TEXAS REGISTER

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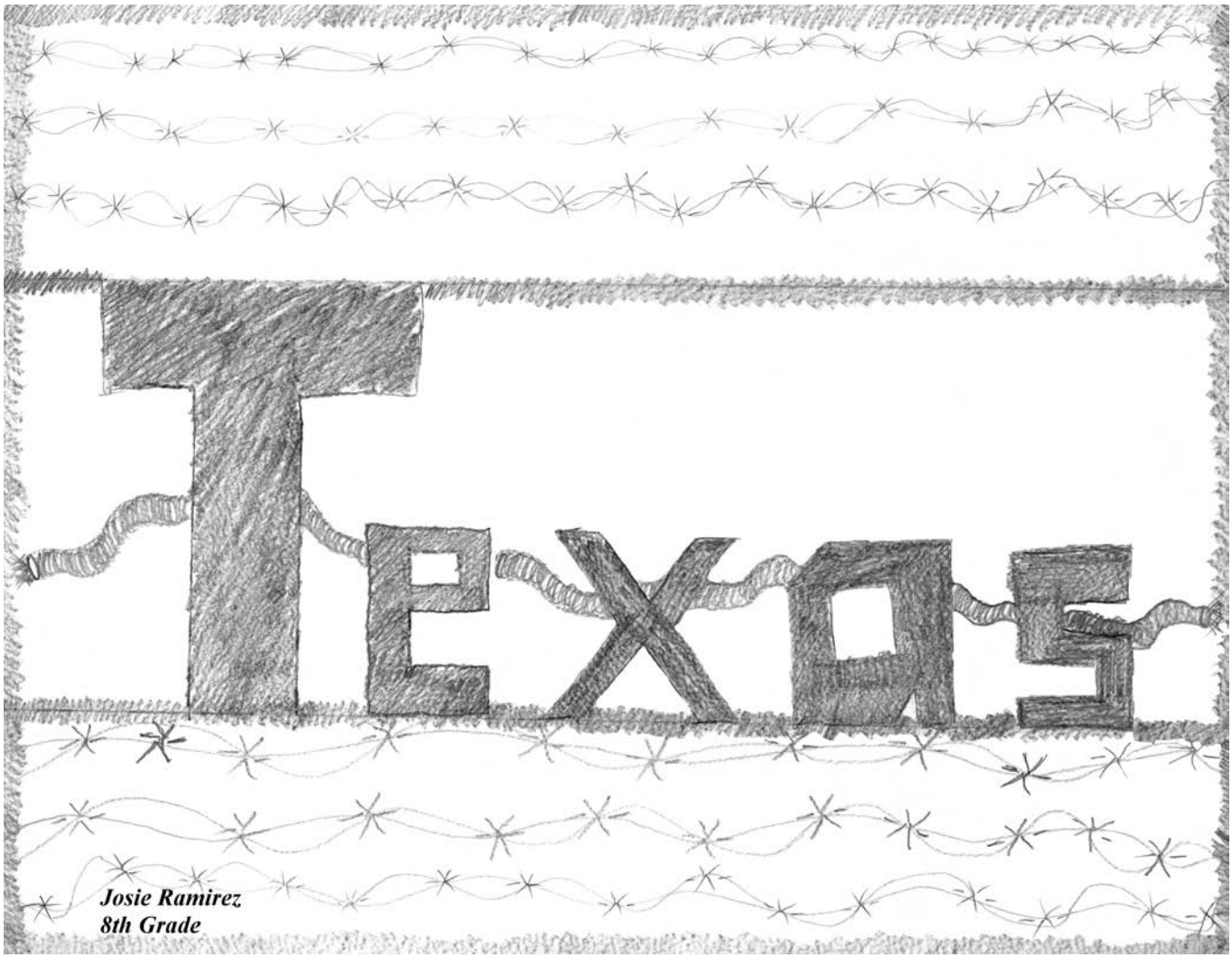

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1209-GA

Requestor:

The Honorable Nandita Berry

Texas Secretary of State

Post Office Box 12697

Austin, Texas 78711-2697

Re: Authority of a notary public to withhold or redact certain information from a notary public record book (RQ-1209-GA)

Briefs requested by July 31, 2014

RQ-1210-GA

Requestor:

The Honorable Allan B. Ritter

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

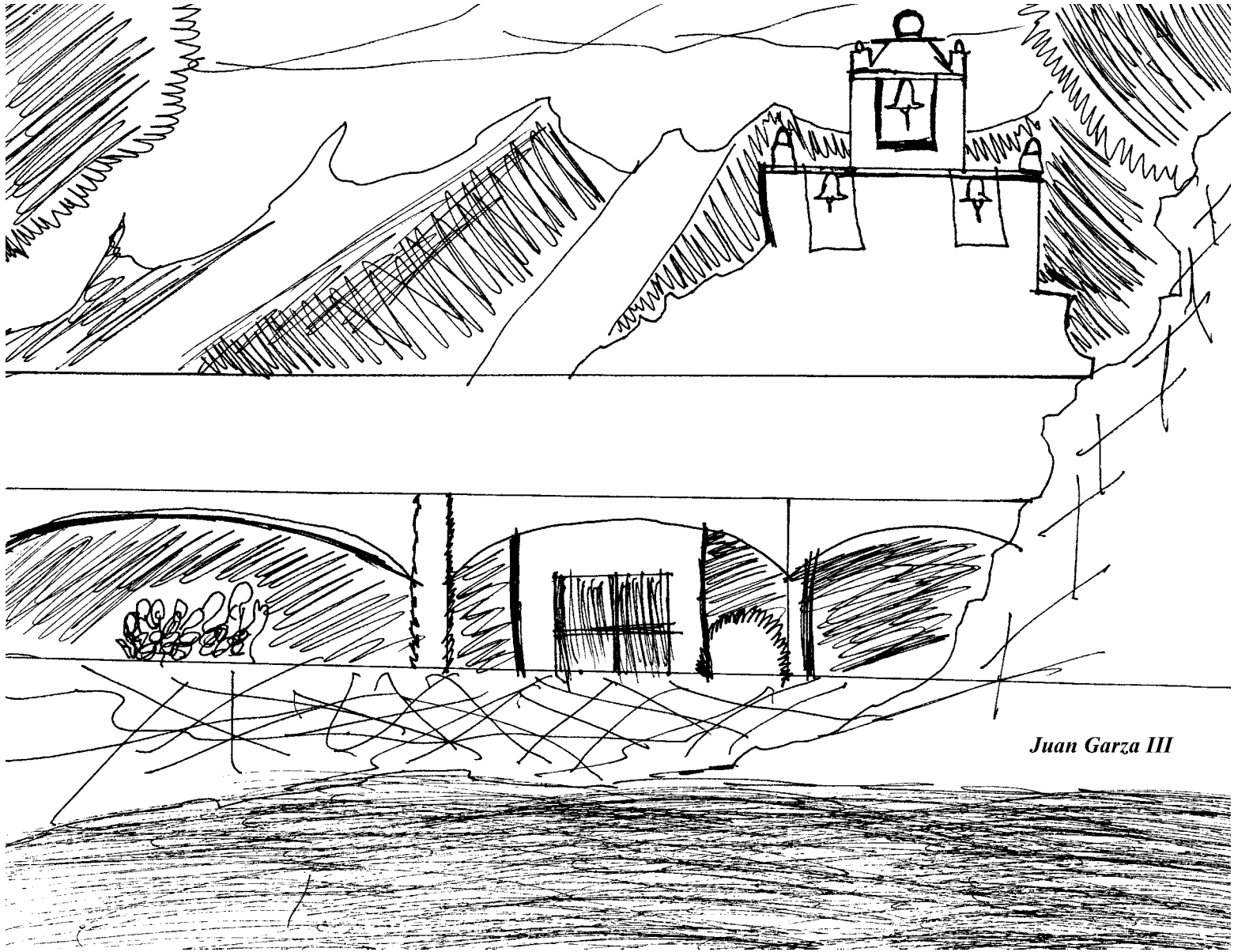
Re: Whether a home-rule municipality must meet the population threshold in section 43.121 of the Local Government Code in order to consensually annex property under section 43.129 (RQ-1210-GA)

Briefs requested by August 4, 2014

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

TRD-201403257
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 15, 2014

♦ ♦ ♦


Juan Garza III

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 21. CITRUS

SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.10

The Texas Department of Agriculture (the department) adopts on an emergency basis new §21.10, which establishes restrictions on quarantined articles at nurseries that are located in the Citrus Zone in areas that are not quarantined for citrus greening (CG). Citrus greening *("Candidatus* Liberibacter asiaticus"), also known as Huanglongbing (HLB), is an exotic incurable, lethal disease that is dangerous to citrus trees and many related plants. A newly detected infestation at a citrus nursery in a quarantined area represents a serious risk to the state's commercial citrus and citrus nurseries. The department believes that establishment of these restrictions is both necessary and appropriate in order to effectively slow the spread of CG to non-infected areas, including to commercial citrus groves, citrus nurseries and residential citrus in Texas and other states. Restrictions on citrus nursery plants that are intended for movement are needed to prevent this disease from spreading unchecked.

New §21.10 establishes requirements and restrictions, including mandatory testing and treatments, for those quarantined articles that are at nurseries in areas of the Citrus Zone that are not quarantined for CG.

On January 13, 2012, CG was discovered in a commercial citrus orchard in San Juan, Texas. A citrus greening quarantine has been adopted by the department to slow the spread of the disease. To date, CG has been detected in citrus plants in residential dooryards, citrus groves and citrus nurseries located in the citrus zone in Hidalgo and Cameron counties indicating that the threat to the citrus industry is imminent.

The commercial citrus and citrus nursery industries in particular are in peril because without this emergency action and taking all steps to slow the spread of the disease, USDA could quarantine the entire state of Texas, and as a result, important export markets for citrus plants could be lost and limitations on availability of citrus nursery plants will adversely affect markets. This emergency rule takes steps necessary to slow the spread of the infection, thus limiting the impact of this incurable disease on the state's citrus fruit and nursery crop that are agricultural industries of vital importance to the state of Texas.

The new section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles to determine the extent of infested or infected plants, plant products, or substances and take measures to prevent further infestations; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71; §94.003, which provides the department with the authority to develop and adopt rules related to the requirements of citrus fruit for human consumption; §73.002, which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§21.10. Requirements and Restrictions for Quarantined Articles at Nurseries in Areas of the Citrus Zone Not Quarantined for Citrus Greening.

(a) In addition to any other restrictions or requirements that apply, in areas of the Citrus Zone, as described in §21.4 of this chapter (relating to Citrus Zone), that are not quarantined under Chapter 19, Subchapter X of this title (relating to Citrus Greening Quarantine), all quarantined articles that are intended for sale, distribution, planting in orchards, or other purposes and that are not in a structure certified under Chapter 21, Subchapter D of this title (relating to Citrus Nursery Stock Certification Program), shall be subject to the requirements and restrictions of this section.

(b) If Asian citrus psyllid (ACP) has not been detected by the department on any quarantined article at the nursery, quarantined articles will not be required to be held from sale or distribution, or be required to place plants under insect exclusionary cover until results of the initial testing cycle are available. The nursery shall have all quarantined articles sampled and tested for citrus greening (CG), within 30 days of the initial inspection, according to subsection (k) of this section.

(1) If results of any initial leaf tissue test results are positive for CG:

(A) all quarantined articles will be subject to a Seizure Order;

(B) all quarantined articles testing positive for CG shall be destroyed in accordance with department destruction and removal protocol and under departmental supervision; and

(C) the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(2) If results of all of the initial tests are negative for CG, all quarantined articles shall be sampled and tested for CG every six months, according to requirements in subsection (k) of this section.

(c) If ACP is detected by the department on any quarantined article the following shall apply.

(1) All quarantined articles at the nursery shall be placed under a stop-sale order and held without further movement.

(2) The nursery shall have ACP and all quarantined articles sampled immediately and tested for CG, according to subsection (k) of this section.

(3) All quarantined articles shall be treated according to the pesticide treatment requirements and restrictions in subsection (l) of this section.

(4) All quarantined articles shall be re-tested for CG every six months, according to requirements in subsection (k) of this section.

(d) If initial laboratory test results of leaf tissue for any quarantined article are positive for CG:

(1) all quarantined articles will be subject to a Seizure Order;

(2) all quarantined articles testing positive for CG shall be destroyed in accordance to department destruction and removal protocol and under departmental supervision; and

(3) the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(e) If initial laboratory test results of leaf tissue for any quarantined article are negative for CG, but test results for ACP are positive for CG, the quarantined articles will be:

(1) placed under a stop-sale order and be ineligible for sale or distribution and held without further movement;

(2) treated according to the pesticide application requirements and restrictions in subsection (f) of this section;

(3) enclosed and maintained in an insect exclusionary cover ("cover") that prevents any ACP from coming in contact with the quarantined article (the openings of any screen mesh used shall not exceed 0.3 square millimeters); and

(4) re-tested for CG every six months, according to requirements in subsection (k) of this section.

(f) If initial laboratory test results of leaf tissue at a nursery where ACP was initially detected, is negative for CG and test results for ACP are negative for CG, the quarantined articles:

(1) Must undergo testing of leaf tissue for CG every six months, beginning six months after the initial tests. Quarantined articles shall be sampled and tested for CG according to requirements in subsection (k) of this section.

(2) Quarantined articles will be placed under a stop-sale order and held from sale or distribution during the initial six month testing cycle.

(3) The stop-sale order will be released upon a minimum of two consecutive negative test results six months apart.

(g) If two consecutive tests six months apart indicate negative results for CG, quarantined articles may be sold or distributed; however, the following conditions must continue to be met.

(1) Leaf tissue samples shall be collected and tested for CG according to requirements in subsection (k) of this section every six months until there are no more quarantined articles in stock.

(2) Pesticide treatments must continue to exclude ACP according to requirements and restrictions in subsection (l) of this section.

(3) If quarantined articles were required to be held under insect exclusionary cover during testing cycle, they must remain under cover until sold, moved, or destroyed.

(h) If leaf tissue test results of any quarantined article are positive for CG:

(1) all quarantined articles will be subject to a Seizure Order;

(2) all quarantined articles testing positive for CG shall be destroyed in accordance to department destruction and removal protocol and under departmental supervision; and

(3) the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(i) If ACP is detected on quarantined articles at any point, the ACP will be sampled and tested. The testing cycle will be restarted and the nursery will be subject to enforcement action for noncompliance. In addition, quarantined articles must be:

(1) placed under a stop-sale order and be ineligible for sale or distribution and held without further movement;

(2) treated according to the pesticide treatment requirements and restrictions in subsection (l) of this section;

(3) re-tested for CG every six months, according to requirements in subsection (k) of this section.

(j) New inventory of quarantined articles shall be kept free of ACP and undergo pesticide treatments according to requirements in subsection (l) of this section.

(k) Requirements for sampling and testing of quarantined articles for CG are as follows.

(1) A sampling cycle consists of two sets of tissue samples conducted six months apart.

(2) Sampling shall be performed using the USDA-APHIS "Survey Protocol in Exclusionary Facilities for Interstate Movement of Citrus and Other Rutaceous Plants for Planting from Areas Quarantined for Citrus Greening, Asian Citrus Psyllid, and Citrus Canker". Sampling shall be performed by a person who is not affiliated with the nursery and who is approved by the department.

(3) Samples shall be tested for CG by a laboratory approved by the department. Results of the tests must be reported directly to the department by the laboratory.

(l) Treatment requirements for quarantined articles are as follows.

(1) Foliar application of pesticides. Foliar pesticide applications with an appropriately labeled pesticide for the control of ACP on citrus shall be required when ACP is present or prior to shipment. Treatment must be made within 10 days prior to shipment or movement of plants.

(2) Soil drench or in-ground pesticide application. Required application shall consist of an appropriately labeled soil drench or in-ground granular systemic insecticide for the control of ACP in citrus. The required application shall be applied according to pesticide label directions to any quarantined article that has not received a soil drench or in-ground granular systemic insecticide within the previous 60 days. Required applications shall be repeated every 60 days or as restricted by the product label directions.

(3) Shipment of quarantined articles. Quarantined articles shall not be shipped unless they are compliant with pesticide application requirements.

(4) Application of pesticides. All pesticides must be applied according to their EPA label, including application directions, restrictions, and any other precautions including the Worker Protection Standards. Application of any Restricted Use Pesticide requires a valid pesticide applicator's license and additional recordkeeping.

(m) Any quarantined article that is not in compliance with cover, sampling and pesticide application requirements may be seized and destroyed in accordance to department destruction and removal protocol and under departmental supervision.

(n) All costs of sampling, analysis and required or voluntary destruction of quarantined articles shall be the responsibility of the nursery.

(o) The nursery shall keep records of treated quarantined articles treated, the pesticides applied, application rates and treatment dates. The records shall be maintained by the nursery for a period of not less than two years following the last treatment date for a given lot of quarantined articles. Failure to prepare or maintain records may result in enforcement actions, including tree destruction or other mitigation measures.

(p) The term "destroyed in accordance to department destruction and removal protocol" referenced in this section means: Timely destruction and removal of citrus greening (HLB) infected citrus nursery plants is a key part of effective management of HLB. Proper removal and disposal of infected plants helps prevent artificial spread of the disease. By using the following protocol, risks associated with spreading HLB during the removal and destruction of plants is mitigated:

(1) Spray infected plants with an insecticide appropriately labeled for controlling Asian citrus psyllids (ACP) in citrus. The *reentry interval (REI)* and all other pesticide label directions and restrictions must be followed.

(2) Tree destruction by removal and subsequent herbicide treatment of field-planted plants as follows.

(A) Cut down the plant, making the cut near ground level or below ground level.

(B) Collect and dispose of the trunk, limbs and leaves as provided below. No part of the plant may be removed from the site, unless it has been completely desiccated. Thoroughly desiccated plants have no further destruction requirements.

(C) Immediately treat any remaining freshly-cut stump with a systemic herbicide appropriately labeled to prevent regrowth.

(D) Mark the herbicide-treated stump with orange spray paint and mark the former location of the plant with a colored flag or a stake.

(E) Monitor for regrowth; reapply herbicide if regrowth is seen.

(F) Do not remove stake for a minimum of one year.

(3) Destruction by herbicidal treatment of field-planted plants shall be as follows.

(A) Treat the plant with a systemic herbicide labeled to destroy unwanted vegetation and to prevent regrowth.

(B) Mark the base of the trunk clearly with orange paint and mark the location of the plant with a colored flag or a stake. Any alternative method of identifying trees must be submitted to the department in writing and approved by the department.

(C) Monitor for regrowth; reapply herbicide if regrowth is seen.

(D) Do not remove stake for a minimum of one year.

(E) Allow plant to desiccate; thoroughly desiccated plants have no further destruction requirements.

(4) Destruction of containerized plants shall be as follows.

(A) Uproot the plant and remove media from the roots.

(B) Cut the plant into non-viable pieces.

(C) Collect and dispose of the trunk, limbs, leaves and roots as provided in paragraph (5) of this subsection. No part of the plant may be removed from the site unless it has been thoroughly desiccated or bagged for disposal. Thoroughly desiccated plants have no further destruction requirements.

(5) Disposal of plant material shall be as follows.

(A) Burning: Check with local officials to ensure burning is allowed and is performed in compliance with local requirements. Ashes may be transported from the quarantine area.

(B) Chipping: Chips may be used immediately for mulch, at any location inside the quarantine area.

(C) Burial: Prior to burial inside the quarantine area or at a sanitary landfill, any plant material should be sun-dried until the soft inner bark (cambium) is confirmed to have died.

(D) Desiccation: Allow plants to thoroughly desiccate prior to disposal. Thoroughly desiccated plants have no further destruction requirements.

(E) All leaves, stems, branches, and debris must be disposed of in the quarantine area, or sealed in black plastic trash bags, bags sealed and exposed to solar radiation for 7 days and disposed of in a landfill.

(F) Transportation: If burning, chipping or burial of tree parts must be performed at another location inside the quarantine area, the load should be thoroughly covered with a tarp before it leaves the location, to prevent loss of leaves, twigs or other plant parts. None of the plant material may be transported from the site unless it has been thoroughly desiccated.

(6) Following tree removal the following shall apply.

(A) Stump removal: Stump may be removed at any time. Stumps and roots must be disposed of in the same way as other parts of the tree.

(B) Monitor for regrowth: For one year, at least monthly, monitor the place where the tree was removed and destroy any regrowth from surviving roots.

The agency certifies that legal counsel has reviewed the emergency adoption 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 7, 2014.

TRD-201403114

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 7, 2014
Expiration date: November 3, 2014
For further information, please call: (512) 463-4075

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General (OAG) proposes amendments to Chapter 61, Subchapter A, §§61.1 - 61.4; Subchapter B, §61.101; Subchapter C, §§61.201 - 61.203; Subchapter D, §§61.301 - 61.303; Subchapter E, §§61.401 - 61.414; Subchapter F, §§61.501 - 61.508; Subchapter G, §61.601 and §61.602; Subchapter H, §§61.701 - 61.706; Subchapter I, §§61.801 - 61.804; Subchapter J, §§61.901 and 61.903 - 61.905; and Subchapter K, §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1030, 61.1035, 61.1040, and 61.1045; and new §61.304 and §61.305 in Subchapter D; and new §61.416 in Subchapter E, concerning the administration of the OAG's Crime Victims' Compensation Program.

The proposed amendments and new sections will update the administrative rules to reflect current agency practice. Some changes are being made to clarify definitions or make references to internal procedures and processes more consistent. Other changes are being implemented due to developments in law or agency policy.

Subchapter A, Scope and Construction of Rules and General Provisions. Sections 61.1 - 61.4 are amended to generally update the provisions.

Subchapter B, Definitions. Section 61.101 is amended to generally update the existing terms for Disability Period, Extraordinary Pecuniary Loss, Interested Person, Physical Therapy, Psychiatric Care or Counseling, as well as to add new definitions for Closed Application, Funeral Purchase Agreement, Health Care Service Provider, Incarceration, Medically Necessary, Penal Institution, Service Provider, Total and Permanent Disability, and Trafficking of Persons.

Subchapter C, Application. Sections 61.201 - 61.203 are amended to reorganize the rules for clarity and to allow for merging of applications and to describe in more detail period of incapacity.

