowledge and consider all comments received and make any revisions it deems appropriate.

(c) Plan submission. The LMHA shall submit its proposed plan to the department with:

(1) a summary of the public comments received; and

(2) the LMHA's response to the comments.

§412.760. Plan Approval and Implementation.

(a) Department review. The department shall review each plan to ensure compliance with the requirements of this subchapter and to determine whether the LMHA is making reasonable attempts to develop its provider network.

(1) The department shall solicit input from the LANAC as part of the evaluation process.

(2) In reviewing an LMHA's plan, the department shall evaluate the level of effort made by the LMHA to achieve compliance and the rationale and any supporting documentation for its decisions and plans. This evaluation must include:

(A) the LMHA's response to public comment;

(B) the LMHA's past efforts and progress made in developing a network of external providers;

(C) the specific context of the local service area, including population density and distribution, existing service organizations, and local priorities;

(D) the potential impact on individual choice and access; and

(E) input from the LMHA's PNAC.

(3) The department may require an LMHA to submit additional information or documentation.

(b) Department approval. The department shall notify an LMHA of its decision within the timeframe established at the beginning of the planning cycle.

(1) The department shall approve the plan if it determines that the LMHA:

(A) is in compliance with the requirements of this subchapter; and

(B) is making reasonable attempts to develop an available and appropriate external provider base that is sufficient to meet the needs of individuals in its local service area.

(2) The department may require the LMHA to make revisions before approving the plan. If revisions are required, the department will determine a timeframe for resubmission.

(c) Posting the approved plan. After the department approves the plan, the LMHA shall post the approved version on its website. The posting must include the summary of public comments and the LMHA's response.

(d) Implementation. An LMHA shall conduct procurement as described in its approved plan.

(e) Amendment. If an LMHA determines it is unable to conduct the procurement as originally approved by the department, it shall submit a request for plan amendment to the department within 30 days of making the determination. An amendment is not required to expand the scope of a planned procurement or to conduct additional procurements outside of what is approved by the department. The department will evaluate the amendment request using the same process used for the original plan. Any proposed amendment must be approved in writing by the department and posted on the LMHA's website before it is implemented.

(f) List of external providers. The LMHA must maintain a current list of external providers on its website, including the name of each

organization or private practitioner and the services provided. The list shall include the number of contracts and agreements with individual peer support providers, but not the names of individual peer support providers.

§412.761. Procurement.

(a) Procurement procedures. An LMHA shall develop and implement procurement procedures that comply with applicable state laws and rules. The LMHA may procure mental health services by any procurement method allowed by applicable statutes and rules that provides the best value to the LMHA.

(b) Content of the procurement document. A procurement document shall include:

(1) the actual or maximum rate of payment for providing the services, as applicable;

(2) the criteria for determining whether an applicant is a qualified provider; and

(3) a detailed description of information to be included in a proposal, including:

(A) how the provider would meet the cultural and linguistic needs of the individuals in the LMHA's local service area; and

(B) how the provider would involve individuals, legally authorized representatives, and families at the policy and practice levels within the respondent's organization.

(c) Publication. An LMHA shall publicize the procurement document by:

(1) posting on the Electronic State Business Daily;

(2) posting on the LMHA's website;

(3) posting a link on the department website;

(4) sending to providers known to be interested in providing services in the LMHA's local service area; and

(5) sending to local consumer and advocacy organizations and local private psychiatric hospitals.

(d) Provider follow-up. If a provider submits printed or electronic documentation of interest but does not submit an application, the LMHA shall attempt to contact the provider to determine why the provider withdrew from the process.

(e) Provider standards. An LMHA shall not apply more rigorous standards and requirements to external providers than it applies to its own programs and staff. This does not preclude the LMHA from requiring documentation and reporting necessary to verify compliance with the terms of the contract.

(f) Provider compensation. An LMHA shall pay external providers a fair and reasonable rate in relation to the local prevailing market.

(g) Monitoring and enforcement. An LMHA shall implement effective procedures for contract monitoring and enforce the requirements set out in applicable rules and contract provisions. Examples include standards for service delivery, cultural and linguistic competency, and consumer protections.

§412.762. Post Procurement Report.

Report content. An LMHA shall submit a post procurement report to the department within 30 days of completing a procurement described in the LMHA's approved plan. If procurement is conducted through open enrollment, the LMHA shall submit a procurement report at intervals specified in the timeline established by the department at the beginning of the planning cycle. The report must include:

(1) a list of the applications received in response to the procurement;

(2) the results of the procurement;

(3) an updated list of the LMHA's external providers; and

(4) the responses from providers who did not complete the procurement process regarding their reasons for withdrawing from consideration, if applicable.

§412.763. Appeals.

(a) Local appeal process. An LMHA shall establish an appeal process for providers that:

(1) is available to any provider who submitted a written statement of interest or participated in any phase of the procurement process; and

(2) includes an opportunity for informal review and resolution as well as a formal appeal procedure.

(b) Department review. If an issue cannot be resolved at the local level and involves an alleged violation by the LMHA of a state rule or contract provision, either the LMHA or the provider may submit the issue to the department in writing for review. Potential actions that may be taken by the department shall be defined in the performance contract. The decision of the Commissioner or his designee will be final.

§412.764. Individual Selection of Providers.

(a) Individual choice. An LMHA shall give consumers the opportunity to choose from any available provider in the LMHA's provider network offering services for which the individual is authorized at the time of admission and at least annually thereafter.

(b) Changing providers. Individuals may request and change providers at any time.

(c) Provider information. An LMHA shall maintain a current list of providers and a provider profile for each provider in the network, including the LMHA, on its website. The LMHA's website must also provide instructions for requesting a change in providers as described in §401.464 of this title (relating to Notification and Appeals Processes).

(1) The provider list must include the following information about each provider:

(A) name;

(B) service locations and the services provided at each location; and

(C) contact information, including the provider's website address.

(2) The provider profile is a standardized form completed by the provider, may include information such as staffing patterns, special features of service delivery, and cultural and linguistic specialization. An LMHA shall use the provider profile template established by the department at the beginning of the planning cycle. The LMHA may add additional items to the provider profile based on input from the local PNAC.

(d) Provider selection process. The LMHA shall inform individuals, verbally and in writing, that they may choose to receive services from any available provider in the LMHA's network that offers the authorized services. The LMHA shall also provide individuals with a neutral presentation of available providers consistent with the plan to

support consumer transition to the external network described in subsection (f) of this section. When an individual is given the opportunity to choose a provider, the LMHA shall:

(1) state that the individual may change providers at any time;

(2) give the individual the provider list, provider profiles, and a written copy of the procedures for requesting a change in providers;

(3) allow a reasonable period of time and make an area available for the individual to review the materials and make a decision; and

(4) maintain documentation of the individual's choice of provider.

(e) An LMHA shall not offer or schedule services before the individual selects a provider. If an individual is unable to select a provider or does not select a provider before leaving the first appointment, the LMHA shall provide the consumer with an appointment for ongoing services at an assigned provider. Except as provided in subsection (f) of this section, assignments shall rotate equally among all available external providers. In this situation, the LMHA shall also provide the individual with information about how to have the appointment rescheduled with a different provider.

(f) External network transition plan. The LMHA shall develop and implement a plan to promote consumer transition to the external network when a new provider joins the network.

(1) The plan shall be developed with input from the LMHA's PNAC, any local consumer-operated organization, and its external providers.

(2) LMHAs may emphasize benefits of receiving services from an external provider, but shall not favor one provider over another except to identify service sites that may be more convenient for a client.

(3) The plan may include reassigning consumers to external providers based on geographic proximity, but must give them the option of choosing a different provider instead.

(4) The plan may include directing new individuals to choose an external provider, but must give them the option of choosing an LMHA service site instead.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB or Board) proposes amendments to 31 Texas Administrative Code Chapter 358, §358.6, relating to Water Loss Audits. The Board has determined that the changes in this section are necessary to address statutory changes not currently reflected in §358.6.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSAL

In 2013, the 83rd Texas Legislature passed House Bill 3605 (HB 3605) (Tex. Gen. Laws ch. 1139) amending Texas Water Code §16.0121, effective September 1, 2013, regarding the water loss audit that is required of all retail public utilities providing potable water. HB 3605 requires that a retail public utility (utility) providing potable water that receives financial assistance from the Board must use a portion of that, or any additional, financial assistance to mitigate the utility's system water loss if the utility's system water loss meets or exceeds a threshold to be established by Board rule. The Board's rules must address the amount of system water loss that requires a utility to take action and must address the use of financial assistance to mitigate system water loss.

DISCUSSION OF THE PROPOSED RULE

The proposed amendments add a new subsection (a) relating to Definitions. The proposed amendments add definitions related to water loss including definitions for "apparent loss," "average system operating pressure," "minimum allowed apparent loss," "real loss," "annual real loss," "unavoidable annual real loss," and "total water loss." Water loss consists of both real loss and apparent loss. Real loss includes actual loss of water such as through leaks and breaks. Apparent loss includes the "paper loss" of water, including meter inaccuracies, billing adjustments, and theft. Because both types of loss must be addressed in order to obtain an accurate measure of a utility's water loss, metrics and thresholds are proposed for each type of loss.

Subsection (a) also provides acronyms for commonly used phrases and definitions for commonly used terms in the discussion of water loss.

Former subsection (a) is redesignated as subsection (b) and succeeding subsections are renumbered accordingly. The reference to "fewer" in subsection (b)(2) calls for the parallel comparative adjective "more" in subsection (b)(1)(A) to indicate a count of units. Therefore, "greater" has been deleted and "more" inserted in subsection (b)(1)(A).

Language in subsection (b)(3) lists the bases for the methodologies developed by the executive administrator in accordance with Texas Water Code §16.0121(d).

Subsection (b)(4) is deleted because the language is in the statute and therefore applies without the need for further reference in the rule, and the language does not directly address an obligation of the utilities.

Subsection (d) is revised by adding references to Chapter 15, Subchapters G and H, the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas, as programs for which a water loss audit must be submit-

ted for a utility to be eligible for financial assistance under one of the listed programs.

New subsection (e) provides the thresholds and metrics that apply to the various categories of retail public utility listed in the statute. For purposes of the proposed rule, the first three categories defined in subsection (c) of §16.0121, consisting of utilities with populations of more than 10,000, are combined. The fourth category in subsection (c), consisting of utilities with populations of 10,000 or less, is divided according to service connection density.

The proposed rule provides the following metrics and thresholds:

For a retail public utility with a population more than 10,000:

- Apparent loss expressed as gallons per connection per day must be less than the allowed apparent loss, consisting of a unique number calculated for each utility.

- Real loss expressed as gallons per connection per day must be less than three times the unavoidable annual real loss, consisting of a unique number calculated for each utility.

For a retail public utility with a population less than or equal to 10,000 and a service connection density more than or equal to 32 connections per mile:

- Apparent loss expressed as gallons per connection per day must be less than the allowed apparent loss, consisting of a unique number calculated for each utility.

- Real loss expressed as gallons per connection per day must be less than 50 gallons per connection per day.

For a retail public utility with a population less than or equal to 10,000 and a service connection density less 32 connections per mile:

- Apparent loss expressed as gallons per connection per day must be less than the allowed apparent loss, consisting of a unique number calculated for each utility.

- Real loss expressed as gallons per mile per day must be less than 1,600 gallons per mile per day.

Apparent Loss

The proposed metric for apparent loss is gallons per connection per day regardless of the utility's size or connection density. The threshold for apparent loss is the allowed apparent loss $^{L}A_{m}$, which is defined as:

Figure 1: 31 TAC Chapter 358--Preamble

where V_m is the billed and metered volume of water in the system, V_i is the corrected input volume to the system, and N_c is the number of connections. The first term encompasses meter accuracy of 95 percent. The second term represents unauthorized consumption (theft), assumed for illustration to be 0.25 percent of the corrected input volume. The third term represents systematic data handling errors, assumed here to be 0.25 percent of the corrected input volume. This threshold is utility specific and includes assumptions based on industry standards.

Real Loss

For real loss, the population served by the utility as well as connection density determines the appropriate metrics and thresholds.

The metric for utilities that serve more than 10,000 people is derived from the Infrastructure Leakage Index. The source of the Index is a utility-specific calculation of unavoidable real loss based on the number of connections, miles of distribution lines, and operating pressure. The Index applies only to utilities with more than 3,000 connections and more than 16 connections per mile.

Application of the Infrastructure Leakage Index allows for a certain multiplier of unavoidable real loss based on water scarcity, water cost, and the economics of addressing water loss. Unavoidable real loss is a theoretical value representing the lowest water loss that could be achieved if all available technology were successfully applied.

In places where water resources are costly to develop, the recognized and desired threshold for real water loss is less than three times the unavoidable real loss. Therefore, a threshold for real loss for utilities that serves more than 10,000 people $^{L}R_{\geq 10,000}$, is proposed as:

Figure 2: 31 TAC Chapter 358--Preamble

where UARL = Unavoidable Annual Real Loss (gallons), N_c is the number of connections, L_m is the length of the water mains in miles, and P is the average system operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

This calculation is based on industry methodology. The resulting threshold has units of gallons per connection per day. This threshold for real loss is utility specific.

For utilities serving populations of less than or equal to 10,000 people, two different metrics based on industry performance indices are used: (1) gallons per connection per day for utilities with a service connection density more than or equal to 32 connections per mile, and (2) gallons per mile per day for a service connection density less than 32 connections per mile.

No method to calculate a theoretical unavoidable real loss for smaller systems exists, and the quality of water loss reports submitted for smaller utilities is a concern, with many utilities reporting exceptionally low losses. A statistical approach based on erroneous low water loss reports could unfairly penalize utilities that submit high quality reports with acceptable levels of water loss. To address this concern, Equation (2) is used to calculate the thresholds for utilities that serve between 10,000 and 50,000 people and uses the median threshold as the threshold for utilities that serve less than or equal to 10,000 people with a service connection density more than or equal to 32 connections per mile. In other words, the utilities just above the 10,000 person line are used to help define a threshold for utilities below the 10,000 person line. This threshold is approximately 50 gallons per connection per day.

For utilities that serve less than or equal to 10,000 people and have a service connection density less than 32 connections per mile, a threshold of 1,600 gallons per mile per day is used, calculated by multiplying the threshold of 50 gallons per connection by 32 connections per mile.

Wholesale Factor

In recognition of the fact that many utilities may have large volumes of wholesale water (water sold to another provider), an additional factor has been established to take into account those water volumes.

The real loss for those utilities with a wholesale component in their distribution system will be calculated as:

Figure 3: 31 TAC Chapter 358--Preamble

New subsection (f) addresses the requirement that a utility whose water loss meets or exceeds the threshold for that utility must address the amount of system water loss with a portion of any financial assistance provided by the board through one or more of the following programs:

- the Water Loan Assistance Fund,

- the State Participation Program,

- the State Water Implementation Fund for Texas,

- the State Water Implementation Revenue Fund for Texas,

- the Drinking Water State Revolving Fund,

- the Rural Water Assistance Fund,

- the Water Infrastructure Fund, or

- the Economically Distressed Areas Program.

Because each utility, each project, and the nature and extent of the water loss will be unique for a given utility, the nature of the mitigation measures will be determined by the executive administrator and the utility at the time the financial assistance is provided.

New subsection (g) provides that the requirements in subsection (f) will apply to applications for financial assistance received by the Board after January 1, 2015.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Amanda Landry, Chief Financial Officer, has determined that there will not be any additional estimated costs to state or local governments as a result of the proposed rulemaking for the first five years this rule will be in effect.

Ms. Landry has also determined that there are no estimated reductions in costs to state or local governments as a result of the proposed rulemaking for the first five years the rule will be in effect. The rule provides methodologies and submission dates for performing water loss audits. The rule also provides that, if a utility's total water loss meets or exceeds the applicable threshold set out in the rule, the utility must use a portion of financial assistance received from the board to mitigate the utility's water loss. There is no expected reduction in the costs to the local government.

Additionally, Ms. Landry has determined that there will not be any loss of or increase to revenue to state or local governments as a result of the proposed rulemaking for the first five years that the rule will be in effect. The proposed rule does not affect the revenues of state or local governments.

PUBLIC BENEFITS AND COSTS

Ms. Landry has determined that this rule does not impose costs to the public as the retail public utilities that are required to comply with the rule already perform similar functions. The benefit to the public is improved management of a utility's water service and reduced water loss. Additionally, the rule will provide a public benefit through improved water conservation, as the rule increases the number of utilities that are required to perform and file an annual water audit and address excessive water loss.

Ms. Landry has also determined that there are probable economic costs to utilities required to comply with the proposed rule. There could be costs to certain retail public utilities that would vary by utility depending on the reporting procedures and costs for the utility to perform a water loss audit or to mitigate their water loss as required by the rule. These same utilities will benefit from funding available from the board.

LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect as it imposes no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rule is not directed at private small or micro-businesses. The proposed amended rule requires retail public utilities whose total water loss meets or exceeds the applicable threshold. This may mean some additional costs to some retail public utilities; but funding for that mitigation may be provided by the board, and it will mean increased water conservation, which has been reported by the Legislative Budget Board to be the most cost-efficient method to enhance current water supplies. The proposed rule has no effect on the local economy or small or micro businesses because the rule applies only to retail public utilities.

REGULATORY ANALYSIS

The board has determined that this rule does not constitute a major environmental rule because it is not based on a standard set by federal law, does not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and is adopted pursuant to express state laws under Texas Water Code, Chapter 16.

TAKINGS IMPACT ASSESSMENT

The board has determined that this rule does not impact private property because the rule is directed to retail public utilities and is not directed to private landowners. The rule does not affect private property because it does not authorize any governmental entity to regulate or affect the status of private property. The rule regulates only the performance and submission of annual water loss audits by retail public utilities.

SUBMITTAL OF COMMENTS

Comments on the proposed rule will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.texas.gov, or by fax at (512) 475-2053.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §16.0121, which requires the board to develop appropriate thresholds and methodologies for a water loss audit required under that statute.

The proposed rulemaking affects Texas Water Code §16.0121, relating to Water Loss Audits.

§358.6. Water Loss Audits.

(a) Definitions. Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Category or Categories--A category of retail public utility as listed in Texas Water Code §16.0121(c).

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--Means the number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(12) Unavoidable annual real loss--A unique number calculated for each utility based on the number of connections, miles of distribution lines, and operating pressure.

(b) [~~(a)~~] A retail public utility [~~In accordance with Texas Water Code §16.0121, a retail public utility, as defined by Texas Water Code §13.002,~~] that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more [~~greater~~] than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit shall be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

[~~(4) The executive administrator shall compile the information included in the water loss audits according to category of retail public utility and according to regional water planning area.~~]

(c) [~~(b)~~] The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided. In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(d) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(e) The following thresholds and metrics shall apply to the indicated categories of retail public utility:

(1) For a retail public utility with a population of more than 10,000:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than three times the utility's unavoidable annual real loss.

(2) For a retail public utility with a population of 10,000 or fewer and a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 50 gallons per connection per day.

(3) For a retail public utility with a population of 10,000 or fewer and a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per mile per day must be less than 1,600 gallons per mile per day.

(4) For a utility that has a large volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day, determined using a modified calculation that includes the wholesale volume, must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than three times the utility's unavoidable annual real loss.

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administra-

tor in conjunction with the project proposed by the utility and funded by the board.

(g) Subsection (f) of this section shall apply to applications for financial assistance received by the board after January 1, 2015.

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 July 28, 2014.

TRD-201403387
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 463-8061

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

SUBCHAPTER B. CONTRACTING

40 TAC §802.22

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 802, relating to Integrity of the Texas Workforce System:

Subchapter B. Contracting, §802.22

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 802 rule change is to set forth a formal process for Local Workforce Development Boards (Boards) to procure workforce service providers and specify an initial contract period of at least one year, not to exceed two years, and with subsequent renewals not to exceed a maximum of five years, prior to a new procurement. In determining whether to extend a contract for the option period, Boards shall consider the provider's performance, oversight of services, reasonableness of cost, and any other locally developed criteria.

Currently, Chapter 802 does not specify or define a contract period for Board-executed contracts regarding workforce service provider procurement. As a result, some contracts are awarded for extended periods without the benefit of new procurement.

The Agency's Financial Manual for Grants and Contracts §14.3 states that the procurement of all goods and services must be conducted, to the maximum extent practical, in a manner providing full and open competition that:

--promotes competition between suppliers, resulting in the best value for the money; and

--offers transparency that helps mitigate favoritism.

The Federal Acquisition Regulation (FAR) governs federal agency procurements. Boards are not required to comply with FAR, however, its guidance is the basis for FMGC policies. FAR defines multiyear contracting in 48 CFR Part 17 as a contract for the purchase of supplies or services for more than one--but not more than five--program years. Although a multiyear contract requires diligence in ongoing oversight, its benefits include reducing paperwork, stabilizing services, and a more balanced contract management workload.

The intent of this amendment is to:

--allow the Commission to promote full and open competition while providing Boards with contract flexibility at the local level; and

--define the maximum length of time for a service provider contract without a new procurement.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. CONTRACTING

The Commission proposes the following amendments to Subchapter B:

New §802.22. Board Contract Limits

New §802.22(1) adds that Boards shall procure a workforce service provider for an initial period of at least one year, not to exceed two years, allowing for subsequent renewals during an option period following the conclusion of the initial procurement period.

New §802.22(2) adds that when procuring a new workforce service provider, Boards shall ensure that the initial procurement and subsequent renewals do not exceed a maximum of five years total.

Boards are expected to timely conduct procurements, as appropriate, to ensure full and fair competition. Boards must review their current contracts and, consistent with existing obligations, align their practices with these requirements moving forward. Where a Board's existing contract exceeds the five-year limit under this new rule, the Board will be expected to re-procure at the next renewal point. Boards must timely prepare for re-procurement in order to minimize any holdover period beyond five years. The Board's procurement efforts, negotiation issues, and individual circumstances will be taken into consideration in determining the reasonableness of any holdover period.

New §802.22(3) adds that when determining whether to renew a contract during the option period following the completion of the initial procurement period, Boards shall consider a workforce service provider's performance, oversight of services, reasonableness of cost, and any other locally developed criteria.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has 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 proposed rules will be to clarify the process for Boards when procuring workforce service providers.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 13, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on May 16, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.22. Board Contract Limits.

In procuring a new workforce service provider, Boards shall:

(1) procure the workforce service provider for an initial period of at least one year, not to exceed two years, allowing for subsequent renewals during an option period following the conclusion of the initial procurement period;

(2) ensure that the initial procurement and subsequent renewals do not exceed a maximum of five years total; and

(3) in determining whether to renew a contract during the option period following the completion of the initial procurement period, consider the workforce service provider's performance, oversight of services, reasonableness of cost, and any other locally developed criteria.

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

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403345
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: September 7, 2014
For further information, please call: (512) 475-0829

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.95

The Texas Alcoholic Beverage Commission withdraws proposed new §45.95 which appeared in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2731).

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403350
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: July 22, 2014
For further information, please call: (512) 206-3489

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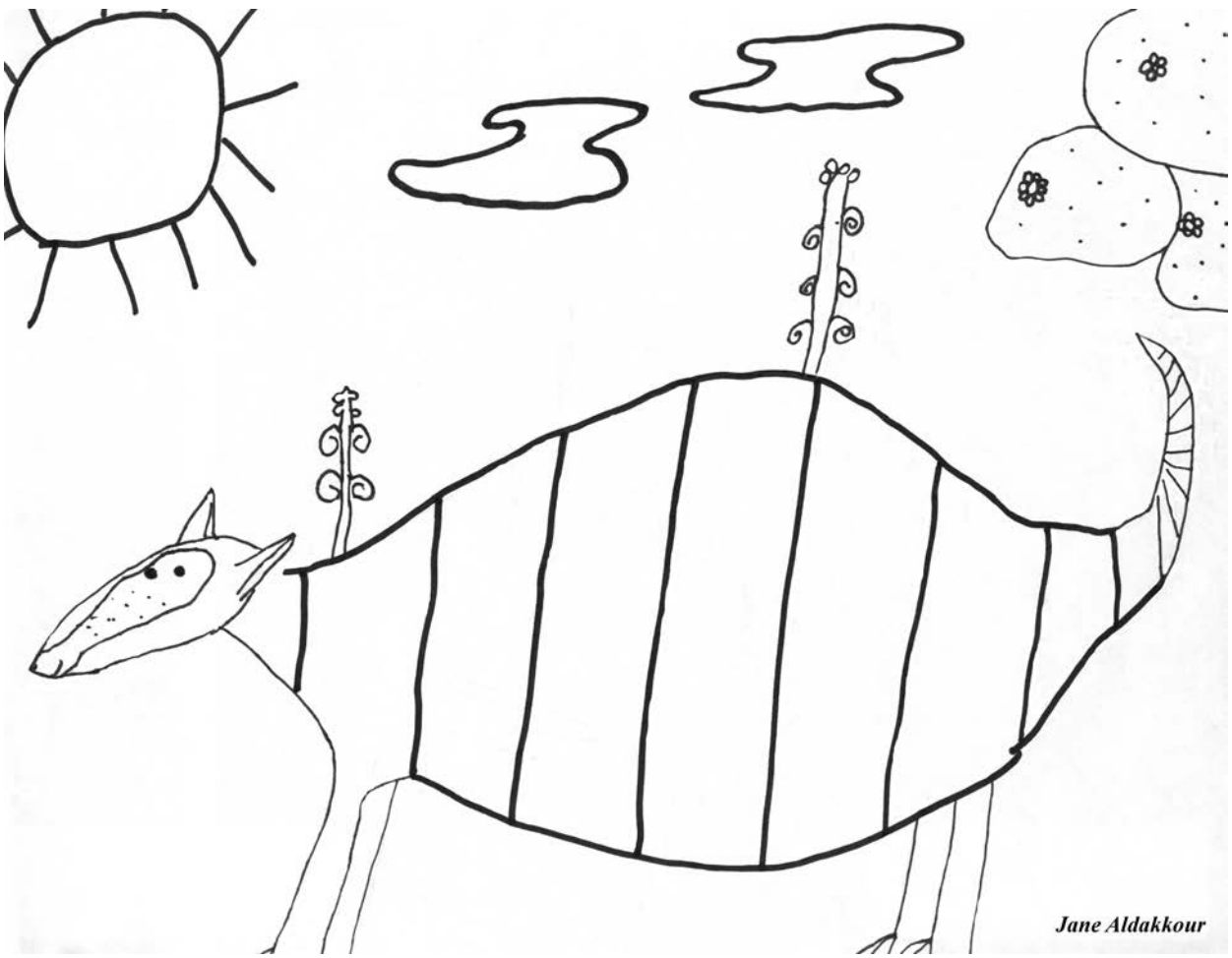
Jane Aldakkour

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 13. CULTURAL RESOURCES

PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION

CHAPTER 191. COMMISSION PROCEDURES

13 TAC §191.8

The Texas Holocaust and Genocide Commission (Commission) adopts an amendment to 13 TAC §191.8, concerning the Commission's grant program, without changes to the proposed text as published in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2004). The section will not be republished. The section describes and establishes standards for grants awarded by the commission.

The amendment revises language to §191.8(c) and (e) to allow in-kind services to be counted toward a required 50% match of grant funds and remove capital expenditures as costs that may be funded by Commission grant funds. Non-profit institutions involved in Holocaust education would have greater ability to submit grant applications if submitting in-kind services as part of matching funds were permitted. Additionally, the Commission does not wish to fund capital expenditures with grant funds.

The Commission did not receive comments regarding adoption of the amendment.

The amendments are adopted under Texas Government Code §449.052(c), relating to general powers and duties of Commission, which authorizes the Commission to adopt rules for its own procedures, and Texas Government Code §2255.001.

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 July 28, 2014.

TRD-201403396
Peter Berkowitz
Chairman
Texas Holocaust and Genocide Commission
Effective date: August 17, 2014
Proposal publication date: March 21, 2014
For further information, please call: (512) 463-8815

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.73

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.73, relating to Label: General, with changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2727).

The amendments state the purpose of and authority for the section, clarify that a brewpub licensee may apply for label approval of malt beverages and delete references to special or private brands.

The amendments clarify that the commission interprets Alcoholic Beverage Code §102.07 and §102.15 to prevent the use of a malt beverage label that is identified with a specific retailer (under the circumstances outlined in subsection (e)(1) and (2) of the section) because it would constitute a form of advertising for the retailer. Brewers and manufacturers generally cannot provide advertising for a specific retailer because it would be providing a thing of value to the retailer that is prohibited by Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1). Although some forms of advertising are specifically excepted from such prohibition by other provisions of the Alcoholic Beverage Code, labels do not fall under any such exceptions.

Section 45.73 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide a clear statement regarding its statutory basis and to reflect recently-authorized activities for brewpubs.

Comments on the proposed amendments were received in writing, and oral comments were received at a public hearing on April 30, 2014.

Comments in support of the proposal were filed by the Beer Alliance of Texas and the Wholesale Beer Distributors of Texas. Comments opposed were received from Mark Anthony Brewing, the Texas Craft Brewers Guild, and H.E. Butt Grocery Company, and in joint comments from the Texas Retailers Association and Walgreens.

No one opposed the change to proposed subsection (d), adding brewpub licensees to the list of those eligible to apply for and receive label approvals for malt beverages, which is appropriate for the reasons expressed in the preamble to proposed new §45.96 of this chapter. Similarly, no one opposed the addition of language to proposed subsection (e) limiting the applicability of

that subsection to brewers and manufacturers. The commission adopts these proposed changes.

In support of the proposed changes to this section, the Beer Alliance submitted an expert report by Dr. Wayne D. Hoyer, Chairman of the Department of Marketing in the McCombs School of Business at the University of Texas at Austin. Dr. Hoyer concludes that there "are significant benefits provided to a retailer...when its trademark appears on a new brand". Dr. Hoyer's report supports the commission's conclusion that the label prohibitions in subsection (e) are appropriate applications of the language in Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) that forbid a brewer or manufacturer from furnishing a "thing of value" to a retailer.

Mark Anthony Brewing opposes the proposed amendments because, it alleges: they constitute an unconstitutional restriction on the rights of free speech enjoyed by members of the industry; they exceed the agency's legitimate rulemaking authority; they would impose a regime of regulatory restriction that is in direct and arbitrary conflict with both the law and longstanding and unquestioned applications of that law by the commission; they are unnecessary and even counter-productive in light of the legitimate policy purposes of the commission; and they are supported by no experience, evidence or data within the possession of the commission.

Mark Anthony Brewing also argues that there are "enormous amounts of value that flow from the upper tiers to the retail tier" in ways both authorized by the Alcoholic Beverage Code and otherwise allowed by the commission. The suggestion appears to be that, in light of this, the commission would be acting arbitrarily to enforce Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) if it does not cut off such flow altogether.

Mark Anthony Brewing also asserts that the proposed rule was driven by the commission's desire to protect the profit margins of distributors, which is no part of the commission's legitimate business.

The commission disagrees with all of Mark Anthony Brewing's assertions. The commission is engaged in litigation with Mark Anthony Brewing in the Travis County District Court regarding the effects of this section on the company's free speech rights and believes the section as amended is both lawful and consistent with the commission's position in the litigation.

The Texas Craft Brewers Guild supports the amendment of subsection (d) to allow brewpubs to apply for and receive label approval but believes the other proposed changes should at least be deferred pending guidance from the court in the Mark Anthony Brewing litigation and possibly the 84th Legislature.

H.E. Butt Grocery Company asserts that the San Antonio Court of Appeals decision in the 1985 *TABC v. Pearl Brewing Company* case forecloses the commission's proposals. It also asserts that the use of a trademark constitutes commercial free speech. It questions both the wisdom of and the authority for existing subsection (f) and proposed amendments thereto, as well as proposed subsection (g).

The Texas Retailers Association and Walgreen Co. submitted joint comments. They assert that the San Antonio Court of Appeals decision in the 1985 *TABC v. Pearl Brewing Company* case forecloses the commission's proposals. They also believe the pending Mark Anthony Brewing litigation will likely clarify the law. They allege that proposed subsection (e)(3) would result in insurmountable difficulties related to its interpretation and application. They state that the proposed amendments to subsection (f) seem to misinterpret the basic three-tier system and sales of beer. They also point to alleged difficulties applying proposed subsection (g).

Although the commission believes the proposed amendments would be legitimate exercises of its authority and are not foreclosed by the *Pearl Brewing Company* decision, it acknowledges the opposition to certain of its proposals. Since the proposals were an attempt to provide statutory clarification, and since some of the underlying issues are currently being litigated in the Mark Anthony Brewing case, the commission is persuaded that it is appropriate to await judicial guidance on certain issues before proceeding.

With that in mind, the commission adopts the amendments to subsections (d) and (e) previously discussed. While the commission adopts the proposed deletion of the term "special or private brand" in subsections (e)(1) and (f), in order to preserve the status quo regarding the underlying policy the commission modifies the proposed amendment to subsection (f) in order to retain the remedy of label cancellation for violating the restriction on exclusive sale of a brand. Finally, also to preserve the status quo as regards policy, the commission does not adopt proposed subsections (e)(3) or (g).

The amendments are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and of Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§45.73. Label: General.

(a) The purpose of this section is to implement Alcoholic Beverage Code §101.67 (Prior Approval of Malt Beverages) and §101.41 (Containers, Packaging, and Dispensing Equipment of Beer: Labels), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties). The section applies the prohibitions in Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) in the labelling context.

(b) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(c) Alteration of labels.

(1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

(d) Only a brewer's or non-resident brewer's permittee, a manufacturer's or non-resident manufacturer's licensee, or a brewpub licensee under §45.96 of this chapter may apply for and receive label approval on beer, ale, or malt liquor.

(e) No application for a label filed by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee shall be approved which:

(1) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or any private club registration permittee; or

(2) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee.

(f) The sale of a brand of malt beverages by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee exclusively to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusively to retail licensees or permittees under common ownership, control, or management, to the exclusion of other retail licensees or permittees is specifically prohibited and the label approval for any such label shall be cancelled and withdrawn.

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 July 23, 2014.

TRD-201403354
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: August 12, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 206-3489

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16 TAC §45.82

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.82, relating to Prohibited Practices, with changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2728).

The amendments add a statement of statutory authority, delete a reference to special or private brands, and re-format subsection (a)(7) of the section.

The amendments clarify that the commission interprets Alcoholic Beverage Code §102.07 and §102.15 to prevent the use of any statement, design, device or representation on a malt beverage label that the beverage is identified with a specific retailer (under the circumstances outlined in subsection (a)(7) of the section) because it would constitute a form of advertising for the retailer. Brewers and manufacturers generally cannot provide advertising for a specific retailer because it would be providing a thing of value to the retailer that is prohibited by Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1). Although some forms of advertising are specifically excepted from such prohibition by other provisions of the Alcoholic Beverage Code, labels do not fall under any such exceptions.

Section 45.82 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide a clear statement regarding its statutory basis and to conform to changes in §45.73 of this chapter that are being adopted simultaneously with this section.

Comments on the proposed amendments were received in writing, and oral comments were received at a public hearing on April 30, 2014.

Comments in support of the proposed amendments were filed by the Beer Alliance of Texas and the Wholesale Beer Distributors of Texas. Comments opposed were received from Mark Anthony Brewing, the Texas Craft Brewers Guild, H.E. Butt Grocery Company, and WFM Beverage Corp. and in joint comments from the Texas Retailers Association and Walgreens

In support of the proposed changes to this section, the Beer Alliance submitted an expert report by Dr. Wayne D. Hoyer, Chairman of the Department of Marketing in the McCombs School of Business at the University of Texas at Austin. Dr. Hoyer concludes that there "are significant benefits provided to a retailer...when its trademark appears on a new brand". Dr. Hoyer's report supports the commission's conclusion that the prohibitions in subsection (a)(7) are appropriate applications of the language in Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) that forbid a brewer or manufacturer from furnishing a "thing of value" to a retailer.

Mark Anthony Brewing opposes the proposed amendments because, it alleges: they constitute an unconstitutional restriction on the rights of free speech enjoyed by members of the industry; they exceed the agency's legitimate rulemaking authority; they would impose a regime of regulatory restriction that is in direct and arbitrary conflict with both the law and longstanding and unquestioned applications of that law by the commission; they are unnecessary and even counter-productive in light of the legitimate policy purposes of the commission; and they are supported by no experience, evidence or data within the possession of the commission.

Mark Anthony Brewing also argues that there are "enormous amounts of value that flow from the upper tiers to the retail tier" in ways both authorized by the Alcoholic Beverage Code and otherwise allowed by the commission. The suggestion appears to be that, in light of this, the commission would be acting arbitrarily to enforce Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) if it does not cut off such flow altogether.

Mark Anthony Brewing also asserts that the proposed rule was driven by the commission's desire to protect the profit margins of distributors, which is no part of the commission's legitimate business.

The commission disagrees with all of Mark Anthony Brewing's assertions. The commission is engaged in litigation with Mark Anthony Brewing in the Travis County District Court regarding the effects of this section on the company's free speech rights and believes the section as amended is both lawful and consistent with the commission's position in the litigation.

The Texas Craft Brewers Guild believes the proposed amendments are unnecessary and fear that, as proposed, they could create confusion regarding the ability of brewpubs to use their own trademarks on their products. The commission believes it is necessary and appropriate to amend this section to remain consistent with the changes to §45.73 of this chapter that are being adopted simultaneously. In response to the comment about

brewpubs, the commission adds language referencing §45.96 of this chapter, which addresses this issue and is also being adopted simultaneously.

H.E. Butt Grocery Company ("HEB") asserts that the San Antonio Court of Appeals decision in the 1985 *TABC v. Pearl Brewing Company* case forecloses the commission's proposals. It also asserts that the use of a trademark constitutes commercial free speech. Specifically, it believes proposed subsection (a)(7)(C) would be void for vagueness.

The Texas Retailers Association and Walgreen Co. ("TRA/Walgreen") submitted joint comments. They assert that the San Antonio Court of Appeals decision in the 1985 *TABC v. Pearl Brewing Company* case forecloses the commission's proposals. They also believe the pending Mark Anthony Brewing litigation will likely clarify the law. Specifically, they assert that the proposed amendments would impact brewpubs by creating a conflict with §45.96 of this chapter, which is being adopted simultaneously. As noted in response to this same concern expressed by the Texas Craft Brewers Guild, the commission adds language referencing §45.96 of this chapter.

WFM Beverage Corp. ("WFM") shares the concern expressed by the Texas Craft Brewers Guild and by TRA/Walgreen regarding the impact on brewpubs of a conflict between the proposed amendments and §45.96 of this chapter, which is being adopted simultaneously. Again, the commission addresses this concern by adding language referencing §45.96 of this chapter. WFM also shares HEB's concern that proposed subsection (a)(7)(C) would be void for vagueness.

Although the commission believes the proposed amendments would be legitimate exercises of its authority and are not foreclosed by the *Pearl Brewing Company* decision, it acknowledges the opposition to certain of its proposals. Since the proposals were an attempt to provide statutory clarification, and since some of the underlying issues are currently being litigated in the Mark Anthony Brewing case, the commission is persuaded that it is appropriate to await judicial guidance on certain issues before proceeding.

With that in mind and in response to comments, the commission modifies proposed subsection (a)(7) to add specific statutory references and, as previously mentioned, to reference §45.96 of this chapter regarding brewpubs. To be consistent with amendments to §45.73 of this chapter that are being adopted simultaneously, the commission adopts the proposed deletion of the term "special or private brand", but does not adopt proposed subsection (a)(7)(C).

The amendments are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and of Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§45.82. Prohibited Practices.

(a) Statements on labels. Containers of malt beverages or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

(1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's products;

(3) any statement, design, device, or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

(7) pursuant to Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1), and except as authorized by §45.96 of this chapter, any statement, design, device, or representation that:

(A) the malt beverage is brewed or bottled for any retail licensee or permittee or private club registration permittee; or

(B) includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee.

(b) Simulation of government stamps. No label shall be of such design as to resemble or simulate a stamp of the United States government or of any state or foreign government. No label, other than stamps authorized or required by the United States government or any state or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, labeled, sold under, or in accordance with any municipal, state, federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by federal or state law or regulations of the foreign country in which such malt beverages were produced. If the foreign municipal or state government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by the law of that state or foreign municipality.

(c) Use of word "bonded," etc. The words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packaging, shall not be used on any label for malt beverages.

(d) Statements, seals, flags, coats of arms, crests, and other insignia. Statements, seals, flags, coats of arms, crests, or other insignia, or graphic, or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government, organiza-

tion, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of malt beverages.

(e) Curative and therapeutic effects. Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §45.94

The Texas Alcoholic Beverage Commission (commission) adopts new §45.94, relating to Verification Regarding Use of Facilities, without changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2730).

The section implements the requirements of Alcoholic Beverage Code §102.22, relating to Verification of Use of Facilities.

Alcoholic Beverage Code §102.22(a) requires that a person who holds a Chapter 12 or 13 permit or a Chapter 62 or 63 license must annually verify to the commission that a brewing or manufacturing facility owned or controlled by that person "is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates". Alcoholic Beverage Code §102.22(b) requires the commission to adopt a form for the verification.

This section requires that the Alcoholic Beverage Code §102.22 verification be filed on or before September 1 of each year by each permittee and licensee required to do so by that section of the Alcoholic Beverage Code. The section also provides that the commission will promulgate a form requiring the verification as stated in Alcoholic Beverage Code §102.22.

Comments on the proposed new section were received in writing, and oral comments were received at a public hearing on April 30, 2014.

Comments in support of the proposal were received from the Texas Craft Brewers Guild, the Beer Alliance of Texas and the Wholesale Beer Distributors of Texas. The Beer Institute filed comments suggesting a modification. The Texas Retailers Association and Walgreen Co. ("TRA/Walgreen") commented that "while the tracking of the language in the statute in this rule is appreciated, there still remain a number of issues as to how this rule will be interpreted and enforced".

Both the Beer Institute and TRA/Walgreen believe that the use of the word "primarily" is problematic. The Beer Institute would essentially substitute the term "all or substantially all of a brand". TRA/Walgreen suggests that "primarily" should be interpreted as 51%.

The commission notes that, as mentioned by TRA/Walgreen, the language tracks the language used in Alcoholic Beverage Code §102.22. The commission believes that changing the language of the section as suggested by the Beer Institute would require republication of the section, as would formally interpreting the language used in the statute. The commission already tried providing guidance by publishing a proposal that differed from the statutory language. That proposal was withdrawn in the face of significant disagreement among stakeholders. To the extent clarification is necessary or appropriate, the legislature is obviously in the best position to clarify its intent.

The new section is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.22, which requires the commission to adopt a form.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §45.96

The Texas Alcoholic Beverage Commission (commission) adopts new §45.96, relating to Brewpubs, with changes to the proposed text published in the April 11, 2014, *Texas Register* (39 TexReg 2732).

The section clarifies that a brewpub can apply for and receive label approval on malt beverages. Before recent amendments to Alcoholic Beverage Code Chapter 74, the commission did not require brewpubs to receive label approval for their products, which could only be sold on their own premises. However, since Alcoholic Beverage Code §§74.08 - 74.10 now authorize brewpubs to sell their products under certain conditions to retailers, distributors and wholesalers, it is incumbent upon the commission under Alcoholic Beverage Code §74.01(a)(1) and §74.06 to apply appropriate labelling requirements.

The section clarifies that a brewpub can indicate on the label of a malt beverage that the product is brewed or bottled for itself, an entity under common ownership with it, or an entity that has the same name or tradename it has. Likewise, a brewpub can use its own name, tradename or trademark, or that of an entity

under common ownership with it, or an entity that has the same name or tradename it has.

However, a brewpub may not indicate on the label of a malt beverage that the product is brewed or bottled for, nor use the name, tradename or trademark of, another retailer that is neither under common ownership with it nor shares its name or tradename.

The section clarifies that a brewpub is not authorized to provide contract brewing or alternating brewery proprietorship arrangements or engage in such activities, because the Alcoholic Beverage Code provides such authority only to holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and of licenses under Alcoholic Beverage Code Chapters 62 and 63.

Comments on the proposed new section were received in writing, and oral comments were received at a public hearing on April 30, 2014.

The Wholesale Beer Distributors of Texas filed comments supporting the proposed section. The Texas Craft Brewers Guild filed comments supporting proposed subsection (b)(1) - (4), but opposing subsection (b)(5) and subsection (c). A joint comment opposing the section was filed by the Texas Retail Association and Walgreen Co. WFM Beverage Corp. also filed comments opposing the section.

The Texas Craft Brewers Guild ("Guild") states that proposed subsection (b)(1) - (4) are necessary and in line with the intent of the legislature. It asserts that proposed subsection (b)(5) "starts into the territory of the private label dispute, though that fight centers around relationships between retailers and manufacturers whereas this language seeks to govern relationships between members of the same tier". For this reason, the Guild considers proposed subsection (b)(5) as far-over-reaching. It characterizes proposed subsection (c)(1) as "a pointless clarification of the law" and "needless" because the issue (i.e., the inability of brewpubs to provide contract brewing or engage in alternating brewery proprietorships) is not in doubt. The Guild contends that proposed subsection (c)(2) "would appear to have the effect of precluding sales of product by and between members of the retail tier" and that it is "highly inappropriate to make this sort of change through regulatory edict".

The Texas Retailer Association and Walgreen Co. contend that there is a conflict between proposed subsection (b)(4) and both proposed subsection (b)(5)(A) and (B). They assert that proposed subsection (c)(2) is contrary to Alcoholic Beverage Code §102.75(c) and that the use of the term "substantially all" in proposed subsection (c)(3) is vague.

WFM Beverage Corp. ("WFM") objects specifically to proposed subsection (c)(2) and (3) as lacking a statutory basis and, in the case of subsection (c)(3), being too vague. WFM at least seeks assurance that it will not be prohibited by those paragraphs from selling the product produced at its brewpub to distributors and wholesalers and then having its other retail locations purchase the product from them.

While not agreeing with all of the reasons asserted by the commenters, the commission does agree that the proposed section should be modified to eliminate inconsistencies and to restrict its scope. Language is added in both subsection (b)(5)(A) and (B) to clarify that a brewpub can use its own name, tradename or trademark on a label, or use the name, tradename or trademark of an entity that either shares common ownership with the brewpub, or has the same name or tradename as the brewpub. Similarly the label can indicate that it is brewed or bottled for the brewpub itself or for one of those entities. The commission does not adopt proposed subsection (b)(5)(C) or subsection (c)(2) or (3). The commission does adopt proposed subsection (c)(1) as subsection (c). It is included because the commission has been questioned about the topic outside of the formal comment process in this rulemaking. None of the commenters disagree that it is an accurate statement of the law.

The new section is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

§45.96. Brewpubs.

(a) The purpose of this section is to implement Alcoholic Beverage Code §§5.39 (Regulation of Liquor Containers), 74.01 (Authorized Activities), 74.06 (Quality Standards), and 101.67 (Prior Approval of Malt Beverages), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties).

(b) Labels.

(1) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or to remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(2) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(3) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

(4) A brewpub licensee may apply for and receive label approval on beer, ale, or malt liquor. The label may contain the brewpub licensee's name, tradename or trademark.

(5) No application for a label filed by a brewpub licensee shall be approved which:

(A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or for any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it); or

(B) includes the name, tradename, or trademark of any retailer permittee or licensee or for of any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it).

(c) Nothing in this subchapter or in Alcoholic Beverage Code Chapter 74 authorizes a brewpub licensee to engage in contract brewing or alternating brewery proprietorship arrangements, and its facilities may not be used to provide such arrangements or engage in such activities, which are authorized only for holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and holders of licenses under Alcoholic Beverage Code Chapters 62 or 63.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.110

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.110, relating to Inducements, with changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2733).

The amendments add a statutory reference, conform subsection (c)(3) to a United States District Court finding that the provision currently in effect is unconstitutional, and cite as examples of unlawful inducements certain malt beverage labels using the tradenames or trademarks of retailers.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n,* 835 F. Supp. 2d 227 (W.D. Tex., Dec. 19, 2011), §45.110(c)(3) was declared unconstitutional as a violation of the First Amendment and the commission was enjoined from enforcing it, which the commission has not done since the court's ruling. However, the court's order affirms the commission's authority to prohibit undue collusion, financial or otherwise, among the tiers. Accordingly, the paragraph is amended to replace the per se prohibition on advertising that benefits a specific retailer with a prohibition on such advertising that is a product of unauthorized activity.

In addition, the amendments expand the list of examples of unlawful inducements in subsection (c) by adding paragraph (7), which deals with the use of retailer tradenames and trademarks on malt beverage labels.

Section 45.110 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Comments on the proposed amendments were received in writing, and oral comments were received at a public hearing on April 30, 2014.

The Beer Alliance of Texas and the Wholesale Beer Distributors of Texas filed comments supporting the proposed amendments. Comments opposing the proposed amendments were filed by Mark Anthony Brewing, H.E. Butt Grocery Company, the Texas Craft Brewers Guild, WFM Beverage Corp., Anheuser-Busch InBev, MillerCoors, and the Texas Association of Business. Joint comments were also filed by the Texas Retailers Association and Walgreen Co. opposing the proposed amendments.