Subchapter D, Denial or Reduction of Award. Sections 61.301 - 61.304 are amended to reorganize for clarity, provide a complete list of statutory reasons and factors considered when an award is reduced or denied, and to add a human trafficking exception for illegal activity. New §61.304 and §61.305 are proposed regarding refunds to victims or claimants and refunds to service providers.

Subchapter E, Pecuniary Loss. Sections 61.401 - 61.414 are amended to clarify loss of earnings, verification of disability period, loss of support, travel expenses, other limits to pecuniary losses, collateral sources, extraordinary pecuniary losses, emergency awards, actual pecuniary losses, unjust enrichment and funeral expenses. New §61.416 is proposed regarding verification of information.

Subchapter F, Medical Care, Psychiatric Care or Counseling. Sections 61.501 - 61.508 are amended to clarify the payment of bills, counseling expenses inpatient and intensive psychiatric care or counseling expenses, dental services, health care service providers and to provide time limits for submission of bills.

Subchapter G, Relocation and Housing Rental. Section 61.601 and §61.602 are amended to provide definitions for trafficking of persons, clarify types of expenses allowed and eligibility.

Subchapter H, Compensation to Certain Disabled Peace Officers. Sections 61.701 - 61.706 are amended to update reference to another state agency and to add a cost of living adjustment as authorized by law.

Subchapter I, Reimbursement to Law Enforcement Agencies for Forensic Sexual Assault Medical Examinations. Sections 61.801 - 61.804 are amended to clarify and adjust the reimbursement amounts and time limits for filing requests for reimbursement.

Subchapter J, Administrative Remedies. Sections 61.901 and 61.903 - 61.905 are amended to clarify the review processes, provide a good cause exception for late hearing requests, and to preclude attorney fees for a self-representing victim or claimant.

Subchapter K, Address Confidentiality Program. Sections 61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1030, 61.1035, 61.1040, and 61.1045, are amended to include human trafficking victims as eligible for the program, and clarify the reconsideration process.

Gene McCleskey, Division Chief, OAG Crime Victim Services Division, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended and new sections.

Mr. McCleskey has also determined that for each of the first five years following the adoption of the amendments and new sections, the anticipated public benefit of the proposal will be to increase the state's effective and efficient administration of the crime victim's compensation program. Also, the General Counsel has determined that the proposed amendments and new sections are not likely to have an adverse economic impact on micro-business or small business. There is no anticipated economic cost to persons who are required to comply with the amendments and new sections as proposed.

Written comments on the proposal should be submitted to Kristen Huff, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, at Kristen.huff@texasattorneygeneral.gov. Written comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

SUBCHAPTER A. SCOPE AND CONSTRUCTION OF RULES AND GENERAL PROVISIONS

1 TAC §§61.1 - 61.4

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which require the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.1. Scope and Construction of Rules.

(a) This chapter [~~section~~] is intended to apply solely to the administration of the Crime Victims' Compensation Act (CVCA), Texas Code of Criminal Procedure Chapter 56, Articles 56.06, 56.065, and Subchapter B. The Office of the Attorney General (OAG) adopts this chapter consistent with the CVCA and the authority granted under Texas Code of Criminal Procedure Articles 56.33(a) and 56.42(c) [~~Subchapters A and B. (Tex. Code Crim. Proc.)~~].

(b) To assure a just determination for every application [~~claim~~] submitted to the OAG for compensation by victims of crime, this chapter [~~these rules~~] will be given their most reasonable meaning taken in their total context, and will be construed to secure a just resolution or decision for every controversy.

[~~(c) The chief of the Crime Victims' Compensation Division may delegate a power, duty, or responsibility given to the chief by the attorney general to a person in the Crime Victims' Compensation Division.~~]

(c) [~~(d)~~] If good cause is established to show that compliance with this chapter [~~these rules~~] may result in an injustice to any interested person [~~party~~], the chapter [~~rules~~] may be suspended at the discretion of the OAG [~~Chief~~].

(d) All ranges of calendar dates shall be inclusive of the listed dates. All applications shall be governed by the statutes in effect on the date of the criminally injurious conduct.

(e) All prior rules promulgated by the OAG in the administration of the CVCA shall continue in effect for the administration of applications arising out of criminally injurious conduct during the effective period of such prior rules.

(f) This chapter shall be liberally construed to promote fairness, due process and the interests of justice.

§61.2. Insufficient Funds.

If the OAG adjusts the amount of awards and payments pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.58(a), available funds will be awarded to emergency payments, loss of earnings [~~wages~~], loss of support, and relocation and housing rental expenses. Other allowable awards [~~benefits~~] will be adjusted and paid [~~awarded~~] as directed by the OAG. [~~Chief in a manner that does not exceed the amount of money credited to the fund during that year.~~]

§61.3. Closing Applications [~~Claims~~].

(a) An application for compensation [~~A claim for an award~~] may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) The victim has been awarded the statutory maximum amount of compensation allowed under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42, in accordance with the law in effect at the date of the criminally injurious conduct;

(2) The 30-day time period for appealing the decision of the OAG to award or deny an application or award [~~a claim~~] has passed without a request from the victim or claimant for reconsideration;

(3) The 30-day time period for appealing the reconsideration has passed without a request from the victim or claimant for a hearing;

(4) The 40-day period has passed for filing a written notice of dissatisfaction with the OAG's final decision;

(5) The 40-day period has passed to bring suit in district court after filing a written notice of dissatisfaction with the OAG's final decision;

(6) The victim or claimant knowingly or intentionally submits false or forged information to the OAG;

(7) The victim or claimant submits an incomplete application[~~,~~] or a service provider submits an incomplete file on behalf of the victim or claimant;

(8) The victim or claimant fails to respond within a 30-day period to a request made by the OAG for information;

(9) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating that a crime occurred;

(10) The victim or claimant fails to report a collateral source or any other source of income; or

(11) The [~~If a~~] victim is approved for compensation [~~benefits~~] and subsequently dies without a claimant on the application[~~, the claim will be closed~~]. Payment may only be made on crime related bills submitted to the OAG prior to the victim's death which meet all payment requirements. Upon the victim's death, the individual who is legally charged with administering the victim's estate may request to become a claimant and the application [~~claim~~] may remain open or be reopened for payment of crime related expenses;[~~.~~]

(12) The victim or claimant fails to provide requested medical reports pursuant to §61.502(a) of this chapter (relating to Medical Reports and Records);

(13) The victim or claimant fails to submit to an independent physical or mental examination requested pursuant to §61.502(b) of this chapter; or

(14) The victim or claimant delays medically recommended treatment or is non-compliant with medical orders.

(b) A [~~"~~]closed application [~~claim"~~] may be reopened upon the receipt of requested information, the OAG's own motion, or upon written request showing good cause by the victim or claimant.

§61.4. Confidentiality of Records.

(a) The OAG shall keep confidential all applications, records and other information to the extent authorized by law [~~as authorized by the Public Information Act~~].

(b) The application and all documentation submitted to or created by the OAG is a governmental record.

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

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SUBCHAPTER B. DEFINITIONS

1 TAC §61.101

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.101. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings:

(1) Closed Application--An application which has been administratively closed under §61.3 of this chapter (relating to Closing Applications). The administrative closure of an application will prevent further payments, reimbursements or other claim processing to occur unless the application is reopened under §61.3(b) of this chapter.

(2) Disability Period--The length of time that a victim has a medically determinable physical or mental impairment that causes the victim to be unable to perform their work as a direct result of the criminally injurious conduct. For a victim under 18, the disability period means the length of time the victim has a medically determinable physical or mental impairment, or a combination of impairments, that causes marked and severe functional limitations as a direct result of the criminally injurious conduct. The disability period must be determined by a Medical Doctor (M.D.), Doctor of Osteopathy (D.O.), or the OAG.

(3) Extraordinary Pecuniary Losses--As used in Texas Code of Criminal Procedure Article 56.42(b), means economic losses which exceed the limits on compensation in effect on the date of the criminally injurious conduct giving rise to the application for compensation. Extraordinary pecuniary losses may include loss of earnings, but only in addition to the statutorily enumerated costs, which are further described in §61.407 of this chapter (relating to Additional Compensation for Extraordinary Pecuniary Losses).

(4) Funeral Purchase Agreement--A written statement of funeral goods and services signed by a claimant and a representative of the service provider which itemizes the cost of funeral services or merchandise selected by a claimant. The agreement may or may not include terms governing burial expenses, but it must include the following information:

(A) the funeral goods and funeral services selected by that person and the prices to be paid for each, unless there is an itemized discounted package arrangement;

(B) specifically itemized cash advance items; and

(C) the total cost of the goods and services selected.

(5) Health Care Service Provider--Any person or entity that provides medical, psychiatric care or counseling services, and includes a doctor or other person duly licensed to practice one or more of the healing arts, a health care facility, or an entity providing health care.

(6) Incarcerated--A person who is confined in a penal institution as a result of being arrested for, charged with, or convicted of a criminal offense. This term also includes persons who have been detained in a confined space pending or during transport to or from a penal institution.

[(1) Catastrophic injury--As used in Tex. Code Crim. Proc. Art. 56.42(b), injury to a victim is catastrophic if the injury results in total and permanent disability. The extent of personal injury will be determined from supporting documentation from a physician specializing in the specific area of disability. Catastrophic injury must meet both if the following criteria:]

[(A) The total and permanent disability is such that the victim will not likely improve throughout his or her lifetime. This means that the victim's work capacity is so limited that he or she is left with a substantial disadvantage in the competitive labor market.]

[(B) The degree of pecuniary loss as a result of the crime is such that the victim incurs exorbitant pecuniary losses exceeding the amount compensable for non-catastrophic injury.]

[(2) Chief--The administrative head of Crime Victim Services Division of the OAG.]

(7) [(3)] Interested Person--As used in Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.40(c), includes a victim and any valid claimants whose application for compensation may be affected by the outcome of a final ruling hearing and [the term] does not include the accused criminal offender or non-claimant creditors.

(8) [(4)] Law enforcement agency--As used in Texas Code of Criminal Procedure [Tex. Code Crim. Proc.] Chapter 56, [the term] means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 2.12.

(9) [(5)] Medical--As used in Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(A), means medical, hospital, nursing, physical therapy or dental services and [the term] includes the costs of medical treatment, [costs of counseling, the one time only repair or replacement of medical or dental devices in use by the victim prior to the crime if damaged or stolen as a result of the criminally injurious conduct, one time only medically prescribed assistive or adaptive items,] or any other medical cost deemed appropriate by the OAG. Except for an admission to a hospital or clinic for in-patient psychiatric treatment, a residential treatment center, or intensive outpatient programs, the term medical does not include psychiatric care or counseling, as that term is defined in this chapter.

(10) [(6)] Medically Indicated Services [indicated services]--As used in Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(B)(ii), [the term] means medical treatment, or psychiatric care or counseling related to the disability period resulting from the personal injury which is [dental treatment, and mental health counseling] ordered and provided by a [licensed] heath care service provider.

(11) Medically Necessary--As used in Texas Code of Criminal Procedure Article 56.385, refers to services that a health care service provider, exercising prudent clinical judgment, would provide to a victim or claimant for the purpose of evaluating, diagnosing or treating an illness, injury, disease or its symptoms.

(12) Penal Institution--As used in Texas Code of Criminal Procedure Article 56.41(b)(6) and as defined in the Texas Penal Code §1.07, refers to a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(13) [~~(7)~~] Physical Therapy [~~therapy~~]--As used in Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(9)(A), [~~the term~~] refers to treatment prescribed by a M.D., D.O. [~~Medical Doctor, (M.D.), Doctor of Osteopathy (D.O.)~~], or Chiropractic Doctor[~~,~~] (D.C.), conducted under the direct supervision of the M.D., D.O., D.C., or a physical therapist, and means health care services that prevent, identify, correct, or alleviate [~~prevents, identifies, corrects, and alleviates~~] acute or prolonged movement dysfunction or pain of anatomical or physiological origin. [~~Physical therapy includes the testing and measurement of the function of the musculoskeletal, neurological, pulmonary, and cardiovascular systems and rehabilitative treatment concerned with the restoration of function and prevention of disability caused by injury from criminally injurious conduct. Physical therapy also includes treatment, consultive, educational, and advisory services for the purpose of reducing the incidence and severity of disability and pain to enable, train, or retrain an individual to perform the independent skills and activities of the victim's daily living at the same level as immediately before the criminally injurious conduct. Physical therapy does not include a membership in a health club or gym facility, or for the purchase of fitness, exercise, gym aquatic, or other items for use in the victim's or claimant's home.~~]

(14) [~~(8)~~] Psychiatric Care or Counseling [~~care or counseling~~]--As used in Texas Code of Criminal Procedure Articles 56.32(a)(9)(A) and 56.32(a)(2)(D)(I), [~~Tex. Code Crim. Proc. Art. 56.32(a)(9)(A) the term~~] means [~~only~~] psychiatric care or counseling performed by a mental health service provider with a professional license and may include any modality recognized by the Texas Department of Insurance, Division of Workers Compensation in their medical fee guidelines. The types of licenses approved by the OAG to provide psychiatric care or counseling are listed on the OAG website. The term psychiatric care or counseling does not include an admission to a hospital or clinic for in-patient psychiatric treatment, admission to a residential treatment center or intensive outpatient programs, which are considered medical expenses. [~~psychiatrists (M.D. or D.O.), psychologists (Ph.D.), clinical nurse specialists (C.N.S. in psychiatric care), licensed professional counselors (L.P.C.), licensed marriage and family therapists (L.M.F.T.) and licensed masters in social work-advanced clinical practitioners (L.M.S.W.-A.C.P.). Psychiatric care or counseling does not include art therapy, music therapy, or equestrian therapy. Any other non-traditional psychiatric care or counseling must be pre-approved by the OAG to be eligible for reimbursement.~~]

(15) [~~(9)~~] Reports [~~Report from law enforcement agency~~]--As used in Texas Code of Criminal Procedure Article 56.38(d), [~~Tex. Code Crim. Proc. Art. 56.38(d), the term "reports"~~] includes both written and oral reports from a law enforcement agency as deemed appropriate by the OAG.

(16) [~~(10)~~] Resident--As used in Texas Code of Criminal Procedure Article 56.32(a)(11)(A)(ii), [~~Tex. Code Crim. Proc. Art. 56.32(a)(11)(A)(ii), the term~~] means a person who has a domicile in Texas or who lives for more than a temporary period in Texas, another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession or territory of the United States.

(17) Service Provider--Any provider of compensable services to a victim or claimant including, but not limited to, health care service providers, mental health counselors, funeral or burial service providers, child care providers, landlords, moving companies, or any other person or entity who is eligible to receive direct payments from the OAG on behalf of a victim or claimant under Texas Code of Criminal Procedure Article 56.44(d) for pecuniary losses under Texas Code of Criminal Procedure Article 56.32(a)(9).

(18) Total and Permanent Disability--As used in Texas Code of Criminal Procedure Article 56.42(b), means the victim is not likely to recover from their crime related personal injury such that an M.D. or D.O. may certify with reasonable medical certainty that a disabling condition will continue indefinitely and results in the victim's disqualification or inability to perform the usual tasks of a worker in such a way as to leave the victim at a substantial disadvantage in the competitive labor market for any type of work. The term does not require permanent unemployment.

(19) Trafficking of Persons--As defined by Texas Code of Criminal Procedure Article 56.32(a)(14), means any offense that results in a person engaging in forced labor or services and that may be prosecuted under Texas Penal Code §§20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26.

(b) The definitions in this chapter [~~section~~] will be given their most ordinary [~~reasonable~~] meaning unless the context clearly indicates otherwise, in accordance with Texas Government Code §312.002(a).

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

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SUBCHAPTER C. APPLICATION

1 TAC §§61.201 - 61.203

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.201. Application for Compensation.

(a) As required by Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.36, all communications and OAG approved applications for compensation shall be submitted to the Crime Victims' Compensation Program [~~Division~~], Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711-2198. An OAG approved application for compensation is considered complete and will be processed when the application:

(1) is filled out in its entirety;

(2) is signed by a victim or a [~~valid~~] claimant as defined by Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32;

(3) provides the case number or other sufficient information concerning the relevant law enforcement or public safety agency to enable the OAG to request a criminal report substantiating that the victim or claimant reported the crime; and

(4) provides any other information requested by the OAG to determine eligibility.

(b) If the victim or claimant submits an application that is not complete, the OAG will notify the victim or claimant in writing that his or her application is incomplete and request that the additional information be provided within 30 days. If the victim or claimant does not return the completed application to the OAG within 30 days, the application [~~claim~~] for compensation may be closed in accordance with §61.3 of this chapter (relating to Closing Applications) [~~at the discretion of the OAG~~].

(c) Under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(2)(E), to be an authorized individual entitled to file an application [~~a claim~~] and act on behalf of a child [~~(a minor under the age of 18)~~], an individual must:

(1) have legal guardianship; or

(2) have the legal authority to act on behalf of the child [~~(i.e., an individual authorized to represent the Department of Family and Protective Services)~~]; or

(3) be the parent, spouse, or the child if the child has been emancipated.

(d) The OAG may merge one or more submitted applications for compensation involving the same victim if:

(1) the applications arise out of the same alleged incident of criminally injurious conduct;

(2) the applications arise out of substantially similar alleged facts involving the same victim and offender; or

(3) the applications allege a pattern of criminally injurious conduct against the same victim by the same offender over a period of time greater than one day.

(e) Subsection (d) of this section shall not be construed to deny an application for compensation for each individually named victim of the same incident of criminally injurious conduct. If a victim or claimant disputes the merging of two or more applications for compensation under this section, the victim or claimant may request a reconsideration of the decision to merge applications.

§61.202. Timely Filing an Application.

Except as provided by paragraph (7) of this section:

(1) [~~(a)~~] An application for compensation based on criminally injurious conduct that occurred between [~~on or after~~] January 1, 1980, and [~~to on or before~~] August 31, 1983, must have been [~~be~~] filed with the OAG not later than 180 days from the date of the criminally injurious conduct.

(2) [~~(b)~~] An application for compensation based on criminally injurious conduct that occurred between [~~on or after~~] September 1, 1983 and [~~to on or before~~] August 31, 1997, must have been [~~be~~] filed with the OAG not later than one year from the date of the criminally injurious conduct.

[~~(c) On or after September 1, 1985, the limitation period to file an application will not include that period of mental or physical incapacity resulting from criminally injurious conduct that reasonably prevented the victim or claimant from filing an application for compensation. It is the victim's or claimant's responsibility to provide written, medically documented evidence of such mental or physical incapacity.~~]

(3) [~~(d)~~] An application for compensation based on criminally injurious conduct that occurred on or after September 1, 1997 must be filed with the OAG not later than three years from the date of the criminally injurious conduct.

(4) In accordance with Texas Code of Criminal Procedure Article 56.37(b), the OAG may extend the time for filing an application upon good cause shown by the claimant or victim. Good cause, as determined by the OAG, includes the following circumstances:

(A) the victim or claimant was not informed about the CVC program by a law enforcement agency, public service agency or service provider and the victim or claimant has not previously applied for or received compensation from the CVC Program;

(B) physical or psychological factors prevented the victim or claimant from filing in a timely manner;

(C) communication barriers existed that prevented the victim or claimant from filing in a timely manner; or

(D) any other circumstance that the OAG considers significant.

(5) In accordance with Texas Code of Criminal Procedure Article 56.37(c), if the victim is a child, the application must be filed within three years from the date the claimant or victim is made aware of the crime but not after the child is 21 years of age.

(6) In accordance with Texas Code of Criminal Procedure Article 56.37(d), the OAG will exclude a period of incapacity from the time to file an application if the victim or claimant:

(A) submits medically documented evidence of a physical or mental incapacity;

(B) the period of incapacity is a result of the criminally injurious conduct; and

(C) the incapacity reasonably prevented the victim or claimant from filing an application within the statutorily prescribed limit in effect on the date of the criminally injurious conduct.

(7) In accordance with Texas Code of Criminal Procedure Article 56.37(e), an application on behalf of a victim of criminal homicide must be filed with the OAG not later than three years after the date the victim's identity is established by a law enforcement agency.

[~~(e) If a claim is filed after the limitation period the claim may be approved based on good cause. Good cause, as deemed acceptable by the OAG, may be shown by verification of the following circumstances:~~]

[~~(1) the victim or claimant was not informed about the CVC program;~~]

[~~(2) insufficient information about the CVC program was given to the victim or claimant by a law enforcement or public service agency;~~]

[~~(3) physical or psychological factors prevented the victim from filing in a timely manner;~~]

[~~(4) communication barriers existed that prevented the victim or claimant from timely filing an application; or~~]

[~~(5) any other circumstance that the OAG considers significant.~~]

§61.203. Timely Reporting to Law Enforcement.

(a) As required by Texas Code of Criminal Procedure Article 56.46(a), a victim or claimant may not file an application with the OAG unless he or she timely reports the crime to the appropriate state or local public safety or law enforcement agency. This timely reporting requirement does not apply to a victim who is a child, as defined by Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(1).

(b) For criminally injurious conduct that occurred prior to September 1, 1997, the report to a law enforcement agency must have

been made within 72 hours. After September 1, 1997, the report to a law enforcement agency must have been made within a reasonable time so as not to interfere with or hamper the investigation and prosecution of the crime.

(c) If the OAG determines that extraordinary circumstances exist, then the reporting period may be extended. Extraordinary circumstances, as deemed acceptable by the OAG, may be shown by verification of the following:

(1) physical or psychological factors prevented the victim or claimant from reporting in a timely manner;

(2) threats were made against the victim or claimant in an attempt to prevent the reporting of the crime;

(3) communication barriers existed that prevented the victim or claimant from timely reporting; or

(4) any other circumstance [~~factor~~] that the OAG considers significant.

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SUBCHAPTER D. REDUCTION, DENIAL, OR REFUND OF AN APPLICATION OR AWARD

1 TAC §§61.301 - 61.305

The amendments and new sections are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.301. Reducing an Application or Award.

(a) To reduce an application or award under Texas Code of Criminal Procedure Article 56.45(2) [~~Tex. Code Crim. Proc. Art. 56.45~~], the OAG may consider the victim's behavior if it was [~~as~~] a significant factor in the cause of the personal injury. If the OAG determines that the victim shared a portion of the responsibility for the act or omission that gave rise to the application [~~award~~], the OAG may reduce the award for compensation by 25% or 50%. [~~In determining whether the victim shared a portion of the responsibility, the OAG may consider the victim's ability to have reasonably avoided the incident.~~] When an award for compensation is reduced, the reduction applies to each bill, each individual award amount, and the aggregate award amount.

(b) When determining whether a victim's behavior is a significant factor in the cause of the personal injury, the OAG will consider the totality of facts and circumstances, including but not limited to:

(1) the victim's ability to have reasonably avoided the incident;

(2) the nature and extent of injuries sustained by the victim;

(3) the nature and extent of injuries sustained by the alleged offender or offenders;

(4) exhibition or use of a deadly weapon;

(5) the relationship, if any, between the victim and offender or offenders, including a history of criminally injurious conduct;

(6) the proportionate responsibility between the parties;

(7) the opinions and conclusion of law enforcement investigators assigned to the case;

(8) the legal opinions and conclusions of prosecutorial agencies regarding the presentation of criminal charges and an assessment of affirmative defenses;

(9) the results of the victim's actions could have been reasonably foreseen by the victim at the time;

(10) there is a causal relationship between the victim's or claimant's conduct; and

(11) the degree of harm that occurred as a result of the criminally injurious conduct and the future harm that may occur if compensation is not awarded.

§61.302. Denying an Application or Award.

(a) An application for compensation shall be denied if: [~~To deny an award under Tex. Code Crim. Proc. Art. 56.45, the OAG may consider the victim's or claimant's behavior as a factor in the cause of the personal injury. If the OAG determines that the victim intentionally or knowingly acted in a manner that directly caused the injury, the award for compensation may be denied.~~]

(1) the criminally injurious conduct is not reported to law enforcement as required by Texas Code of Criminal Procedure Article 56.46;

(2) the application does not satisfy the requirements of Texas Code of Criminal Procedure Articles 56.36 and 56.37;

(3) the victim or claimant knowingly and willingly participated in the criminally injurious conduct as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(3);

(4) the victim or claimant is determined by law enforcement to be the offender or an accomplice as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(4);

(5) an award of compensation to the victim or claimant would benefit the offender or an accomplice as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(5);

(6) the victim or claimant was incarcerated at the time the offense was committed as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(6);

(7) the victim or claimant, as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(7), knowingly or intentionally:

(A) submits, or causes to be submitted by a third party, a material statement or representation of fact that the person knows or intends to be false or forged; or

(B) omits material information in an application or supporting documentation that the person knows or should reasonably know will result in reliance upon the omission.

(b) An application for compensation may be denied under Texas Code of Criminal Procedure Article 56.45 if:

(1) the victim or claimant has not substantially cooperated with the appropriate law enforcement agency;

(2) the victim or claimant is responsible for the act or omission giving rise to the application because of the victim or claimant's behavior and a reduction is not granted under §61.301 of this subchapter (relating to Reducing an Application or Award); or

(3) the victim or claimant was engaging in an activity at the time of the criminally injurious conduct that was prohibited by law, excluding minor traffic offenses or other certain non-violent misdemeanors.

(c) Applications arising out of the criminally injurious conduct of trafficking of persons will not be denied solely because the victim engaged in an activity prohibited by law due to threat, coercion, or intimidation as a part of criminally injurious conduct giving rise to the application.

(d) Under Texas Code of Criminal Procedure Articles 56.311 and 56.45(1), the legislature intended the CVC program to encourage greater public cooperation in the successful apprehension and prosecution of criminals. When determining whether a victim or claimant has substantially cooperated with law enforcement, the OAG will consider the totality of facts and circumstances, including but not limited to:

(1) the victim's physical and mental capacity to participate in the investigation, apprehension and prosecution of the offender or offenders;

(2) whether the victim has provided a true, accurate and complete description of the crime;

(3) the extent to which the victim or claimant has participated in investigative activities;

(4) the extent to which the victim or claimant has participated in the prosecution of the offender; and

(5) whether any delays in substantial cooperation hindered or hampered the successful apprehension and prosecution of the offender.

§61.303. Other Grounds for Reducing or Denying an Application or Award.

An award of compensation also may be reduced or denied in the manner prescribed in §§61.406, 61.410, and 61.413 of this chapter (relating to Collateral Sources; Changes in Circumstances; and Unjust Enrichment) [~~§61.406, §61.410, and §61.413 of this title~~].

§61.304. Refunds from Victims or Claimants.

(a) The OAG may request a refund of any amount awarded by fraud, mistake or because of newly discovered evidence in accordance with Texas Code of Criminal Procedure Article 56.47(c).

(b) The OAG may pursue available administrative or civil penalties as provided under Texas Code of Criminal Procedure Articles 56.62, 56.63 and 56.64 in addition to seeking a refund.

(c) The OAG may:

(1) require the victim or claimant to repay the overpayment in full;

(2) allow the requested refund to be repaid in installments in consideration of the victim or claimant's financial circumstances; or

(3) reduce future payments from the OAG to the victim or claimant by the amount of the overpayment, if future payments are anticipated.

(d) The OAG may discontinue or suspend all current and future payments to a victim or claimant who has received a request for a refund until the OAG is satisfied that the refund requirements have been met or the victim or claimant enters into a refund payment arrangement as described in this section.

§61.305. Overpayments to Service Providers.

(a) If a service provider is overpaid or paid in error by the OAG for any reason, the service provider shall voluntarily repay the overpaid amount as soon as practicable upon discovering the overpayment or upon notification of the overpayment by the OAG.

(b) The amount of the overpayment to the service provider per CVC application will not reduce the maximum amount available to the victim or claimant for an approved application.

(c) The OAG, at its discretion, may discontinue or suspend all current and future payments to a service provider who has received a request for return of an overpayment until the OAG is satisfied that the overpayment requirements have been met or the service provider enters into an overpayment return arrangement.

(d) The OAG may pursue available administrative or civil penalties as provided under Texas Code of Criminal Procedure Articles 56.62, 56.63, and 56.64.

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.401 - 61.416

The amendments and new section are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.401. Applicability.

The OAG shall determine the eligibility, standards, and reasonable limits on compensation for pecuniary losses under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(9), in a manner consistent with the provisions of this chapter and in accordance with any other controlling provisions of [~~state~~] law[~~, including the Texas Constitution~~].

§61.402. Loss of Earnings.

(a) Pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(9)(B) and [~~56.32(a)(9)~~](I), the OAG shall determine an award for actual loss of past earnings, [~~and~~] the anticipated loss of future earnings and bereavement leave. Loss of earnings may be paid to victims who suffer a disability period as defined in §61.101(a)(2) of this chapter (relating to Definitions) [~~outlined in (b) of this rule~~], or to victims or claimants attending individual appointments, executions, or funerals and memorials as outlined in subsections (e), (i) and (j) of this section [~~rule~~]. The victim or claimant must submit information to the OAG in the manner prescribed in §61.404 of this subchapter (relating to Travel Expenses) [~~Rule 61.404 of this subsection~~].

(b) The actual loss of past earnings will be computed by determining the weekly net earnings of the victim on the date of the criminally injurious conduct multiplied by the disability period. The [~~For the first 14 days or less of a personal injury disability period, the~~] OAG may determine the initial [~~personal~~] disability period upon verification of work missed up to fourteen calendar days after the criminally injurious conduct. Verification may be from any source deemed appropriate by the OAG. [~~In this subsection, "disability period" means the length of time that a victim is unable to work as a direct result of the criminally injurious conduct for the following:~~]

[~~(1) personal injury as determined by a physician and consistent with §61.402(d) of this title; or~~]

[~~(2) mental trauma as determined by a mental health professional licensed to provide care or counseling as defined in §61.101(8) of this title and consistent with §61.402(c) and (d) of this title.~~]

(c) If a victim's loss of [~~victim lost~~] past or anticipated earnings is [~~as~~] a result of a disability period lasting more than 14 days [~~mental trauma~~] directly caused by the criminally injurious conduct, the M.D. or D.O. who [~~mental health professional that~~] regularly treats the victim must [~~may~~] submit a written statement and any other documentation requested by [~~to~~] the OAG in order to verify [~~verifying~~] loss of past or anticipated earnings. [~~for the victim for a maximum period of six months. In order to continue receiving benefits after six months, a victim must submit to an independent medical evaluation and a disability determination by an M.D. or a D.O. with a psychiatric specialty. The evaluation will be scheduled and paid for by the OAG.~~]

(d) If a victim was unemployed at the time of the criminally injurious conduct and claims a loss of anticipated earnings, the victim or claimant must provide the OAG with a sufficient showing that the victim would have had earnings had the victim not suffered injury or death as a direct result of the criminally injurious conduct. "Sufficient showing" may include a written statement [~~includes an affidavit~~] from the employer, [~~including the employer's identification number, affirming~~] that the victim was offered employment, but did not [~~was unable to~~] begin employment [~~as a direct result of a disability caused by the crime~~] or any other information deemed appropriate by the OAG. [~~In order to continue receiving benefits after six months, a victim must submit to an evaluation and a disability determination from an M.D. or a D.O. with a similar practice specialty. The evaluation will be scheduled and paid for by the OAG.~~]

(e) Loss of earnings may be paid to a claimant, consistent with the rest of this section, if the expense is reasonably and necessarily incurred as a result of the victim's personal injury or death for: [~~the claimant can substantiate in a manner that is acceptable to the OAG that his or her presence is necessary for the following activities relevant to the criminally injurious conduct:~~]

(1) the victim's disability period resulting from the personal injury;

(2) the receipt of medically indicated services related to the victim's disability period resulting from the personal injury; or

(3) the participation in or attendance at investigative, prosecutorial, or judicial processes related to the criminally injurious conduct and participation in or attendance at any post-conviction or post-adjudication proceeding relating to the criminally injurious conduct.

[~~(1) decision-making on behalf of a medically incapacitated adult victim or minor child victim who is unable to make decisions on his or her own behalf; or~~]

[~~(2) transporting a medically incapacitated adult victim or minor child victim to medically indicated services or participation in legal matters relating to the prosecution of the criminally injurious conduct; or~~]

[~~(3) providing care for an incapacitated adult victim or minor child victim not to exceed 180 consecutive days, if the attending physician provides a letter stating the care is medically necessary.~~]

(f) In computing loss of earnings, the OAG will consider any other income earned subsequent to the crime, and any collateral source under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(3).

(g) Loss of past earnings may be paid upon verification of one of the following:

(1) income reported to the Internal Revenue Service[~~, if reporting is required by law~~];

(2) documentation from the Texas Workforce Commission;

(3) an affidavit from an employer, including the employer's Texas Workforce Commission employer identification number; or

(4) any other source approved by the OAG.

(h) The [~~amount of~~] loss of [~~past~~] earnings available [~~awarded~~] under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(9)(B) is determined by the date of criminally injurious conduct and is limited pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42(c) as follows:

(1) Between [~~On or after~~] January 1, 1980 and[~~, to on or before~~] August 31, 1989, the maximum amount of an award for loss of earnings is $150[~~.00~~] per week.

(2) Between [~~On or after~~] September 1, 1989 and[~~, to on or before~~] August 31, 1995, the maximum amount of an award for loss of earnings is $200[~~.00~~] per week.

(3) Between [~~On or after~~] September 1, 1995 and[~~, to on or before~~] January 31, 1998, the maximum amount of an award for loss of earnings is $400[~~.00~~] per week.

(4) After [~~On or after~~] February 1, 1998, the maximum amount of an award for loss of earnings is $500[~~.00~~] per week.

(i) Loss of earnings may be paid to a household member, as defined in Texas Code of Criminal Procedure Article [~~Art.~~] 56.32(a)(6), or immediate family member, as defined in Texas Code of Criminal Procedure Article [~~Art.~~] 56.32(a)(7), if it can be substantiated in a manner that is acceptable to the OAG that bereavement leave was taken from work in connection with the death of a victim who died on or after September 1, 2003.

(j) Loss of earnings available to a victim or claimant to attend an execution under Texas Code of Criminal Procedure Article 56.32(a)(9)(B)(iii) is limited to three consecutive days per proceeding and cannot exceed the limits described in subsection (h) of this section. The OAG may extend this limit upon good cause shown.

[~~(j) Loss of earnings may be paid to a claimant if it can be substantiated in a manner that is acceptable to the OAG that the claimant traveled to witness an execution, if the cost is incurred on or after June 21, 2003.~~]

(k) The amount of loss of [~~past~~] earnings awarded under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(9)(I) for bereavement leave is determined by the date of the criminally injurious conduct, and is limited to [~~and the maximum~~

amount of an award is] ten work days of lost earnings, not to exceed $1,000.

(l) Loss of earnings may be paid to a claimant if it can be substantiated in a manner that is acceptable to the OAG that the claimant traveled to witness an execution, if the cost was incurred on or after June 21, 2003.

[(l) The amount of loss of past earnings awarded under Tex. Code Crim. Proc. Art. 56.32(a)(9)(I) to travel to witness the execution is determined by the date the cost is incurred, and the maximum amount of an award is three days of lost earnings.]

(m) Reimbursements [To ensure reimbursements] for loss of [lost] earnings are limited to [paid at a reasonable amount, the OAG may limit] reimbursement for the actual loss of earnings [lost] due to individual medical, investigative, or court appointments, including judicial proceedings, but not to exceed [to] four hours of work time, unless evidence presented by the victim or claimant or an investigation by the OAG indicates that the appointment exceeded four hours.

(n) At the discretion of the OAG, an award for loss of earnings due to a disability period may require review and application of the requirements provided in the "Official Disability Guidelines" adopted by the Texas Department of Insurance.

§61.403. Loss of Support Payments for Dependents.

(a) Pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(E), the OAG may make payments for actual loss of support for the [a] dependent(s) of a victim. Under this provision, actual loss of support will be paid to the victim on behalf of a dependent(s) or to a claimant on behalf of a dependent(s) if the victim is deceased.

(b) To determine the actual loss of support for the dependent(s), the OAG may consider the victim's income and the offender's income if the income source was available for the dependent(s) on the date of the criminally injurious conduct and was lost as a result of that criminally injurious conduct. The amount of any award for loss of support shall be reduced by any payments from collateral sources and any loss of earnings paid under §61.402 of this subchapter (relating to Loss of Earnings). Loss of support payments may not exceed the actual pecuniary loss or any other limits set by this section.

(c) Consistent with Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.41(b)(5), the OAG shall not make loss of support payments for the dependent(s) [a dependent] of a victim if the offender or an accomplice of the offender would benefit from such payment, consistent with §61.413 of this subchapter (relating to Unjust Enrichment).

(d) The OAG will review the supporting documentation provided by the victim or claimant to determine eligibility and amount of an award of loss of support payments. The OAG will determine if the documentation is sufficient to support an award under this section. The victim or claimant must provide all documentation deemed necessary by the OAG as proof of the following:

(1) the dependent is the victim's dependent, as defined in Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(5);

(2) the amount of net income or other verifiable support available for the dependent;

(3) if applicable, verification that the victim is deceased or verification of the medical disability of the victim consistent with [the provisions of] §61.502 of this chapter (relating to Medical Reports and Records) [title]; and

(4) any other documentation deemed necessary by the OAG.

(e) Payments made under this section are subject to ongoing review by the OAG to determine continued eligibility. If the victim has a medical disability as a result of the criminally injurious conduct and therefore is unable to work, then the victim or claimant must comply with, and is subject to, all provisions of §61.502 of this chapter. [Medical Reports, of this title. If the victim fails to comply with the provisions of §61.502, then the OAG, within its discretion, may close the case and may cease making any further payments.]

(f) Loss of support payments for the dependent(s) of a deceased victim may be paid on an ongoing basis at 100% of the pecuniary loss, subject to the award cap determined by the date of the criminally injurious conduct, up to the maximum amount of the claim or until the dependent(s) no longer qualifies due to [for this benefit by] age[, marital status,] or emancipation, subject to the following provisions:

(1) If there are multiple dependents of a deceased victim, the OAG will pay the loss of support payments in equal amounts for each eligible dependent claimant not to exceed the aggregate limits set in paragraph (2) of this subsection [§61.403(f)(2)].

(2) The amount of the loss of support payment awarded for the dependent(s) of a deceased victim is determined by the date of the criminally injurious conduct and is limited pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.42(c) as follows:

(A) Between [On or after] January 1, 1980 and[, to on or before] August 31, 1989, the maximum amount of an award for loss of support is $150[.00] per week.

(B) Between [On or after] September 1, 1989 and[, to on or before] August 31, 1995, the maximum amount of an award for loss of support is $200[.00] per week.

(C) Between [On or after] September 1, 1995 and[, to on or before] January 31, 1998, the maximum amount of an award for loss of support is $400[.00] per week.

(D) After [On or after] February 1, 1998, the maximum amount of an award for loss of support is $500[.00] per week.

(g) Loss of support payments made for the dependent(s) of a surviving victim may be paid to the victim [to allow an opportunity to make arrangements for alternative financial support for the dependent(s)], subject to the following provisions:

(1) To be eligible to receive an award under this section, the criminally injurious conduct causing the injury to the surviving victim must have occurred on or after September 1, 1997.

(2) If there are multiple dependents of a surviving victim, the OAG will pay the loss of support payments in equal amounts for each eligible dependent not to exceed the aggregate limits set in paragraph (3) of this subsection [§61.403(g)(3)].

(3) The amount of the loss of support payment awarded for dependent(s) of a surviving victim is determined by the date of the criminally injurious conduct and is limited pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.42(c) as follows:

(A) Between [On or after] September 1, 1997 and[, to on or before] January 31, 1998, the maximum amount of an award for loss of support is $400[.00] per week.

(B) After [On or after] February 1, 1998, the maximum amount of an award for loss of support is $500[.00] per week.

(4) An award of loss of support for the [a] dependent(s) of a surviving victim is limited to 13 continuous weeks [90 days] following the date of the criminally injurious conduct. If the surviving victim is medically disabled as a result of the criminally injurious conduct, such that the surviving victim is unable to work, loss of support payments for the dependent(s) of the surviving victim will be paid during the medical disability period and will continue for 13 continuous weeks [90 days] after the removal of the medical disability. Loss of support payments are subject to the limits in effect on [award cap determined by] the date of the criminally injurious conduct, and are paid up to the maximum amount of the claim or until the dependent(s) no longer qualifies as a dependent by age[, marital status,] or emancipation.

§61.404. Travel Expenses.

(a) Pursuant to Texas Code of Criminal Procedure Article 56.32(a)(9)(B), (D), and (J) [Tex. Code Crim. Proc. Art. 56.32(a)(9)(B), Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I)], the OAG may reimburse a victim or claimant for actual, reasonable and necessary travel expenses resulting from the criminally injurious conduct [crime]. Reasonable and necessary travel expenses include transportation provided by a commercial transportation company, or for mileage for the use of the victim's or claimant's personally owned motor vehicle, including reimbursement to a claimant transporting a victim who is physically or legally unable to operate a motor vehicle. The OAG may reimburse transportation expenses only from the victim's or claimant's residence, unless the applicant demonstrates that good cause exists [extenuating circumstances exist] for another starting destination. The travel distance must exceed 20 miles one-way.

(b) Meals and lodging expenses are considered reasonable and necessary travel expenses under Texas Code of Criminal Procedure Article 56.32(a)(9)(B)(ii) and (iii), (D), and (J) [Tex. Code Crim. Proc. Art. 56.32(a)(9)(B)(i), (ii), and (iii), Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I)]. The OAG may reimburse a victim or claimant for meals and lodging if: [when]

(1) the travel distance, one-way from the victim's or claimant's residence, exceeds 60 miles; and[.]

(2) [Only] lodging is provided by a commercial lodging establishment including [shall be reimbursed. The term "commercial lodging establishment" means] a hotel, motel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.

(c) Reimbursement to a victim or claimant for transportation, meals and lodging may not be paid at a rate that exceeds the maximum rates provided by law to Texas state employees. If no state maximum rate for an expense exists by law, the OAG may reimburse the victim or claimant at a rate determined to be [fair,] reasonable and necessary. Reimbursement for meals may be paid only if the victim or claimant stays overnight, regardless of whether the OAG reimburses for lodging expenses related to the stay.

(d) A victim or claimant seeking reimbursement shall submit a verified statement on a form prescribed by the OAG setting forth the transportation, meals, and lodging expenses [and lost earnings necessitated by travel] under this section. The form shall reflect the number of hours or days of travel and attendance [that made the victim or claimant absent from work, if any,] and the mileage using the shortest route between the victim's or claimant's residence and the travel destination if a personal vehicle is used. The victim or claimant shall submit all receipts of transportation and lodging with the claim form. [An employment verification form is required to verify time lost from work.] The forms shall contain all of the signatures of the appropriate officials in the following manner:

(1) for psychiatric care or counseling, or medically indicated services, the signature of a health care provider [the attending physician or licensed counselor];

(2) for attendance at or participation in the investigation of the criminally injurious conduct leading to the application [claim], the signature of the law enforcement officer, crime victim liaison, or victim assistance coordinator requesting the victim's or claimant's presence;

(3) for attendance at or participation in the prosecution or judicial proceedings of the criminal case forming the basis of the application [claim], the signature of the prosecuting [district or county] attorney, his or her authorized representative the crime victim liaison, the victim assistance coordinator, the presiding official, or his or her authorized representative [assistant or the victim/witness coordinator];

(4) for attendance at or participation in post-conviction or post-adjudication proceedings, the signature of the prosecuting attorney, his or her authorized representative, the crime victim liaison, the victim assistance coordinator, the presiding official, or his or her authorized representative;

[(5) for loss of earnings, the signature of the victim, the victim's or claimant's employer, or any other person deemed appropriate by the OAG to verify how much time was missed from work and the rate of pay;]

(5) [(6)] for attendance at the funeral or memorial service of a victim, the signature of the person officiating the service or a representative of the funeral home, or any other person deemed appropriate by the OAG; or

(6) [(7)] for attendance at an execution proceeding, the signature of a representative, including a victim services professional from the offices [office] of the district attorney, attorney general, a [representative from the] law enforcement agency or the Texas Department of Criminal Justice.