In support of the proposed changes to this section, the Beer Alliance submitted an expert report by Dr. Wayne D. Hoyer, Chairman of the Department of Marketing in the McCombs School of Business at the University of Texas at Austin. Dr. Hoyer concludes that there "are significant benefits provided to a retailer...when its trademark appears on a new brand". Dr. Hoyer's report supports the commission's conclusion that the label prohibitions in subsection (e) are appropriate applications of the language in Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) that forbid a brewer or manufacturer from furnishing a "thing of value" to a retailer.

Mark Anthony Brewing opposes the proposed amendments because, it alleges: they constitute an unconstitutional restriction on the rights of free speech enjoyed by members of the industry; they exceed the agency's legitimate rulemaking authority; they would impose a regime of regulatory restriction that is in direct and arbitrary conflict with both the law and longstanding and unquestioned applications of that law by the commission; they are unnecessary and even counter-productive in light of the legitimate policy purposes of the commission; and they are supported by no experience, evidence or data within the possession of the commission.

Mark Anthony Brewing also argues that there are "enormous amounts of value that flow from the upper tiers to the retail tier" in ways both authorized by the Alcoholic Beverage Code and otherwise allowed by the commission. The suggestion appears to be that, in light of this, the commission would be acting arbitrarily to enforce Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1) if it does not cut off such flow altogether.

Mark Anthony Brewing also asserts that the proposed rule was driven by the commission's desire to protect the profit margins of distributors, which is no part of the commission's legitimate business.

In reply comments, Mark Anthony Brewing also posits that to address each real three-tier system concern, the commission only needs to prohibit products with retailer names on the label that are exclusive to that retailer. It describes those concerns as retailer independence, small retailers, distributor margins and business justification. It asserts that the commission has misconstrued its enabling statutes.

The commission disagrees with all of Mark Anthony Brewing's assertions. The commission is engaged in litigation with Mark Anthony Brewing in the Travis County District Court regarding the effects of this section on the company's free speech rights and believes the section as amended is both lawful and consistent with the commission's position in the litigation.

H.E. Butt Grocery Company asserts that the San Antonio Court of Appeals decision in the 1985 *TABC v. Pearl Brewing Company* case forecloses proposed subsection (c)(7), and that proposed subsection (c)(8) misconstrues the Alcoholic Beverage Code. It also asserts that the use of a trademark constitutes commercial free speech.

The Texas Craft Brewers Guild ("Guild") asserts that proposed paragraphs (7) and (8) are redundant and confusing to clearly written law, and that resolution of the underlying issue is best left to the court in the Mark Anthony Brewing litigation. Further, it alleges that proposed subsection (c)(7) and (8) could be read to conflict with the authority granted to brewpubs in §45.96 of this chapter, which is being adopted simultaneously.

The Guild also asserts that the proposed amendments to subsection (c)(3) are needless, confusing and "seems to flatly contradict" one of the purposes of Alcoholic Beverage Code §102.75(b). The Guild concedes that a possible distinction is that Alcoholic Beverage Code §102.75(b) governs "ordinary business transactions" whereas the proposed amendment only applies to advertising that is the result of "unauthorized activity". It states that things that are illegal are already illegal, and that inclusion of the language in proposed subsection (c)(3) would "roil" the marketplace. Indeed, the Guild alleges, "even the suggestion of it could be seen as problematic".

WFM Beverage Corp. seeks confirmation that proposed subsection (c)(7) does not apply with respect to its registration of labels for malt beverage products that it will produce for its own account. It also asserts that proposed subsection (c)(8) misconstrues the Alcoholic Beverage Code.

Anheuser-Busch InBev concurs with the position of the Texas Craft Brewers Guild regarding the proposed amendment to subsection (c)(3). It alleges that its adoption would "create great uncertainty and confusion in the marketplace".

MillerCoors urges the commission, "for clarity and simplicity" to strike the proposed amendment to subsection (c)(3) and to substitute for it the words: "unless the activity is permitted by the code".

The Texas Association of Business states that it was a party to discussions during the last legislature where all parties agreed that advertising funds are clearly "an ordinary business transaction". It asserts that the proposed amendment to subsection (c)(3) "turns that agreement on its head and will drastically interfere with a free and functioning marketplace". It is also concerned that "even the suggestion of interference through regulation could have the effect of stifling economic growth".

The Texas Retailers Association and Walgreen Co. ("TRA/Walgreen") also support the comments of the Texas Craft Brewers Guild regarding the proposed amendment to subsection (c)(3). They assert that the proposed wording of "financial remuneration, incentive, inducement or compensation" is lawful under Alcoholic Beverage Code §102.75(b) "in the form of allowances, rebates, refunds, service, capacity, advertising funds, promotional funds, and sports marketing funds" as part of "ordinary business transactions". TRA/Walgreen further assert that the proposed rule would outlaw "advertising funds" allowing for financial remuneration, incentive, inducement or compensation. They state that "unlawful conduct is already unlawful conduct under the code and rules and therefore the proposed language does nothing to further the commission's ability to ensure compliance with the same".

In response to concerns about the proposed language amending subsection (c)(3), the commission adopts the amendment with a modification. The commission strikes the proposed language that the commenters believe conflicts with Alcoholic Beverage Code §102.75(b), but leaves the language necessary to assert the commission's jurisdiction over advertising that results from unauthorized activities. This modification is consistent with the *Authentic Beverage* decision.

To be consistent with the commission policy expressed in the amendments to §45.73 and §45.82 of this chapter that are being adopted simultaneously with the amendments to this section, the commission adopts subsection (c)(7) (with one modification) and does not adopt subsection (c)(8). The modification to subsection (c)(7) addresses the concern expressed by WFM Beverage Corp. regarding a possible inconsistency with §45.96 of this chapter, which is being adopted simultaneously and which deals with brewpubs.

The amendments are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

§45.110. Inducements.

(a) General. This section is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this section applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed $500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer;

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership; or

(7) except as otherwise allowed under §45.96 of this chapter, marking, branding or labeling a malt beverage with:

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

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 July 23, 2014.

TRD-201403353
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: August 12, 2014
Proposal publication date: April 11, 2014
For further information, please call: (512) 206-3489

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

The Texas Education Agency (TEA) adopts the repeal of §§105.1021-105.1023 and new §105.1021, concerning severance payments. The repeals and new section are adopted without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4080) and will not be republished. Sections 105.1021-105.1023 address provisions related to the administration of reporting and payment reduction for severance payments made to superintendents. The adopted rule actions repeal sections that include outdated provisions related to the agency's review of superintendent severance payments and attendant reductions in state aid and replace them with a single rule reflecting current statute and agency practice.

With Senate Bill (SB) 1, 74th Texas Legislature, 1995, the legislature enacted the Texas Education Code (TEC), §11.201(c), to require that the board of trustees of an independent school district report the terms of any severance payment made to a superintendent and to require the commissioner of education to reduce the school district's Foundation School Program (FSP) state aid by the amount of the severance payment. With SB 1446, 77th Texas Legislature, 2001, the legislature amended the TEC, §11.201(c), to define the term "severance payment" and to require the commissioner to reduce the FSP state aid of a district that had made a severance payment by the amount that the payment exceeded one year's salary and benefits. The amended statute also permitted the commissioner to adopt rules to administer the TEC, §11.201(c).

In November 2001, the commissioner exercised rulemaking authority by adopting 19 TAC Chapter 105, Subchapter CC, §§105.1021-105.1023. Section 105.1021 provides definitions. Most of the provisions in §105.1022 address reductions in FSP funding related to severance payments based on agreements entered into before September 1, 2001. Section 105.1023 primarily addresses reductions in FSP funding related to severance payments based on agreements entered into on or after September 1, 2001. A provision in subsection (a) of §105.1022 allows a school district to elect to have the provisions in §105.1023 applied for a severance payment that was based on an agreement entered into before September 1, 2001. The rules have not been amended since they were adopted.

The adopted rule actions repeal the three existing sections and replace them with a single rule reflecting current statute and agency practice. The adopted repeal deletes an obsolete definition. It also deletes rule provisions specifying the procedures for FSP funding reductions related to severance payments that were based on agreements entered into before September 1, 2001. As statute limits the term of a superintendent's employment contract to five years, and as more than a decade has passed since September 1, 2001, those procedures are no longer used. The adopted new section provides definitions, severance-payment reporting requirements, procedures for identifying districts subject to reductions in FSP funding, procedures for reducing FSP funding, and consequences of failure to comply with the rule.

The adopted rule actions have reporting implications. The adopted new section requires a school district that makes a payment to a departing superintendent to file with the TEA a Superintendent Payment Disclosure Form, as is currently required by existing §105.1023. The adopted new section also requires a school district to provide the commissioner with any information or documentation that the commissioner requests to determine whether a payment was a severance payment and whether the district is subject to a reduction in its FSP funding as a result of the payment. Information that the commissioner may request is specified in adopted new §105.1023(b)(4). Any locally maintained paperwork requirements support the reporting requirements in adopted new §105.1023(b)(4).

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

The public comment period on the proposal began May 30, 2014, and ended June 30, 2014. No public comments were received.

19 TAC §§105.1021 - 105.1023

The repeals are adopted under the Texas Education Code (TEC), §11.201(c), which authorizes the commissioner of education to adopt rules as necessary to reduce an independent school district's Foundation School Program funds based on the severance payment amount reported by a board of trustees of an independent school district if that district makes a severance payment to a superintendent exceeding an amount equal to one year's salary and benefits under the superintendent's terminated contract.

The repeals implement the TEC, §11.201(c).

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 July 25, 2014.

TRD-201403383
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 14, 2014
Proposal publication date: May 30, 2014
For further information, please call: (512) 475-1497

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19 TAC §105.1021

The new section is adopted under the Texas Education Code (TEC), §11.201(c), which authorizes the commissioner of education to adopt rules as necessary for reducing an independent school district's Foundation School Program funds based on the severance payment amount reported by a board of trustees of an independent school district that makes a severance payment to a superintendent exceeding an amount equal to one year's salary and benefits under the superintendent's terminated contract.

The new section implements the TEC, §11.201(c).

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 July 25, 2014.

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Proposal publication date: May 30, 2014
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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.9

Introduction. The Texas Board of Nursing (Board) adopts amendments to §214.9, concerning Program of Study. The amendments are adopted without changes to the proposed text published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3971) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b) and are necessary to clarify two of the existing provisions of the section.

First, the adopted amendments clarify the provisions of §214.9(i)(2). The existing paragraph requires major changes in a program's curriculum to be approved by Board staff prior to implementation. The adopted amendments clarify that Board staff approval is also required before a program changes the delivery method of its curriculum to methods consistent with distance education/learning, such as online instruction. Changes in the delivery method of a program's curriculum, particularly those that lead to a substantial increase in enrollment, may affect the quality of educational instruction and the potential success of the program's students. As such, the Board believes it is important for such changes to be evaluated prior to implementation in order to ensure continuity in quality nursing education.

Second, the adopted amendments make clear that programs not having full approval status from the Board may not submit a new nursing education program proposal to the Board for approval until the program has been restored to full approval status. In order to ensure program consistency and student success, programs that have not achieved or maintained full approval status need to correct the deficiencies in their current programs before beginning a new program. Under the adopted provisions, a program may submit a new program proposal to the Board when, and if, the program successfully corrects its deficiencies and is returned to full approval status by the Board.

The Board considered the proposed amendments at its April 2014 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed amendments in the *Texas Register.* The proposed amendments were published in the May 23, 2014, issue of the *Texas Register.* The Board did not receive any comments on the proposal.

How the Sections Will Function.

Adopted §214.9(i)(2)(A) requires Board staff approval for major curriculum changes and provides that a change in a program's approved delivery method of its curriculum to methods consistent with distance education/learning constitutes a major curriculum change.

Adopted §214.9(l) prohibits vocational nursing education programs not having full approval status from submitting a proposal for a new nursing education program to the Board until the program's status has been restored to full approval status by the Board.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.157(b).

Section 301.157(b)(2) provides that the Board prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses.

Section 301.157(b)(3) provides that the Board prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(b)(4) provides that the Board approve schools of nursing and educational programs that meet the Board's requirements.

Section 301.157(b)(6) provides that the Board deny or withdraw approval from a school of nursing or educational program that (i) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (ii) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under (b)(5) under which it was approved or sought approval by the Board; or (iii) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 July 21, 2014.

TRD-201403331
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: August 10, 2014
Proposal publication date: May 23, 2014
For further information, please call: (512) 305-6822

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.9

Introduction. The Texas Board of Nursing (Board) adopts amendments to §215.9, concerning Program of Study. The amendments are adopted without changes to the proposed text published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3972) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b) and are necessary to clarify the existing provisions of the section and to address potential changes in nursing program curriculum as a result of Senate Bill (SB) 215, enacted by the 83rd Legislature, Regular Session, effective September 1, 2013, and SB 497, enacted by the 83rd Legislature, Regular Session, effective June 14, 2013.

Background

During the last legislative session, SB 215 and SB 497 were enacted by the Legislature. These bills prohibit an institution of higher education from requiring a student earning an associate degree to complete more than 60 semester credit hours, unless the institution determines that there is a compelling academic reason to require the completion of additional semester credit hours for the degree. The bills do not prohibit an institution from reducing the number of semester credit hours a student must complete to receive the degree. Further, these new requirements do not apply to an associate degree awarded by an institution to a student enrolled in the institution before the 2015 fall semester.

Some professional nursing education programs affected by the new legislation may choose to reduce the number of credit hours nursing students must complete in order to receive their degree. Although existing §215.9(i)(2) requires major changes in a program's curriculum to be approved by Board staff prior to implementation, the rule does not specifically address a reduction in the number of program hours. As such, and in anticipation of some nursing programs' responses to SB 215 and SB 497, the adopted amendments clarify that a reduction in the number of program hours constitutes a major curriculum change that requires Board staff approval prior to implementation. Further, the adopted amendments clarify that the addition or reduction of courses in the program of study also constitute a major curriculum change that requires Board staff approval prior to implementation. Changes in a program's approved courses and/or number of program hours may affect the quality of nursing education provided to nursing students. Further, these types of changes may affect the program's ability to graduate safe, competent nursing students. As a result, the Board has determined it is important to clarify that these types of changes must be reviewed and approved by Board staff before a program may implement them.

Additionally, the adopted amendments clarify that Board staff approval is also required before a program changes the delivery method of its curriculum to methods consistent with distance education/learning, such as online instruction. Changes in the delivery method of a program's curriculum, particularly those that lead to a substantial increase in enrollment, may affect the quality of educational instruction and the potential success of the program's students. As such, the Board believes it is important for such changes to be evaluated prior to implementation in order to ensure continuity in quality nursing education.

Finally, the adopted amendments make clear that programs not having full approval status from the Board may not request approval for the addition of transition course(s) or tracks/alternative programs of study, including MEEP, that provide educational mobility or submit a new nursing education program proposal to the Board for approval until the program has been restored to full approval status. In order to ensure program consistency and student success, programs that have not achieved or maintained full approval status need to correct the deficiencies in their current programs before seeking to expand a program or begin a new program. Under the adopted amendments, a program may request approval for the addition of transition course(s) or tracks/alternative programs of study, including MEEP, that provide educational mobility or submit a new program proposal to the Board when, and if, the program successfully corrects its deficiencies and is returned to full approval status by the Board.

The Board considered the proposed amendments at its April 2014 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed amendments in the *Texas Register.* The proposed amendments were published in the May 23, 3014, issue of the *Texas Register.* The Board received one written comment on the proposal. However, the

Board declines to make the commenter's suggested changes for the reasons set out in this adoption order.

How the Sections Will Function.

Adopted §215.9(i)(2)(A) requires Board staff approval for major curriculum changes and provides that a change in a program's approved delivery method of its curriculum to methods consistent with distance education/learning constitutes a major curriculum change.

Adopted §215.9(i)(2)(C) requires Board staff approval for major curriculum changes and provides that revisions in program hours constitutes a major curriculum change.

Adopted §215.9(i)(2)(D) requires Board staff approval for major curriculum changes and provides that the addition/reduction of course(s) in the program of study constitutes a major curriculum change.

Adopted §215.9(l) provides that professional nursing education programs not having full approval status are not eligible to request Board Staff approval for the addition of transition course(s) or tracks/alternative programs of study, including MEEP, that provide educational mobility or to submit for Board approval a proposal for a new nursing education program until the program's status has been restored to full approval status by the Board.

Summary of Comments and Agency Response.

Comment: A commenter representing the University of Texas at Austin's School of Nursing believes that the proposed rule change presents an unnecessary burden on nursing programs throughout the state of Texas. The commenter states that proposed §215.9(i)(2)(C) and (D) would establish any revision in program hours and the addition/reduction of any course(s) in the program of study as major changes that require Board staff approval before the changes could be implemented. The commenter states that this change would increase the difficulty that nursing programs have to make revisions and updates to the curriculum that already undergo a cumbersome approval process. To ameliorate some of the burden, the commenter recommends that the proposal be amended to provide for Board staff approval for those revisions affecting more than three program hours and that add/reduce the number of hours in the program of study by more than three. The commenter believes that this change would strike a healthier balance between the Board's interest in protecting the integrity of professional nursing education programs and the important interest that nursing schools have in efficiency when making needed changes to the nursing curricula.

Response: The Board declines to make the suggested change. The Board appreciates the commenter's position and is cognizant that some programs undergo a rigorous, in-house approval process for curriculum changes. However, the Board is also aware that not all programs have an established in-house review process, and the adopted changes are necessary to ensure that all programs remain in compliance with the Board's requirements for program content subsequent to curriculum changes. Over the last few years, the Board has seen problems arise, such as decreased pass rates on the national nursing licensing exam, when programs have modified their curriculum without prior consultation with Board staff or approval. The Board is tasked with protecting the interests of the public, including nursing students. When nursing education programs make changes to their approved curriculum, the Board must ensure that the changes will not negatively impact students' ability to receive quality nursing education or the program's ability to graduate safe and competent practitioners. The adopted amendments are designed to detect potential problems with program curriculum changes early in the process, so programs can make the necessary changes before implementing changes in curriculum that may be detrimental to the program or their students. Further, the adopted changes to §215.9 are necessary for consistency with the existing requirements of §214.9 of this title (relating to Program of Study), which relate to vocational nursing education programs. Vocational nursing education programs have been required to seek Board staff approval for revisions in program hours and the addition and/or reduction of courses in their programs of study since at least 2005, without notable difficulty or impasse. The Board believes that consistency among the treatment of nursing education programs in this state is important, particularly when there is not a justifiable reason to treat vocational and professional nursing education programs differently. Further, the adopted amendments do not affect the redistribution of course content or credit hours; these types of changes are considered minor curriculum changes and would not be subject to the adopted amendments.

Additionally, the adopted amendments are not intended to be obstructive, nor does the Board expect that the adopted changes will have such effect. Many program directors currently discuss potential curriculum changes with Board staff prior to making such changes to ensure they will remain in compliance with the Board's requirements. Board staff is available to discuss these types of concerns and typically complete a straightforward review of a program's requested curriculum changes within fourteen business days, without need for revision to the program's requested changes. Further, many nursing education programs are eligible to file an abbreviated proposal with Board staff for review of curriculum changes. The eligibility requirements and procedures for filing an abbreviated proposal for the review of curriculum changes are currently set out in Education Guideline 3.7.1.a. Further, programs that hold national nursing accreditation are already required to submit curriculum changes to the program's accreditation organization for review and approval. The Board believes it may be appropriate to amend its education guidelines to permit accredited programs to file the same report with Board staff that they file with their accrediting organization(s) for purposes of reviewing the program's requested proposed curriculum changes. This should reduce duplicative efforts for these programs, while still allowing Board staff to review proposed changes to program curriculum to ensure continued compliance with Board requirements.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.157(b).

Section 301.157(b)(2) provides that the Board prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses.

Section 301.157(b)(3) provides that the Board prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(b)(4) provides that the Board approve schools of nursing and educational programs that meet the Board's requirements.

Section 301.157(b)(6) provides that the Board deny or withdraw approval from a school of nursing or educational program that

(i) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (ii) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under (b)(5) under which it was approved or sought approval by the Board; or (iii) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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.

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 July 21, 2014.

TRD-201403333
Jena Abel
Assistant General Counsel
Texas Board of Nursing
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Proposal publication date: May 23, 2014
For further information, please call: (512) 305-6822

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §329.1, regarding General Licensure Requirements and Procedures, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4374). The amendment allows new licensees to work on the basis of website verification of licensure.

The amendment adds language that provides for a more expeditious procedure for new licensee verification.

No comments were received regarding the proposal.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

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 July 28, 2014.

TRD-201403388
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: August 17, 2014
Proposal publication date: June 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 adopts an amendment to §341.3, regarding Qualifying Continuing Competence Activities, with changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4375). The amendment revises the method of obtaining credit for service as a Clinical Instructor and the method of qualifying manuscript and grant reviews for credit.

The amendment revises language that provides additional means for licensees to demonstrate competency.

No comments were received regarding the proposal.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

§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 subsection

(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) If selected for audit, the licensee must submit a copy of the letter or certificate from the publisher confirming completion of manuscript review.

(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) If selected for audit, the licensee must submit a letter or certificate confirming grant review from the grant provider.

(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 - 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 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) 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 American Physical Therapy Association (APTA) (or an APTA component), or 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) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §341.6

The Texas Board of Physical Therapy Examiners adopts amendments to §341.6, regarding License Restoration, with changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4380). The amendment expands the requirements that licensees must meet before restoring or reinstating a Texas license that has been expired one year or more.

The amendment adds options for license restoration that will encourage more PTs and PTAs whose licenses have expired to return to the workforce if they are in Texas.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

§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;

(D) verification of Licensure from all states in which the applicant has held a license; and

(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 within the previous 24 months;

(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 within the previous 24 months.

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 343. CONTESTED CASE PROCEDURE

22 TAC §343.1

The Texas Board of Physical Therapy Examiners adopts amendments to §343.1, regarding Definitions, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4381). The amendment streamlines the process for filing a complaint against a licensee.

The amendment provides for a more expeditious procedure for filing a complaint against a licensee of the board.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER C. VISION AND HEARING SCREENING

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §37.21 and §37.22, new §§37.23 - 37.28, and the repeal of §§37.23 - 37.39, concerning vision and hearing screening services. The amendment to §37.22, new §§37.23, and 37.25 - 37.28 are adopted with changes to the proposed text as published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1638). The amendment to §37.21, new §37.24, and the repeal of §§37.23 - 37.39 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The department administers the state Vision and Hearing Screening Program, which is designed to identify individuals from birth through 20 years of age with special senses and communication disorders and who may need remedial vision, hearing, speech, and/or language services. Vision and hearing screenings are required for individuals who attend a "facility" (i.e., public or private preschools and schools, licensed child care centers and licensed child care homes). The facilities ensure that enrolled individuals comply with the screening requirements of this subchapter. Department rules cover appropriate standards for the screenings at issue. The program trains and certifies individuals to conduct vision and hearing screenings. The program also trains instructors who themselves then conduct screening training sessions all over the state and issue certificates for individuals to conduct screenings. An essential element of screening training is teaching the screener to make referrals for professional examinations based on screening results.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.21 - 37.39 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to effectively administer the program. Needed revisions to the rules are detailed herein.

The amendments were necessary to: (1) update, clarify, and restructure sections in order to make them current, provide for consistent terminology, and improve their readability and user-friendliness; (2) allow the appropriate use of new technology for vision screening; (3) repeal language related to Radiation Control to better reflect Texas statutes; and (4) incorporate almost all of the most-recent version of national screening standards. As part of the improvement and reorganization related to the four-year review of these rules, the department placed the content of the repealed sections in a more logical organization in the amended and new sections.

A small number of changes, both substantive and clerical, have been made from the proposed version of the rules, and those changes are identified accordingly in the Section-by-Section Summary and Comments Section, as follows.

SECTION-BY-SECTION SUMMARY

The amendments to §37.21 give the complete name of the referenced statute. The cross-reference to Health and Safety Code, Chapter 401, concerning radioactive materials and other sources of radiation, was deleted because there is no reasonable use of an audiometer that could cause harm and thus these rules are not covered by Texas radiation law.

The amendments to §37.22 represent an update of the subchapter's definitions section, and introduce new terminology used in other rule sections amended in this rulemaking action. Renumbering is consistent with the changes made to the section following the comment period, as detailed below. The terms in existing paragraphs (1), (10), (18), (20), and (21) were deleted because they are no longer necessary given other changes in this rulemaking action. A new paragraph at (1) introduces the term American Academy of Pediatrics (AAP). The department decided to add this definition since the proposal version of these rules because the organization's name is now used in the definition found at paragraph (2), based on a change made to that definition since it was originally proposed. A new term and definition at paragraph (2) define American Association for Pediatric Ophthalmology and Strabismus (AAPOS), an organization that issues recommendations which act as national standards, which states may reference in their state regulations. A revision was made since this definition was originally proposed--a reference to AAP was inserted because AAPOS issues the standards in conjunction with AAP. Amendments to renumbered paragraph (5) clarify what the term "audiometric calibration equipment" encompasses. Amendments to paragraph (7) spell out the word "decibel," when initially used, and introduce its abbreviation, "dB." Other amendments to paragraph (7) correct the capitalization of the term "Hertz" and provide the term's abbreviation. An amendment at renumbered paragraph (8) provides additional language at the end of the definition to emphasize that calibration must be

done in accordance with applicable legal requirements. Amendments to renumbered paragraph (9) update the name of the agency and provide the term "department" for subsequent use. Other amendments to this subsection provide consistent language regarding individuals who conduct screenings and individuals who provide screening training. The definition was clarified since the proposal version in response to a comment received during the official 30-day comment period (see discussion in "Comments"). Amendments to renumbered paragraph (10) give the abbreviation of the term "decibel" as it is previously used in this rulemaking action. The amendments to paragraph (10) also improve clarity and readability. The definition of the term "extended recheck" at renumbered paragraph (12) is revised to improve its clarity and provide more information regarding the option that is available to the individual conducting a hearing screening if a child fails two sweep-check screens. An amendment to renumbered paragraph (13) is a statutory cross-reference for the definitions of the terms "schools" and "preschools," in order to avoid the impression that the regulatory definitions are different from the statutory definitions. Other amendments to the paragraph introduce the acronym for the referenced state agency name. The amendments to renumbered paragraph (14) provide the acronym "Hz" for the term "Hertz" since it has previously been provided when the term was first mentioned; and provide changes to improve readability. Amendments to renumbered paragraph (15) clarify the scope of practice of a licensed professional as it pertains to vision and hearing screening, consistent with Health and Safety Code, Chapter 36. A new term, "pass/fail," is introduced in renumbered paragraph (16). The definition for the new term describes the allowable method for documenting results when conducting vision screening through photoscreening. Renumbered paragraph (17) introduces the term "photoscreening" to these rules. The amendment defines this optional vision screening method, which is allowed in certain circumstances under these rule amendments. The introduction of this new optional method is allowable because under Health and Safety Code, §36.004, the department may determine appropriate screening equipment when it writes rules to implement the program. Language was added since the proposal version of these rules in order to clarify the definition and emphasize that photoscreening does not assess factors (such as those provided as examples in the new rule language) that affect visual acuity. To do this the department listed specific factors that affect visual acuity that photoscreening does not assess. An amendment to renumbered paragraph (18) revises language to more closely reflect the applicable legal authority at Health and Safety Code, §36.003(4), as it relates to screening. The amendments to renumbered paragraph (19) provide the term "department" when referring to the agency and delete mention of the legacy name of the agency. A new term, "pure-tone audiometer," is introduced in renumbered paragraph (20) since that term is used in the amendments to the subchapter. Existing paragraphs (20) and (21) are the new (21) and (22), respectively, to accommodate a term added to this section since the proposed version. An amendment to renumbered paragraph (22) better reflects the underlying statutory authority at Health and Safety Code, §36.003(8). Amendments to renumbered paragraph (24) clarify the use of the term "sweep-check" and use the abbreviations for the words Hertz and decibel, which are previously provided. A new term, "telebinocular instrument," is introduced in renumbered paragraph (25) since the term is used in other sections of the amended rules. The department made a revision to the definition since the proposal version of these rules to make it clear that telebinocular instruments are to be used for screening, as opposed to diagnostic, purposes. Paragraphs (25), (26), and (27) in the proposed rules were renumbered to new paragraphs (26), (27), and (28) to accommodate the addition of a term following the comment period.

Existing §37.23 was repealed and replaced by language in three separate §§37.23 - 37.25, in order to provide needed reorganization to this subchapter to clearly differentiate between vision screening, hearing screening and the requirements that facilities must follow.

New §37.23 covers the procedures for vision screening. The title for the new section is Vision Screening." The new language explains that vision screening conducted by a person who is not a licensed professional must be conducted following the national standards set by AAPOS (with a weblink given to those standards), with limited exceptions. The language specifies the applicability of AAPOS standards in conducting vision screening, including allowable methods of vision screening and referral criteria. The language also specifies three exceptions to the AAPOS standard requirements. One of the exceptions is for referrals of children less than five years of age when the screening indicates a difference of two lines in passing acuities. The department has decided on this exception as it is in line with AAP recommendations, and the department believes it will provide more comprehensive vision screening. A second exception pertains to referrals made for children five years of age or older when screening results indicate visual acuity less than 20/30 in either eye, rather than the AAPOS recommendation of 20/32. Strict adherence to AAPOS recommendations regarding visual acuity charts would create an undue financial burden for facilities across the state because most Texas facilities presently use charts with the 20/30 format, not 20/32, as recommended by AAPOS. A department subject matter expert in ophthalmology was consulted and advised that the difference between the two chart formats is not significant from a screening perspective, and therefore the economic hardship associated with requiring the AAPOS formatted charts would not be justified. A third exception, added by the department since the proposal version of these rules, is regarding the acceptable use of photoscreening in individuals (referenced in §37.21) with disabilities who do not respond well to traditional screening methods. The department added this exception to allow for early detection of vision disorders among those referenced individuals whose limitations or disabilities prevent them from responding to traditional forms of vision screening. A referral to a professional examination is recommended if the child fails the photoscreening.

Other language in new §37.23 clarifies that persons who are not licensed professionals and who conduct vision screening must be trained and certified as described in this subchapter. Vision screening is expected to be part of the professional practice of licensed professionals, therefore licensed professionals (as defined in this subchapter) do not have to be trained and certified as described elsewhere in this subchapter. The language adds that referrals for professional examination following vision screening shall not be to a specific individual but rather to a licensed professional, in order to avoid any possible conflict of interest when a screener makes a referral. Additional language in this new §37.23 provides that the requirements of this section do not apply to an individual who is actively under the medical care of an appropriate licensed professional for one or more of the vision problems for which the screening is done. This language is based on the presumption that licensed professionals will administer appropriate medical care, as required by their licensure, to such patients.

New §37.24 is titled "Hearing Screening." The new language better aligns department rules related to hearing screening with the underlying statutory authority regarding hearing screening methods, referral criteria, and standards and procedures. The language clarifies that hearing screening conducted under this subchapter is to be performed by certified screeners under this subchapter, with the same type of exception related to licensed professionals that is described previously in the vision screening section of this preamble. New language at subsection (d) makes clear that each ear is to be screened one at a time. New language at subsection (e) provides clarification that it is recommended that a screener conduct a re-screen when test results indicate failure to respond to any of the three frequencies in either ear. New language at subsection (f) clarifies that a screener is to either conduct an extended recheck or initiate a referral for a professional examination when test results indicate failure to respond to a sweep-check. New language at subsection (g) clarifies that a screener is to recommend that a child be referred for a professional examination when the test results indicate failure to respond to any of the three frequencies. New language at subsection (h) clarifies the procedure a screener must follow when conducting an extended recheck as part of hearing screening. This ensures that specific steps are taken when conducting extended rechecks. The new language in subsection (i) adds that referrals for professional examination following hearing screening shall not be to a specific individual but rather to a licensed professional in order to avoid any possible conflict of interest when a screener makes a referral. New language at subsection (j) provides that the requirements of this section do not apply to an individual who is actively under the medical care of an appropriate licensed professional for one or more of the hearing problems for which the screening is done. This language is based on the presumption that licensed professionals will administer appropriate medical care, as required by their licensure, to such patients. Throughout the section, amendments were made to correct grammar and improve readability and user-friendliness.

New §37.25 is titled "Facility Requirements; Department Activities." The new language is better aligned with the underlying statutory authority, and is better organized and thus improves clarity, readability and user-friendliness. New language at subsection (a) clarifies that it is the responsibility of each facility to ensure that each individual admitted to the facility complies with the screening requirements, with the specific reference to the facility chief administrator added to reflect Health and Safety Code, §36.005(c). Clarifying language was added since the proposal version in response to a comment received during the official 30-day comment period (see discussion in "Comments"). Schedules and other requirements for specific groups of children are listed in subsection (a)(1) - (6). These were derived by department subject matter experts, in compliance with the requirements of Health and Safety Code, Chapter 36. Language at new paragraph (1) specifies when a child four years of age or older enrolled in a facility for the first time must be screened. The language also prevents placing a burden on parents at the closing of a facility each summer and specifies time requirements for screenings at the beginning of the following school year (e.g. semester or quarter). Language at new paragraph (2) ensures that children in pre-kindergarten and kindergarten are screened during each of those years, in a timely manner. Language at new paragraph (3) provides, for the listed grades, the schedule for when vision and hearing screening must be conducted. Language at new paragraph (4) is better aligned with the underlying statutory authority at Health and Safety Code, §36.005(a); clearly states the timeframes facilities must follow for accepting screening documentation, consistent with Health and Safety Code, §36.004(d); and is worded to clearly capture all the children from pre-kindergarten on up. Language at new subsection (a)(5) clearly states that children who are not 4 years of age by September 1 of each year are not required to be screened until the following September. The language at new paragraph (6) provides facilities the option of switching to an even-year screening schedule, with written department pre-approval. The facility must send a written request for a schedule change to the department. The new language makes clear that any department approval will include conditions so that children do not miss necessary screening during the transition. New language at subsection (b) is better matched to the underlying statutory authority at Health and Safety Code, §36.005(b). The language was further clarified in response to a comment received during the official 30-day comment period (see discussion in "Comments"). Modifications clarify that the parent, managing conservator, or legal guardian has two options when electing to not have their child screened by the individual secured by the facility to conduct screenings at the facility. The parent may secure a screening from another screener or attain an examination by a licensed professional. Either is sufficient to meet the requirements. Other new language at subsection (b) gives facilities a certain amount of flexibility regarding the issue of provisional enrollment (consistent with Health and Safety Code, §36.005(a)). The language at subsection (c) provides clarification to regarding who is responsible for a minor, in order to better align with Health and Safety Code, §36.005(b). New language at subsection (d) clarifies that volunteer assistants in screenings must have completed high school. This ensures that peers of high school students being screened will not participate in the screenings.

New §37.26 is titled "Recordkeeping and Reporting." The new section provides clearer organization pertaining to the documentation, recordkeeping, and reporting requirements and is better aligned with the underlying statutory authority. New subsection (a) states the requirements specific to individuals conducting screenings. New language at paragraph (1) clarifies the documentation requirements of individuals conducting screenings at facilities, and those individuals other than professionals who conduct screenings outside of a facility, and indicates the specific information that must be recorded in each child's screening record. Certified screeners may conduct screenings at a facility or outside of a facility. The documentation of such screenings, in either circumstance, must be submitted to the facility as stated in subsection (a)(1). The requirements are designed to help ensure that screenings are conducted correctly and are documented in an accurate manner. New language at paragraph (2) establishes recordkeeping and reporting requirements for the new technology of photoscreening, which in this rulemaking is being introduced into department vision screening rules for the first time. Under this language, an individual who conducts photoscreening at a facility must first provide specified documentation to the facility in order to ensure the proper qualification of the screener to use that method. New language at paragraph (3) of the subsection specifies recordkeeping and reporting requirements when a telebinocular instrument is used for vision screening, with the language organized in a similar manner to the provision at paragraph (2) regarding photoscreening. A cross-reference to subsection (b)(3) of this section was deleted in response to a comment received during the official 30-day comment period. (See discussion in "Comments"). New language at paragraph (4) of the subsection provides the timeline by when individuals conducting screenings must submit the screening records, with the documentation described in new paragraph (1), to the

facility. The documentation is to be provided at the time of the screening. New language at paragraph (5) provides a cross-reference to §37.27 requirements regarding certifications and refresher courses.

New language at §37.26(b) provides the recordkeeping and reporting requirements for facilities. Language at paragraph (1) of the subsection requires a facility to maintain the specified vision and hearing screening records for a minimum of two years, which is consistent with requirements found at Health and Safety Code, §36.006(a). New language at paragraph (2) relates to facility recordkeeping for documents associated with claiming exemptions to screening under Health and Safety Code, §36.005(b). A time limit for facility recordkeeping was added in response to a comment received during the official 30-day comment period (see discussion in "Comments"). New paragraph (3) relates to facility recordkeeping for documents associated with individuals using a photoscreener for vision screening. A time limit for a facility to maintain the documents was added in response to a comment received during the official 30-day comment period (see discussion in "Comments"). New paragraph (4) relates to the transferring of records between facilities, consistent with Health and Safety Code, §36.006(c). Language at paragraph (5) is revised to better reflect the requirements of inspecting records in Health and Safety Code, §36.006(b). New language at paragraph (6) of the subsection relates to the annual report that a facility must submit to the department. The rules provide a web link to the department's instructions on submitting the report, and subparagraphs (A) and (B) provide the specific categories on which a facility is required to report. Additional language at subparagraph (B) specifies that the vision screening category "total number screened" includes the number screened with telebinocular screening. Subsection (c) has additional recordkeeping requirements for audiometers or audiometric screening equipment. New language at subsection (d) provides the department address for submissions under this section.

Existing language at §37.27, "Inspection of Facility Records," was repealed as part of the reorganization described above. The new language, for §37.27 under the title "Standards and Requirements for Screening Certification and Instructor Training," consolidates and clarifies rule language pertaining to the training and certification of screeners by the department and by department-trained and certified instructors. This new language covers the related matter of training and certification of these instructors, as well as covering issues surrounding the refresher courses that screeners and instructors must take. Special training requirements for individuals wishing to use certain screening instruments are also covered in the new section. The section reiterates that vision and/or hearing screeners must be properly certified unless they are a licensed professional (as the term is defined in this subchapter). The section also clarifies that there are two options for obtaining screening certification: one being a certificate issued directly by the department following successful completion of a training course given by department staff; and the other being a certificate issued by an instructor trained and authorized by the department to issue such screening certificates. The new language also clarifies that there is no cost to taking a course in either option. Language at proposed subsection (a)(1) gives details about screening courses, and requires that a person be a high school graduate in order to be eligible to take the course. The department believes this eligibility requirement is appropriate because a certain level of education, coupled with the maturity of someone the age of a high school graduate, is important for comprehending the material a screener must learn and for conducting the screenings. Language at subsection (a)(2) gives details about instructor issuance of screening certificates, as well as covering instructor training. The subsection also requires the individual be a high school graduate to be eligible to take the instructor training course, based on the same reasoning as given for the same requirement for screeners as in subsection (a)(1). Language at §37.27(b) provides the requirements applicable to screening certificates issued under this subsection. Language at paragraph (1) requires screeners to follow the requirements of this subchapter, and provides that failure to do so may lead to the modification, suspension and/or revocation of the screening certificate. Language at paragraph (2) provides the additional training requirements for an individual wishing to use a photoscreener for vision screening, including required photoscreener-specific refresher courses every five years. Additionally, the language requires that individuals who conduct vision screening with a photoscreener must also be certified under subsection (a)(1) or (2) of this section. Subsection (b)(2) also requires that documentation of photoscreening training, containing certain specified information, be submitted to the instructor at the beginning of the courses described in subsection (a)(1) and (2) of the section. Language at subsection (b)(3) provides that screeners who use a telebinocular instrument must do so in accordance with manufacturer guidelines and that they must have a full understanding of the pass/fail referral criteria for this type of vision screening. The remaining paragraph language tracks similar language in paragraph (2) regarding the requirement for having a current screening certificate. Language at paragraph (4) specifies that a screening certificate is good for five years (unless an adverse action is taken against it by the department), and that renewals are handled as described at paragraph (5) of this section. Language at paragraph (5) provides the requirements for renewal of screening certificates and for refresher training courses, including associated deadlines and the consequences of not renewing the certification within the required time period. The amendment at paragraph (6) provides clarification about when the department may modify, suspend, or revoke a screening certificate, and requires the department to send a notice of the action to the individual holding the certification. The language at paragraphs (7) and (8) provide information regarding the due process rights of an individual subject to an action under proposed paragraph (6), including a cross-reference to existing department hearing rules found at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

Language at §37.27(c) provides all the details regarding the process by which an instructor, trained and certified as an instructor by the department, may conduct screener trainings around the State of Texas and issue screening certificates at the conclusion of the training sessions. The language states that instructors may not charge any type of fee for these screening courses, because the department does not want to penalize individuals who live farther away from Austin and thus cannot avail themselves of the free screening courses given by department staff. Language at paragraph (1) lists the qualifications an individual must meet prior to taking an instructor course. To be eligible, the person must: have a current, valid department screening certificate, and have actual experience performing screenings pursuant to that certificate; have experience conducting trainings to groups of adults; and must be an audiologist, speech pathologist, optometrist, ophthalmologist, or registered nurse, with the applicable Texas license that is current and in good standing under Texas law. This third requirement was made because these professionals will have already had a type

of training for their profession that (in conjunction with the training given by the department) is needed to effectively train others in vision and/or hearing screening. Since the proposal of these rules, the department added "ophthalmologist" to the list of professions because they, too, have the education, training and experience needed to train others in vision screening. Language at paragraph (2) details the time period that instructor certification is valid, as well as the process and associated deadlines for renewals and required refresher courses. This language also states that failure to meet the renewal deadlines requires the individual to attend the basic instructor course in order to obtain a new instructor certification. These deadlines are designed to prevent unqualified instructors from giving screening courses and issuing certificates. Language in paragraphs (3) and (4) of the subsection require instructors to use training materials obtained from the department, and to get prior approval from the department (by the listed deadline) before each training course begins and to respond to any questions that the department might have. Language at paragraph (5) of the subsection allows instructors who are in good standing with the department under this section to conduct the screening refresher courses described in subsection (b)(5) of this section. The department corrected the cross-reference since these rules were proposed in the *Texas Register.* Language at subsection (c)(6) of the section requires the instructor to submit certain documentation to the department (by the listed deadline) when the instructor issues certificates of screening following the training courses. Language at paragraph (7) provides clarification about when the department may modify, suspend, or revoke an instructor certification, and requires the department to send a notice of the action to the individual holding that certification. The language at paragraphs (8) and (9) provides information regarding the due process rights of an individual subject to an action under proposed paragraph (7), including a cross-reference to existing department hearing rules found at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

Existing language at §37.28 was repealed as the information regarding the transfer of an individual's screening records is now covered in §37.26(b)(4). New §37.28 is titled "Hearing Screening Equipment Standards and Requirements." Sections 37.32 - 37.39 were repealed as the content is now contained in new §37.28, which provides logical organization of hearing equipment standards and requirements, in order to improve clarity, readability, and user-friendliness. Subsection (a) of the section covers the applicability of the section in terms of individuals, entities (including calibration companies and facilities) and hearing screening equipment/devices. The inclusion of "facilities" in the examples parenthetical was made in response to a comment received during the 30-day official comment period (see discussion in "Comments"). Language at subsection (b) clarifies the department's registration requirements for those individuals and facilities using any of the equipment listed in subsection (a), and provides a department registration weblink. A deletion of the example parenthetical was made since these rules were proposed in order to eliminate redundancy, since calibration companies were previously listed in subsection (a) as an example of an "entity" (see discussion in "Public Comment"). Language at subsection (c) of the section provides the technical standards which individuals/entities listed in subsection (a) must follow as to the screening equipment/devices listed in that same subsection. Specifically, ANSI standards must be met, or else manufacturer's specifications if no ANSI standards apply to the specific equipment or device in question. The purpose of these standards is to ensure that the equipment/devices used for hearing screening are appropriate and are maintained in their proper working condition so that consistent, reliable hearing screening results are produced from their use. Language at subsection (d) of the section cross-references the training requirements found in proposed §37.27. A deletion of the word "also" was made in response to a comment received during the 30-day official comment period (see discussion in "Comments"). Language at subsection (e) of the section provides the registration requirements for individuals and entities who perform calibration services on equipment referenced in subsection (a), and provides a department registration weblink. Language at subsection (f) specifies that only calibration firms shall perform periodic electronic calibrations and exhaustive electronic calibrations on the equipment/devices listed in subsection (a), and that those firms shall notify the owner of the audiometer that the audiometer has been calibrated. Specific instructions on the form of the notifications are also given, along with a requirement that the equipment owner maintain the notifications and make them readily available to the department or its designated representative upon request. Language in subsection (g) provides certain recordkeeping requirements for those individuals/entities covered by the section under subsection (a). These requirements in subsections (f) and (g) are also cross-referenced at §37.26, which relates to recordkeeping and reporting under the subchapter. Language at subsection (h) provides exceptions to the registration requirements of the section.

Language currently found at §37.34(c)(1) - (2) was repealed because the department is not aware of any federal law that preempts the requirements of Health and Safety Code, Chapter 36.

COMMENTS

The proposed rules were published in the March 7, 2014, issue of the *Texas Register.*

The department received comments from individuals, associations, and groups (e.g. school nurses, vision and hearing screeners, the Texas Ophthalmological Association, and the Lions Club members) during the 30-day official public comment period. All commenters except one were in support for the rules. That commenter was generally supportive of the rules but did suggest certain specific changes. In response to the individual's comments, the department has revised portions of the rule language but has declined to make other changes sought, all as detailed as follows.

COMMENT: The commenter was concerned about a lack of clarity in the definition of the term "certification" in renumbered §37.22(9).

RESPONSE: The department agrees, and has revised the language to clarify the definition and improve its readability and user-friendliness concerning training and certification.

COMMENT: The commenter appears to be recommending that §37.26(a)(5) be deleted as redundant.

RESPONSE: The department disagrees, and maintains that the cross-reference is appropriate because §37.27 does in fact contain recordkeeping and reporting requirements (e.g., see §37.27(c)(6)). To the extent the commenter is making a point about ensuring that facilities verify that a screener is properly certified, the department agrees and has added clarifying language at §37.25(a) to emphasize that responsibility.

COMMENT: The commenter suggested that clarification was needed on the options of a parent, managing conservator or legal guardian when opting to not have their child screened by

an individual secured by a facility to conduct screenings in their facility, found at §37.25(b).

RESPONSE: The department agrees that clarification is needed and has revised the language to clarify that the parent, managing conservator, or legal guardian has two options when electing to not have their child screened by the individual secured by the facility to conduct screenings at the facility. The parent may secure a screening from another screener, or may opt for an examination by a licensed professional (as defined in these rules). Either is sufficient to meet the requirements.

COMMENT: The commenter recommended that the department adopt the commenter's re-organizational structure of §37.26.

RESPONSE: The department disagrees and declines to do so, and maintains that the re-organization of the section in this rulemaking as proposed is more in line with the overall re-organization of the subchapter, is more clear, readable, and user-friendly. No change was made as a result of this comment.

COMMENT: The commenter suggested that certain cross-reference language in §37.26(a)(3) is superfluous.

RESPONSE: The department agrees with the commenter and has removed the phrase "in addition to the documents which must be submitted under subsection (b)(3) of this section" from the rule language.

COMMENT: The commenter suggested that a recordkeeping time limit be added to §37.26(b)(2) and (b)(3) similar to the time limit that is in §37.26(b)(1) in the proposed rules.

RESPONSE: The department agrees and has added a time limit "for at least two years" to §37.26(b)(2) and (b)(3) for consistency.

COMMENT: The commenter had concerns about the rules prohibiting instructors to charge any type of fee for screening courses in §37.27(a) and (c). The commenter stated that it is not fair that non-department instructors should be asked to volunteer their time to provide classes.

RESPONSE: The department disagrees and declines to make this change. As stated in the proposal preamble for this rulemaking, the department does not want to penalize individuals who live farther away from Austin and thus cannot avail themselves of the free screening courses given by department staff. This would create a disparate financial (and public health) impact on the citizens of Texas based solely on the arbitrary matter of geography. There is also no express statutory authority to allow for such fees to be charged. The department commits to monitoring the situation to ensure that free courses are reasonably available around the state, and will be looking to fill gaps if it perceives a problem in providing sufficient training to underserved areas. No change was made as a result of this comment.

COMMENT: The commenter recommended a re-organization of §37.27(b), as part of the commenter's recommended organization of §36.26 (detailed immediately above) regarding the recordkeeping and recording requirements that individuals using photoscreening must follow.

RESPONSE: The department disagrees and declines to re-organize the sections as the commenter suggests and maintains that the re-organization of the section in this rulemaking is more in line with the overall re-organization of the subchapter, is more clear, readable, and user-friendly. No change was made as a result of this comment.