(e) A [non-resident] victim or claimant who is subject to a subpoena [a witness] may not be reimbursed for travel expenses, pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(B)(iii), for attendance at or participation in the prosecution, judicial, post-conviction or post-adjudication proceedings to the extent the [non-resident victim or claimant] witness receives [is eligible for] reimbursement pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Articles 56.32 and] 35.27.

(f) Reimbursement for reasonable and necessary travel expenses incurred by a claimant for criminally injurious conduct that occurred on or after June 21, 2003, is available for the purpose of witnessing an execution, as provided by to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(I).

(g) Reimbursement for reasonable and necessary travel expenses incurred by an immediate family member or household member of a deceased victim to attend the funeral or memorial services of the victim, as provided by Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(D), is available [for one funeral or memorial service per immediate family member or household member,] for criminally injurious conduct occurring on or after September 1, 2003.

[(h) To ensure reimbursements for lost earnings are paid at a reasonable amount, the OAG may limit reimbursement for earnings lost due to individual medical, investigative, or court appointments to four hours, unless evidence presented by the victim or claimant or an

investigation by the OAG indicates that the appointment exceeded four hours.]

[(i) Travel expenses for counseling appointments will not be paid once counseling limits have been reached. The OAG may limit reimbursements for travel expenses to 30 sessions when counseling is provided by another agency.]

§61.405. Other Limits on Compensation.

(a) The limits on amounts of awards may be different from the amounts listed in this chapter [subchapter] based on the statute and rules [law] in effect at the time of the criminally injurious conduct.

(b) Under Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(c), the actual cost of care for a child victim, a dependent of a victim or a minor child of a victim may be awarded if the criminally injurious conduct occurred on or after September 1, 1997, and the care is a new and ongoing expense resulting from the criminally injurious conduct [crime]. Care of a child or dependent under this section [This benefit] is subject to the following provisions:

(1) Limited to children 14 and under, unless good cause exists;

(2) Limited to 13 continuous weeks if the victim is not deceased, unless good cause exists;

(3) Must be provided by a licensed, registered, or certified care provider;

(4) May not be paid once a person no longer qualifies as a child or dependent; and

(5) Limited to $100 per week for each child or dependent for criminally injurious conduct occurring after September 1, 1997.

[(1) The victim or claimant must submit a written request for the care and an explanation of how the crime created the new care expense. Care must be provided by a certified, registered, or licensed care provider.]

[(2) The OAG will provide reimbursement for the care at a maximum rate of $100 per week for the victim, each dependent, and minor child or the actual cost of care, whichever is less. A minor child for purposes of this benefit may be limited to children 14 years of age or younger. The age requirement may be removed by the OAG upon review of extenuating circumstances.]

[(3) The OAG may limit care for the surviving victim, and the children and dependent(s) of the victim to a maximum of 90 consecutive days. Under extenuating circumstances, care may be extended upon review by the OAG.]

[(4) Care for the children and dependent(s) of a deceased victim may be paid on an ongoing basis up to a maximum of $100 per week based on the pecuniary loss. This benefit is subject to the award cap determined by the date of the criminally injurious conduct, up to the maximum amount of the claim or until the claimant or dependent(s) no longer qualifies for this benefit by age, marital status, or emancipation.]

(c) Funeral and burial expenses provided by Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(D) are limited to $4,500. The actual, reasonable and necessary costs of transporting the deceased victim 50 miles or more to the funeral service location, and 50 miles or more to the place of burial, are allowable funeral and burial expenses which are in addition to [may be excluded from] the $4,500 limit.

(d) Under Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(F), the actual, reasonable, and necessary cost of cleaning the crime scene may be awarded if the criminally injurious conduct occurred [on or] after September 1, 1995, up to[. This benefit is limited to] $750 per victim.

(e) Under Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.32(a)(9)(G), if the criminally injurious conduct occurred [on or after] September 1, 1995, the OAG may pay for the reasonable replacement costs, not to exceed $750 in the aggregate, for property seized as evidence[, rendered unusable as a result of the criminal investigation, or that is not returned to the victim or claimant by law enforcement within a reasonable period of time].

(f) Under Texas Code of Criminal Procedure Article 56.61, the OAG may reimburse claimants for pecuniary losses within the limits and at the rates in effect on the date the identity of the deceased victim is established by a law enforcement agency.

§61.406. Collateral Sources.

(a) The crime victims' fund is the payer of last resort, according to Texas Code of Criminal Procedure Article 56.34(f). Under Texas Code of Criminal Procedure Articles 56.34(b) and 56.36(b)(3)(B), the OAG may only pay for those actual pecuniary losses that are not paid by a collateral source.

(b) Collateral sources are those benefits or advantages for pecuniary loss specifically described in Texas Code of Criminal Procedure Article 56.32(a)(3) and do not include other possible sources of reimbursement or recovery.

(c) Service providers should seek payment from all collateral sources which might be readily available to the victim or claimant prior to submitting claims or bills to the OAG, when possible. Service providers shall notify the OAG of all collateral sources being pursued on behalf of the victim or claimant.

(d) The OAG may deny or reduce an award if the OAG notifies the victim, claimant or service provider of a possible collateral source and the victim, claimant or service provider fails to apply or pursue the collateral source within an acceptable time frame for such collateral source. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(e) If a service provider receives payment from any other source on behalf of the victim or claimant, the service provider must report the payment and the source to the OAG before receiving reimbursement. If the OAG has already made a payment, the service provider is responsible for notifying the OAG of the amount and the source of the other payment within 10 business days. Payments made to a service provider that reduce the amount of actual pecuniary loss that must be reported to the OAG include, but are not limited to the following: auto insurance; burial insurance; veterans' benefits; worker's compensation; death benefits; foreign consulate payments; gifts, donations and charitable contributions.

(f) Unless good cause exists, a victim or claimant who receives payment, benefits or reimbursement from a collateral source at any time must report that information to the OAG within 30 days.

(g) If the victim or claimant fails to utilize a collateral source that is readily available to the victim or claimant for all or a portion of a pecuniary loss, the OAG may deny or reduce an award to the extent of the unused collateral source.

(h) The OAG may consider good cause shown when determining whether a collateral source is considered readily available to the victim or claimant.

(i) Gifts, donations or charitable contributions made directly to a victim or claimant are not a collateral source and do not reduce the

determination of the actual pecuniary losses incurred by the victim or claimant.

[(a) If the victim or claimant fails to use, or apply for, a collateral source that is readily available to the victim or claimant for all or a portion of a pecuniary loss, the OAG may deny or reduce an award to the extent of the unused collateral source. Purely donative contributions to the victim or claimant are not considered a collateral source.]

[(b) A collateral source, is a benefit or advantage as defined in the Tex. Code Crim. Proc. Art. 56.32(a)(3) for pecuniary loss related to the crime, and includes the following:]

[(1) A settlement or other recovery from the offender or any third party.]

[(2) Wages and other income received during a time period within which a victim or claimant receives or seeks lost earnings benefits.]

§61.407. Additional Compensation for Extraordinary Pecuniary Losses [Catastrophic Injury].

(a) Compensation for extraordinary pecuniary losses are available to victims of criminally injurious conduct which occurred after September 1, 1995. Losses associated with subsection (d)(6), (7), and (8) of this section are only available for victims of criminally injurious conduct which occurred after September 1, 2001.

(b) [(a)] Pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.42(b), the OAG may only award an additional [benefit] amount to be used for actual extraordinary pecuniary losses if the personal injury to a victim is catastrophic and results in a total and permanent disability to the victim. Claims for extraordinary pecuniary losses are governed by the statute and rules in effect on the date of the criminally injurious conduct. [For purposes of this benefit, extraordinary pecuniary loss means crime related expenses that exceed, or the OAG anticipates expenses to exceed, the maximum amount allowed under Tex. Code Crim. Proc. Art. 56.42(a).]

(c) [(b)] Once the OAG determines that a victim is eligible for additional compensation [catastrophically injured], the OAG may approve payment of expenses from either the victim's initial compensation amount or from the additional [basic or catastrophic] compensation amount [benefits], as determined appropriate by the OAG. The additional compensation for extraordinary pecuniary losses [catastrophic injury benefit amount] is available for the actual, reasonable and necessary costs incurred as a result of the criminally injurious conduct [catastrophic injury] occurring on or after September 1, 1995, as follows:

(1) An award [A claim] for additional compensation for extraordinary pecuniary losses [catastrophic injury benefit amount] arising from criminally injurious conduct [crimes] that occurred between [on or after] September 1, 1995 and[, to on or before] August 31, 1997, shall not exceed $25,000. [A claim for the additional catastrophic injury benefits for this time period shall be applied only to lost wages and (c)(1), (2), (3), (4), and (5) below.]

(2) An award [A claim] for additional compensation for extraordinary pecuniary losses [catastrophic injury benefit amount] arising from criminally injurious conduct [crimes] that occurred between [on or after] September 1, 1997 and[, to on or before] August 31, 2001, shall not exceed $50,000. [A claim for the additional catastrophic injury benefits for this time period shall be applied only to lost wages and (c)(1), (2), (3), (4), and (5) below.]

(3) An award [A claim] for additional compensation for extraordinary pecuniary losses [catastrophic injury benefit amount] arising from criminally injurious conduct [crimes] that occurred on or after September 1, 2001, shall not exceed $75,000. [A claim for the additional catastrophic injury benefits for this time period shall only be applied to lost wages and (c)(1), (2), (3), (4), (5), (6), (7) and (8) below.]

(d) Lost wages under this section has the same meaning as loss of earnings in this chapter. Loss of earnings under this section will be computed, as follows:

(1) By determining the weekly net earnings of a victim at the time of the criminally injurious conduct and multiplying the victim's net earnings by the number of weeks the victim continues to incur loss of earnings; and

(2) The OAG will consider any other income earned subsequent to the crime, and any collateral source under Texas Code of Criminal Procedure Article 56.32(a)(3).

(e) Lost wages may be paid upon verification of one of the following:

(1) income reported to the Internal Revenue Service;

(2) documentation from the Texas Workforce Commission;

(3) an affidavit from an employer, including the employer's Texas Workforce Commission employer identification number; or

(4) any other source approved by the OAG.

(f) Lost wages available under Texas Code of Criminal Procedure Article 56.42(b) are determined by the date of criminally injurious conduct and are limited pursuant to Texas Code of Criminal Procedure Article 56.42(c) as follows:

(1) Between January 1, 1980 and August 31, 1989, the maximum amount of an award for loss of earnings is $150 per week.

(2) Between September 1, 1989 and August 31, 1995, the maximum amount of an award for loss of earnings is $200 per week.

(3) Between September 1, 1995 and January 31, 1998, the maximum amount of an award for loss of earnings is $400 per week.

(4) After February 1, 1998, the maximum amount of an award for loss of earnings is $500 per week.

(g) [(c)] The additional compensation for extraordinary pecuniary losses [catastrophic injury benefit] shall be used only for the specific costs articulated in Texas Code of Criminal Procedure Article 56.42(b). Compensation may be made to replace lost wages and the following reasonable and necessary extraordinary pecuniary losses for expenses incurred [on the dates] as follows:

(1) ["]Making a home accessible, including the actual,[" means] reasonable and necessary physical or structural modifications to a residence that are necessary to maintain an optimal level of independence in the activities of daily living [independent lifestyle]. This includes, but is not limited to, modifications for ingress and egress to the home, modifying a kitchen, bedroom, or bathroom to accommodate the victim's physical limitations [disability] resulting from the criminal injury. The legal owner of the residence must submit to the OAG verification of ownership and written permission to modify the dwelling. [(Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).]

(2) ["]Making an automobile accessible , including[" means] equipping a personal vehicle with reasonable and necessary equipment to allow the victim to control or to enter the vehicle to maintain an optimal level of independence in the activities of daily living. Modification of a vehicle is limited to one time per two year period unless good cause exists. [Eligibility for this benefit may be based on the OAG's assessment of the extent of the disability

and the availability of collateral sources. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).]

(3) Expenses for job training or vocational rehabilitation may be compensated if the service provider is licensed. Job training or vocational rehabilitation should be based upon a[, certified or otherwise operating within the guidelines of the state in which services are being provided and a] referral [has been made] by one of the health care service provider [professionals] treating the victim's injuries that resulted in the disability. All [Services may be obtained through private or public institutions. However, all] other collateral sources for job training and vocational rehabilitation [these services] must be utilized. Itemized bills must indicate [should be submitted to CVC indicating] the dates of service and the nature of the services provided. Semi-annual [Quarterly] reviews of these conditions shall be conducted to assure continued compliance within the predicted length of rehabilitation. [(Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).]

(4) Training in the use of special appliances necessary due to the victim's physical limitations. [includes the training required by the victim or a non-medically trained person providing care for the victim. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).]

(5) Home health care expenses may be paid for [related] services provided by health care service providers [licensed individuals or facilities] upon submission by the victim or claimant to the OAG of an itemized bill [for services provided]. Home health care service providers must be licensed, certified or registered within the state in which services are being provided. Itemized bills must indicate the dates of service and the nature of the services provided. [(Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 1995).]

(6) Durable medical equipment, including [refers to] those items that can withstand repeated use, are primarily used to serve a medical purpose, are generally not useful to a person in the absence of illness, injury or disease, and are appropriate for use in the victim's home or workplace or to assist with activities of daily living. [(Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 2001).]

(7) Rehabilitation technology, including [are] those therapeutic devices or systems [measures], deemed appropriate by the OAG, which [that] help the victim attain maximum function and an optimal level of independence in the activities of daily living. [(Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 2001).]

(8) Long-term medical expenses are: [incurred as a result of medically indicated treatment for the catastrophic injury includes, but is not limited to, medications, supplies, surgery, and surgery related expenses necessary to sustain the highest possible quality of life following a catastrophic injury. (Available to victims with catastrophic injuries resulting from criminally injurious conduct that occurred on or after September 1, 2001).]

(A) incurred for medically indicated treatments which are considered reasonable and necessary and the expense occurs after 12 months of total and permanent disability or after the victim has reached maximum medical improvement, whichever is sooner; and

(B) medical, as defined by §61.101(a)(9) of this chapter (relating to Definitions), expenses which are a direct result of the criminally injurious conduct include, but are not limited to: medications, supplies, surgery, and surgery related expenses necessary to sustain or achieve the highest possible quality of life; or

(C) other expenses resulting from medically indicated treatments related to the criminally injurious conduct in which the OAG finds good cause for an expense to be covered as a long-term medical expense which is either:

(i) prior to the 12 month period of total and permanent disability; or

(ii) outside of the services listed in this section.

[(d) Pursuant to Tex. Code Crim. Proc. Art. 56.42(b) only the victim may be eligible to be awarded compensation for catastrophic injury.]

§61.408. Lump Sum Payments Under Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.44.

(a) A victim or claimant may receive a lump sum payment for pecuniary loss [actual loss of earnings or loss of support] based on an amount equal to the pecuniary loss accrued to the date of the award for installment payments.

(b) A victim or claimant may receive [request] a lump sum payment for future loss of earnings or loss of support. The victim or claimant must request a lump sum payment for future loss of earnings or support in writing to the OAG and must submit documentation [that substantiates] that a lump sum payment will promote the best interest of the victim or claimant. If the OAG determines that there is good cause [sufficient reason] to make a lump sum payment, the lump sum payments based on future loss of earnings or future loss of support may not exceed a total of $1,000. After a lump sum payment for future earnings or support is paid, all other loss of earnings or loss of support expenses incurred shall be paid in installments as the loss is incurred [expense accrues]

§61.409. Emergency Awards.

(a) In accordance with Texas Code of Criminal Procedure Article 56.50, the OAG may make an emergency award, not to exceed $1,500, before acting on an application if it appears likely that:

(1) a final award will be made; and

(2) the victim or claimant will suffer undue hardship if immediate economic relief is not obtained.

(b) All requests for emergency awards under Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.50 shall include a written statement from the victim or claimant setting forth the reasons why the denial of an emergency award would create an undue hardship.

(c) Awards made under this section will be deducted from the final award or repaid by the victim or claimant to the extent the emergency award exceeds the final award [subsequent awards at the discretion of the OAG].

§61.410. Changes in [Financial] Circumstances.

(a) [The OAG may award benefits for pecuniary loss arising from criminally injurious conduct for which the victim or claimant was not compensated by a collateral source.] If a victim or claimant is receiving ongoing compensation [benefits] from the OAG for a pecuniary loss and [during that time] the victim or claimant begins receiving compensation [benefits] from a collateral source, the victim or claimant must [immediately] notify the OAG of the collateral source in accordance with §61.406 of this subchapter (relating to Collateral Sources). The OAG may adjust compensation [benefits] in accordance with the amount of the collateral source received, pursuant to Texas Code of

Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.45(3) and §61.304 of this chapter (relating to Refunds).

(b) If a victim or claimant is receiving ongoing compensation for loss of past or anticipated future earnings or loss of support from the OAG, and [~~during that time~~] the victim or claimant becomes employed (either part-time or full-time), the victim or claimant must [~~immediately~~] notify the OAG of the change in his or her income status. The OAG may adjust compensation [~~loss of past or anticipated future earnings or loss of support benefits~~] in accordance with the amount of the earnings received, pursuant to §61.304 of this chapter.

[~~(c) If a victim or claimant intentionally or knowingly misrepresents or fails to notify the OAG of any changes in the victim's or claimant's financial circumstances, the OAG may close the claim, demand repayment, and begin action as authorized by Tex. Code of Crim. Proc. Articles 56.62, 56.63 and 56.64.~~]

§61.411. Evidence of Actual [~~a~~] Pecuniary Loss.

(a) Upon initial notification by the OAG that a victim or claimant is eligible for compensation [~~will be awarded benefits~~], the victim or claimant must submit bills, records or other evidence of a pecuniary loss to the OAG within 30 days of the date of notification of the decision to award. [~~The OAG may close the claim for failure to comply with the 30-day limitation period.~~]

(b) To continue to receive [~~an ongoing~~] compensation [~~benefit~~], the victim or claimant must submit bills, records or evidence of the continuing actual pecuniary loss to the OAG within 180 days from [~~six months after~~] the date the services were provided or the cost was incurred. [~~The OAG may close the claim for failure to comply with the six-month limitation period.~~]

§61.412. Actual Pecuniary Loss.

(a) The OAG shall [~~only~~] award compensation under Texas Code of Criminal Procedure Article [~~Tex. Code of Crim. Proc. Art.~~] 56.34, if the OAG determines that the victim or claimant has incurred an actual pecuniary loss as a result of criminally injurious conduct. This includes actual, reasonable and necessary pecuniary losses incurred by[~~, but is not limited to, expenses that~~] the victim or claimant [~~has personally paid, or expenses in which the victim or claimant legally assumes the obligation for payment~~].

(b) Payments or reimbursements from sources not included under Texas Code of Criminal Procedure Article 56.32(a)(3) will be considered when calculating a victim or claimant's actual pecuniary loss. Any payments from other sources may reduce the amount of an award to the victim or claimant to the extent that the payments have reduced the amount of actual pecuniary loss.

§61.413. Unjust Enrichment.

(a) As provided by Texas Code of Criminal Procedure Article 56.41(c), the OAG may deny an award to prevent the unjust enrichment of an offender or an accomplice of the offender.

(b) [~~(a)~~] When determining whether an application or award [~~a claim~~] for compensation may be denied based on unjust enrichment, pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code of Crim. Proc. Art.~~] 56.41(b)(5), the following factors will be considered:

(1) whether, and to what extent the offender or the accomplice of an offender has access to any cash compensation payments paid to, or on behalf of, the victim or claimant by the OAG;

(2) whether the award is essential to the health or safety of the victim or claimant; and

(3) whether [~~any portion of~~] the compensation will [~~benefits will be used by, or~~] directly benefit[~~,~~] the offender or an accomplice of the offender in more than a minimal or inconsequential manner [~~for living expenses~~].

[~~(b) If the OAG determines that the offender or accomplice of an offender may be unjustly enriched by any CVC award, the OAG may deny the CVC award.~~]

§61.414. Personal Injury Outside of Texas.

(a) [~~Tex. Code Crim. Proc. Art. 56.32(a)(3)(D) defines a collateral source as a benefit available from another state's or another country's crime victims' compensation program.~~] If a Texas resident suffers personal injury or death as a result of criminally injurious conduct that occurs in another state or country that has a crime victims' compensation program, the victim or claimant must first apply for compensation [~~benefits~~] from that state or country. The other state or country must make a compensation eligibility determination prior to the OAG approving or denying [~~reviewing~~] an application for compensation. If an application [~~a compensation claim~~] is approved by the other state or country, the victim or claimant must exhaust that collateral source before the OAG makes a compensation award determination.

(b) Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.32(a)(3)(B) defines a collateral source as a benefit available from a federal agency. If a Texas resident applies for compensation for personal injury or death as a result of international terrorism, the victim or claimant must first apply with the federal International Terrorism Victim Expenses Reimbursement Program (ITVERP). ITVERP must make a compensation eligibility determination prior to the OAG reviewing an application for compensation. If a compensation claim is approved by ITVERP, the victim or claimant must exhaust that collateral source before the OAG makes a compensation award determination.

§61.415. Funeral and Burial Expenses [~~Refunds~~].

(a) In order to determine whether the funeral and burial expenses are reimbursable, the OAG will review the supporting documentation provided by the claimant or the service provider. Supporting documentation includes, but is not limited to, the funeral purchase agreement, a burial services contract, all other related bills, documentation of any collateral sources, all other sources of payment made to the service provider, and any other documentation relevant to the OAG determination.

(b) If the claimant requests reimbursement for any portion of the funeral and burial bills, he or she must submit proof of payments to include canceled checks, receipts, or bills indicating payment was made.

(c) In addition to the funeral purchase agreement, the following information may be required by the OAG in order to process payments:

(1) the date of death and the date of the funeral service;

(2) the funeral provider's tax identification number;

(3) an itemization of charges for funeral goods and services selected;

(4) itemized cash advance items, including an acknowledgment of such by the claimant; and

(5) any additional supporting documentation requested by the OAG.

(d) The general price list of the funeral service provider applicable on the date of the service may be reviewed by the OAG. Expenses must be verifiable, usual and customary charges and in compliance with the rules and regulations set forth by the licensing entity governing the industry.

(e) If a funeral service provider makes payments to a third party including, but not limited to, other funeral homes, embalming services, airlines, or air freight companies relating to the funeral and burial of the victim, documentation must be provided to substantiate the expenses. This may include an itemization of any costs or additional charges associated with cash advance items.