COMMENT: The commenter suggested that language at §37.28(a) should include "facilities" in the example parenthetical as a possible entity that would have audiometers.

RESPONSE: The department agrees and has included the word "facilities" in §37.28(a). Included in the revisions to address this comment is the deletion of the example parenthetical "(e.g., calibration company)" from §37.28(b).

COMMENT: The commenter suggested that the word "also" should be deleted in §37.28(d) to improve the readability of the sentence.

RESPONSE: The department agrees that the word "also" at §37.28(d) should be deleted, and has deleted that word to improve the readability of the sentence.

DEPARTMENT CHANGES

The department added the definition of "American Academy of Pediatrics (AAP)" in §37.22(1) because the American Association for Pediatric Ophthalmology and Strabismus in conjunction with the AAP issues recommended vision screening standards.

Language was added in order to clarify the definition of "photoscreening" in §37.22(17) and emphasize that photoscreening does not assess factors (such as those provided as examples in the new rule language) that affect visual acuity. To do this the department listed specific factors that affect visual acuity that photoscreening does not assess.

The department made a revision to the definition of "telebinocular instrument" in §37.22(25) to make it clear that telebinocular instruments are to be used for screening, as opposed to diagnostic purposes.

The department added a third exception in §37.23(a) (see paragraph (3)) regarding the acceptable use of photoscreening in individuals (referenced in §37.21) with disabilities who do not respond well to traditional screening methods. The department added this exception to allow for early detection of vision disorders among those referenced individuals whose limitations or disabilities prevent them from responding to traditional forms of vision screening. A referral to a professional examination is recommended if the child fails the photoscreening.

The term "ophthalmologist" was added to the list of professions in §37.27(c)(1)(C) because ophthalmologists have the education, training and experience needed to train others in vision screening.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§37.21 - 37.28

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, Chapter 36; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§37.22. Definitions.

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

(1) American Academy of Pediatrics (AAP)--The AAP is a nationally recognized professional organization which issues recommended standards pertaining to the health and well-being of children.

(2) American Association for Pediatric Ophthalmology and Strabismus (AAPOS)--AAPOS is a nationally-recognized professional body which, in conjunction with the AAP, issues recommended vision screening standards. The goals of AAPOS are to advance the quality of children's eye care, support the training of pediatric ophthalmologists, support research activities in pediatric ophthalmology, and advance the care of adults with strabismus.

(3) American National Standards Institute, Inc. (ANSI)--The national coordinator of standards development and the United States clearinghouse for information on national and international standards.

(4) Audiometer--An electrical device for testing hearing, and for measuring bone and air conduction of sound.

(5) Audiometric calibration equipment--Electro-acoustical equipment used to calibrate audiometers and audiometric testing devices. The term includes frequency counters, voltmeters, and distortion measuring equipment used to calibrate audiometers and audiometric testing devices.

(6) Audiometric testing device--An electro-acoustical generator that provides acoustic energy of a calibrated output.

(7) Biological calibration check--The process of testing a person having a known, stable audiometric curve that does not exceed 25 decibels (dB) hearing level at any frequency between 250 and 6000 Hertz (Hz), and comparing the test results with the subject's known baseline audiogram.

(8) Calibration--The process of comparing an instrument or device with a standard to determine its accuracy and to make the necessary repairs or adjustments to assure that the operating characteristics are within the allowable limits established by a national standard, all in accordance with applicable legal requirements.

(9) Certification--The process by which the Department of State Health Services (department) trains individuals to conduct vision and/or hearing screening or provides training to instructors. The applicable certification is awarded following the successful completion of any of the course scenarios in this paragraph.

(10) dB--The decibel is a unit for expressing the relative intensity of sounds on a scale from zero for the average least perceptible sound to approximately 130 for the average pain level.

(11) Exhaustive calibration--A calibration that tests all settings for both earphones.

(12) Extended recheck--A screen used after the child has failed two sweep-check screens. The screener may perform an extended recheck or initiate a referral for a professional examination, as defined in this section, after the two failed sweep-check screens.

(13) Facility--Includes public or private preschools and schools, as defined as follows:

(A) schools, as the term is defined at Texas Health and Safety Code, §36.003(7);

(B) preschools, as the term is defined at Texas Health and Safety Code, §36.003(3);

(C) child care centers licensed by the Department of Family and Protective Services (DFPS); and

(D) child care homes licensed by DFPS.

(14) Hz--Hertz is a unit of frequency equal to one cycle per second.

(15) Licensed professional--An individual whose legally-defined scope of practice under the license includes knowledge and experience in conducting professional examinations and screenings for vision and/or hearing abnormalities in children, all consistent with this subchapter and Texas Health and Safety Code, Chapter 36. The terms "professional examination" and "screening" are as defined in this section.

(16) Pass/Fail--Allowable documentation of results of vision screening when photoscreening is used for vision screening, in accordance with this subchapter. The documentation of the screening results is in lieu of visual acuity results using "20/20" format.

(17) Photoscreening--A form of pediatric vision screening that uses a special-purpose camera to determine how well a child can see. It is an alternative under this subchapter to visual acuity-based screening with an eye chart for certain children, as specified herein. Other related terms are: autorefractor, objective screening and instrument-based screening. Photoscreening cannot determine exactly how well a child's visual acuity is developing. Important factors that affect visual acuity such as accommodative ability (focusing ability), binocular vision development, and other eye health issues are not assessed via photoscreening.

(18) Professional examination (also referred to as examination)--A diagnostic evaluation performed by an appropriately licensed professional or by a department-certified individual whose expertise addresses the diagnostic needs of the individual identified as having a possible special senses or communication disorder. A professional examination is one that is done according to the requirements of this subchapter and of the Texas Health and Safety Code, Chapter 36.

(19) Program--The department's Vision and Hearing Screening Program.

(20) Pure-tone audiometer--A pure-tone audiometer electronically generates pure-tones which are used as signals to test a person's hearing.

(21) Reporting year--A 12-month period beginning June 1 of each year and ending May 31 of the following year.

(22) Screening--A test or battery of tests for rapidly determining the need for a professional examination.

(23) Screening equipment--An instrument or device used to perform a measurement or measurements for the assessment of sensory abilities.

(24) Sweep-check--A quick hearing screening test using a pure-tone audiometer to determine whether a person can hear the following frequencies: 1000 Hz, 2000 Hz, and 4000 Hz at less than or equal to 25 dB.

(25) Telebinocular instrument--A stereoscopic instrument for screening various eye defects and measuring visual acuity.

(26) Testing equipment--An instrument or device used under this subchapter to perform a measurement or measurements to substantiate or verify the presence or absence of sensory impairment(s).

(27) Tests--Procedures under this subchapter to measure special senses and communication functions.

(28) Visual acuity--The relative ability of the visual organ to resolve detail that is measured and recorded using an internationally recognized, two-figured indicator, such as 20/20.

§37.23. Vision Screening.

(a) Screening is required, for individuals who attend a facility, to detect vision disorders. Vision screening conducted under this subchapter by a person who is not a licensed professional, as the term is defined in this subchapter, must be conducted following the national standards set by AAPOS currently found at http://www.aapos.org/terms/conditions/131, as revised, as they apply to age, verbal ability, ability to cooperate with screening, allowable methods of screening in different situations, and referral criteria, with the following exceptions.

(1) For children less than five years of age, refer for a professional examination when there is a difference of two lines between passing acuities in either eye.

(2) For children five years of age and older, refer for a professional examination when screening results indicate visual acuity of less than 20/30 in either eye (rather than 20/32 as listed in the AAPOS standards).

(3) In addition to AAPOS' recommendation regarding photoscreening for children 42 months to five years of age, photoscreening may be used for any individual (referenced in §37.21 of this title (relating to Purpose) with disabilities who does not respond well to other allowable screening methods. A referral to a professional examination is recommended if the individual fails the photoscreening.

(b) A person who is not a "licensed professional," as that term is defined in this subchapter, who conducts vision screening must be trained and certified as described in §37.27 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(c) When a screener makes a referral based on the screening results under subsection (a) of this section, that referral shall be to a licensed professional for a professional examination, and not to a specific individual.

(d) The requirements of this section do not apply when the individual is already actively under medical care by an appropriate licensed professional for one or more of the vision problems for which screening is done under this section. In order to claim this exception, the individual under the scenarios described at Texas Family Code, §32.003 or, if the individual is a minor, the individual's parent, managing conservator or legal guardian, must submit documentation from the licensed professional to the facility. The documentation must be signed and dated by the licensed professional, and must affirmatively state that the individual is under active, ongoing medical care from the licensed professional for specific vision problems as referenced in this subsection.

§37.25. Facility Requirements; Department Activities.

(a) The chief administrator of each facility shall ensure that each individual admitted to the facility complies with the screening requirements of this subchapter (including ensuring that any screening done is performed by a properly certified screener), according to the following schedule.

(1) Children four years of age or older, who are enrolled in any facility for the first time, must be screened for possible vision and hearing problems within 120 calendar days of enrollment. If a child is enrolled within 60 days of the date a facility closes for the Summer, the child's vision and hearing must be tested within 120 days of the beginning of the following school year.

(2) Children enrolled in pre-kindergarten and kindergarten must be screened each year within 120 days of enrollment.

(3) Children enrolled in the first, third, fifth, and seventh grades must receive vision and hearing screening in each of those grade years (can be done at any time during each of those years).

(4) Except for children enrolled in pre-kindergarten, kindergarten or first grade, a facility shall exempt any child from screening as required by paragraphs (1) - (3) of this subsection if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, submits a record to the facility showing that a professional examination was properly conducted during the grade year in question or during the previous year. The record must be submitted to the facility during the grade year in which the screening would otherwise be required.

(5) Children enrolled in a facility who turn four years of age after September 1 of that year are exempt from screening until the following September.

(6) Upon written request pre-approved by the department, the screening of vision and hearing performed at a facility may occur on an even-year schedule (i.e., pre-kindergarten, kindergarten, and first, second, fourth, and sixth grades instead of pre-kindergarten, kindergarten, and first, third, fifth, and seventh grades). Any department approval will include conditions so that children do not miss necessary screening during the transition.

(b) A child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, may execute an affidavit stating that a person, other than the individual secured by the facility to conduct screenings at the facility, shall conduct the screening (or that a licensed professional shall conduct an examination) as soon as is feasible. The facility may admit the child on a provisional basis for up to 60 days, or may deny admission until the screening record(s) are provided to the facility.

(c) A facility shall not require a child to be screened if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, submits to the facility, on or before the date vision or hearing screening is scheduled, an affidavit in lieu of the screening record(s) stating that the vision or hearing screening conflicts with the tenets and practices of a church or religious denomination of which the affiant is an adherent or member.

(d) Only individuals who have completed high school may serve as volunteer assistants during vision and/or hearing screenings. It is the responsibility of the certified screener to determine how any volunteer assistant(s) will be used during the screening process, consistent with all state and federal confidentiality requirements.

§37.26. Recordkeeping and Reporting.

(a) Individuals conducting screenings under this subchapter must comply with the following recordkeeping and reporting requirements.

(1) Individuals conducting screenings at the facility (and those other than licensed professionals conducting screenings outside of the facility) shall document in each child's screening record the specific screening conducted, the date the screening was conducted, observations made during the screening, and the final results of the screening. The individual shall also ensure that the following are included in the documentation: the name of the child, age or birthdate of the child, and whether the child is wearing corrective lenses during the vision screening. The documentation required under this subsection must also be signed and dated by the person who conducted the screening.

(2) Individuals using photoscreening for vision screening must comply with the recordkeeping and reporting requirements detailed at §37.27(b)(2) of this title (relating to Standards and Requirements for Screening Certification and Instructor Training). Additionally, prior to conducting photoscreening at a facility, the individual must submit copies of these same documents to that facility in addition to the documents which must be submitted under subsection (b)(3) of this section.

(3) Individuals using a telebinocular instrument for vision screening must comply with the recordkeeping and reporting requirements detailed at §37.27(b)(3) of this title. Additionally, prior to conducting telebinocular screening at a facility, the individual must submit copies of these same documents to that facility.

(4) Individuals conducting screenings at a facility (and those other than licensed professionals conducting screening outside of the facility) shall submit the documentation referenced in paragraph (1) of this subsection to the facility at the time of that screening.

(5) Individuals must submit documentation to the department related to certifications and refresher courses, as specified in §37.27 of this title.

(b) Facilities must comply with the following recordkeeping and reporting requirements.

(1) Each facility shall maintain vision and hearing screening records under this section onsite for at least two years.

(2) A facility must maintain screening records regarding any individual claiming the exemptions found in §37.23(d) of this title (relating to Vision Screening) and/or §37.24(j) of this title (relating to Hearing Screening) for at least two years.

(3) A facility shall maintain the records it receives from screeners under subsection (a)(2) of this section, related to the use of photoscreening for vision screening at the facility for at least two years.

(4) An individual's screening records may be transferred among facilities without the consent of the individual under the scenarios described at Texas Family Code, §32.003 or, if the individual is a minor, the minor's parent, managing conservator, or legal guardian, pursuant to Texas Health and Safety Code, §36.006(c).

(5) The recordkeeping required in this section must be made available to the department in a timely manner upon request. The department may, directly or through its authorized representative, enter a facility and inspect records maintained relating to vision and hearing screening.

(6) On or before June 30 of each year, each facility shall submit to the department a complete and accurate annual report on the vision and hearing screening status of its aggregate population screened during the reporting year. Facilities shall report in the manner specified by the department (currently found at http://chrstx.dshs.state.tx.us). Facilities are required to report on the following categories.

(A) For hearing screening--The total number screened: the number who failed; the number referred for professional examination; the number transferred out of the facility prior to the facility receiving the professional examination results; professional examination results indicating none of the disorders present which are screened for under this section; professional examination results indicating a disorder(s) which is screened for under this section; and referral for a professional examination with no indication that a professional examination was ever done.

(B) For vision screening--The total number screened; the total number screened with correction (e.g. glasses or contacts); the total number screened with photoscreening; the number who failed; the number referred for professional examination; the number transferred out of the facility prior to the facility receiving the professional examination results; professional examination results indicating none of the disorders present which are screened for under this section; professional examination results indicating a disorder(s) which is screened for under this section; and referral for a professional examination with no indication that a professional examination was ever done. The "total number screened" includes the number screened with telebinocular screening.

(c) There are additional recordkeeping requirements in §37.28(f) and (g) of this title (relating to Hearing Screening Equipment Standards and Requirements) for individuals or entities who own and/or use audiometers and audiometric screening equipment.

(d) For all submissions to the department under this subchapter, use the following contact information (unless otherwise specified): Vision, Hearing and Spinal Screening Program, Department of State Health Services, Mail Code 1978, P.O. Box 149347, Austin, Texas 78714-9347.

§37.27. Standards and Requirements for Screening Certification and Instructor Training.

(a) Individuals who conduct vision and/or hearing screening must be certified under this section unless the screening is conducted by a licensed professional. There are two options for obtaining this certification: a certificate issued directly by the department; or a certificate issued by an instructor who has been trained and authorized by the department to issue certificates. There is no cost to taking the course in either scenario.

(1) The department offers certification courses, and issues certificates to those who successfully complete them. To be eligible to take the department's certification course, an individual must be a high school graduate and sign a written statement to that effect at the beginning of the course. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate by the department.

(2) The department trains instructors who themselves give certification courses, as described in this section. The eligibility requirement to attend such a course is the same as is described at paragraph (1) of this subsection. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate signed by the authorized instructor. It will have the same validity, and is subject to the same restrictions, as a certificate issued under paragraph (1) of this subsection.

(b) Screening certificates issued under this section are subject to the following requirements.

(1) Individuals who receive a certificate are authorized to conduct vision and/or hearing screening (as applicable to the course taken, and as listed on the certificate) in accordance with this subchapter. Certified screeners are required to comply with this subchapter, and failure to do so is grounds for the modification, suspension and/or revocation of the certification as provided in this section.

(2) Individuals using a photoscreener for vision screening must have successfully completed instrument-specific training (including passing all associated tests) in accordance with manufacturer guidelines and must have a full understanding of the pass/fail referral criteria in accordance with AAPOS standards. Individuals conducting photoscreening must also have a current screening certificate under subsection (a)(1) or (2) of this section. Documentation of the photoscreening training must be submitted to the instructor upon attendance at a certification class and include the date and location the training

was taken, and the name, affiliation and contact information of the instructor. The individual must successfully complete instrument-specific refresher training (including passing any associated tests) every five years. Such refresher training must be completed during the fifth year of certification from the date the preceding certificate was issued.

(3) Individuals using a telebinocular instrument for vision screening must be familiar with the instrument in accordance with manufacturer guidelines and must have a full understanding of the pass/fail referral criteria. Individuals conducting telebinocular screening must also have a current screening certificate under subsection (a)(1) or (2) of this section.

(4) Screening certification under this section allows the individual to screen children for vision and/or hearing problems (as applicable to the course taken, and as listed on the certificate) under this subchapter for a period of five years, with renewals processed as described in paragraph (5) of this subsection.

(5) Screening certification may be renewed by attending a department-approved refresher training course (either offered directly by the department or by an instructor authorized under this section). The refresher training course must be completed during the fifth year of certification from the date the preceding certificate was issued. Once a refresher training course is successfully completed, the five-year cycle begins again. If certification is not renewed within the required time period, the individual must attend the basic certification training course (i.e., a refresher course will not be sufficient).

(6) When the department receives information from any source that indicates a screener has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(7) The affected individual has 20 days after receiving the notice, referenced in this paragraph, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the address specified in §37.26(d) of this title (relating to Recordkeeping and Reporting). If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(8) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules, at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(c) Individuals who successfully complete a department instructor training course, including all associated testing, are authorized to conduct screening trainings and issue screening certificates to individuals who successfully complete the screening training (including all associated testing), subject to the requirements of this section. Instructors may not charge any kind of fees for their activities under this section.

(1) Individuals wishing to take the instructor course must first meet the following qualifications:

(A) have a current, valid department screening certification, and have experience performing screenings under that certificate;

(B) have experience conducting trainings to groups of adults; and

(C) be an audiologist, speech pathologist, optometrist, ophthalmologist or a registered nurse and must have the applicable Texas license, current and in good standing under Texas law.

(2) Department authorization for instructors to conduct trainings is valid for five years from the date certification was issued. The individual must successfully complete a department-approved instructor training refresher course (including passing any associated tests) and submit documentation of successful completion to the department within 30 days of completion of the course. Such refresher training must be completed during the fifth year of certification from the date the preceding certificate was issued. Failure to comply with these requirements, by the deadline given, means that the individual must then attend the basic instructor training course (i.e., a refresher course will not be sufficient).

(3) Once authorized by the department to conduct trainings, instructors must do so using training materials obtained from the department.

(4) All proposed screening training sessions must be approved by the department at least 15 working days prior to the training session. The instructor must provide all information sought by the department, by the deadlines given.

(5) Instructors in good standing under this section may teach screening refresher courses as described in subsection (b)(5) of this section. Such refresher courses are subject to the same requirements under this section as those pertaining to initial screening courses.

(6) When a department-authorized instructor issues a certificate of vision and/or hearing screening, the instructor has 14 days to submit the attendance sheets, evaluations and the tear-off portion of the department's certification, and the photoscreening certificate, if applicable, to the department. These original documents should be submitted to the program at the address found at §37.26(d) of this title. The instructor should maintain a copy.

(7) When the department receives information from any source that indicates a screening instructor has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(8) The affected individual has 20 days after receiving the notice, referenced in paragraph (7) of this subsection, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the address specified in §37.26(d) of this title. If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(9) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules at §§1.51 - 1.55 of this title.

§37.28. Hearing Screening Equipment Standards and Requirements.

(a) Except as otherwise specifically provided, the sections in this subchapter apply to all persons and entities (e.g., calibration companies, facilities) who receive, possess, acquire, transfer, own, or use audiometers, audiometric testing devices, and audiometric calibration equipment, and to all audiometers used for audiometric screening and hearing threshold tests, all audiometric testing devices, and all audiometric calibration equipment used in the State of Texas.

(b) Each individual and entity using any of the equipment referenced in subsection (a) of this section must be registered with the department, in the manner prescribed by the department (see information at http://www.dshs.state.tx.us/vhs/audio.shtm). Registration information must be updated in a timely manner to keep it current.

(c) Equipment referenced in subsection (a) of this section shall meet the appropriate current ANSI standards, or the manufacturer's specifications if no ANSI standards apply, and all other applicable federal and state standard(s) and/or regulation(s) for such equipment.

(d) Individuals must be trained by or undergo training approved by the department in the proper use of this equipment, as detailed in §37.27 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(e) Individuals and entities who perform calibration services on the equipment referenced in subsection (a) of this section shall register with the department, and must update that registration in a timely manner to keep it current, in a manner prescribed by the department (see information at http://www.dshs.state.tx.us/vhs/audio.shtm).

(f) Only calibration firms shall perform periodic electronic calibrations and exhaustive electronic calibrations. Calibration firms shall provide notification to the owner of the audiometer being calibrated that the audiometer has been calibrated. The notification may be in the form of a decal or sticker affixed to the audiometer, or in hard copy documentation that must be maintained by the owner and be made readily available to the department or its representative upon request.

(g) Upon reasonable notice, each individual or entity using audiometric screening equipment shall make available to the department, in a timely manner, records maintained pursuant to this subchapter. Calibration forms and records for all equipment referenced in subsection (a) of this section, including monthly biological calibration data, shall be maintained for inspection by the department for three years.

(h) Registration is not required for:

(1) equipment in storage, being shipped, or being offered for sale, if the audiometer, audiometric testing devices, and audiometric calibration equipment is not being used; and

(2) equipment limited to nonhuman use.

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 July 28, 2014.

TRD-201403392
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: August 17, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 776-6972

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25 TAC §§37.23 - 37.39

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 36; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The 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 July 28, 2014.

TRD-201403393
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: August 17, 2014
Proposal publication date: March 7, 2014
For further information, please call: (512) 776-6972

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (Commission) adopts the following amendments to Chapter 817, relating to Child Labor, *without* changes, as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4209):

Subchapter A. General Provisions, §817.2

Subchapter B. Limitations on the Employment of Children, §817.21 and §817.23

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of Texas Labor Code, Chapter 51, is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, and well-being. Texas Labor Code §51.023 provides that the Commission can adopt rules as necessary to promote the purpose of Chapter 51. The purpose of this rulemaking is to:

--define terms commonly used in this chapter or Texas Labor Code, Chapter 51; and

--add language to support future renumbering of federal regulations referenced in §817.21 and §817.23.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§817.2. Definitions

To properly understand the requirements of safely employing children, it is necessary to define some of the terms used in

Texas Labor Code, Chapter 51, and Chapter 817. Defining commonly used terms as they are currently used in the administration of child labor laws and rules:

--ensures that employers, parents, teachers, and the public understand the circumstances under which the law--and exemptions from the law--apply; and

--assists parents and employers in avoiding unintended violations of the child labor laws while still ensuring the safety, health, and well-being of children.

Section 817.2(2), the definition of "child" is removed.

New §817.2(2) defines "business or enterprise operated by a parent or custodian" as "a business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity and to ensure that parents understand the law and when exemptions from the law apply.

Section 817.2(3), the definition of "child actor" is removed.

New §817.2(3) defines "business or enterprise owned by a parent or custodian" as "a business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(4), the definition of "Texas Workforce Commission" is removed; the definition of "Commission" is set forth in §800.2(7) of this title.

New §817.2(4) defines "casual employment" as "employment that is irregular or intermittent and not on a scheduled basis." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who provide consent to have their own children employed in a permitted capacity and to ensure parents understand the law and when exemptions from the law apply.

Section 817.2(5), the definition of "executive director" is removed.

New §817.2(5) sets forth the definition of "child," previously located in §817.2(2).

New §817.2(6) sets forth the definition of "child actor," previously located in §817.2(3).

New §817.2(7) defines "child actor extra" as "a child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance." The definition clarifies the term to establish special authorization for child actors to be employed as extras without the need for child actor authorization, and removes concerns and barriers for the entertainment business when employing children as extras.

New §817.2(8) defines "direct supervision of the parent or custodian" as "a child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to provide guidance to parents who employ their own children in a permitted capacity and to ensure parents understand the law and when exemptions from the law apply.

The terms "employee," "employer," and "employment" are used throughout this chapter and in Texas Labor Code, Chapter 51. The new definitions clarify that these terms are to be interpreted in the same manner as in Texas Labor Code, Chapter 61 (the Texas Payday Law) and the Fair Labor Standards Act, thus providing consistent definitions for all employers.

New §817.2(9) defines "employee" as "an individual who is employed by an employer for compensation."

New §817.2(10) defines "employer" as "an entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee."

New §817.2(11) defines "employment" as "any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied."

New §817.2(12) sets forth the definition of "executive director," previously located in §817.2(5).

New §817.2(13) defines "private school," as set forth in Texas Education Code, Chapter 5, as "a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity." The definition clarifies that homeschooled children are subject to the same restrictions on hours of work contained in Texas Labor Code, Chapter 51, as those children attending public schools or traditional private schools.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

The Commission adopts the following amendments to Subchapter B:

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children

Section 817.21 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary to continue to adopt these federal regulations as state rules governing the employment of 14- and 15-year-old children in Texas.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children

Section 817.23 clarifies that this section shall continue in effect even if the federal regulations adopted by reference in this section are subsequently renumbered or reorganized. The amendment is necessary in order to continue to adopt those federal regulations as state rules governing the employment of 16- and 17-year-old children in Texas.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §817.2

The amendments are is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403346
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: August 11, 2014
Proposal publication date: May 30, 2014
For further information, please call: (512) 475-0829

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SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §817.21, §817.23

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Labor Code, Title 2.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2014.

TRD-201403347
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: August 11, 2014
Proposal publication date: May 30, 2014
For further information, please call: (512) 475-0829

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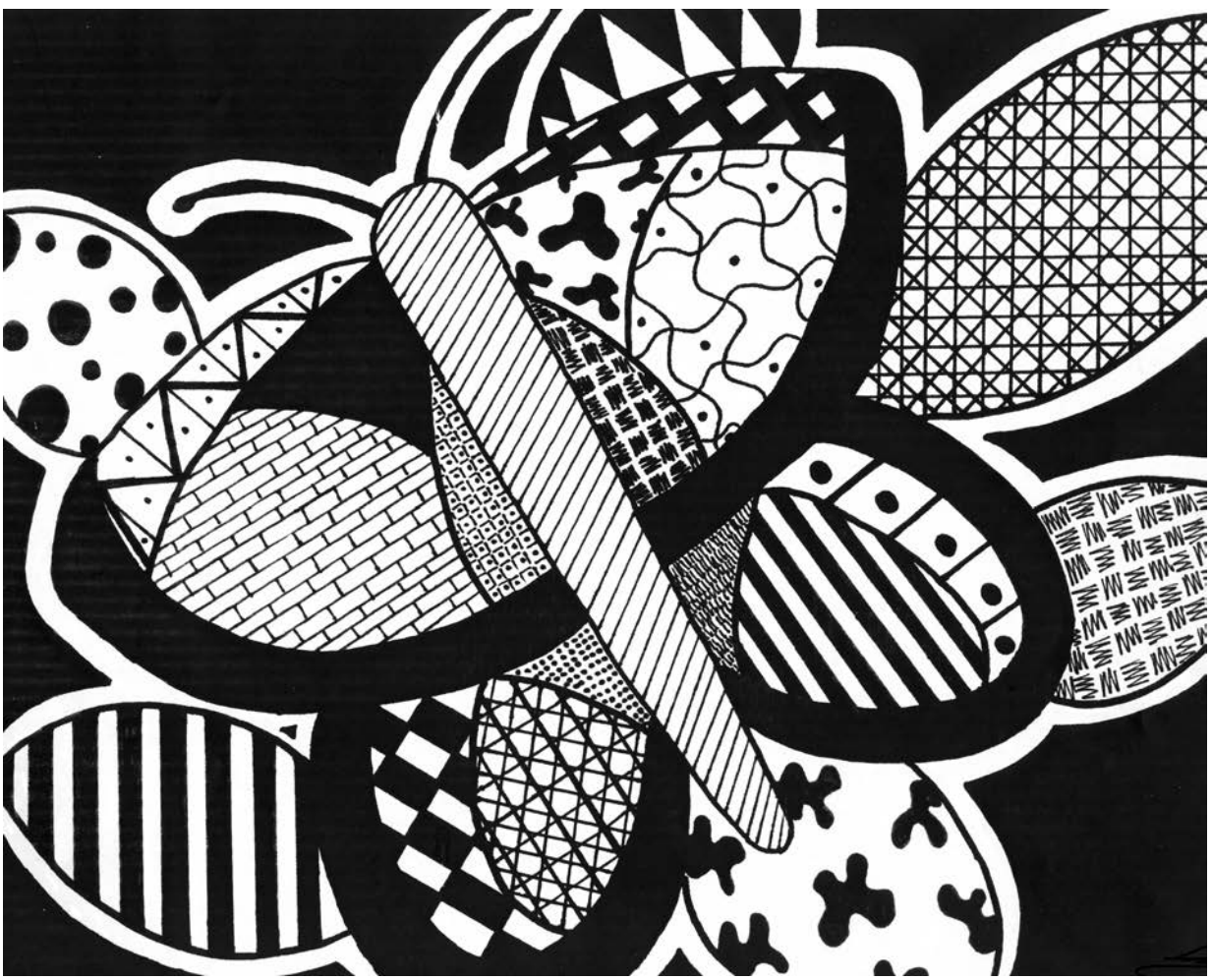


Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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 1: 31 TAC Chapter 358 - Preamble

$$L_{A_m} = \frac{(0.053 \times V_m) + (0.0025 \times V_i) + (0.0025 \times V_i)}{365 \times N_c}$$

Figure 2: 31 TAC Chapter 358 - Preamble

$L_{R_{t_{\geq 10,000}}} = \frac{3 \times UARL}{365 \times N_c}$, and

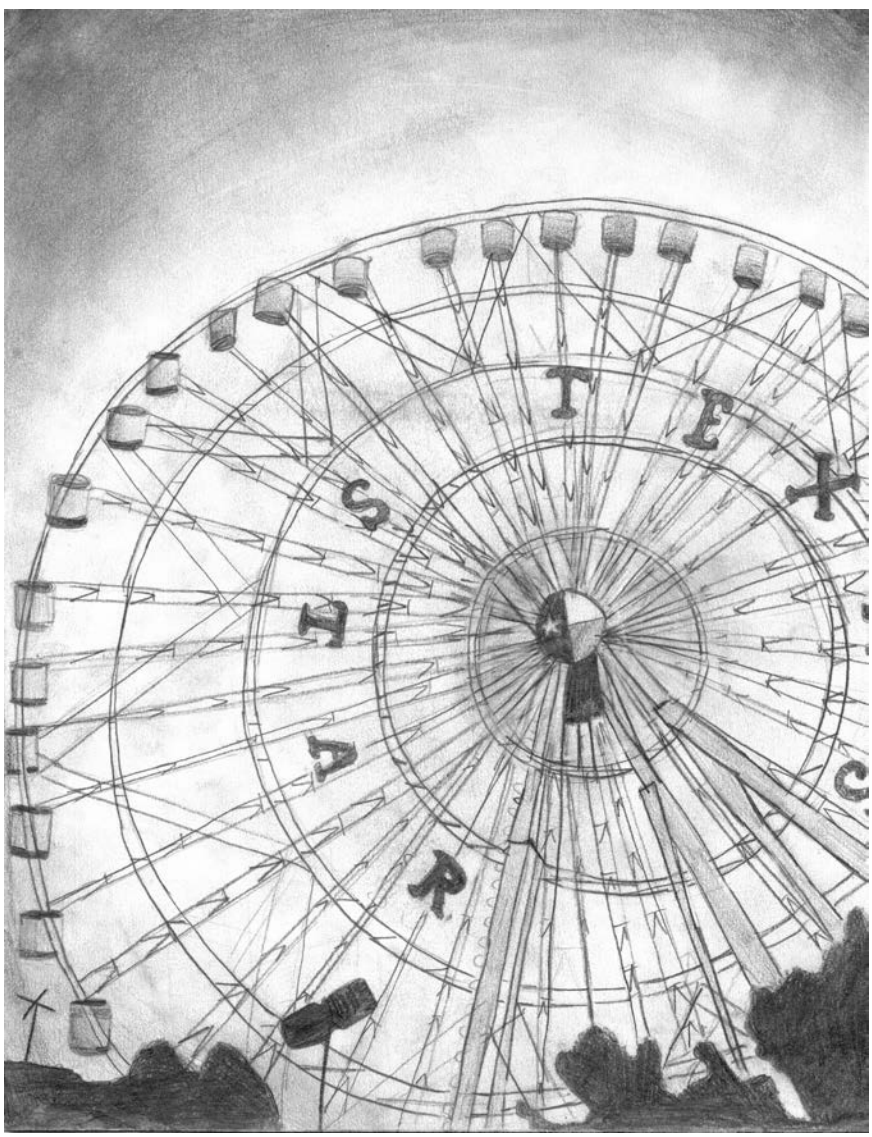
$$UARL = [(0.15 \times N_c) + (5.41 \times L_m)] \times P$$

Figure 3: 31 TAC Chapter 358 - Preamble

$L_R = (1 - WF) \times L_{R_n}$

where $WF = \frac{total\ wholesale\ water\ sales}{corrected\ input\ volume + water\ purchased}$, and

L_{R_n} = Real Loss Normalized (gallons/connection/day)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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.

Department of Aging and Disability Services

Open Solicitation

Pursuant to Title 2, Chapter 32 of the Human Resources Code and Texas Administrative Code (TAC), Title 40, Part 1, Chapter 19, §19.2322(h)(1), the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, beginning the date of this public notice, August 8, 2014, for an additional 90 Medicaid beds through the High Occupancy Waiver process for the counties or precincts identified below. In the identified county or precinct, Medicaid-contracted nursing facility occupancy rates have equaled or exceeded the threshold of 85 percent occupancy for at least nine months in the twelve-month period of May 2013 through April 2014.

An applicant for the additional Medicaid beds in the county or precinct identified in this public notice must submit a complete Medicaid Bed Waiver Application (Waiver Application) for Nursing Facilities (Form 3709) in accordance with 40 TAC §19.2322(h)(1)(E) by Overnight Express Mail or Hand Delivery to:

Texas Health and Human Services Commission

Procurement and Contracting Services (PCS)

4405 N. Lamar Blvd., Bldg. 1, MC: 2020

Austin, Texas 78756

Attn: Lizet Alaniz (sole point of contact)

Hours: 8:00 a.m. to 5:00 p.m.

An applicant may obtain the Waiver Application at: http://dadsview.dads.state.tx.us/forms/3709/.

Additional information regarding this open solicitation has been posted on the Electronic State Business Daily (ESBD) under the listing "Open Solicitation for Department of Aging and Disability Services High Occupancy Allocation for Nursing Facilities," located at: http://esbd.cpa.state.tx.us/sagency-bid.cfm?startrow=1&endrow=25&ag_num=539&order by=Agency.

HHSC must receive the application by 5:00 p.m. September 8, 2014, the last day of the open solicitation period. HHSC will not accept telephone and facsimile applications. HHSC will reject late applications. The applicant must address and deliver the application to HHSC by the specified date and time.

An Applicant must direct all communications relating to this open solicitation to the HHSC sole point of contact named above by email **(lizet.alaniz@hhsc.state.tx.us)** unless specifically instructed to an alternate contact by HHSC Procurement and Contracting Services. All communications between applicants and other HHSC or DADS staff members concerning this open solicitation are strictly prohibited. **Failure to comply with these requirements may result in application disqualification.**

An applicant must submit a complete Waiver Application and comply with the level of acceptable care requirements at 40 TAC §19.2322(e). At the end of the solicitation period, DADS will determine if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, DADS will use a lottery to determine the applicant who will receive the allocation of beds. If no application for the waiver process is received or if no applicant meets the requirements to receive the additional beds, DADS will conduct no further solicitation and will close the process without allocating Medicaid beds.

County	May 2013	June 2013	July 2013	Aug 2013	Sept 2013	Oct 2013	Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014	April 2014
Jackson	65.32%	86.63%	88.04%	88.19%	87.30%	87.78%	85.29%	85.78%	85.63%	87.19%	86.06%	85.46%
Maverick	85.64%	84.71%	86.94%	85.40%	90.27%	90.55%	87.41%	82.96%	82.83%	85.98%	87.51%	86.92%
Real	96.70%	96.31%	95.83%	92.83%	92.12%	92.64%	91.53%	93.06%	92.52%	95.21%	96.28%	97.14%

TRD-201403441
Lawrence T. Hornsby
General Counsel
Department of Aging and Disability Services
Filed: July 30, 2014

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Comptroller of Public Accounts

Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of award for 529 Plan Services for the Texas Prepaid Higher Education Tuition Board. The Request for Proposals (RFP 206j) was published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3680).

The contract was awarded to NorthStar Financial Services Group, LLC, 17605 Wright Street, Omaha, Nebraska 68130. The compensation for the contract is in the form of a Program Management Fee and a Distribution Fee. The term of the contract is July 23, 2014 through August 31, 2019, with option to renew for up to two (2) additional one (1) year periods, one (1) year at a time.

TRD-201403377
Jette Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 24, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/4/14 - 08/10/14 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 08/4/14 - 08/10/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201403401
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 29, 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 **September 8, 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. September 8, 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: American Petroleum Welding, Incorporated dba Profab Corporation; DOCKET NUMBER: 2014-0341-PWS-E; IDENTIFIER: RN105368120; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of four milligrams per liter for fluoride based on the running annual average; PENALTY: $142; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(2) COMPANY: Aqua Utilities Incorporated; DOCKET NUMBER: 2014-0511-PWS-E; IDENTIFIER: RN102682341; LOCATION: Manchaca, Hays County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.107(e) and §290.122(c)(2)(A), by failing to provide the results of the triennial synthetic organic chemical (SOC) contaminants (methods 504, 515.4, and 531.1) sampling to the executive director and failed to provide public notification regarding the failure to provide triennial SOC contaminants monitoring results for the January 1, 2010 to December 31, 2012 monitoring period; 30 TAC §290.106(c)(4) and (e) and §290.122(c)(2)(A), by failing to collect the triennial metal and mineral samples and provide the results to the executive director and failed to provide public notification regarding the failure to collect triennial metal and mineral samples for the January 1, 2010 to December 31, 2012 monitoring period; and 30 TAC §290.106(e) and §290.122(c)(2)(A), by failing to provide the results of the annual nitrate sampling to the executive director and failed to provide public notification regarding the failure to provide annual nitrate results for the 2012 monitoring period; PENALTY: $1,523; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2014-0411-AIR-E; IDENTIFIER: RN100216373; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: sulfur-based organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and (b) and §122.143(4), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit (FOP) Number O1636, Special Terms and Conditions (STC) Number 2.F., by failing to submit an initial notification for Incident Number 191540 no later than 24 hours after the discovery of the emissions event and failed to submit a final report of the emissions event no later than 14 days after the end of the event; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), FOP Number O1636, STC Number 15, and New Source Review Permit Numbers 865A and PSDTX1016M1, Special Conditions Number 2., by failing to prevent unauthorized emissions during an event that occurred on October 27, 2013 and lasted three hours (Incident Number 191540); PENALTY: $7,012; Supplemental Environmental Project offset amount of $2,805 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Bio Energy (Austin), LLC; DOCKET NUMBER: 2013-2018-AIR-E; IDENTIFIER: RN100632629; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: electricity generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O2621, General Terms and Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; 30 TAC §116.115(c), Standard Permit Registration Number 48823, Air Quality Standard Permit for Electric Generating Units (4)(A), and THSC, §382.085(b), by failing to display the certified nitrogen oxides emissions from the electric generating unit in pounds of pollutant per megawatt hour; 30 TAC §122.143(4), FOP Number O2621, Special Terms and Conditions Numbers 3.A.(iv)1 and 3, 3.B.(iii)1 and 2, and 3.C., and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations for stationary vents; 30 TAC §122.210(a) and THSC,

§382.085(b), by failing to obtain an administrative revision to FOP Number O2621 for a change of address; and 30 TAC §116.615(8), Standard Permit Registration Number 48823, and THSC, §382.085(b), by failing to maintain a copy of the Standard Permit at the Plant; PENALTY: $40,990; Supplemental Environmental Project offset amount of $16,396 applied to Railroad Commission of Texas; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Cameo Homes Incorporated (FC); DOCKET NUMBER: 2014-0992-WQ-E; IDENTIFIER: RN107356321; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: CLEVELAND REGIONAL MEDICAL CENTER, L.P.; DOCKET NUMBER: 2014-0508-IHW-E; IDENTIFIER: RN101764132; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: hospital; RULES VIOLATED: 30 TAC §335.10(a), by failing to manifest hazardous pharmaceutical waste utilizing a completed Uniform Hazardous Waste Manifest form; 30 TAC §335.2(b), by failing to prevent the disposal of hazardous pharmaceutical waste at an unauthorized facility; 30 TAC §335.9(a)(1)(B), (D) and (F), by failing to maintain records of all hazardous waste activities regarding the quantities generated, stored, processed, and disposed of on-site or off-site; 30 TAC §335.9(a)(2), by failing to submit a complete and correct Annual Waste Summary detailing the management of each hazardous waste generated or managed on-site during the reporting calendar year; 30 TAC §335.9(a)(1)(G), by failing to maintain records of the location of all hazardous waste accumulation areas, situated at or near any point of generation; 30 TAC §335.474, by failing to have a five-year pollution prevention plan; and 30 TAC §335.69(a)(4) and §335.112(a)(3) and 40 Code of Federal Regulations §265.53(b), by failing to provide a copy of the facility's contingency plan to any of the local authorities including the fire department, police department, or other emergency response groups; PENALTY: $8,533; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2014-0252-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions (SC) Number 2.B., and Federal Operating Permit (FOP) Number O1440, Special Terms and Conditions (STC) Number 20, by failing to operate the Hydrogen Sulfide Flare, Emissions Point Number 66FL6, with a constant pilot flame; 30 TAC §101.20(2) and §113.1090, 40 Code of Federal Regulations §63.6640(a), and THSC, §382.085(b), by failing to maintain the exhaust temperature of a stationary reciprocating combustion engine so that the catalyst inlet temperature is greater than or equal to 750 degrees Fahrenheit; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 8, and FOP Number O1440, STC Number 20, by failing to maintain the incinerator firebox exit temperature at or above 1,180 degrees Fahrenheit; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 1, and FOP Number O1440, STC Number 20, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and (H) and THSC, §382.085(b), by failing to submit a complete final record for Incident Number 163677; PENALTY: $76,017; Supplemental Environmental Project offset amount of $30,407 applied to Borger Independent School District; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Dennis Rabroker; DOCKET NUMBER: 2014-0976-WOC-E; IDENTIFIER: RN103500690; LOCATION: Belton, Bell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (public water supply); PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Duncanville Independent School District; DOCKET NUMBER: 2014-0703-PST-E; IDENTIFIER: RN101554848; LOCATION: Duncanville, Dallas County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Enervest Operating, L.L.C.; DOCKET NUMBER: 2014-0522-WR-E; IDENTIFIER: RN107137127; LOCATION: Aledo, Parker County; TYPE OF FACILITY: oil and gas operations; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $1,013; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: FOREST OAKS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0431-PWS-E; IDENTIFIER: RN101192631; LOCATION: Colorado County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 each quarter and failed to provide public notification regarding the failure to submit a DLQOR to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit 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 to the TCEQ by July 1st of each year; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the months of March 2012 and June 2012; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90450018 for Fiscal Years 2013 and 2014; PENALTY: $575; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Hebron Enterprises, Incorporated dba Mr Cut Rate; DOCKET NUMBER: 2014-0711-PST-E; IDENTIFIER: RN102359387; LOCATION: Jacksboro, Jack County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; EN-

FORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Henry M. Garza dba Cielo Azul Ranch; DOCKET NUMBER: 2012-0779-PWS-E; IDENTIFIER: RN101217792; LOCATION: Wimberley, Hays County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(i)(III), (A)(ii)(III), and (D)(i) and TCEQ AO 2010-0020-PWS-E, Ordering Provision Number 2.a., by failing to provide facility records to commission personnel at time of the investigation; 30 TAC §290.46(i) and TCEQ AO 2010-0020-PWS-E, Ordering Provision Number 2.d.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 §290.121(a) and (b) and TCEQ AO 2010-0020-PWS-E, Ordering Provision Number 2.b.i., by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(s)(2)(C)(i), by failing to calibrate the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.43(c)(3), by failing to provide ground storage tanks (GSTs) designed in strict accordance with American Water Works Association standards with and overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.143(c)(4), by failing to provide the Dara Lane GST with an operable and easily readable liquid level indicator; 30 TAC §290.45(b)(1)(B)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with a gasket or sealing compound; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's three GSTs annually; 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; and 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; PENALTY: $5,402; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(14) COMPANY: James Hardie Building Products Incorporated; DOCKET NUMBER: 2014-0451-AIR-E; IDENTIFIER: RN100763895; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: cement fiberboard manufacturing plant; RULES VIOLATED: 30 TAC §117.410(b)(1)(C) and Texas Health and Safety Code, §382.085(b), by failing to meet the nitrogen oxides emissions specification of 30 parts per million by volume at 3% oxygen, dry basis, at boiler numbers 1 - 5 (Emission Point Numbers BL110201, BL210202, BL310203, BL410204, and BL510205, respectively); PENALTY: $33,750; Supplemental Environmental Project offset amount of $13,500 applied to North Central Texas Council of Governments; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Kempenaar Real Estate, Ltd. dba Still Meadow Dairy; DOCKET NUMBER: 2014-0706-AGR-E; IDENTIFIER: RN101523629; LOCATION: Como, Hopkins County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.40(d), TWC, §26.121(a)(1), and TCEQ Permit Number TXG920117, Part III(A)(11)(b)(1), by failing to prevent the discharge of agricultural waste into or adjacent to water in the state; PENALTY: $11,475; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: LEANDER GROCERY, INCORPORATED dba Jiffy Mart 1; DOCKET NUMBER: 2014-0544-PST-E; IDENTIFIER: RN102713831; LOCATION: Leander, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(17) COMPANY: Lewis Petro Properties, Incorporated; DOCKET NUMBER: 2014-0569-AIR-E; IDENTIFIER: RN107036535; LOCATION: La Salle County; TYPE OF FACILITY: oil and gas handling and production site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation at the site; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: Lewis Petro Properties, Incorporated; DOCKET NUMBER: 2014-0264-AIR-E; IDENTIFIER: RN106484413; LOCATION: Webb County; TYPE OF FACILITY: oil and gas handling and production site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation at the site; 30 TAC §106.6(b), THSC, §382.085(b), and Permit By Rule (PBR) Registration Number 104922, by failing to comply with emission limits as represented in PBR Registration Number 104922; PENALTY: $3,905; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(19) COMPANY: Megatel Homes, Incorporated; DOCKET NUMBER: 2014-1021-WQ-E; IDENTIFIER: RN107231243; LOCATION: Prosper, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Mike Neutze dba Neu Mart 1; DOCKET NUMBER: 2014-0838-PST-E; IDENTIFIER: RN102922051; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: North Orange Water & Sewer, LLC; DOCKET NUMBER: 2012-1868-MWD-E; IDENTIFIER: RN102078896; LOCATION: Orange, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0011155001, Permit Conditions Number 4.a., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to obtain authorization for a major permit amendment prior to making modifications to the permitted facility; 30 TAC §305.125(1),

and TWC, §26.121(a), by failing to prevent the unauthorized discharge of sludge into the receiving stream. Samples taken approximately 800 feet downstream of the outfall indicated elevated levels of ammonia, orthophosphate, phosphorus, total kjeldahl nitrogen and total organic carbon. Sludge, dead blood worms, insects and approximately 200 dead fish were noted in the immediate area where the sludge entered a roadside ditch of the facility at the intersection of Lawn Oak Drive and Rosebud Drive; then east on Rosebud Drive for approximately 700 feet into an unnamed tributary of Cypress Creek; then south approximately 6,000 feet into Cypress Bayou; PENALTY: $9,188; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: PHILLIPS 66 COMPANY; DOCKET NUMBER: 2013-2001-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1), Texas Health and Safety Code (THSC), §382.085(b), and 40 Code of Federal Regulations (CFR) §60.698(b)(1), by failing to submit complete semiannual reports for 40 CFR Part 60, Subpart QQQ; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Permit Number 80799, Special Conditions (SC) Number 8C, and Federal Operating Permit (FOP) Number O1440, Special Terms and Conditions (STC) Number 20, by failing to maintain the required daily records for each vacuum truck in operation at the Plant; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 2C, and FOP Number O1440, STC Number 20, by failing to operate the flare with no visible emissions except periods not to exceed a total of five minutes during any two consecutive hours; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 10, and FOP Number O1440, STC Number 20, by failing to operate the Sulfur Recovery Unit Tail Gas Incinerators with no visible emissions except for uncombined steam; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 22, and FOP Number O1440, STC Number 20, by failing to maintain the concentration of carbon monoxide (CO) in the Fluid Catalytic Cracking Unit 40 stack at less than 500 parts per million by volume (ppmv) on an hourly average at zero percent oxygen when venting through the stack; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Numbers 85872 and PSDTX1158, SC Number 1A, and FOP Number O1440, STC Number 20, by failing to maintain the concentration of CO at less than 50 ppmv on a three hour block average for Skid Boiler, Emissions Point Number; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, SC Number 1, and FOP Number O1440, STC Number 20, by failing to prevent unauthorized emissions; PENALTY: $68,494; Supplemental Environmental Project offset amount of $27,398 applied to Borger Independent School District; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: QAWI AND QUDDUS, Incorporated dba Q & Q Mart; DOCKET NUMBER: 2014-0585-PST-E; IDENTIFIER: RN101700771; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(24) COMPANY: SAHELI FOOD Incorporated dba Melbo's Food Store; DOCKET NUMBER: 2014-0421-PST-E; IDENTIFIER: RN102719606; LOCATION: Livingston, Polk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(B) and (C), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days of the change or addition; 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 §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month. Also, failed to provide release detection for the pressurized piping associated with the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; 30 TAC §334.49(c)(2)(C) and §334.54(c)(1) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; and 30 TAC §334.45(d)(1)(E)(iv) and (vi), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system annually to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Also, failed to equip sumps or manways included in a new secondarily contained UST system with liquid sensing probes which will alert the UST system owner or operator if more than two inches of liquid collects in any sump or manway; PENALTY: $31,582; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: SUTTON HILL ESTATES PROPERTY OWNERS' ASSOCIATION, Incorporated; DOCKET NUMBER: 2014-0069-PWS-E; IDENTIFIER: RN101182061; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), 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 each quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the executive director by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to each bill paying customer of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(c)(2)(D) and (i)(1), by failing to collect the nine year 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; and 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect the annual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; PENALTY: $1,230; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Walcott Independent School District; DOCKET NUMBER: 2014-0602-PWS-E; IDENTIFIER: RN101270064; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: school district with a public water supply; RULES VIOLATED: 30 TAC