(f) The funeral service provider must notify the OAG of all payments received by the funeral service provider including payments received after the funeral purchase agreement has been submitted. If changes occur or payments are received after the original submission, the funeral service provider is obligated to notify the OAG, in accordance with this chapter.

(g) If the victim is shipped, the claimant or funeral service provider must submit a bill including: victim's name, cities of departure and arrival, an itemized invoice, a Burial Transmit Permit (Form VS-116) or apostille issued by the appropriate authority, regardless of the method of transportation.

(h) Documentation and services submitted by the funeral service provider must comply with the rules and regulations of the licensing entity governing the industry, as well as any state or federal regulations governing the industry or profession.

~~[(a) When compensation benefits are paid as a result of fraud or error, the OAG may request a full or partial refund of paid benefits as follows:]~~

~~[(1) if a victim or claimant knowingly submits false information or documentation, the OAG shall request a refund of payments made in reliance on the false information or documentation;]~~

~~[(2) if the OAG erroneously overpays a victim or claimant, future awards may be offset by the amount paid in error, or the OAG may request a refund;]~~

~~[(3) if new evidence shows that a victim or claimant is ineligible to receive compensation payments, future awards may be offset by the amount paid in error, or the OAG may request a refund;]~~

~~[(4) if the victim or claimant has received the maximum amount of compensation benefits such that there are not future benefits from which to offset an erroneous payment, the OAG shall request a refund of the amount paid in error;]~~

~~[(5) if a provider of service is overpaid for any reason, the OAG shall request an immediate refund.]~~

~~[(6) If a claim is approved for compensation benefits and the victim or claimant subsequently fails to comply with the requirements of Tex. Code Crim. Proc. Chapter 56, Subchapter B, the OAG may deny further benefits and request a refund of compensation benefits awarded.]~~

~~[(b) The OAG may consider the victim's or claimant's financial circumstances and allow the requested refund to be paid in installments.]~~

§61.416. Verification.

(a) The OAG may verify and investigate an application or award. Verification and investigation includes, but is not limited to:

(1) a verification of any evidence submitted to the OAG;

(2) a review of records submitted by a service provider; or

(3) a post payment audit to verify actual charges, bills, payments, and the delivery of goods or services.

(b) The OAG may require additional supporting documentation from a victim, claimant, or service provider.

(c) If the OAG determines that the supporting documentation is insufficient to process a payment, the OAG may deny payment.

(d) If the OAG determines that charges or bills submitted by a service provider are not in compliance with the laws and regulations governing a profession or industry, the OAG may notify the appropriate licensing or regulatory agency governing the service provider.

(e) A service provider is subject to a reduction or denial of payment, a request for a refund of any overpayments as described in §61.305 of this chapter (relating to Overpayments to Service Providers), and any other penalties authorized by law, for the following acts:

(1) submitting charges for services that were not rendered;

(2) submitting charges that are not reasonable and necessary;

(3) violating rules and regulation set forth by a state or federal licensing or regulatory agency; or

(4) failing to submit the required documentation for services rendered and payments received.

(f) In order to verify the reasonableness and necessity of certain pecuniary losses, a victim or claimant may be required to submit to an independent medical evaluation by an M.D. or a D.O. The evaluation will be scheduled and paid for by the OAG. In addition, a health care service provider who treats the victim or claimant may also be required to submit a current treatment recommendation.

(g) In order to receive or continue receiving compensation for personal injury that is or has been exacerbated by the criminally injurious conduct, a victim or claimant may be required to submit to an independent medical evaluation by an M.D. or D.O. The evaluation will be scheduled and paid for by the OAG. In addition, a health care service provider who treats the victim or claimant may also be required to submit medical documentation relating to the personal injury prior to and after the date of crime.

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

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SUBCHAPTER F. MEDICAL CARE, PSYCHIATRIC CARE OR COUNSELING

1 TAC §§61.501 - 61.508

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.501. Payment of Medical Bills.

(a) All bills for medical[~~, chiropractic~~], psychiatric[~~, and psychological~~] care or counseling, and all bills of health care service

providers [~~duly licensed practitioners providing remedial treatment to the victim or claimant for the condition resulting from the crime,~~] must be itemized and submitted on a form approved by the OAG. If a collateral source is available, the explanation of benefits (EOB) showing the utilization of collateral sources must be attached.

(b) Health care service providers shall be reimbursed according to the Texas Department of Insurance, Division of Workers' Compensation allowable medical fee guidelines, where applicable.

(c) Services not covered under the medical fee guidelines that the OAG deems reasonably and necessarily incurred as a result of the criminally injurious conduct may be compensated at a fair and reasonable amount.

§61.502. Medical Reports and Records.

(a) The [~~victim or claimant shall file with the~~] OAG may require victims, claimants, or health care service providers to submit current medical reports or records including information regarding the [~~outlining~~] treatment, diagnosis, and prognosis of the victim or claimant's condition. The OAG may require a health care service provider to[~~, including~~] estimate the length of any disability period or the extent of the physical impairment, and provide an opinion on [~~setting forth~~] the victim's or claimant's ability to be [~~gainfully~~] employed. To verify treatment and reasonableness of care, the OAG may require reports or records for medical care, dental care, and psychiatric care or counseling.

(b) Costs for medical reports, records, mental health forms, and copies shall be reimbursed to health care service providers according to the Texas Department of Insurance, Division of Workers' Compensation allowable medical fee guidelines for completion of a return to work status report for the Texas Department of Insurance [~~Commission rules regarding medical reports~~].

(c) Costs for medical reports, records, mental health forms, and copies shall be reimbursed to the victim or claimant for the actual expense incurred.

(d) [~~(b)~~] A victim or claimant shall be subject at all times to an independent physical or mental examination if requested by the OAG and shall submit himself or herself to such further examination as the OAG may require. The OAG shall pay the [~~all~~] costs of such examination.

[~~(c) If any victim or claimant shall refuse to provide reports pursuant to 61.502(a) or to submit himself or herself to an examination requested pursuant to §61.502(b), the OAG, within its discretion, may close the case and may cease making any further payments.~~]

[~~(d) If any victim delays medically recommended treatment or is non-compliant with medical provider orders, the OAG, within its discretion, may close the case and may cease making any further payments.~~]

§61.503. Psychiatric Care or [~~Mental Health~~] Counseling Expenses.

(a) Pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42(c), the OAG limits compensation for psychiatric care or counseling [~~counseling expenses~~] to: [~~a maximum of $3,000 per victim or claimant.~~]

(1) for criminally injurious conduct between October 12, 1992 and August 31, 1994, $3,000 or 40 sessions per victim or $1,000 per eligible residing family members;

(2) for criminally injurious conduct between September 1, 1994 and December 14, 2002, $3,000 or 40 sessions per victim or claimant;

(3) for criminally injurious conduct between December 15, 2002 and August 31, 2014, $3,000 per victim or claimant; and

(4) for criminally injurious conduct after September 1, 2014, 60 sessions per victim or claimant.

(b) Under unusual facts and circumstances, additional sessions may be allowed, but are limited to those that are authorized and approved by the OAG [~~prior to treatment~~].

(c) Eligible providers must be health care service providers with a professional license. The types of licenses approved by the OAG to provide psychiatric care or counseling are listed on the OAG's website at https://www.texasattorneygeneral.gov/victims/. [~~licensed practitioners and are limited to: Clinical Nurse Specialists (C.N.S.-Psychiatric Nurse), Licensed Marriage and Family Therapists (L.M.F.T.), Licensed Master Social Worker-Advanced Clinical Practitioners (L.M.S.W.-A.C.P.), Licensed Professional Counselors (L.P.C.), Psychologists (Ph.D.) And Psychiatrists (M.D., D.O.). The OAG may pay the licensed employer of an intern who has a temporary license.~~]

(d) Reimbursement for related psychiatric medication for victims or claimants may be limited to one year from the date of crime, or when the psychiatric care or counseling limits are reached. [~~The victim or claimant must be in counseling during the time frame that psychiatric medications are being reimbursed. Medical management under this provision must be performed by a psychiatrist.~~]

(e) When psychiatric care or counseling has [~~counseling or other mental health services have~~] been ordered by the court, the OAG may deny payment if another party has been ordered to make payments or if a victim receiving counseling has been ordered to undergo counseling as an offender.

(f) Reimbursement for psychiatric care or counseling [~~related mental health treatment~~] for victims or claimants must be submitted to the OAG within three years of the date of service, unless the OAG finds good cause for an extension.

[~~(g) Pursuant to Tex. Code Crim. Proc. Art. 56.42(b) only the victim may be awarded compensation for catastrophic injury.~~]

§61.504. Inpatient and Intensive Psychiatric Care or Counseling Expenses.

(a) Expenses [~~Victims may receive compensation for expenses~~] relating to the victim's [~~acute~~] inpatient psychiatric hospitalization [~~care~~], residential treatment or intensive [~~care, and partial day~~] outpatient programs are limited to 30 days of treatment, unless good cause is shown.

(b) The OAG may require a written authorization prior to the victim's admission for treatment before making an award.

(c) Psychiatric hospitals and residential treatment centers must be licensed, certified or registered by the proper state regulatory [~~licensing~~] authority.

(d) Expenses relating to inpatient psychiatric hospitalization, residential treatment or intensive outpatient programs for treatment of a claimant are not considered reasonable or necessary expenses under this chapter.

[~~(d) Any of the above psychiatric admissions exceeding 30 days are subject to review and approval by the OAG.~~]

(e) A victim may receive compensation for the following, at a limit determined by the OAG, pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42(c):

(1) Admissions [~~Only admissions~~] to [~~acute~~] inpatient psychiatric hospitalization care made at the direction of a licensed medical

doctor [and approved in accordance with general standards of utilization review] will be paid. Expenses for [acute] inpatient psychiatric hospitalization care are limited as follows:

(A) if the date of the criminally injurious conduct was between [on or after] September 1, 1994 and [1995, to on or before] January 31, 1998, the expenses are limited to $400 per day with a maximum 30 day stay, or $12,000, and includes room, board, medications, therapeutic modalities; [or]

(B) if the date of the criminally injurious conduct was between [on or after] February 1, 1998 and August 31, 2014, the expenses are limited to $600 per day with a maximum 30 day stay, or $18,000, and includes room, board, medications, therapeutic modalities; or[.]

(C) if the date of the criminally injurious conduct was after September 1, 2014, the expenses will be paid at the medical fee guidelines.

(2) Expenses for residential treatment center care, including partial day programs or intensive outpatient programs, are limited as follows:

(A) if the date of the criminally injurious conduct was between [on or after] September 1, 1994 and [1995, to on or before] January 31, 1998, the expenses are limited to $200 per day with a maximum 30-day stay, or $6,000; [or]

(B) if the date of the criminally injurious conduct was between [on or after] February 1, 1998 and August 31, 2014, the expenses are limited to $400 per day for a full day with a maximum 30 days of treatment, or $12,000; [or]

(C) if the date of the criminally injurious conduct was between [on or after] February 1, 1998 and August 31, 2014, the expenses are limited to $200 per day for a partial day program with a maximum 30 days of treatment, or $6,000; or[.]

(D) if the date of the criminally injurious conduct was after September 1, 2014, the expenses will be paid at the medical fee guidelines.

§61.505. Reimbursement of Medical, Psychiatric Care or Counseling Expenses Paid by Victim or Claimant.

Pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.34, if circumstances require that the victim or claimant personally pay a medical, or psychiatric care or counseling expense incurred as a direct result of criminally injurious conduct, the OAG will award compensation to the victim or claimant for the amount not compensated by a collateral source. [If an insurance company pays the medical bill, the unpaid balance of said bill is determined to be the victim's or claimant's pecuniary loss and payment shall not exceed the allowable amount for that service under the Texas Workers' Compensation Commission medical fee guidelines.]

§61.506. Reimbursement of Expenses for Dental Services.

(a) Compensation [Pre-treatment plans for dental services are required and written authorization for dental services is recommended. Examinations and x-rays do not require authorization and may be paid upon approval of the OAG. Pursuant to Tex. Code Crim. Proc. Art. 56.34(d), after investigation, the OAG has determined that there is a reasonable health care justification for deviation from the Texas Workers' Compensation Commission Medical Fee Guidelines, and that reimbursement] for dental services shall be subject to fair and reasonable guidelines. For dental services normally associated with criminally injurious conduct, the OAG has determined that fair and reasonable reimbursements will be paid at the amount published in the current American Dental Association Survey of Dental Fees[, whichever is less].

(b) Pre-treatment plans for dental services are recommended, however examinations and x-rays do not require authorization and may be compensated if they are reasonably and necessarily incurred as a result of the criminally injurious conduct.

§61.507. Payments to Health Care Service Providers.

[(a) Any of the following acts by a service provider constitutes a violation for which the service provider is subject to subsection (b) of this section:]

[(1) submitting charges for services that were not rendered;]

[(2) administering improper, unreasonable, or medically unnecessary treatment or service;]

[(3) failing or refusing to timely file required reports or records upon request;]

[(4) making unnecessary referrals for service;]

[(5) violating the fee guidelines as established by the Texas Workers' Compensation Commission; or]

[(6) failure to comply with any provision of the Texas Administrative Code, Title 1, Part III, Chapter 61, or Tex. Code Crim. Proc. Chapter 56.]

(a) [(b)] Failure to comply with any provision of this chapter or Texas Code of Criminal Procedure Chapter 56 may [A service provider that commits any of the violations in subsection (a) of this section is] subject a health care service provider to a reduction or denial of payments, and any other applicable penalties allowed by law.

(b) [(c)] The OAG shall award compensation for out of state health care services[, except for acute trauma care as provided in subsection (d) of this section,] according to the Texas Department of Insurance, Division of Workers' Compensation [Commission] medical fee guidelines.

[(d) Under the Texas Workers' Compensation Commission medical fee guidelines, reimbursements for acute trauma care shall be paid at a fair and reasonable amount. The OAG has determined that a fair and reasonable amount under this provision is the maximum allowable reimbursement under the Medicare program or the amount billed, whichever is less.]

(c) [(e)] To maximize efficiency, bills submitted by service providers for $5[.00] or less will not be processed. Service providers are encouraged to combine bills of $5[.00] or less to ensure payment can be made.

(d) In the event a victim's pecuniary losses for medically indicated services exceed the maximum aggregate amount allowable for the application, the OAG may distribute awards of compensation to the victim, claimant and service providers in the manner requested by the victim or claimant.

(e) All payments to health care service providers may be held until the application is processed in accordance with Texas Code of Criminal Procedure Chapter 56, Subchapter B and all provisions of this chapter.

§61.508. Other Limits on Medical Expenses [Review of Heath Care Services].

(a) The OAG considers the following medical services to be reasonable and necessary as a result of the personal injury caused by the criminally injurious conduct:

(1) the one time only repair or replacement of medical or dental devices in use by the victim prior to the criminally injurious

conduct, if the device is damaged, lost or rendered unusable as a result of the criminally injurious conduct; and

(2) the one time only purchase, or the reasonable and necessary rental, for medically prescribed assistive or adaptive items.

(b) The OAG does not consider the following medical services to be reasonable and necessary as a result of the personal injury due to the criminally injurious conduct:

(1) treatment for wellness or the prevention of disease;

(2) membership in a health club or gym facility;

(3) the rental or purchase of fitness, exercise, or gym equipment; or

(4) any other items or services which are not regularly used in the course of treating a medical condition in a health care facility or setting.

(c) Unless the OAG has made a determination that good cause exists, the OAG will not process bills and requests for reimbursements for health care services that are received three years after the date of service.

(d) For victims under the age of 18 at the time of the criminally injurious conduct, bills and requests for reimbursements for health care services may be submitted up to the victim's 22nd birthday for consideration of payment.

(e) Physical therapy expenses will be reviewed as health care services under this subchapter. Physical therapy includes the testing and measurement of the function of the musculoskeletal, neurological, pulmonary, and cardiovascular systems and rehabilitative treatment concerned with the restoration of function and prevention of disability. It also includes treatment, consultive, educational, and advisory services for the purpose of reducing the incidence and severity of disability and pain to enable, train, or retrain an individual to perform the independent skills and activities of the victim's daily living at the same level as immediately before the criminally injurious conduct.

[Pursuant to Tex. Code Crim. Proc. Art. 56.385, the OAG may review all bills and requests for reimbursements for health care services before making a compensation payment to determine if the services were medically necessary subject to the following provisions:]

[(1) Medically necessary services are those that cure or relieve the effects naturally resulting from the injury; that promote recovery; and that enhance the victim's or claimant's ability to return to pre-crime health status.]

[(2) Health care services provided as maintenance for wellness and prevention of disease or to maintain or prevent deterioration of a chronic condition will be considered maintenance health care services that are not eligible for reimbursement. Clinical improvement must be documented and care must be corrective, not supportive as reflected by the treatment plan.]

[(3) The OAG must be able to properly verify information as submitted to determine if the health care services were medically necessary. Unless the OAG has made a determination that extenuating circumstances exist, the OAG will not process bills and requests for reimbursements for health care services that are received five years after the date of service. For child victim treatment reimbursement up to the patient's 21st birthday, medical records will need to be secured and submitted by the requestor for consideration of payment.]

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

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SUBCHAPTER G. RELOCATION AND HOUSING RENTAL EXPENSES BENEFITS

1 TAC §61.601, §61.602

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.601. Definitions Pertaining to Relocation and Housing Rental Expenses Benefits.

(a) For the limited purpose of awarding compensation [benefits] for relocation and housing rental expenses pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.42(d)(1) and (2), the following terms shall have the following meanings:

(1) Deposits--Expenses for rental deposits are limited to property deposits and utility deposits.

(2) Domestic violence--For purposes of this subchapter the term "domestic violence" shall have the same meaning as the term "family violence" in Texas Family [Tex. Fam.] Code §71.004(1). "Domestic violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(3) Family--As defined in Texas Family [Tex. Fam.] Code §71.003, without regard to whether the following individuals reside together, the term "family" includes:

(A) individuals related by consanguinity or affinity, as determined by Texas Government Code, §573.022 and §573.024;

(B) individuals who are former spouses of each other;

(C) individuals who are the biological parents of the same child without regard to marriage; and

(D) a foster child and foster parent.

(4) Family violence--As defined in Texas Family [Tex. Fam.] Code §71.004(1), the term "family violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(5) Household--As defined in Texas Family [Tex. Fam.] Code §71.005, the term "household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(6) Member of a household--As defined by the Texas Family [~~Tex. Fam.~~] Code, §71.006, the term "member of a household" includes a person who previously lived in the household.

(7) Place of Residence--The term means a victim's dwelling, the property under the dwelling, and all other areas and structures on the property under the control of the owner of the property.

(8) Trafficking of Persons--As defined by Texas Code Criminal Procedure Article 56.32(a)(14), means any offense that results in a person engaging in forced labor or services and that may be prosecuted under Texas Penal Code §§20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26.

(9) [~~(8)~~] Utility connections--Expenses for utility connections are limited to those associated with establishing service [~~expenses~~] for gas, electricity, water, internet, home security, television, and one telephone land line connection.

(b) The definitions in this subchapter will be given their most ordinary meaning unless the context clearly indicates otherwise, in accordance with Texas Government Code §312.002(a).

§61.602. Eligibility and Reimbursement for Relocation and Housing Rental Expenses Benefits.

(a) Pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42(d), the OAG shall determine eligibility for reimbursement of the reasonable and necessary costs for relocation and housing rental expenses. A request for relocation and housing rental expenses must be incurred [~~submitted~~] within three years of the date of the criminally injurious conduct unless the OAG determines that good cause exists for an extension [~~crime~~].

(b) A victim of domestic violence that occurred between [~~on or after~~] June 19, 1999, and [~~to on or before~~] August 31, 2001, may receive reimbursement for relocation and housing rental expenses. [~~a one time only per offender assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per offender assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.~~]

(c) A victim of family violence that occurred on or after September 1, 2001, may receive reimbursement for relocation and housing rental expenses. [~~a one time only per offender assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per offender assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.~~]

(d) A victim of sexual assault who is sexually assaulted in the victim's place of residence on or after September 1, 2001, may receive reimbursement for relocation and housing rental expenses. [~~a one time only per incident assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per incident assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For the purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.~~]

(e) A victim of trafficking of persons on or after September 1, 2013, may receive a reimbursement for relocation and housing rental expenses.

(f) [~~(e)~~] The [~~Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the~~] OAG will verify that the victim requesting this award is eligible [~~benefit was the victim of domestic violence or family violence~~] by reviewing:

(1) [~~the victim's or claimant's affidavit seeking a protective order and the court order signed by the issuing judge, pursuant to Tex. Fam. Code Chapters 71, 81, and 82; or~~] the offense report submitted by a law enforcement agency; [~~and~~]

(2) a signed copy of a protective order, including the application for a protective order, pursuant to Texas Family Code Chapters 71, 81, 82 or Texas Code of Criminal Procedure Chapter 7A or 7B; or

(3) [~~(2)~~] evidence [~~proof~~] of the relationship between the victim and the offender, if necessary [~~in a manner deemed appropriate by the OAG~~].

[~~(f) Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG will verify that the victim was sexually assaulted in the victim's residence by reviewing the offense report submitted by a law enforcement agency.~~]

(g) The OAG may not reimburse a victim for relocation expenses in excess of $2,000. To determine the amount of an award for relocation expenses, the victim [~~or claimant~~] must provide the OAG proof of actual costs or an estimate of the relocation expenses on the form provided and approved by the OAG. Relocation expenses may include, but are not limited to the actual costs of rental deposits, utility connections, moving vans, moving labor, packing, and private vehicle mileage[~~, transportation, lodging, and meals~~]. Relocation expenses may [~~shall~~] be limited to the victim's proportionate share of costs based on the number of adult tenants listed on the leasing agreement. Expenses for transportation, lodging, and meals will be reimbursed in a manner consistent with §61.404 of this chapter (relating to Travel Expenses) and are limited to out of state moves [~~title~~]. Restrictions on reimbursement for travel under 20 miles are not applicable for this award.

(h) The victim must provide the OAG with documentation such that the OAG can reconcile the estimated relocation costs with the actual relocation expenditures within 30 days of receipt of CVC funds [~~relocation benefits~~].

[~~(1)~~] In the event the estimated relocation costs were:

(1) less than the actual relocation expenses, the OAG will reimburse the victim for the actual relocation costs. The total amount of a relocation award may not exceed $2,000; or [~~$2,000.00.~~]

(2) [~~In the event the estimated relocation costs were~~] more than the actual relocation expenses, the OAG will:

(A) reduce other compensation [~~benefits~~] to which the victim may be entitled by an amount equal to the overpayment; or

(B) demand payment from the victim to satisfy the overpayment.

(i) An award for rental expenses under this provision may be approved for three months of rent, not to exceed $1,800 [~~$1,800.00~~]. Rent payments shall be limited to the victim's proportionate share of rent based on the number of adult tenants listed on the leasing agreement. [~~Pursuant to Tex. Code Crim. Proc. Art 56.41(b)(5), rent and relocation expenses shall be denied if the offender occupies the new residence with the victim or claimant.~~] To make an award for rental expenses, the victim must provide to the OAG the following information:

(1) a copy of the signed lease or signed contract for a rental agreement for the victim, or a written statement from the landlord showing the location of the rental property, the date of the victim's

move-in, the rent amount, the rent due date, and the names of the occupants of the rental property;

(2) the landlord's name, phone number, address, and federal tax identification number or social security number; or the name of the management company to whom the rent is paid and its phone number, address, and federal tax identification number; and

(3) other information deemed necessary by the OAG to assist in locating the victim or claimant.

(j) Pursuant to Texas Code of Criminal Procedure Article 56.41(b)(5), rent expenses shall be denied if the offender is listed on the new rental agreement with the victim or claimant.

(k) In accordance with Texas Code of Criminal Procedure Article 56.42(d), the OAG may reimburse a victim for relocation and rental expenses one time only, per offender.

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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Katherine Cary
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1180

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SUBCHAPTER H. COMPENSATION TO CERTAIN DISABLED PEACE OFFICERS

1 TAC §§61.701 - 61.706

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.701. Applicability and General Provisions.

(a) Pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.542, a peace officer or a former peace officer, as defined therein, who, in the performance of the officer's duties as a peace officer employed by the state or a local governmental entity, sustains an injury as a result of criminally injurious conduct on or after September 1, 1989, will be entitled to annual payments if the peace officer's condition is a total disability that has persisted for more than 12 months and results in a permanent incapacity for work. In order to be eligible to receive annual payments, the peace officer must comply with the application provisions of this chapter [~~Chapter 61 of this title~~], and other applicable state laws and the OAG will compute the amount of the annual payments in a manner consistent with Texas Code of Criminal Procedure [~~Tex. Code Crim. Proc.~~] Chapter 56, the Texas Administrative Code, and any other controlling law.

(b) A disabled peace officer, determined to be eligible for benefits pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.542, may also be eligible for compensation [~~benefits~~] pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42. When a peace officer is eligible to receive payments under both provisions, payments pursuant to Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.42 will be exhausted before payments will be made under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.542.

(c) For purposes of this subchapter, eligibility and award determinations will be made based on the law that was in effect at the time the criminally injurious conduct occurred. The date of the criminally injurious conduct is the date of the injury that resulted in the disability of the peace officer. The date of the disability is determined by the latter of the date of the injury or the date that the peace officer is no longer able to perform the duties of a peace officer due to the criminally injurious conduct.

§61.702. Definitions.

For purposes of this subchapter, the following terms shall have the following meanings:

(1) A peace officer eligible to receive payments under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.542 is defined as an individual elected, appointed, or employed to serve as a peace officer for a government entity under Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 2.12 or other law, or is a former peace officer, who suffers personal injury as a result of criminally injurious conduct while performing duties as a peace officer.

(2) The terms "total disability" and "permanent incapacity for work" are defined to mean a [~~be such~~] disability that [~~as~~] permanently incapacitates a peace officer from performing the usual and customary duties of a peace officer. [~~Agency Comment: We recognize that these terms are similar to the term "total and permanent disability" as used in Art. 56.42. We differentiate the meanings in these two articles, because Art. 56.542 is a disability program, intended to benefit a peace officer who has a permanent disability to be a peace officer; whereas, Art. 56.42 is a reimbursement program, intended to reimburse a victim who, because of a permanent disability cannot engage in any substantial, gainful employment, and he or she will not likely improve throughout his or her lifetime.~~]

§61.703. Eligibility.

Eligibility of a peace officer to receive benefits under this subchapter shall be determined in accordance with the provisions and requirements of Texas Code of Criminal Procedure Article [~~Tex. Code Crim. Proc. Art.~~] 56.542.

§61.704. Supporting Evidence for Determination of Total Disability Resulting in Permanent Incapacity for Work.

(a) Any one of the following will be sufficient evidence of total disability resulting in permanent incapacity for work:

(1) a determination of total and permanent disability by the Texas Department of Insurance, Division of Workers' Compensation [~~Commission~~];

(2) a determination of total and permanent disability by a Pension Board created pursuant to Texas Revised Civil Statutes Article [~~Tex. Rev. Civ. Stat. Art.~~] 6243d-1;

(3) a determination of total and permanent disability by another governmental agency authorized to make such a determination; or

(4) a determination of total and permanent disability by an independent medical examination made at the request of the OAG.

(b) A peace officer shall be subject at all times to re-examination by the OAG and shall submit himself or herself to such further examination as the OAG may require. If any peace officer shall refuse

to submit himself or herself to any such examination, the OAG may, within its discretion, stop making annual payments. [If a peace officer whose total disability has resulted in a permanent incapacity for work in the opinion of the OAG, recovers so that he or she is able to perform the usual and customary duties of a peace officer, the OAG may stop annual payments.]

§61.705. Contents of Application.

(a) A disabled peace officer must submit a completed, OAG approved application for compensation to the Crime Victims' Compensation Program [Division], Office of the Attorney General, P.O. Box 12198, Austin, TX 78711-2198. An application is deemed complete if:

(1) it is signed by the applicant or his or her legal representative, attesting to the truthfulness, accuracy, and completeness of the enclosed information; and

(2) all necessary documents are provided.

(b) The application shall include all relevant supporting documents which will be used by the OAG to determine eligibility and the date and amount of the first annual payment. The OAG requires that the peace officer submit supporting documents [thereafter on a yearly basis to be used by the OAG] to determine continuing eligibility and the amount of each subsequent annual payment. The following is necessary supporting documentation:

(1) The peace officer must submit all necessary supporting documentation, such as that listed in §61.704 of this subchapter (relating to Supporting Evidence for Determination of Total Disability Resulting in Permanent Incapacity for Work), as evidence of the total disability which resulted in a permanent incapacity for work as a peace officer;

(2) The peace officer must submit all necessary supporting documentation as evidence of the officer's average annual net salary during the officer's final three years as a peace officer; or, if employed less than three years, the peace officer must submit evidence of the peace officer's final net salary. This supporting documentation may be copies of the police officer's federal income tax return(s) for the time period or any other documentation deemed necessary by the OAG.

(3) The peace officer may be required to submit a copy of his or her annual income tax return annually; and

(4) The peace officer must submit all necessary supporting documentation as evidence of other sources of income, such as:

(A) settlements relating to the injury or disability;

(B) insurance benefits;

(C) short or long term disability benefits;

(D) federal disability benefits;

(E) workers' compensation benefits;

(F) benefits from another government entity; and/or,

(G) employee wage continuation.

(c) The OAG may request additional information as the OAG deems necessary to make an accurate determination of the amount of award due to the disabled peace officer.

§61.706. Computation of Award.

(a) If the OAG determines that a disabled peace officer is eligible for an award under this subchapter, the OAG will compute the amount of the annual payment based on the average annual net salary, minus any amount from collateral sources, consistent with the provisions of this subchapter and Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.542 and in accordance with any other controlling provisions of state law, including the Texas Constitution.

(b) The OAG shall add to the initial payment amount the cumulative successive cost of living adjustment for the intervening years computed from the date of injury.

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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Katherine Cary
General Counsel
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SUBCHAPTER I. REIMBURSEMENT TO LAW ENFORCEMENT AGENCIES FOR FORENSIC SEXUAL ASSAULT MEDICAL EXAMINATIONS

1 TAC §§61.801 - 61.804

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.801. Applicability, General Provisions, and Exclusions.

(a) A law enforcement agency is entitled to reimbursement from the OAG for the reasonable costs associated with a forensic sexual assault medical examination of a victim consistent with Texas Code of Criminal Procedure Articles 56.06, 56.065, and 56.54(k) and this subchapter [the provisions and criteria of state law and of these administrative rules].

(b) The OAG shall determine the manner for submitting reimbursement requests. Requests for reimbursement shall be submitted in accordance with the instructions, application, and documentation requirements as found on the OAG website.

(c) Only one forensic sexual assault medical examination per victim per alleged sexual assault will be considered a reimbursable cost.

(d) The OAG will reimburse a law enforcement agency for the reasonable costs associated with a forensic sexual assault medical examination of a victim up to a maximum aggregate amount of $700. Reasonable costs for the services provided during the evidence collection portion of the examination include, but are not limited to, charges for the examiner, health care facility use, procedures, and materials.

(e) Law enforcement shall submit one complete application for reimbursement per victim per alleged sexual assault.

(f) If there are multiple fees from separate service providers, the OAG will reimburse the law enforcement agency up to a maximum aggregate amount of $700.

(g) The OAG will not reimburse the law enforcement agency for any costs associated with medical diagnosis and treatment. A law

enforcement agency is not required to pay any costs of medical diagnosis or treatment for the victim's injuries.

[(b) The costs for multiple examinations of the same victim will not be reimbursed. The cost of only one forensic sexual assault examination per victim per alleged sexual assault will be considered a reimbursable cost.]

[(c) OAG has determined that expenses that comply with the Texas Workers' Compensation Commission medical fee guidelines, identified as Current Procedural Terminology (CPT) Codes, are considered "reasonable expenses." If there is no specific CPT Code under the medical fee guidelines for the medical service or procedure provided in the sexual assault examination, the OAG may accept from a physician a Revenue Code, or the CPT Code that most closely reflects that used in the sexual assault forensic examination. Each cost identified in a descriptive, itemized statement submitted by a sexual assault nurse examiner or sexual assault examiner will be assigned a CPT Code by the OAG.]

[(d) In addition to the costs shown in the Texas Workers' Compensation Commission medical fee guidelines, the OAG has determined that the costs listed in §61.804 of this title are also reasonable costs. In the event the costs in the Texas Workers' Compensation Commission medical fee guidelines are lower than the costs listed in §61.804 of this title, the OAG will reimburse law enforcement agencies the greater amount; however, the total amount reimbursed shall not exceed $700.00 in the aggregate.]

[(e) The OAG will reimburse a law enforcement agency for the reasonable costs associated with a forensic sexual assault examination of a victim in an amount not to exceed $700.00 in the aggregate. The OAG has determined the reasonable costs for the services of the professional, the use of a facility, procedures, and materials. The list of allowable reimbursable costs is provided in §61.804 of this title.]

[(f) In the event there are multiple fees from separate service providers, the OAG will reimburse the law enforcement agency up to a maximum aggregate amount of $700.00 to be allocated among the service providers.]

[(g) A law enforcement agency is not required to pay any costs of treatment or diagnosis for the victim's injuries and the OAG will not reimburse the law enforcement agency for any costs associated with treatment or diagnosis.]

(h) The OAG is not bound by any billing or contractual agreements made between a law enforcement agency and a service provider.

(i) The OAG may require additional documentation from a law enforcement agency or a service provider at any time to support a request for reimbursement.

(j) The OAG will not reimburse a law enforcement agency for any additional costs incurred during the testing and analysis of other physical evidence. This includes, but is not limited to: examining or treating a suspected perpetrator, laboratory testing of clothing, or forensic analysis of crime scene materials or other evidence.

(k) The OAG is only authorized to reimburse a law enforcement agency for a forensic sexual assault medical examination. The OAG is not authorized to reimburse a victim, claimant, physician, sexual assault examiner, sexual assault nurse examiner, or health care facility for any charges associated with a forensic sexual assault medical examination.

[(i) All bills are subject to an individual audit and the OAG may request additional documentation at any time.]

[(j) The maximum aggregate amount for which the OAG will reimburse a law enforcement agency for all costs associated with a forensic sexual assault examination of a victim will be $700.00. The OAG will not reimburse for any type of sexual assault examination of a suspected perpetrator. The OAG will not reimburse for the laboratory analysis of victim's clothing or crime scene materials or objects, including weapons.]

§61.802. Definitions.

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Evidence collection kit and protocol--Refers to the Texas Evidence Collection Protocol published by the OAG or any other evidence collection protocol approved by the OAG.

(2) Forensic sexual assault medical examination--A specialized examination provided pursuant to Texas Government Code, Chapter 420, which uses an OAG-approved evidence collection kit and protocol.

(3) Health care facility--A general or special hospital licensed under the Texas Health and Safety Code, Chapter 241; a general or special hospital owned or operated by the State; an outpatient clinic; or a physician's office.

(4) Law enforcement agency--A governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12.

(5) Sexual assault--Shall have the meaning assigned by any of the following statutes: Texas Penal Code, §§21.02, 21.11, 22.011, 22.021, and 25.02.

(6) Sexual assault examiner--A person who performs a forensic sexual assault medical examination and uses an OAG-approved evidence collection kit and protocol to collect and preserve evidence of a sexual assault.

(7) Sexual assault nurse examiner--A nurse who conducts forensic sexual assault medical examinations, who may or may not hold an OAG-Sexual Assault Nurse Examiner certification.

(b) The definitions in this subchapter will be given their most ordinary meaning unless the context clearly indicates otherwise, in accordance with Texas Government Code §312.002(a).

[For purposes of this subchapter, the following terms shall have the following meanings:]

[(1) "Law enforcement agency" is a governmental organization that employs commissioned peace officers as defined by Tex. Code Crim. Proc. Art. 2.12.]

[(2) "Sexual assault" is generally any act of sexual contact or intimacy performed upon one person by another without mutual consent, or with an inability of the victim to give consent due to age, or mental or physical incapacity. Sexual assault is specifically defined in Texas Penal Code, Sections 21.11, 22.011, 22.021 and 25.02.]

[(3) "Forensic sexual assault examination" is a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense.]

[(4) "Sexual assault examiner" is a person who uses a service-approved evidence collection kit and protocol to collect and preserve evidence of a sexual assault.]

[(5) "Sexual assault nurse examiner" is a registered nurse who has completed a service-approved examiner training course.]

§61.803. Reimbursement Procedures for Law Enforcement Agencies.

(a) A [~~The~~] law enforcement agency seeking reimbursement for the reasonable costs of a forensic sexual assault examination must provide copies of bills which comply with the requirements of this subchapter and any instructions found on the OAG website within three years from the date of the examination [~~provisions of this section~~].

(b) A forensic sexual assault medical examination for which a law enforcement agency is seeking reimbursement must have been paid by a law enforcement agency:

(1) for use in the investigation or prosecution of an alleged sexual assault;

(2) performed at the request of a law enforcement agency;

(3) authorized by a law enforcement agency; or

(4) authorized by Texas Code of Criminal Procedure Article 56.06 or 56.065.

[~~(b) The forensic sexual assault examination must have been performed at the request of a law enforcement agency for use in the investigation and prosecution of an alleged sexual assault.~~]

(c) A physician, a sexual assault examiner, or a sexual assault nurse examiner must have performed the forensic sexual assault examination. A sexual assault examiner or a sexual assault nurse examiner performing a forensic sexual assault medical examination must have oversight by a medical director of the health care facility where the examination was conducted.

(d) The law enforcement agency must complete all sections of the application for reimbursement. The verification section of the application for reimbursement must be signed by a representative of the law enforcement agency who has knowledge of the facts stated in the application.

(e) By submitting a complete Application for Reimbursement, the law enforcement agency certifies to the OAG that the forensic sexual assault medical examination was performed in compliance with applicable laws and regulations and that an OAG-approved evidence collection kit and protocol was used by the examiner.

[~~(d) Payments will be only for reimbursement; therefore, the law enforcement agency must have received and paid all bills associated with the forensic sexual assault examination before applying to the OAG for reimbursement. The law enforcement agency should attach all necessary supporting documentation to the OAG approved Application for Reimbursement.~~]

[~~(e) The law enforcement agency must complete all sections of the Application for Reimbursement. Incomplete applications will not be processed and will be returned to the law enforcement agency noting the reason the application is incomplete. The verification section of the Application for Reimbursement must be signed by an appropriate representative of the law enforcement agency who has knowledge of the facts stated in the application.~~]

[~~(f) All bills associated with the requested forensic sexual assault examination must be attached to the application, and only those expenses for the actual forensic sexual assault examination will be considered for reimbursement. All bills must be submitted at one time. No other bills submitted to the OAG will be processed after the Application for Reimbursement is received. At the written request of a law enforcement agency, items that have been denied on an application submitted between June 17, 2001, and July 30, 2002, may be re-submitted for review by the OAG if such denied items would be reimbursable under these rules.~~]

§61.804. Billing Instructions [~~Reasonable Costs~~].

(a) The reasonable costs of a forensic sexual assault medical examination under this subchapter include either of the following:

(1) Expenses that comply with the Texas Department of Insurance, Division of Worker's Compensation medical fee guidelines, and identified with Current Procedural Terminology (CPT) Codes; or

(2) The usual and customary charge for the forensic sexual assault medical examination on a standard billing form with a descriptive itemized statement of the service provided if there is no specific CPT Code under the medical fee guidelines for the medical service or procedure provided in the forensic sexual assault medical examination.

[~~(a) In order to be considered for reimbursement, the law enforcement agency must provide copies of bills that comply with the guidelines in this section.~~]

(b) In order to be considered a [~~allowable~~] reimbursable charge [~~costs~~] for services of a physician, sexual assault examiner, or sexual assault nurse examiner, the following provisions apply:

(1) A physician should bill the law enforcement agency his or her usual and customary charge for the forensic sexual assault medical examination on a Centers for Medicare and Medicaid Services [~~Health Care Financing Administration~~] form (CMS 1500) [~~(HCFA-1500)~~] or on his or her standard billing form. To be considered for reimbursement, the bill for service must include the associated CPT Code [~~(99201-99137 or 99499)~~] and an itemization of the service provided. The OAG will accept a descriptive itemization of the service provided if no CPT or Revenue Codes are available. [~~The OAG will reimburse a law enforcement agency up to a maximum amount of $195.00 for the service of a physician.~~]

(2) A sexual assault examiner or a sexual assault nurse examiner should not use CPT or Revenue Codes, but should bill the law enforcement agency his or her usual and customary charge for the forensic sexual assault medical examination on his or her standard billing form. To be considered for reimbursement, the bill for service must include a descriptive itemized statement of the service provided. [~~The OAG will determine the appropriate CPT or Revenue Codes. The OAG will reimburse a law enforcement agency up to a maximum amount of $195.00 for the service of a sexual assault examiner or a sexual assault nurse examiner.~~]

(3) In some examinations, a physician, sexual assault examiner, or a sexual assault nurse examiner may have additional evaluation and management requirements. To be considered for reimbursement in these cases, the OAG requires a full documentation of the procedure with the associated CPT Code or a descriptive itemized statement[~~, 99499, may be allowed~~]. The documentation of procedure must fully identify why the reason additional evaluation and management service was required to complete the examination and what [~~the~~] services were provided. [~~The OAG will reimburse a law enforcement agency up to a maximum amount of $106.00 per hour of this service up to the allowable limits found in §§61.801(d), (e), (f), and (j).~~]

(4) The OAG will not reimburse more than one examiner fee per examination.

(c) In order to be considered a [~~allowable~~] reimbursable health care [~~costs for costs for an accredited and licensed healthcare~~] facility charge, the following provisions apply:

(1) The OAG will reimburse a law enforcement agency for a facility charge for the examination at eligible health care facilities which are [~~the cost associated with a healthcare facility that is~~] certified by Medicare or accredited by the Joint Commission [~~Accreditation of Health Organizations~~], and are [~~that is~~] licensed by the Texas Department of State Health Services.

(2) To be considered for reimbursement, the bill from the health care [healthcare] facility must be on a Uniform Billing form (UB-04 [92]) or on the standard form used by the health care [healthcare] facility, and must have a descriptive itemized statement of the service provided. The licensed, accredited or certified health care [healthcare] facility may use the appropriate Revenue Code [R-760] for a medical treatment room[;] or [may use Revenue Code R-450 for an] emergency room or may provide a descriptive itemized statement. [The OAG will reimburse a law enforcement agency for these healthcare facilities up to a maximum amount of $250.00.]

(d) In order to be considered a [allowable] reimbursable charge [costs] for procedures and materials [supplies], the following provisions apply:

(1) The OAG will reimburse a law enforcement agency for an anogenital examination using photo documentation of evidence collected during a forensic sexual assault medical examination. This charge may be reimbursed in addition to the charge for the sexual assault examiner or sexual assault nurse examiner.

(2) The OAG will reimburse for laboratory procedures, as further listed on the OAG website. Maximum reimbursement amounts may be associated with each procedure.

[(1) The bill for a colposcopy procedure may indicate CPT Code 57452. The OAG will reimburse a law enforcement agency up to a maximum amount of $233.00 for this procedure. The bill for an office visit for a colposcopy procedure may indicate CPT Code 99025. The OAG will reimburse a law enforcement agency up to a maximum amount of $26.00 for the office visit for this procedure. However, the cost of the colposcopy procedure includes the cost of the examination services of the professional and the OAG will not reimburse for both this procedure and the $195.00 fee in §§61.804(b)(1) and 61.804(b)(2).]

[(2) The bill for an anoscopy procedure may indicate CPT Code 46600. The OAG will reimburse a law enforcement agency up to a maximum amount of $71.00 for this procedure.]

[(3) The bill for a venipuncture procedure may indicate CPT Code 36415. The OAG will reimburse a law enforcement agency up to a maximum amount of $20.00 for this procedure.]

[(4) The bill for laboratory procedures may indicate CPT Code 8000. The OAG will reimburse a law enforcement agency up to a maximum amount of $150.00 for laboratory work. Laboratory procedures may include:]

[(A) Pregnancy test may indicate CPT Code 81025. The OAG will reimburse a law enforcement agency up to a maximum amount of $6.00 for this procedure.]