§290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; and 30 TAC §290.46(f)(2) and (f)(3)(A)(ii)(III), by failing to provide facility records to commission personnel at the time of an investigation; PENALTY: $100; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: William Roy Henning; DOCKET NUMBER: 2014-0973-WR-E; IDENTIFIER: RN107048472; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §11.081 and §11.121, by failing by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(28) COMPANY: WM Resource Recovery & Recycling Center, Incorporated; DOCKET NUMBER: 2014-0794-AIR-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: waste incineration plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit Number O3058, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance for at least each 12-month period following initial permit issuance; PENALTY: $5,325; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201403400
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 29, 2014

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Correction of Error

The Texas Commission on Environmental Quality adopted amendments to 30 TAC §§321.32 - 321.34, 321.36 - 321.40, 321.44, 321.46, and 321.47 in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5786). In the preamble of the notice, on page 5788, first column, third full paragraph, the title of §321.47 was published incorrectly as: "Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated A Concentrated Animal Feeding Operations (CAFOs)". The correct name of §321.47 reads as follows:

"Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated As Concentrated Animal Feeding Operations (CAFOs)"

TRD-201403406

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Enforcement Orders

An agreed order was entered regarding A.Z.H.E. CORPORATION dba Forest Conoco, Docket No. 2013-1230-PST-E on July 14, 2014 assessing $3,563 in administrative penalties with $712 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marie E. Brown dba Urbinas Drive Thru, Docket No. 2013-1439-PST-E on July 14, 2014 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ejaz-Hira-Rayan Investments, Inc. dba Del Valle Food Mart, Docket No. 2013-1831-PST-E on July 14, 2014 assessing $3,875 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shallowater, Docket No. 2013-1861-MWD-E on July 14, 2014 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority, Docket No. 2013-2107-MWD-E on July 14, 2014 assessing $4,125 in administrative penalties with $825 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Catholic Diocese of Austin, Docket No. 2013-2223-EAQ-E on July 14, 2014 assessing $1,062 in administrative penalties with $212 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandra West dba Home on the Range RV Park, Docket No. 2014-0135-PWS-E on July 14, 2014 assessing $1,269 in administrative penalties with $253 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seminole Pipeline Company LLC, Docket No. 2014-0150-AIR-E on July 14, 2014 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW PROSPECT BAPTIST CHURCH OF NEMO, TEXAS, Docket No. 2014-0218-PWS-E on July 14, 2014 assessing $1,337 in administrative penalties with $267 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-

4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAMMOET USA SOUTH, INC., Docket No. 2014-0236-PWS-E on July 14, 2014 assessing $2,278 in administrative penalties with $455 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PK-RE, LTD., Docket No. 2014-0277-PWS-E on July 14, 2014 assessing $175 in administrative penalties with $35 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAKER HUGHES OILFIELD OPERATIONS, INC., Docket No. 2014-0292-PWS-E on July 14, 2014 assessing $2,294 in administrative penalties with $458 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NNY BUSINESS LLC dba Country Pantry 11, Docket No. 2014-0295-PST-E on July 14, 2014 assessing $5,299 in administrative penalties with $1,059 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Hogg County Water Control and Improvement District No. 2, Docket No. 2014-0305-MWD-E on July 14, 2014 assessing $6,562 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tawakoni Waste, LLC, Docket No. 2014-0318-MWD-E on July 14, 2014 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District 88, Docket No. 2014-0339-PWS-E on July 14, 2014 assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anton, Docket No. 2014-0345-PWS-E on July 14, 2014 assessing $348 in administrative penalties with $69 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOSS LAKE WATER SUPPLY CORPORATION, Docket No. 2014-0354-PWS-E on July 14, 2014 assessing $490 in administrative penalties with $98 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BLAIR WATER SUPPLY CORPORATION, Docket No. 2014-0366-PWS-E on July 14, 2014 assessing $165 in administrative penalties with $33 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Earth Promise, Docket No. 2014-0441-PWS-E on July 14, 2014 assessing $660 in administrative penalties with $132 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ellisor Investments, LTD. dba Benchmark Completions, Docket No. 2014-0444-PWS-E on July 14, 2014 assessing $1,265 in administrative penalties with $252 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Robert J. Luzio, Docket No. 2014-0622-WOC-E on July 14, 2014 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Prospect Oilfield Services LP, Docket No. 2014-0650-WR-E on July 14, 2014 assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Loera Home Builders Company, Docket No. 2014-0651-WQ-E on July 14, 2014 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Richard Boyett, Docket No. 2014-0653-OSI-E on July 14, 2014 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Truitt Garland Construction, Inc., Docket No. 2014-0663-WQ-E on July 14, 2014 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tom Anderson, Docket No. 2014-0674-WOC-E on July 14, 2014 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201403437
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 30, 2014

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Proposed Permit Number 2384

APPLICATION. Wastewater Residuals Management LLC, 10217 Wallisville Road, Houston, Harris County, Texas 77013, a wastewater processing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Type V Grease and Grit Trap Wastes Processing Facility permit. The Austin Wastewater Processing Facility is located at 800 Linger Lane, Austin, Travis County, Texas 78721. The TCEQ received the application on June 18, 2014. The permit application is available for viewing and copying at the Austin Public Library - Cepeda Branch, 651 North Pleasant Valley Road, Austin, Travis County, Texas 78702 and may be viewed online at http://www.austinwwprocessing.webs.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.251111&lng=-97.680555&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court. TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Wastewater Residuals Management LLC at the address stated above or by calling Mr. Mark L. Urback, P.E., CobbFendley, Inc. at (713) 462-3242.

TRD-201403436

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 30, 2014

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Notice of Water Quality Applications

The following notices were issued on July 18, 2014 through July 25, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

OXY VINYLS LP which operates the La Porte VCM Site, a vinyl chloride manufacturing facility, has applied for a major amendment with renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002097000 to add cooling tower blowdown to the authorized discharges via Outfalls 002 and 003, and change the analytical method use for testing dioxin/furans in sludge. The current permit authorizes the discharge of treated wastewater consisting of process, domestic, and utility wastewaters and stormwater at a daily average flow not to exceed 1,570,000 gallons per day (GPD) via Outfall 001; stormwater, steam condensate, air conditioning condensate, and wash down water (and occasional discharges of wastewater diverted from Outfall 001) on an intermittent and flow-variable basis via Outfall 002; and stormwater, steam condensate, air conditioning condensate, and wash down water on an intermittent and flow variable basis via Outfall 003. The draft permit authorizes the discharge of treated wastewater consisting of process, domestic, and utility wastewaters and stormwater at a daily average flow not to exceed 1,570,000 GPD via Outfall 001; stormwater, steam condensate, air conditioning condensate, wash down water (and occasional discharges of wastewater diverted from Outfall 001), and cooling tower blowdown on an intermittent and flow-variable basis via Outfall 002; and stormwater, steam condensate, air conditioning condensate, wash down water, and cooling tower blowdown on an intermittent and flow-variable basis via Outfall 003. The facility is located at 2400 Miller Cut Off Road, approximately 3,000 feet east of the intersection of Miller Cut Off Road and State Highway 134 (Battleground Road) in the City of La Porte, Harris County, Texas 77571. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

HUNTSMAN PETROCHEMICAL LLC HUNTSMAN INTERNATIONAL FUELS LLC HUNTSMAN PROPYLENE OXIDE LLC ISP WATER MANAGEMENT SERVICES LLC AND TPC GROUP LLC which operates petrochemical, industrial gases, and synthetic rubber plants, has applied for a major amendment to TPDES Permit No. WQ0000511000 to remove Outfalls 201, 005, and 011 from the permit; change the sample types for parameters monitored annually at Outfall 301 from composite to grab; and remove effluent limitations and monitoring requirements for phenol and total chromium at Outfall 301. The current permit authorizes combined wastewaters from internal Outfalls 201 (storm water runoff which may contain hydrostatic test water, steam condensate and other utility wastewaters) and 301 (treated process wastewater, utility wastewater, domestic sewage and storm water runoff) via Outfall 001 on a flow variable basis; previously monitored effluents from Outfalls 201 and 301 and other waters exiting the constructed wetlands via Outfalls 003 and 004 on a flow variable basis; and the intermittent flow variable discharge of storm water runoff (which may contain hydrostatic test water, steam condensate and other utility wastewaters) via Outfalls 002, 005, 006, 007, 008, 009, 010, 011, and 012. The facility is located at the southwest corner of the intersection of State Highway Spur 136 and Farm to Market Road 366, immediately east of the City of Port Neches, Jefferson County, Texas 77651.

CINCO MUNICIPAL UTILITY DISTRICT NO 1 which proposes to operate Cinco MUD 1 Reverse Osmosis WTP, has applied for new TPDES Permit No. WQ0005115000 to authorize the discharge of reverse osmosis concentrate and raw well water (washwater and overpressure relief valve wastewater) at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001. The facility will be located at 21607 Westheimer Parkway, Katy, Fort Bend County, Texas 77450.

CITY OF SINTON has applied for a renewal of TPDES Permit No. WQ0010055001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 0.75 mile north of Sinton, Texas from the intersection of U.S. Highway 181 and State Highway 181 just east of U.S. Business Highway 77 North and along the southern edge of Chiltipin Creek, extending until the right of way of the Missouri Pacific Railroad in San Patricio County, Texas 78387.

CITY OF ELGIN has applied for a renewal of TPDES Permit No. WQ0010100001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 720 West Cleveland Street, Elgin in Bastrop County, Texas 78621.

CITY OF ROCKDALE has applied for a renewal of TPDES Permit No. WQ0010658001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility is located at 290 Beverly Drive, Rockdale, southwest of the intersection of Beverly Road and Southern Pacific Railroad in Milam County, Texas 76567.

CITY OF CRANE has applied for a renewal of TCEQ Permit No. WQ0010750001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day via surface irrigation of 115 acres of non-public access land and 60 acres of public exposure golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 1.2 miles northwest of the intersection of U.S. Highway 385 and State Highway 329 and Northwest of the City of Crane in Crane County, Texas 79731.

BRAZOS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011719001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 227 Educator Lane, Wallis, approximately 1.0 mile southeast of the City of Wallis and approximately 1,000 feet south of State Highway 36 in Austin County, Texas 77485.

CITY OF CARMINE has applied for a renewal of TCEQ Permit No. WQ0012272001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day via surface irrigation of 8.1 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 551 Carmine Lane, approximately 0.8 mile northwest of the intersection of U.S. Highway 290 and State Highway Spur 458, north of the City of Carmine in Washington and Fayette Counties, Texas 78932. The wastewater treatment facility and disposal site are located in the

drainage area of Somerville Lake in Segment No. 1212 of the Brazos River Basin.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TCEQ Permit No. WQ0013206001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 720,000 gallons per day via surface irrigation of 298.7 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 2100 Portofino Ridge Road, which is approximately 5.5 miles southeast of the intersection of State Highway 71 and Farm-to-Market Road 2244 and 0.5 mile south of Barton Creek in Travis County, Texas 78746.

STAFFORD MOBILE HOME PARK INC has applied for a renewal of TPDES Permit No. WQ0014064001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 3411 Fifth Street, Stafford, on Stafford Run Creek, approximately 3,800 feet northwest of the intersection of Farm-to-Market Road 1092 and 5th Street in Fort Bend County, Texas 77477.

EDWARDS CONSTRUCTION has applied for a major amendment to TCEQ Permit No. WQ0014132001, to authorize the year-round disposal of treated domestic wastewater effluent at a daily average flow not to exceed 10,000 gallons per day via surface irrigation of 7 acres of land. The existing permit authorizes the disposal of treated domestic wastewater effluent at a seasonal daily average flow not to exceed 10,000 gallons per day (March through October) and 2,000 gallons per day (November through February). This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 608 Garrett Road in Gregg County, Texas 75603. The wastewater treatment facility and disposal site are located in the drainage basin of Lake Cherokee in Segment No. 0510 of the Sabine River Basin.

REUNION RANCH WATER CONTROL & IMPROVEMENT DISTRICT has applied for a renewal of TCEQ Permit No. WQ0014480001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 11.5 acres. The wastewater treatment facility and disposal site are located approximately 4,000 feet southeast of the intersection of Farm-to-Market Road 1826 and Bear Creek Pass, approximately 4,300 feet south of the intersection of Farm-to-Market Road 1826 and proposed Barrett Boulevard, in Hays County, Texas 78737.

AQUA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014607001, 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 0.8 mile south of the intersection of Wolf Lane and Pearce Lane in Bastrop County, Texas 78617.

CITY OF PFLUGERVILLE has applied for a renewal of TPDES Permit No. WQ0014642001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility will be located approximately 2,500 feet east of the intersection of Farm-to-Market Road 973 and New Sweden Church Road in Travis County, Texas 78653.

XS RANCH FUND VI LP has applied for a renewal of TPDES Permit No. WQ0014946001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located approximately 2.3 miles northwest of the intersection of Sayers Road and Phelan Road in Bastrop County, Texas 78602.

TWO SEVENTY SEVEN LIMITED AND GUADALUPE-BLANCO RIVER AUTHORITY have applied for a major amendment to permit No. WQ0014959001 to authorize a change from a land application permit to a discharge permit at a volume not to exceed a daily average flow of 195,000 gallons of treated wastewater per day. The facility will be located approximately 5,900 feet south of the intersection of State Highway 46 and Blanco Road, and approximately 600 feet east from the Blanco Road right of way on the applicant's property, in Comal County, Texas 78163.

JPHD INC has applied for new TCEQ Permit No. WQ0015201001 to authorize the disposal of treated domestic wastewater effluent at a daily average flow not to exceed 450,000 gallons per day via subsurface drip irrigation on 6 areas with a minimum total surface area of 104.79 acres divided into 36 zones. The draft permit does not authorize the discharge of pollutants into water in the state. The wastewater treatment facility and disposal site will be located 3.2 miles west of the intersection of State Highway 71 and Hamilton Pool Road, on Hamilton Pool Road, in Travis County, Texas 78738.

KBARC LLC has applied for a new permit, TPDES Permit No. WQ0015225001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located at 6932 Farm-to-Market Road 1179, Bryan in Brazos County, Texas 77808.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

LAKE MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to the TPDES Permit No. WQ0014478001 to delete the 80,000 gallons per day (gpd) Interim I phase and the 160,000 gpd Interim II phase and to authorize a 140,000 gpd Interim I phase and a 188,000 gpd Interim II phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gpd. The plant site is located approximately 3,774 feet north of Interstate Highway 10 at John Martin Road and approximately 2,800 feet east of the intersection of John Martin Road and Battle Bell Road in Harris County, Texas 77521.

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-201403435
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 30, 2014

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Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft July 2014 Update to the WQMP for the State of Texas.

Download the draft July 2014 WQMP Update at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_com-*

ment.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on September 8, 2014.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201403397
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 29, 2014

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Department of Family and Protective Services

Notice of Foster Care Remodeling Consultant Contract Renewal

The Texas Department of Family and Protective Services (DFPS or the Department) has expanded the Child Protective Services (CPS) Reform Initiative to include a redesign of the Texas foster care system. The redesign project (the Project) will create needed sustainable placement resources in communities in order to meet the service needs of children and youth in foster care using the least restrictive placement settings available. DFPS has determined that distal placements increase the risk of poor child and family outcomes.

The Project will require effective communication, collaboration, and commitments between DFPS and existing and potential stakeholder groups. These groups include residential child care providers and their respective statewide associations, the Texas Judiciary, the Texas Health and Human Services Commission (HHSC), providers of services to families in the CPS system, the Texas Legislature, foster children and youth, CPS families, DFPS staff, and advocacy groups for children, families, and the Department.

A Consultant is needed to provide DFPS with specialized expertise in the planning and implementation of the Project. The Consultant will establish effective communication, collaboration, and commitments with stakeholders and manage the systemic changes that will occur as a result of the redesign. The Consultant must demonstrate a very high degree of familiarity with Child Welfare, the State of Texas, DFPS, the DFPS service delivery system, federal and Texas child welfare laws and funding, and significant expertise and experience in working closely with both the private and public child welfare communities.

The Project will seek to shift incentives to providers in order to deliver effective, appropriate, and least restrictive services in communities needing services. The Consultant must integrate knowledge of CPS program and services with the financial impact that incentives will have for both DFPS and contracted service providers. The Consultant must effectively manage communications with providers on the financial impact of establishing service networks and/or expanding services to areas where none currently exist.

DFPS selected PDF Group, LLC, located at 5805 Shoal Creek, Austin, Texas 78757 as the initial consultant and intends to renew this contract. Pursuant to Texas Government Code §2254.031(a)(2) and Texas Government Code §2254.029 regarding renewals of major consulting contracts, the Department is posting this notice in the *Texas Register* as an invitation for consultants to provide offers for the above described services. Unless a better offer for the provision of the consulting services is received not later than thirty (30) days from the date of this publication, DFPS will execute the following amendment to add additional services:

Foster Care Remodeling Consultant Contract

Contractor Name: PDF Group, LLC

Contract #: 530-10-7777-00113

Renewal #: 2015.01

The Texas Department of Family and Protective Services, hereinafter referred to as the Department, and PDF Group, LLC, hereinafter referred to as the Contractor, entered into a contract effective January 4, 2010, for the purpose of providing Consultant services with a payment type of Fee for Service. This contract has been renewed three time(s) previously. The contract dated January 4, 2010 and all prior amendments and renewals are referred to herein as the "Original Contract." The procurement #530-0-33065, which resulted in this contract, anticipated possible renewals and amendments of the contract, and no additional procurement process is necessary before entering into this renewal. The Department and the Contractor agree to amend the contract as follows:

Section I.

Effective Date of Contract.

Section 1.2 of the Original Contract is amended to include: September 1, 2014, through January 3, 2015.

Section II.

Section 1.3 of the Original Contract is deleted in its entirety and the following provision substituted for same:

(1) Support implementation of foster care redesign (FCR) in Regions 2/9

(a) Plan and implement change management activities

(b) Facilitate change management/cultural change committee as requested

(c) Develop and implement communications for Regions 2/9 FCR implementation

(d) Train/support FCR Administrator re: job responsibilities and implementation structure

(e) Facilitate regional meetings as needed

(2) Support FCR (statewide) stakeholder activities

(a) Plan and facilitate public private partnership (PPP) meetings

(b) Plan, develop and implement FCR communications

(c) Plan, develop and, as requested, facilitate informational meetings with stakeholders

(3) Support expansion of FCR into the first metro area of Region 3

(a) Assist as requested in development of lessons learned

(b) Plan and facilitate meetings with subject matter experts as requested

(c) Assist in development of provider meetings, responses to inquiries, and communications

(d) Plan, develop and assist in implementation of communications with metro area staff

(4) Support planning for FCR future catchment areas

(a) Assist in internal infrastructure planning

(b) Assist in analysis of lessons learned and determine and advise on model implications

Section III.

Contract Amount.

DFPS will pay the Contractor $51,250 available funds for services rendered in accordance with the terms of this Contract upon receipt of a proper and verified statement and after deducting any known previous overpayment made by the Department. The Contractor will be paid at a rate of $195 per hour, per consultant, plus travel expenses at state mileage, hotel and per diem rates for required project travel. The Contractor shall invoice DFPS consistent with the accepted payment methodology on a monthly basis using the Time Accounting Form provided by the Department. The payment methodology for this contract is unit rate, plus travel expenses. All resulting payments under this agreement shall be due and payable in Travis County, Texas.

Section IV.

Incorporation by Reference.

Contractor represents, and requests the Department to rely on these representations:

A. If any material facts have changed, the Contractor has attached new and current documents as indicated by the Department.

1. Form 2031, Signature Authority Designation

2. Form 4732, Request for Determination of Ability to Contract

B. Upon request by the Department, the Contractor will prepare and execute new documents from the forms listed above.

Section V.

Section 1, GENERAL REQUIREMENTS of the Original Contract is amended by adding the following language: The Contractor will support the Statewide Foster Care Redesign Director in Implementing and Managing Statewide Project Plan and other Stakeholder activities, including assistance in planning and facilitating on-going meetings of advisors, key stakeholders and/or governing bodies:

Section VI.

Service Provisions.

Section 8.2.1 of the Original Contract is deleted in its entirety and the following provision is substituted for same and incorporated here by reference:

(1) Support implementation of FCR in Regions 2/9

(a) Plan and implement change management activities

(b) Facilitate change management/cultural change committee as requested

(c) Develop and implement communications for Regions 2/9 FCR implementation

(d) Train/support FCR Administrator re: job responsibilities and implementation structure

(e) Facilitate regional meetings as needed

(2) Support FCR (statewide) stakeholder activities

(a) Plan and facilitate PPP meetings

(b) Plan, develop and implement FCR communications

(c) Plan, develop and, as requested, facilitate informational meetings with stakeholders

(3) Support expansion of FCR into the first metro area of Region 3

(a) Assist as requested in development of lessons learned

(b) Plan and facilitate meetings with subject matter experts as requested

(c) Assist in development of provider meetings, responses to inquiries, and communications

(d) Plan, develop and assist in implementation of communications with metro area staff

(4) Support planning for FCR future catchment areas

(a) Assist in internal infrastructure planning

(b) Assist in analysis of lessons learned and determine and advise on model implications

All other terms and conditions of the Original Contract not in conflict with this renewal are continued in full force and effect.

By signing this renewal, the Contractor represents and warrants to the Department that Contractor still complies with all previously submitted Certifications made when entering into this agreement.

This renewal #3 to contract #530-10-7777-00113 is effective September 1, 2014, through January 3, 2015.

For the submission of offers or information concerning this proposed renewal or potential offers, please contact: Carol Allen, Contract Manager, at (512) 438-5257 or email Carol.Allen@dfps.state.tx.us.

TRD-201403402
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Filed: July 29, 2014

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, on the western shore of Trinity Bay, dated March 13, 2014, by William E. Merten, Licensed State Land Surveyor, in support of a shoreline protection and breakwater construction project, proposed under Texas General Land Office lease SL20140014. The survey delineates a portion of the littoral boundary of the William D. Smith Survey, Abstract 23, along the line of Mean Higher High Water, same line being on the western boundary of State of Texas, Trinity Bay Submerged Land Tract 5. The site is situated on said western shore of Trinity Bay, extending northerly from Morrison Drive at approximate coordinates N 29°41'42" W 94°51'54" (WGS84). A copy of the survey is recorded in Book 4, at Page 200, Chambers County Surveyor's Records and as Chambers County Clerk's File No. 95097.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201403381
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 25, 2014

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey on the northerly shore of East Bay of Galveston Bay, dated March 14, 2014, by William E. Merten, Licensed State Land Surveyor, in support of a shoreline protection and marsh habitat creation project, proposed under Texas General Land Office lease SL20140019. The survey delineates a portion of the littoral boundary of the Daniel Craft Survey, Abstract 70, along the line of Mean High Water, same line being on the northerly boundary of State of Texas, East Bay, Submerged Land Tract 150. The site is situated at the southern terminus of Kelley Road on said East Bay, east of Smith Point at approximate coordinates N 29°31'47", W 94°44'02", WGS84. A copy of the survey is recorded in Book 4, at Page 201, of the County Surveyor's Record and as Chambers County Clerk's File No. 95098

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201403382
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 25, 2014

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the NorthSTAR Behavioral Health waiver program, a Medicaid waiver program operating under the authority of §1915(b) of the Social Security Act. The proposed effective date for the amendment is March 1, 2015.

The NorthSTAR program is designed to provide behavioral health services (mental health and substance abuse) to Medicaid-eligible individuals in the Dallas service delivery area. These services are provided to eligible clients in a managed care setting. Individuals enrolled in NorthSTAR have access to coordinated mental health and substance abuse/chemical dependency services that exceed the traditional Medicaid service array. NorthSTAR serves seven counties in Texas: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall.

Effective March 1, 2015, adults (21 and above) who reside in Dallas County, receive service through the NorthSTAR waiver and are eligible for both Medicare and Medicaid will be notified by mail and given a choice between continuing to receive services through NorthSTAR or enroll in the Duals Demonstration Waiver. Adults who do not make an active choice to continue to receive service through NorthSTAR will be automatically enrolled in the demonstration. Any individual who was automatically enrolled in the demonstration can request to return to the NorthSTAR waiver.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning March 1, 2015 through September 30, 2015. The amendment maintains cost effectiveness for federal years 2014 through 2015.

To obtain copies of the proposed waiver amendment, interested parties may contact Betsy Johnson by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6286, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201403432
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2014

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Public Notice

The Centers for Medicare and Medicaid Services (CMS) issued a final rule for home and community-based settings, effective March 17, 2014. Under 42 C.F.R. §441.301, States must meet new requirements for home and community-based services and supports. The new home and community-based requirements define the settings in which it is permissible for states to provide services. The purpose of these regulations is to ensure that individuals receive 1915(c) waiver services in the most integrated settings possible and that the services support

full access to the greater community including opportunities to seek competitive employment and work in an integrated setting, engage in community life, and control personal resources in a manner similar to individuals who do not receive 1915(c) waiver services.

The rule also provides for a transitional period for States to come into compliance with the new waiver program requirements. States are required to develop a transition plan to assess compliance, develop remediation strategies, and establish timelines for meeting the requirements of the new rule.

The Texas Health and Human Services Commission is submitting to CMS a timeline that outlines the transition plan to comply with the new Home and Community-based Services (HCBS) regulations for the Youth Empowerment (YES) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act.

Assessment and Public Input

1. July 2014 - August 2014: Conduct assessment of settings in the YES waiver to ensure compliance with new HCBS rules.

2. July 2014 - August 2014: Develop high level settings transition plan with timeline for remediation of any YES settings not already in compliance.

3. August 2014: Release public notice for review of the YES settings transition plan.

4. August 2014 - September 2014: Period for public input on transition plan.

5. September 2014: Review and include appropriate revisions to the MDCP settings transition plan based on public input and submit settings transition plan in waiver amendment.

6. November 2014 - December 2014: Public input of assessment results and full transition plan which will be incorporated into the full transition plan.

7. December 2014: Submit full transition plan to CMS.

Remediation Activities

1. November 2014 - November 2015: If determined necessary based on assessment and public input, amend YES program rules, Title 25, Part 1, Chapter 419, Subchapter A - Youth Empowerment Services, and other necessary rules and policies to ensure the services comply with the new HCBS guidelines.

2. November 2014 - January 2015: If changes to existing waiver policies are required based on assessment and public input, deliver educational webinars for HCS providers about new HCBS guidelines.

3. April 2015 - November 2015: If determined necessary based on assessment and public input, revise the YES manual to further outline HCBS requirements.

4. November 2015: If changes to existing waiver policies are required based on assessment and public input, submit YES amendment updating the settings transition plan.

The YES waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. At any given time, the waiver can serve up to 400 youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months.

To obtain copies of information relating to the matter for which notice was published, interested parties may contact Beth Rider by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 730-7421, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201403439
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2014

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License #	City of Licensed Entity	Amend -ment #	Date of Action
Houston	City of Houston Drinking Water Ops. Lab.	L06657	Houston	00	07/01/14
Throughout Tx	Streamline Production Systems Inc.	L06658	Kountze	00	07/08/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name	License #	City of Licensed Entity	Amend -ment #	Date of Action
Amarillo	Ali Jaffar M.D., P.A.	L05577	Amarillo	10	07/03/14
Amarillo	BSA Hospital L.L.C., dba The Don and Sybil Harrington Cancer Center A Department of Baptist St. Anthony's Hospital	L06556	Amarillo	02	07/11/14
Anderson	National Oilwell Varco L.P.	L06094	Anderson	10	07/11/14
Austin	Seton Family of Hospitals	L00268	Austin	131	07/01/14
Austin	Seton Family of Hospitals	L00268	Austin	132	07/11/14
Austin	Tri County Clinical dba Seton Heart Institute	L06598	Austin	01	07/11/14
Bryan	St. Joseph Regional Health Center	L00573	Bryan	82	07/02/14
Corpus Christi	Valero Refining - Texas L.P. dba Valero Bill Greehey Refinery	L03360	Corpus Christi	31	07/11/14
Cypress	Northwest Cardiology Consultants P.A.	L05795	Cypress	11	07/07/14
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	117	07/15/14
Dallas	Heartplace P.A.	L05541	Dallas	12	07/15/14
Dallas	Walnut Hill Physicians Hospital L.L.C. dba Walnut Hill Medical Center	L06579	Dallas	04	06/02/14
Flower Mound	Texas Oncology P.A.	L05526	Flower Mound	26	07/01/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	193	07/11/14
Houston	Baylor College of Medicine	L00680	Houston	115	07/14/14
Houston	Ben Taub General Hospital	L01303	Houston	86	07/01/14
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	98	07/10/14
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	111	07/11/14
Houston	Woodlands-North Houston Heart Associates	L04253	Houston	33	07/11/14
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	102	07/03/14
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	103	07/16/14
Houston	Radiomedix Inc. dba Radiomedix	L06044	Houston	11	07/15/14

Houston	Rice University	L06284	Houston	01	07/07/14
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06331	Houston	10	07/07/14
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	06	07/10/14
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	50	07/16/14
Longview	Longview Medical Center L.P. dba Longview Regional Medical Center	L02882	Longview	45	07/01/14
Lubbock	University Medical Center	L04719	Lubbock	131	07/15/14
Lubbock	Radiation Oncology of the South Plains P.A. dba Lubbock Imaging Center	L05418	Lubbock	21	07/15/14
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	17	07/11/14
North Richland Hills	Heartplace P.A.	L05548	North Richland Hills	23	07/09/14
Plano	Texas Health Resources dba Heart First	L06480	Plano	06	07/11/14
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	330	07/08/14
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	155	07/16/14
San Marcos	Adventist Health System/Sunbelt Inc. dba Central Texas Medical Center	L03133	San Marcos	29	07/15/14
San Marcos	Texas State University San Marcos	L03321	San Marcos	35	07/01/14
Sherman	Texas Oncology P.A. dba Texas Cancer Center Sherman	L05019	Sherman	27	07/10/14
Sugar Land	G.E. Energy Oilfield Technology Inc.	L06542	Sugar Land	03	07/15/14
Throughout Tx	U.S. NDI L.L.C.	L06597	Abilene	02	07/11/14
Throughout Tx	Pega Development L.L.C.	L06636	Amarillo	01	07/10/14
Throughout Tx	RWLS L.L.C. dba Renegade Services	L06307	Andrews	28	07/15/14
Throughout Tx	Radiation Technology Inc.	L04633	Austin	31	07/15/14
Throughout Tx	Fesco Ltd.	L06343	Corpus Christi	05	07/10/14
Throughout Tx	Alliance Geotechnical Group Inc.	L05314	Dallas	26	07/14/14
Throughout Tx	Techcorr USA L.L.C. dba AUT Specialists L.L.C.	L05972	Flint	106	07/08/14
Throughout Tx	Archer Wireline L.L.C.	L06620	Fort Worth	02	07/09/14
Throughout Tx	Q.C. Laboratories Inc.	L04750	Houston	29	07/09/14
Throughout Tx	Streamline Production Systems Inc.	L06658	Kountze	01	07/15/14
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	282	07/16/14
Throughout Tx	Chief Inspection Service Inc.	L06541	Longview	02	07/09/14
Throughout Tx	Capitan Corporation	L05824	Midland	11	07/02/14
Throughout Tx	Team Industrial Services Inc.	L00087	Pasadena	229	07/14/14
Throughout Tx	ACE NDT	L06595	Perryton	03	07/15/14
Throughout Tx	Siemens Medical Solutions USA Inc.	L05884	Plano	07	07/11/14
Throughout Tx	All American Inspection Inc.	L01336	San Antonio	72	07/01/14
Throughout Tx	IHI Southwest Technologies Inc.	L05278	San Antonio	18	07/03/14
Uvalde	Uvalde County Hospital Authority dba Uvalde Memorial Hospital	L03327	Uvalde	25	07/01/14

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name	License #	City of Licensed Entity	Amend -ment #	Date of Action
Texarkana	J. M. Hurley, M.D., P.A. dba Texarkana Cardiology Associates	L04738	Texarkana	15	07/01/14
Throughout Tx	Alliance Imaging Inc.	L05336	Arlington	16	07/07/14

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name	License #	City of Licensed Entity	Amend -ment #	Date of Action
Garland	Garland Cardiac Imaging L.P.	L05948	Garland	05	07/15/14
Odessa	University of Texas of the Permian Basin	L02695	Odessa	18	07/01/14
Throughout Tx	Ascend Performance Materials Operations L.L.C.	L06271	Alvin	06	07/09/14
Tomball	RCOA Imaging Services Inc.	L05329	Tomball	19	07/16/14
Tomball	RCOA Imaging Services Inc.	L06091	Tomball	13	07/16/14
Trophy Club	Trophy Club Medical Center L.P.	L05909	Trophy Club	02	07/07/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b), it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under tis chapter if the department or commission determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

TRD-201403375
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 24, 2014

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of HARBOR SPECIALTY INSURANCE COMPANY to AMERICAN PROPERTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Eatontown, New Jersey.

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-201403440
Norma Garcia
Chief Clerk
Texas Department of Insurance
Filed: July 30, 2014

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Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation (Department) submitted adopted amendments to 16 TAC Chapter 60, §60.10 and §60.82, in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5746). Due to an editing error, the first sentence of the rule preamble states: "The Texas Department of Licensing and Regulation (Department) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 60, §60.10 and §60.82...." The corrected language should read:

"The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 60, §60.10 and §60.82...."

The Department also submitted the adopted repeal of 16 TAC Chapter 80, §§80.1, 80.10, 80.20, 80.22, 80.23, 80.25, 80.70, 80.80, 80.90, and

80.100 in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5747). Due to an editing error, the first sentence of the rule preamble states: "The Texas Department of Licensing and Regulation (Department) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC) Chapter 80...." The corrected language should read:

"The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC) Chapter 80...."

The Department submitted proposed amendments to 16 TAC Chapter 60, §60.24, in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5855). Due to an editing error, the first sentence of the rule preamble states: "The Texas Department of Licensing and Regulation (Department) proposes amendments to 16 TAC §60.24...." The corrected language should read:

"The Texas Commission of Licensing and Regulation (Commission) proposes amendments to 16 TAC §60.24...."

TRD-201403380

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Texas Lottery Commission

Instant Game Number 1647 "Lucky 13"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1647 is "LUCKY 13". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1647 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1647.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 13 SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $25,000.

D. Play Symbols 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. 1647 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
13 SYMBOL	DOUBLE
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $25,000.

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 (1647), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1647-0000001-001.

K. Pack - A Pack of "LUCKY 13" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

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 "LUCKY 13" Instant Game No. 1647 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 "LUCKY 13" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the SCARY NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "13" Play Symbol, the player wins DOUBLE the PRIZE for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current 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.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "SCARY NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. The "13" (doubler) Play Symbol will never appear in the "SCARY NUMBERS" Play Symbol spots.

G. The "13" (doubler) Play Symbol will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never appear more than two (2) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 13" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 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 "LUCKY 13" Instant Game prize of $1,000 or $25,000, 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 "LUCKY 13" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCKY 13" 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 "LUCKY 13" 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 7,200,000 Tickets in the Instant Game No. 1647. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1647 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	748,800	9.62
$4	691,200	10.42
$5	115,200	62.50
$10	86,400	83.33
$20	57,600	125.00
$50	38,820	185.47
$100	3,000	2,400.00
$1,000	90	80,000.00
$25,000	7	1,028,571.43

*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 4.14. 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. 1647 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. 1647, 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-201403403
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 29, 2014

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Instant Game Number 1652 "Candy Cane Ca$h"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1652 is "CANDY CANE CA$H". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1652 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1652.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, DOUBLE DOLLAR SIGN SYMBOL, STAR SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $25,000.

D. Play Symbols 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. 1652 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
DOUBLE DOLLAR SIGN SYMBOL	DOUBLE
STAR SYMBOL	WIN
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $25,000.

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 (1652), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1652-0000001-001.

K. Pack - A Pack of "CANDY CANE CA$H" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

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 "CANDY CANE CA$H" Instant Game No. 1652 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 "CANDY CANE CA$H" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) 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 "STAR" Play Symbol, the player wins the prize for that symbol. If a player reveals a "DOUBLE DOLLAR SIGN" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current 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.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "$$" (doubler) and "STAR" (auto win) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "$$" (doubler) Play Symbol will appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "CANDY CANE CA$H" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 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 "CANDY CANE CA$H" Instant Game prize of $1,000 or $25,000, 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 "CANDY CANE CA$H" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CANDY CANE CA$H" 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 $600 or more from the "CANDY CANE CA$H" 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 11,040,000 Tickets in the Instant Game No. 1652. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1652 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,148,160	9.62
$4	1,059,840	10.42
$5	176,640	62.50
$10	132,480	83.33
$20	88,320	125.00
$50	59,386	185.90
$100	4,600	2,400.00
$1,000	138	80,000.00
$25,000	11	1,003,636.36

*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 4.14. 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. 1652 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. 1652, 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-201403404
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 29, 2014

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Instant Game Number 1656 "Holiday Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1656 is "HOLIDAY GOLD". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1656 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1656.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, GIFT SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $2,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1656 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	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
STAR SYMBOL	WIN
GIFT SYMBOL	DOUBLE
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$100,000	HUN THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1656), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1656-0000001-001.

K. Pack - A Pack of "HOLIDAY GOLD" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOLIDAY GOLD" Instant Game No. 1656 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 GOLD" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of 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 "STAR" Play Symbol, the player wins the prize for that symbol. If a player reveals a "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current 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.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than three matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No matching LUCKY NUMBERS Play Symbols on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

H. The "GIFT" (doubler) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The "STAR" (auto win) Play Symbol will never appear more than once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY GOLD" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY GOLD" Instant Game prize of $2,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY GOLD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOLIDAY GOLD" 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 GOLD" 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 avail-

able 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 6,600,000 Tickets in the Instant Game No. 1656. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1656 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	616,000	10.71
$10	704,000	9.38
$15	264,000	25.00
$20	88,000	75.00
$50	19,250	342.86
$100	26,290	251.05
$500	4,250	1,552.94
$2,000	150	44,000.00
$100,000	6	1,100,000.00

*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 3.83. 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. 1656 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. 1656, 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-201403405
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 29, 2014

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Texas Board of Professional Engineers

Policy Advisory Opinion Regarding Construction Management - EAOR #36

(Editor's Note: The Texas Board of Professional Engineers inadvertently published a miscellaneous document entitled "Policy Advisory Regarding the Engineering Aspects of Construction Management" in the July 25, 2014, issue of the Texas Register (39 TexReg 5828). The miscellaneous notice that should have been published appears below.)

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Chapter 1001, Subchapter M, of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Construction Management. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of construction management, has developed a stakeholder process to gather information from professional engineers and consultants. The following Policy Advisory, "Policy Advisory Re-

garding the Engineering Aspects of Construction Management", was accepted by the Texas Board of Professional Engineers on May 21, 2014, in a public meeting.

EAOR #36, Policy Advisory Regarding the Engineering Aspects of Construction Management

Request: What are the engineering tasks associated with construction management?

Background: In the construction industry, it is generally understood that the duty of the construction manager is to:

1) Communicate with design professionals, trades, contractors, suppliers, inspectors, and safety personnel to enable efficient and economical scheduling and coordination of labor and materials on the jobsite.

2) Endeavor to keep the project on schedule and budget.

3) Administer the project in compliance with contract documents.

4) Log daily activities and conditions.

Just as all projects vary in scope and complexity, the duties of the construction manager also vary in scope and complexity. On some occasions, construction managers have been tasked with or have undertaken responsibilities that require engineering knowledge and expertise to safely and effectively perform.

Section 1001.302(c) of the Texas Engineering Practice Act (TEPA) states that supervision of construction work may not be counted as the active practice of engineering for the purposes of licensure:

1001.302. License Eligibility Requirements.

(c) For purposes of determining an applicant's qualifications under subsection (a)(3), the board may not consider as active practice in engineering work:

(1) engineering teaching;

(2) the mere execution, as a contractor, of work designed by an engineer; or

(3) the supervision, as a foreman or superintendent, of the construction of work designed by an engineer.

Analysis: During the execution of a construction project, approvals, material changes, change orders and design plan deviations, and other changes can occur. According to Texas Occupations Code (TEPA) §1001.003, changes that impact the engineering design or specifications require the services of a Texas licensed professional engineer. Specific activities include but are not limited to:

1) Approval of change orders or field changes that alter engineering plans and specifications in any way, including material substitutions.

2) Acceptance of construction materials per "Texas Board of Professional Engineers Policy Advisory Opinion Regarding Construction Materials Engineering", dated August 20, 2009.

3) Traffic control and trench safety plans per "Policy Advisory Regarding Procurement of Engineering Services by General Construction Contractors for Governmental Public Works Projects", dated August 20, 2009.

4) Approval of shop drawings related to the structural, mechanical, electrical, and civil engineering designs.

5) Approval of conformance of completed construction to project specifications and design drawings.

6) Approval of any modification to any engineering design, specification or system.

In Summary: If a change order, design revision, or a design deviation affects an engineered design or specification, then a Texas licensed Professional Engineer must make the determination that the change or deviation is acceptable.

TRD-201403433
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: July 30, 2014

♦ ♦ ♦

Policy Advisory Request Regarding the Industry Exemption - EAOR #34

(Editor's Note: The Texas Board of Professional Engineers inadvertently published a miscellaneous notice entitled "Policy Advisory Opinion Regarding Water Quality Planning" in the July 25, 2014, issue of the Texas Register (39 TexReg 5829). The miscellaneous notice that should have been published appears below.)

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Chapter 1001, Subchapter M, of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding the Industry Exemption. The Board, upon a written request to issue a Policy Advisory regarding the industry exemption, has developed a stakeholder process to gather information from professional engineers and consultants. The following Policy Advisory, "Policy Advisory Request Regarding the Industry Exemption", was accepted by the Texas Board of Professional Engineers on May 21, 2014, in a public meeting.

EAOR #34, Policy Advisory Request Regarding the Industry Exemption

Question: *"Issue a formal Policy Advisory Opinion regarding the 'Industrial Exemption' sections as they apply to consulting companies performing work from their own offices for 'Industrial' Clients. There is a prevalent interpretation in South Texas that engineering companies do not need to use PE's nor seal work for 'Industrial' clients".*

Analysis: The "Industrial Exemption" mentioned by the requestor specifically refers to the following section of the Texas Engineering Practice Act (TEPA):

§1001.057. Employee of Private Corporation or Business Entity.

(a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity.

(Sections (b) and (c) omitted for clarity)

(d) For purposes of this section, "products manufactured by the entity" also includes computer software, firmware, hardware, semiconductor

devices, and the production, exploration, and transportation of oil and gas and related products.

In short, this part of the Texas Engineering Practice Act allows employees of a company to work on the engineering of products or on the facilities of that company without obtaining a license from the Texas Board of Professional Engineers. In other words, the employees are exempt from licensure. It is important to note that this statute removes such companies from jurisdiction by this agency, however, does not remove the requirements of consulting engineering companies from adhering to the TEPA.

Response: This section of the TEPA allows full time employees and other personnel under the direct control of a private entity to perform engineering services **exclusively** for the private entity without the requirement to be licensed as professional engineers. For the context of the question above, a "consulting company" is required to be a Texas registered engineering firm and the "industrial client" is a client of that engineering firm. In answer to the requestor's question, any engineering work provided by consulting companies for projects located in Texas and provided to an industrial client of the engineering firm must:

1) Be performed by a Texas licensed professional engineer (§1001.004) and;

2) The final version of that work must be sealed, signed, and dated by a Texas licensed professional engineer (§137.33).

The phrase *"other personnel under the direct supervision and control of the business entity"* in §1001.057(a) is intended to allow the practice of private entities to hire workers (i.e. contract employees typically on site) from external sources to perform work **exclusively** for the private entity. These contract employees, who are not required to hold a Texas P.E. license, are under the full supervisory control of the private entity, but their salaries and benefits are provided by the external source. Professional staffing companies that provide contract workers do not need to be registered as Texas engineering firms since they are only providing contract workers and not offering engineering services.

Frequently Asked Questions

1) May a Texas registered engineering firm provide non-P.E. employees to a client to perform engineering activities under this statute? Can the Texas registered engineering firm provide contract employees to a client in an "exempt industry" in the same manner as a professional staffing company?

Yes to both questions. Employees provided must be under the exclusive control and direct supervision of the client business entity.

2) I work for a consulting company and I want to do projects with business entities as described by §1001.057 of the TEPA. My firm is not registered with the Board, but since I'm providing services to an "exempt" industry, do I need to be registered to provide engineering services?

Yes. Even though your client falls under the exemption and does not need to license their employees providing engineering exclusively for the company, your consulting firm is providing engineering services to a client and must be registered as an engineering firm. The engineering work needs to be done by or under the direct supervision of a Texas licensed professional engineer and the final version of those documents must be sealed.

3) I am a licensed professional engineer and I want to do some projects with a business entity as described by §1001.057 of the TEPA. Do I need to be registered as a firm with the Board since I am providing services to an exempt industry?

Yes, an individual licensed professional engineer must be registered as a sole practitioner firm to provide engineering services in Texas.

TRD-201403434
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: July 30, 2014

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on July 23, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of RB3, LLC d/b/a Reach Broadband for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42697.

The requested amendment is to reduce its service area footprint to delete the municipal boundaries of the Cities of Memphis and Van Horn, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42697.

TRD-201403376
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2014

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Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On July 24, 2014, Zayo Group, LLC (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60834. Applicant seeks approval of a corporate restructuring, whereby Zayo Group Holdings, Inc. (Holdings) will become the ultimate parent company of Applicant.

The Application: Application of Zayo Group, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42700.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than August 15, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42700.

TRD-201403408
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2014

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Notice of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on July 24, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42702.

The requested amendment is to expand the service area footprint to include the City limits of Quitman, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42702.

TRD-201403398
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2014

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Notice of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on July 24, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42703.

The requested amendment is to expand the service area footprint to include the City limits of Jacksonville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42703.

TRD-201403399
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2014

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Public Notice of Change of Address for Workshop

Staff of the Public Utility Commission of Texas will conduct a workshop on Project No. 42636, *Commission Comments on Proposed EPA Rule on Greenhouse Gas Emissions for Existing Generating Units,* on Friday, August 15, 2014, at 9:00 a.m. The workshop will be at the John H. Reagan Building, Room 120, 105 West 15th Street, Austin, Texas 78701.

Questions concerning the workshop or this notice should be referred to Kristin Whitley, Competitive Markets Division, at (512) 936-7459 or at kristin.whitley@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201403407
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2014

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Texas Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a State Savings Bank

Notice is hereby given that on July 24, 2014, an application was filed with the Savings and Mortgage Lending Commissioner of Texas for a change of control of Texas Savings Bank, SSB by First Bank Lubbock Bancshares, Inc., Lubbock, Texas.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. The Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201403379
Caroline C. Jones
Commissioner
Texas Department of Savings and Mortgage Lending
Filed: July 25, 2014

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Texas Department of Transportation

Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department **no later than October 31, 2014** in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

http://www.txdot.gov/driver/laws/red-light.html

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 486-5702.

TRD-201403438
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 30, 2014

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 ***(P)***

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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