[(B) Drug or alcohol screen, if drugging is suspected as a part of the crime, may indicate CPT Code series 80100-90. The OAG will reimburse a law enforcement agency up to a maximum amount of $44.00 for this procedure.]

[(C) Chlamydia culture, if the victim is not sexually active, may indicate CPT Code 87110. The OAG will reimburse a law enforcement agency up to a maximum amount of $37.00 for this procedure.]

[(D) Gonorrhea testing, if the victim is not sexually active, may indicate CPT Code 87070. The OAG will reimburse a law enforcement agency up to a maximum amount of $16.00 for this procedure.]

[(E) Urine analysis for trichomoniasis of fungus may indicate CPT Code 81000-90. The OAG will reimburse a law enforcement agency up to a maximum amount of $9.00 for this procedure.]

[(F) Syphilis test, if the victim is not sexually active, must indicate CPT Code 86592. The OAG will reimburse a law enforcement agency up to a maximum amount of $11.00 for this procedure.]

[(5) The bill for the sexual assault examination kit may indicate Revenue Code R-270. The OAG will reimburse a law enforcement agency up to a maximum amount of $50.00 for the kit.]

[(6) The bill for supplies and materials must have a Documentation of Procedures and must indicate CPT Code 99070. The OAG will reimburse a law enforcement agency up to a maximum amount of $100.00 for supplies and materials.]

[(7) The bill for the handling and/or conveyance of the specimen may indicate CPT Code 99000. The OAG will reimburse a law enforcement agency up to a maximum amount of $20.00 for handling and conveyance.]

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

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SUBCHAPTER J. ADMINISTRATIVE REMEDIES

1 TAC §§61.901, 61.903 - 61.905

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.901. Request for Reconsideration of an Adverse Action [Award Decision].

(a) Pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.47(a), a victim or claimant may request a reconsideration of all or any part of the OAG's decision to make or deny an award or the amount of an award.

(b) Within 30 days of the date of the OAG's adverse action [award decision], the victim or claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the victim or claimant fails to file a written request for reconsideration of the OAG's adverse action [award decision] within the 30-day time period, the decision of the OAG becomes binding [final] and the victim or claimant waives the right to further appeal.

(c) The OAG may not grant a reconsideration if a request is not filed by the victim or claimant within the 30-day time period, unless the victim or claimant shows good cause for late filing. The victim or claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsid-

eration of the OAG's adverse action [award decision] within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding [final] and the victim or claimant waives the right to further appeal.

(d) The OAG will provide the victim or claimant a written notification of its reconsideration decision. If the victim or claimant is dissatisfied with the reconsideration of the OAG's award decision, the victim or claimant must file a signed, written request for a hearing with the OAG within 30 days of the date [of the OAG's written notification] of the reconsideration decision. If the victim or claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes binding [final] and the victim or claimant waives the right to a hearing. [A final decision from the attorney general may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.]

(e) The right to request a reconsideration of an OAG adverse action [award decision] is reserved for victims or claimants. Service providers do not have the right to appeal or request a reconsideration of any OAG adverse action [award decision].

(f) A victim or claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

§61.903. Hearing.

(a) If the request for a reconsideration is in accordance with §61.901 of this subchapter (relating to Request for Reconsideration of an Adverse Action [title], and the victim or claimant is dissatisfied with the reconsideration decision, the victim or claimant may file a signed, written request for hearing, pursuant to §61.901(d) of this subchapter. [If the OAG determines that a hearing is necessary, then the victim or claimant will receive notice of hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.]

(b) The OAG may not grant a request for a hearing if a request is not filed by the victim or claimant within the 30-day time period, unless the victim or claimant shows good cause for late filing. The victim or claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for hearing within the 30-day time period.

(c) If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding and the victim or claimant waives the right to further appeal. If the OAG determines that a hearing is necessary, then the victim or claimant will receive notice of hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.

(d) [(b)] The hearing shall be conducted in Texas in manner consistent with Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.40.

(e) [(c)] Any costs for the victim or claimant to travel to the hearing are entirely the financial responsibility of the victim or claimant and those costs will not be reimbursed by the OAG.

(f) [(d)] Failure of the victim or claimant to appear [in person] for the hearing[, or to notify the OAG of the intended absence within 48 hours of the scheduled time for the hearing], may result in the entry of a final decision based upon the available record. A victim or claimant may have the hearing rescheduled by making a request to reschedule at least two OAG business days prior to the hearing. Multiple requests for reschedule may be denied by the OAG. If a victim or claimant fails to make a timely request to reschedule, the OAG may reschedule the hearing upon good cause shown by the victim or claimant.

(g) [(e)] The [As soon as practicable after the hearing, the] OAG will notify the victim or claimant in writing of the final decision, including the reasons for the decision.

(h) [(f)] Pursuant [Upon receipt of the final decision from the OAG hearing officer, the victim or claimant may seek judicial review, pursuant] to Texas Code of Criminal Procedure Article 56.48 and §61.904 of this subchapter (relating to Judicial Review), a victim or claimant may seek judicial review of all or any part of the final decision.

(i) [(g)] In any proceeding under this subchapter, the burden of proof is upon the victim or claimant to prove by a preponderance of the evidence that grounds for compensation exist.

(j) A victim or claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

(k) A final decision from the attorney general may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

§61.904. Judicial Review.

(a) To seek judicial review pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.48(a), the victim or claimant must have exhausted all other available administrative remedies provided in §61.901 and §61.903 of this subchapter (relating to Request for Reconsideration of an Adverse Action and Hearing), and must submit to the OAG a written notice of dissatisfaction with the OAG's final decision from the hearing. The written notice of dissatisfaction must be filed with [received by] the OAG not later than the 40th day after the OAG renders a [victim or claimant receives notice of the OAG's] final decision from the hearing.

(b) Not later than the 40th day after the victim or claimant gives the OAG notice of dissatisfaction with the OAG's final decision from the hearing, the victim or claimant shall [has a right to] bring suit in a district court having jurisdiction over the matter.

§61.905. Attorney Fees.

(a) Pursuant to Texas Code of Criminal Procedure Article [Tex. Code Crim. Proc. Art.] 56.43, the OAG shall determine and award reasonable attorney fees to the attorney representing a victim or claimant in dispute of an OAG compensation determination.

(b) If there is no hearing or dispute about the amount awarded to the victim or claimant and the attorney only assists the victim or claimant in filling out a CVC application for compensation, the attorney fee shall be the lesser of either $300 or 25% of the amount of awarded compensation [the attorney assisted the victim or claimant in obtaining].

(c) If the victim or claimant disputes the amount awarded and the attorney represents the victim in a reconsideration review or hearing, the OAG shall determine and award reasonable attorney fees commensurate with legal services rendered. Attorney fees for representation in a disputed claim shall not exceed 25% of the amount the attorney assisted the victim or claimant in obtaining. To request payment of attorney fees a written request for payment and the following documentation must be submitted to CVC by the attorney:

(1) an "Attorney's Statement Regarding Fees" form provided by the OAG; and

(2) an itemized statement of legal services rendered.

(d) If the attorney fee is based on an undetermined [benefit] amount which the attorney assisted the victim or claimant in obtaining, the attorney may request attorney fee payments in installments or in a lump sum upon final payment to or on behalf of a victim or claimant.

The attorney may be required to submit an itemized statement of legal services rendered prior to each attorney fee payment. Attorney fee payments shall not be paid in excess of the amount claimed in the itemized statement of legal services.

(e) A victim or claimant who is an attorney may not recover attorney fees associated with obtaining or increasing his or her own compensation.

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SUBCHAPTER K. ADDRESS CONFIDENTIALITY PROGRAM

1 TAC §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1030, 61.1035, 61.1040, 61.1045

The amendments are proposed in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.1001. Definitions.

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Applicant--A person who submits an application to the Office of the Attorney General (OAG) to participate in the Address Confidentiality Program (ACP).

(2) Application--For the purpose of administering the ACP, means the OAG application for participation in the ACP and includes all information and documents submitted by, or on the behalf of, the applicant.

(3) Certification--For the purpose of administering the ACP, means OAG authorization for an applicant to participate in the ACP.

(4) Certified mail--For the purpose of administering the ACP, means any first class letter-size or flat-size mail for which the mailer pays a surcharge to the USPS to be provided with a receipt, and the destination post office records delivery of the mail. Certified mail does not include a package regardless of size or type of mailing.

(5) Counseling--For the purpose of administering the ACP, means victim related guidance, advice, and support with crisis intervention, obtaining information, legal advocacy, prevention of further harm, or meeting other physical, emotional or psychological needs.

(6) Family violence--As defined in Texas Family Code §71.004, means:

(A) an act by a member of family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(B) abuse, as that term is defined by [§]§261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or

(C) dating violence, as that term is defined by §71.0021.

(7) First Class Mail--For the purpose of administering the ACP, first class mail means United States Postal Service (USPS) first class letter-size mail and first class flat-size mail:

(A) Letter-size mail, as defined in the USPS Domestic Mail Manual, is mail that is not less than 5 inches long or more than 11 1/2 inches long, and not less than 0.007 inches thick or more than 1/4 inch thick. Letter-size mail may not weigh more than 3.5 ounces.

(B) Flat-size mail, as defined in the USPS Domestic Mail Manual, is mail not more than 15 inches long, more than 12 inches high or more than 3/4 inches thick. Flat-size mail may not weigh more than 13 ounces.

(8) Household--A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other, as defined in Texas Family Code §71.005.

(9) Mail sent by a government agency--Letter-size or flat-size mail sent by a federal, state or local government agency. Mail sent by a government agency does not include a package.

(10) Other entity--For the purpose of administering the ACP, means an entity, whether for profit or nonprofit, that provides the services of a victim's assistance counselor and provides counseling and shelter services to victims of family violence, sexual assault, stalking or trafficking of persons.

(11) Package--For the purpose of administering the ACP, a package shall have the same meaning as parcel, as defined in the USPS Domestic Mail Manual. Parcel is mail that does not meet the mail processing category of letter-size mail or flat-size mail.

(12) Sexual offense--For the purpose of administering the ACP, means sexual assault as defined in Texas Penal Code §22.011, aggravated sexual assault as defined in Texas Penal Code §22.021, or prohibited sexual conduct as defined in Texas Penal Code §25.02 [~~of the Texas Penal Code~~].

(13) Shelter services--For the purpose of administering the ACP, means the following services provided directly, by referral, or through formal arrangements with other agencies:

(A) 24-hour-a-day shelter;

(B) a crisis call hotline available 24 hours a day;

(C) emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;

(E) emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights, and legal options and providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment; or [~~and~~]

(I) a referral system to existing community services.

(14) Stalking--Has [~~has~~] the meaning assigned by Texas Penal Code §42.072.

(15) State or local agency--For the purpose of administering the ACP, a state or local agency includes but is not limited to, a governmental agency of the State of Texas or a Texas county, city, town or municipality.

(16) Texas resident--A person who has a domicile in Texas, who lives for more than a temporary period of time in Texas, or who can show intent to establish a domicile in Texas at the time of the alleged crime. Documentary evidence of the applicant's Texas residency may be established by submitting the following documentation in the name of the applicant:

(A) a lease or rental agreement;

(B) utility bills;

(C) school or work records;

(D) a driver's license;

(E) postmarked mail delivered to the applicant at the Texas residence or intended Texas residence;

(F) written verification from a victim's assistance counselor; or

(G) other documentation approved by the OAG.

(17) Trafficking of Persons--As defined by Texas Code of Criminal Procedure Article 56.81(7), refers to any offense that may be prosecuted under Texas Penal Code §§20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, and that results in a person engaging in forced labor or services; or otherwise becoming a victim of the offense.

(18) [~~(17)~~] True Address--The physical address where the applicant actually resides, is employed, or attends school.

(19) [~~(18)~~] Victim's Assistance Counselor--For the purpose of administering the ACP, means an individual authorized by a state or local agency or other for profit or nonprofit entity to meet with or assist individuals applying for participation in the ACP.

(20) [~~(19)~~] Victim of family violence--An individual against whom family violence has been alleged or committed, as defined in Texas Family Code §71.004.

(b) The definitions in this section will be given their most reasonable meaning unless the content clearly indicates otherwise.

§61.1005. Address Confidentiality Program.

(a) Pursuant to Texas Code of Criminal Procedure Article 56.82 the ACP is administered by the OAG to establish an address confidentiality program to assist victims of family violence, sexual offenses, [~~and~~] stalking, and trafficking of persons in maintaining a confidential mailing address. The OAG shall:

(1) Designate a substitute post office box address for participants to use in place of the participant's true residential, business, or school address;

(2) Act as agent to receive service of process and mail on behalf of the participant;

(3) Forward to the participant the first class mail or mail sent by a government agency received by the OAG on behalf of the participant.

(b) The following will not be forwarded to the participant by the OAG:

(1) packages;

(2) certified mail that does not meet the definition of first class mail; and

(3) government mail that does not meet the definition of first class mail.

(c) A summons, writ, notice, demand, or process may be served on the OAG on behalf of the participant by delivery of two copies of the document to the OAG. The OAG shall retain a copy of the summons, writ, notice, demand, or process and forward the original to the participant via first class or certified mail not later than the third day after the date of service on the OAG.

(d) The OAG may not make a copy of a participant's mail received by the OAG, except that the OAG shall retain a copy of the envelope in which certified mail is received on behalf of the participant and the OAG will forward the certified mail if it meets the definitions of first class mail.

(e) The attorney general or an agent or employee of the attorney general is immune from liability for any act or omission by the agent or employee in administering the ACP if the agent or employee was acting in good faith and in the course and scope of assigned responsibilities and duties.

(f) An agent or employee of the attorney general who does not act in good faith and in the course and scope of assigned responsibilities and duties in disclosing a participant's true residential, business, or school address is subject to prosecution under Chapter 39, Texas Penal Code.

(g) The OAG is not responsible for updating or modification of the participant's public records regarding the substitute address. ACP participants remain personally responsible for compliance with all applicable federal, state, and local laws and regulations, including those which require a valid physical address of residency.

(h) The OAG is not responsible for tracking or otherwise maintaining mail or records of mail received on behalf of a participant, unless otherwise required by statute.

(i) The OAG is not responsible for notifying any person or entity of the expiration or cancellation of the participant's participation in the ACP.

(j) Upon a final determination of the expiration or cancellation of the participant's participation in the ACP, the OAG will return the participant's mail to sender.

§61.1010. Eligibility to Participate in the Address Confidentiality Program.

(a) An application for participation must be completed by the applicant in person at the state or local agency or other entity with which the application is filed.

(b) A state or local agency or other entity with which an application is filed shall forward the application to the OAG.

(c) Pursuant to Texas Code of Criminal Procedure Article 56.83, to be eligible to participate in the ACP, an applicant must:

(1) meet with a victim's assistance counselor from a state or local agency or other entity;

(2) file an application for participation with the OAG or a state or local agency or other entity;

(3) designate the OAG as agent to receive service of process and mail on behalf of the applicant; and

(4) live at a residential address, or relocate to a residential address, that is unknown to the person who committed, or is alleged to have committed, the family violence, sexual offense, [~~or~~] stalking, or trafficking of persons.

§61.1015. Application for Participation in the Address Confidentiality Program.

(a) An application for participation in the ACP must contain the date, the applicant's name and signature affirming the following:

(1) the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of threat of immediate or future harm by the person alleged to have committed the family violence, sexual offense, [~~or~~] stalking, or trafficking of persons;

(2) the applicant's true residential address that, to the best of the applicant's knowledge, is unknown to the alleged offender, and if applicable, the applicant's business and school address;

(3) a statement by the applicant as to whether an existing court order or a pending court case for child support or child custody or visitation that involves the applicant, and if so, the name of the legal counsel of record and each parent involved in the court order or pending case; and

(4) the name, title, and signature of the victim's assistance counselor who met with the applicant, and, if applicable, the name, title, and signature of the victim's assistance counselor who assisted the applicant in the preparation of the application.

(b) In addition to the application, the OAG may require an applicant to submit independent documentary evidence that family violence, a sexual offense, [~~or~~] stalking, or trafficking of persons occurred. Independent documentary evidence may include, but is not limited to:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement from a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, sexual offense, [~~or~~] stalking, or trafficking of persons;

(4) a statement from a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, sexual offense, [~~or~~] stalking, or trafficking of persons; or

(5) any other information the OAG deems appropriate to be included on the application.

§61.1020. Approval of Application and Certification; Renewal.

(a) The OAG shall review and, if appropriate, approve the applicant's application and certify the applicant's participation in the ACP.

(b) Upon certification into the ACP, the OAG will issue an ACP authorization card (ACP card) to the ACP participant. The ACP card is valid as long as the ACP participant remains certified under the ACP.

(1) An ACP card is property of the OAG and must be surrendered or destroyed upon cancellation of participation in the ACP.

(2) An ACP card is an official governmental record and is void if altered, sold, or damaged.

(3) Participants may request a new ACP card in the event the card is lost, stolen, or destroyed.

(4) The OAG may issue and replace ACP cards upon certification or request for a replacement ACP card.

(c) Certification for participation in the ACP expires on the third anniversary of the date of certification.

(d) To renew a certification, a participant must submit a new ACP application and comply with the requirements as if submitting an application for the first time. An applicant may use the same incident of family violence, sexual offense, [~~or~~] stalking, or trafficking of persons as the basis for renewal of their application for participation. An application for renewal will be treated as an original application.

§61.1030. Denial or Cancellation.

[~~(a) Pursuant to Texas Code of Criminal Procedure Article 56.86(a), an applicant is ineligible for, and a participant may be excluded from, participation in the ACP if the applicant or participant knowingly makes a false statement on an application to the OAG.~~]

(a) [~~(b)~~] Pursuant to Texas Code of Criminal Procedure Article 56.86(b), a participant may be excluded and hence cancelled from participation in the ACP if:

(1) mail forwarded to the participant by the OAG is returned as undeliverable on at least four occasions;

(2) the participant changes the participant's true residential address as provided in the application filed by the participant, and does not submit an OAG Change of Address form notifying the OAG at least 10 business days before the date of the address change; or

(3) the participant changes the participant's name.

(b) [~~(c)~~] The OAG shall send a written determination and reason for denial or cancellation to the applicant or participant[~~, as soon as practicable~~].

§61.1035. Request for Reconsideration of Denial or Cancellation Determination.

(a) An ACP applicant or participant has 30 days from the date [~~of receipt of the determination~~] of the OAG's denial or cancellation to seek [a] reconsideration [~~by submitting a Request for Reconsideration of Denial/Cancellation form to the OAG, along with supporting documentation~~]. The OAG may require additional information as deemed necessary. If the applicant or participant fails to seek reconsideration [~~file a Reconsideration of Denial/Cancellation form~~] within the 30-day time period, the decision of the OAG becomes final.

(b) The OAG shall make a determination on the request for reconsideration based on the information submitted. [~~As soon as practicable, the OAG shall issue a determination on the request for reconsideration.~~]

(c) The OAG's determination on the request for reconsideration is final.

(d) An applicant or participant who has previously been denied or cancelled from participation in the ACP may reapply in the event of a new qualifying incident.

§61.1040. Request for Agency Exemption.

(a) An agency may seek an exemption determination from the OAG under Texas Code of Criminal Procedure Article 56.89(b)[~~,~~] to require a participant to provide the participant's true residential, business, or school address. To seek an exemption determination, the agency must file an OAG Request for Agency Exemption form that includes, but is not limited to, the following information:

(1) the name of the agency along with an explanation and supporting documentation that shows the exemption is necessary for the agency to perform a duty or function that is imposed by law or administrative requirement;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) verification that the requestor will maintain the confidentiality of the participant's true residential, business, or school address; and

(4) verification by the agency representative affirming that the information submitted is correct.

(b) The OAG may require additional information deemed necessary by the OAG.

(c) The OAG will issue a written determination as soon as practicable.

(d) An agency may submit a request for an exemption determination at any time even if there is no current case pending at the agency.

(e) An agency previously denied an exemption may reapply in the event of the new information.

§61.1045. Request for Reconsideration of Exemption Denial Determination.

(a) If an agency is denied a request under Texas Code of Criminal Procedure Article 56.89(b), an agency has 30 days from the date of [~~receipt of~~] the exemption denial determination to submit a written request for reconsideration to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary.

(b) The OAG shall make a determination on the request for reconsideration based on the information submitted. The OAG shall issue a determination on the request for reconsideration [~~as soon as practicable~~].

(c) The OAG's determination on the request for reconsideration is final.

(d) An agency previously denied an exemption may reapply in the event of new information.

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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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER E. DISCOVERY

16 TAC §1.86, §1.87

The Railroad Commission of Texas (Commission) proposes new §1.86, relating to Alignment of Municipal Intervenors for Purposes of Discovery, and §1.87, relating to Limitations on Discovery Requests. The Commission concurrently proposes amendments to §7.5530 of this title, relating to Allowable Rate Case Expenses, in a separate rulemaking, in conjunction with these proposed new rules.

State statutes allow participants in complex utility rate cases to recover rate-case expenses from customers. These rules are intended to reduce rate-case expenses and promote the efficient resolution of cases. Alignment of parties reduces rate-case expenses by reducing the duplication of services. Since 1999, litigants in Texas courts have complied with procedures that impose discovery control plans which effectively control costs in complex cases. These rules would be limited to rate-setting proceedings and are designed to promote the efficient resolution of cases, thereby reducing rate-case expenses. Section 1.121 of this title, relating to Presiding Officer, grants a presiding officer broad discretion in regulating the course and conduct of a proceeding. Proposed new §1.86 and §1.87 specifically delineate for parties in a proceeding and a presiding officer what terms and considerations apply to alignment of municipal parties and limitations on discovery. The proposed new rules promote efficient use of party and Commission resources. Rate case proceedings, in particular, can be costly litigation exercises. While parties have the right to contest a utility's request for rate relief and other forms of relief, there are efficiencies that can be gained through alignment of parties and reasonable discovery limitations that will result in reduced rate case expenses, thereby reducing the costs that are passed on to ratepayers. New §1.86 recognizes that parties that participate in a utility ratemaking case are frequently aligned in their attempts to reduce the utility's requested rate increase, and preserves a municipal party's right to propound discovery requests while recognizing that it is more efficient for the utility to respond to a single opposing position from potential municipal intervenors rather than respond to multiple versions of similar discovery requests propounded by parties with the same goal. Thus, the goal of reducing the costs ultimately passed on to ratepayers can be realized by aligning parties with similar interests.

In new §1.86(a), the Commission proposes wording to include a presumption that municipal parties share a common interest such that alignment of municipal parties as a single party is appropriate. Proposed subsection (a) directs the presiding officer to order alignment of municipal parties at the earliest reasonable opportunity to allow municipal parties to coordinate their efforts in the most efficient way possible.

The Commission proposes new §1.86(b) to require a municipal party to file a motion to realign, in whole or in part, to overcome the presumption of alignment. In paragraphs (1) - (7), the presiding officer is required to consider several factors to determine whether the motion to realign, in whole or in part, is warranted including: (1) whether the municipal parties are taking opposing positions regarding the utility's request for relief; (2) whether the municipal parties have sufficiently different positions on one or more issues to justify realignment on such issues; (3) whether granting the motion will create unnecessary inefficiencies or duplication of effort; (4) whether granting the motion will result in undue costs to the parties; (5) the effect of granting the motion on the parties and the public interest; (6) whether granting the

motion will serve the interest of justice; and (7) any other relevant factors as determined by the presiding officer.

Proposed new §1.86(c) states that this section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

Proposed new §1.87(a) grants the presiding officer the discretion, upon request by a party, to order discovery to be limited in the interests of efficiency and justice.

Proposed new §1.87(b) clarifies that each request or subpart in a Request for Information (RFI) is considered a separate RFI and indicates that a reasonable limitation on discovery is no more than 600 total RFIs with no more than 75 RFIs propounded by a single party in a single calendar week. Commission staff and presiding officers are not subject to these discovery limitations when Commission staff or the presiding officers issue the RFIs. These figures are consistent with the discovery control plan adopted by the presiding officers in rate-setting procedures conducted at the Commission over the last ten years. New §1.87 codifies recent rulings recognizing that reasonable limitations on discovery are appropriate. For example, discovery limitations have been granted in recent dockets including GUD Nos. 9902, 10006, 10007, 10038, 10097, and 10106. Moreover, limitations on discovery are common practice in civil litigation in Texas as governed by the Texas Rules of Civil Procedure 190. The goal of reducing the costs ultimately passed on to ratepayers can be realized by implementing reasonable limitations on discovery at the request of a party.

Proposed new §1.87(c) directs that the RFIs propounded during the municipal-level proceeding, if the utility first filed its request for relief at the municipal level and the Commission is exercising its appellate authority, shall count towards the total number of RFIs a municipality may propound on the utility during the Commission proceeding unless the utility updated its test year when filing its appeal.

Proposed new §1.87(d) states that RFIs that a party is not required to answer due to a sustained objection or withdrawal do not count towards the permissible total number of the propounding party's RFI limit. The subsection also states that if the presiding officer determines that a party is intentionally propounding objectionable RFIs, the request or subpart will be included in the calculation of that propounding party's RFI limit even if the responding party is not required to provide an answer.

In accordance with the Texas Rules of Civil Procedure 196 and 198, proposed new §1.87(e) clarifies that discovery limitations would not apply to Requests for Production and Inspection, or Requests for Admission.

Proposed new §1.87(f) requires the party propounding discovery to separately characterize its discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

Gene Montes, Interim Director, Hearings Division, has determined that for each year of the first five years that the proposed new rules are in effect, enforcing or administering the proposed new rules will not result in additional estimated costs to the state or to local governments, may result in a reduction in costs for local governments that participate in proceedings before the Commission by reducing the costs of participating in Commission proceedings, and will not result in any estimated losses or increases in revenue to the state or to local governments.

Mr. Montes has also determined that for each year of the first five years that the proposed rules are in effect, the public benefits expected as a result of adoption of the proposed rules include a reduction in the amount of reasonable rate case expenses included in customer rates. These proposed rules codify current Commission practice and provide regulatory certainty for parties in rate proceedings. There are no foreseeable economic costs to be incurred by parties or persons required to comply with these rules.

Mr. Montes has also determined that for each year of the first five years the proposed new rules are in effect, there should be no adverse effect on a local economy and therefore no local employment impact statement is required under Texas Government Code, §2001.022.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. Mr. Montes has determined that the proposal will not have an adverse economic effect on small businesses or micro-businesses because it adds no new requirements on small businesses or micro-businesses. The proposed rules promote the efficient resolution of rate proceedings.

Mr. Montes has determined that the new rules do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Gas Utilities Docket No. 10362 and will be accepted until 12:00 p.m. (noon) on Monday, August 25, 2014, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's website at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review the proposal and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Cristina Self at (512) 463-2299. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/legal/rules/proposed-rules.

The Commission proposes the new sections under Texas Utilities Code, Titles 3 and 4, which authorize the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities as required by Texas Utilities Code §104.001 and §104.051. The Commission's authority to promulgate these rules relates to the powers it is granted in Texas Utilities Code §103.022, which requires a gas utility in a ratemaking proceeding to reimburse the governing body of a municipality for the reasonable cost of certain services to the extent determined reasonable by the Commission; §104.051, which authorizes the Commission to establish a utility's overall revenues at an amount that will

permit the utility a reasonable opportunity to earn a reasonable return; and Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Utilities Code §103.022 and §104.051; and Texas Government Code §2001.004 are affected by the proposed new sections.

Cross-reference to statute: Texas Utilities Code §103.022, and §104.051; and Texas Government Code §2001.004.

Issued in Austin, Texas on July 8, 2014.

§1.86. Alignment of Municipal Intervenors for Purposes of Discovery.

(a) Municipal parties, whether participating as a single municipality or a coalition of municipalities, are presumed to share a common interest in a proceeding such that alignment of municipal parties as a single party for purposes of discovery is appropriate. The presiding officer shall order alignment of municipal intervenors at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to coordinate discovery efforts in an efficient manner.

(b) To overcome the presumption of alignment, a municipality or municipal coalition must file a motion to realign in whole or in part. In ruling on such a motion, the presiding officer shall consider whether good cause exists to grant the motion to realign in whole or in part including consideration of the following:

(1) whether the municipal parties are taking opposing positions regarding the utility's request for relief;

(2) whether the municipal parties have sufficiently different positions on one or more issues to justify realignment on such issues;

(3) whether granting the motion will create unnecessary inefficiencies or duplication of effort;

(4) whether granting the motion will result in undue costs to the parties;

(5) the effect of granting the motion on the parties and the public interest;

(6) whether granting the motion will serve the interest of justice; and

(7) any other relevant factors as determined by the presiding officer.

(c) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

§1.87. Limitations on Discovery Requests.

(a) Upon request by a party, the presiding officer may limit discovery, by order, in the interest of efficiency and justice.

(b) For purposes of calculating the number of requests for information (RFIs), each request or subpart shall be considered a separate RFI. A reasonable limitation on RFIs propounded to a party is no more than 600 total RFIs, with no more than 75 RFIs propounded by a single party in one calendar week. Commission staff and presiding officers are not subject to these discovery limitations when Commission staff or the presiding officers issue the RFIs.

(c) With regard to discovery propounded by a municipality or municipal coalition, to the extent that the utility first filed its request for relief at the municipal level and the Commission is now considering the utility's request on appeal from the municipal forum, the number of RFIs (inclusive of subparts) that the municipality propounded at the municipal level shall count towards the total number of permissible RFIs a municipality may serve on the utility during the Commission proceeding on appeal, unless the utility updated its test year when filing its appeal.

(d) If a party is not required to answer a question due to a sustained objection or withdrawal, that question may not be included in the calculation of the propounding party's RFI limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question shall be included in the calculation of that propounding party's RFI limit.

(e) As set out in the Texas Rules of Civil Procedure 196 and 198, there shall be no limitation with regard to requests for production and inspection, or requests for admission.

(f) The party propounding discovery shall separately characterize its discovery as an RFI, a Request for Production and Inspection, or a Request for Admission.

(g) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and §104.102.

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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Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.70

The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to Pipeline Permits Required. The Commission proposes the amendments in order to clarify and more specifically prescribe the procedure by which a pipeline operator may identify itself as a common carrier, gas utility, or private line operator when applying for a new T-4 permit to operate a pipeline or when renewing, amending, or cancelling an existing T-4 permit.

The Commission proposes amendments in subsection (a) to reword the requirement that certain pipeline operators must obtain a T-4 permit, renewable annually, as provided in this rule.

The Commission proposes amendments in subsection (b) to state the application requirements for obtaining a new pipeline permit or for amending a permit because of a change of a pipeline's classification. Operators must use the form approved by the Commission and must include certain additional information. More specifically, pipeline operators must provide contact information; state the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility, or private line; and submit a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline. In

addition, if applicable, the pipeline operator must submit documentation to provide support for the classification and purpose being sought for the pipeline together with any other information requested by the Commission.

In new subsection (c), the Commission proposes a new provision to state the application requirements for renewing an existing permit, amending an existing permit for any reason other than a change in classification, or cancelling an existing permit. In each of those instances, an operator must use the form approved by the Commission and must include certain additional information. More specifically, pipeline operators must provide contact information; a statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility, or a private line, if applicable; and any other information requested by the Commission.

In new subsection (d), the Commission proposes a new provision stating that the Commission will determine if the application is complete within 15 calendar days following the date of filing of an application and shall notify the operator either that the application is complete or that the application is incomplete. The notice of an incomplete application will specify the additional information needed to complete the application.

In new subsection (e), the Commission proposes that, once an application is determined to be complete and sufficient, the Commission shall either issue, amend, or cancel the pipeline permit or deny the pipeline permit as filed. If the Commission is satisfied from the application and the documentation in support thereof, and its own review, that the proposed line is, or will be, laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted. Further, proposed new wording in subsection (e) provides that the pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based upon the information and documentation submitted by the applicant and the Commission's review of the application. The Commission's decision on issuance of a pipeline permit shall be completed within 45 calendar days following the Commission's determination that an application is complete.

The Commission proposes new subsection (f), which states that this rule applies to new pipeline permits and to amendments, renewals, and cancellations of existing pipeline permits which are submitted to the Commission on or after the effective date of this rule.

Proposed new subsection (g) provides that the Commission may delegate the authority to administratively issue pipeline permits.

Proposed new subsection (h) states that the pipeline permit, if granted, shall be revocable at any time after a hearing held after 10 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission.

Mary ("Polly") Ross McDonald, Director, Pipeline Safety Division, has determined that for the first five years the amendments will be in effect, there are no anticipated significant fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments.

Ms. McDonald also has determined that for each year of the first five years that the amendments will be in effect, the public benefit expected as a result of adoption of the proposed amendments will be greater confidence in the Commission's classification of pipelines as common carriers, gas utilities, or private lines, and the assurance that there is a review of the pipeline operator's assertion of a particular classification. The permitting process will include a more developed inquiry into the issue of a pipeline's public use, thereby providing more credibility to the Commission's process with respect to the ultimate classification of the pipeline, as well as increased certainty for both pipelines and landowners.

Ms. McDonald has determined that for each year of the first five years that the amendments will be in effect, the probable economic costs for persons required to comply expected as a result of adoption of the proposed amendments will be minimal, if any. The requirement that pipeline operators obtain a T-4 permit is not new; only the requirement to substantiate the classification as a common carrier, gas utility, or private line is new. The sworn statement and corresponding documentation required under subsection (b)(3) and (4) should be readily available to the applicant or otherwise easily procured.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that, as a part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that the proposed amendment is not anticipated to have an adverse economic effect on small businesses or micro-businesses that are pipeline operators, and therefore, the economic impact statement and regulatory flexibility analysis described in Texas Government Code, §2006.002, are not required.

Ms. McDonald has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

Ms. McDonald has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon (12:00 p.m.) on Monday, August 25, 2014, which is 31 days after publication in the *Texas Register.* Comments should refer to Gas Utilities Docket No. 10366. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Cristina Self, Office of General Counsel, at (512) 463-2299 or Polly McDonald at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/legal/rules/proposed-rules.

The Commission proposes the amendments to §3.70 pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Texas Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Texas Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; Texas Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq.;* and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq.,* are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on July 8, 2014.

§3.70. Pipeline Permits Required.

(a) Each operator of a [~~No~~] pipeline or gathering system subject to the jurisdiction of the Commission shall obtain a pipeline[~~, whether a common carrier or not, shall be used to transport oil, gas, or geothermal resources from any tract of land within this state without a~~] permit, renewable annually, from the Commission as provided in this rule [~~commission~~].

(b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an operator shall file an application for a pipeline permit on a [~~Application for the permit shall be made upon the required~~] form approved by the Commission which includes or is accompanied by the following documentation and information:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation or maintenance;

(2) the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line;

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline; and

(4) documentation to provide support for the classification and purpose being sought for the pipeline, if applicable, and any other information requested by the Commission.

(c) To renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit on a form approved by the Commission which includes or is accompanied by:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation, or maintenance; change in operator or ownership; or other change including operator cessation of pipeline operation;

(2) a statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable; and

(3) any other information requested by the Commission.

(d) The Commission shall determine if the application is complete within 15 calendar days following the date of filing of an application and shall notify the operator either that the application is complete or that the application is incomplete. The notice of an incomplete application shall specify the additional information needed to complete the application.

(e) Once an application is determined to be complete and sufficient, the Commission shall issue, amend, or cancel the pipeline permit or deny the pipeline permit as filed. If the Commission[~~, and the permit will be granted if the commission~~] is satisfied from the [~~such~~] application and the documentation and information provided [~~evidence~~] in support thereof, and its own review [~~investigation~~], that the proposed line is, or will be[~~, so~~] laid, equipped, [~~and~~] managed and[~~, as to reduce to a minimum the possibility of waste, and will be~~] operated in accordance with the [~~conservation~~] laws of the state and the [~~conservation~~] rules and regulations of the Commission, the permit may be granted [~~commission~~].

[~~(b)~~] The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based upon the information and documentation submitted by the applicant and the Commission's review of the application. The Commission's decision on issuance of a pipeline permit shall be completed within 45 calendar days following the Commission's determination that an application is complete.

(f) This rule applies to applications made for new pipeline permits and to amendments, renewals, and cancellations of existing pipeline permits which are submitted to the Commission on or after the effective date of this rule.

(g) The Commission may delegate the authority to administratively issue pipeline permits.

(h) The pipeline permit, if granted, shall be revocable at any time after a hearing held after 10 days' notice, if the Commission [~~commission~~] finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the

Commission. [line is so unsafe, or so improperly equipped, or so managed, as likely to result in waste. If the commission finds the line is in such condition as to cause waste, five days' written notice shall be given to the operating company to correct the condition before notice of hearing for revocation of the permit is given. A permit may also be revoked after 10 days' notice and hearing, if the commission finds that the operator of the line, in its operation thereof, is willfully violating or contributing to the violation of the laws of Texas regulating the production, transportation, processing, refining, treating, and/or marketing of crude oil or geothermal resources, or any of the laws of the state to conserve the oil, gas, or geothermal resources, or any rule or regulation of the commission enacted under such laws.]

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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Cristina Martinez Self
Rules Attorney, Office of General Counsel
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For further information, please call: (512) 475-1295

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CHAPTER 7. GAS SERVICES DIVISION
SUBCHAPTER E. RATES AND RATE-SETTING PROCEDURES

16 TAC §7.5530

The Railroad Commission of Texas (Commission) proposes amendments to §7.5530, relating to Allowable Rate Case Expenses. Texas Utilities Code §103.022(b) and §104.001 allow participants in utility rate cases to recover reasonable rate case expenses. These amendments are intended to ensure that rate case expenses are reasonable and to minimize the impact of rate case expenses on end-use customers. The amendments recognize the basic reimbursement principle included in §103.022(b), which requires a gas utility to reimburse a municipality for the reasonable costs of participating in a ratemaking proceeding. The proposed amendments are also intended to encourage municipal oversight of rate case expenses incurred on behalf of municipalities and to allocate rate case expenses to the party or parties that caused such expenses during the appeal of a municipal statement of intent. The amendments memorialize recent Commission precedent by categorizing rate case expenses of the utility as required regulatory expenses of the utility, litigation expenses of the utility, and estimated expenses of the utility. The Commission concurrently proposes new §1.86 and §1.87 of this title, relating to Alignment of Municipal Intervenors for Purposes of Discovery and Limitations on Discovery Requests, in a separate rulemaking, in conjunction with these proposed amendments to §7.5530.

The Commission proposes new §7.5530(c) to state that a gas utility shall not be required to reimburse a municipality for the reasonable costs of a person engaged to participate in a ratemaking proceeding under Texas Utilities Code, §103.022(a), unless the municipality has actually paid such fees and expenses or, by ordinance, the municipality expressly assumes the obligation to pay the fees and expenses of persons engaged under Texas Utilities Code, §103.022(a), and the municipality declares that such obligation is not in any way contingent upon the municipality's receipt of reimbursement under Texas Utilities Code, §103.022(b). Requiring municipalities to actually pay or assume the obligation to pay the fees and expenses of persons engaged under Texas Utilities Code, §103.022(a), will encourage municipal oversight of the charges incurred during an appeal of a municipal proceeding.

The Commission proposes new subsection (d) to require, absent a showing of good cause, that expenses the gas utility reimburses to a municipality be recovered through rates effective only within that municipality, or if the gas utility has joined a coalition of municipalities, rate case expenses reimbursed to the municipalities within the coalition would be recovered through rates effective only within the municipalities belonging to the coalition. This assures that customers who live in a city that participates in a rate proceeding would be required to pay their own city's expenses rather than allocating such costs to all customers in the service area, some of whom are not involved in the litigation.

The Commission proposes new subsection (e) to classify utility rate case expenses as either "required regulatory expenses," "litigation expenses," or "estimated expenses," and to provide for specific recovery of those expenses based on principles of cost causation. Through this method of allocation, rate case fees and expenses shall be attributed to affected parties according to which party or parties cause the rate case fees and expenses to occur.

The Commission proposes new subsection (f) to allocate the categories of rate case expenses listed in proposed subsection (e). This allocation methodology results in rate case expenses being assigned to those parties who contribute to the rate case expenses being incurred.

Bill Geise, Director, Gas Services Division, has determined that for each year of the first five years that the proposed amendments are in effect, enforcing or administering the proposed amendments will not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Geise has also determined that for each year of the first five years that the proposed amendments are in effect, the public benefits anticipated as a result of adoption of the proposed rules include an allocation of recovery of rate case expenses that is guided by principles of cost causation. There are no foreseeable economic costs to be incurred by the parties and/or persons required to comply with these amendments. Affected municipalities will continue to be reimbursed by gas utilities for any rate case expenses the Commission determines to be reasonable, provided that the municipalities have paid rate case fees and expenses or, by ordinance, expressly assumed the obligation to pay such fees and expenses.

Mr. Geise has also determined that for each year of the first five years the proposed amendments are in effect, there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Texas Government Code, §2001.022.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses

or micro-businesses. Mr. Geise has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because it adds no new requirements on small businesses or micro-businesses.

Mr. Geise has determined that the amendments do not meet the statutory definition of a major environmental rule set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

The Commission requests comment from affected parties regarding these amendments. In particular, the Commission requests comments from affected municipalities regarding any potential procedural impact to municipal operations arising out of these proposed rule amendments.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings/; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Gas Utilities Docket No. 10362 and will be accepted until 12:00 (noon) on Monday, August 25, 2014, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Sarah Montoya at (512) 475-1958. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/legal/rules/proposed-rules/.

The Commission proposes the amendments under Texas Utilities Code, §102.001, which gives the Railroad Commission exclusive original jurisdiction over rates in areas outside a municipality and exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction; §103.022, which allows reimbursement to the governing body of a municipality for the reasonable cost of services of a person engaged to the extent the applicable regulatory authority determines reasonable; §104.001, which authorizes the Commission establish and regulate rates of a gas utility; and §104.055, which authorizes the Commission to adopt reasonable rules with respect to certain expenses used in computing the rates to be established.

Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055 are affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055.

Cross-reference to statute: Texas Utilities Code, §§102.001, 103.022, 104.001, and 104.055.

Issued in Austin, Texas on July 8, 2014.

§7.5530. Allowable Rate Case Expenses.

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

(c) A gas utility shall not otherwise be required to reimburse a municipality for the reasonable cost of services of a person engaged under Texas Utilities Code, §103.022(a), unless the municipality has:

(1) paid such fees and expenses; or

(2) by ordinance, expressly assumed the obligation to pay the fees and expenses of persons engaged under Texas Utilities Code, §103.022(a), and declared that such obligation is not in any way contingent upon the municipality's receipt of reimbursement under Texas Utilities Code, §103.022(b).

(d) Absent a showing of good cause:

(1) rate case expenses reimbursed to a municipality under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within that municipality; or

(2) when a municipality has joined a coalition of municipalities for the purpose of pursuing rate case activities, rate case expenses reimbursed to the municipalities within the coalition under Texas Utilities Code, §103.022(b), shall be recovered by the utility through rates effective only within the municipalities belonging to that coalition.

(e) Reasonable rate case expenses of the utility shall be classified into three categories:

(1) required regulatory expenses, which shall consist of expenses the utility incurs that are related to the initial filing of the statement of intent and the expenses the utility incurs to provide or publish required notices;

(2) litigation expenses, which shall consist of expenses incurred after the utility files its statement of intent, excluding the cost of providing notice; and

(3) estimated expenses, which shall consist of the costs the utility estimates it will incur for potential appellate proceedings.

(f) The utility's required regulatory expenses shall be allocated uniformly to all customers affected by the proposed rate change. The utility's litigation expenses and estimated expenses, to the extent there are any, shall be allocated to affected customers in the municipalities or coalitions of municipalities participating in the proceeding and affected customers subject to the original jurisdiction of the Commission.

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

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Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §§4.22, 4.28, 4.31

The Texas Higher Education Coordinating Board proposes amendments to §§4.22, 4.28, and 4.31, concerning Authority, Core Curriculum, and Implementation and Revision of Core Curricula, respectively. The intent of the amendments is to strike a reference to a section of the Texas Education Code repealed by Senate Bill (SB) 215, 2013, by the 83rd Texas Legislature, Regular Session; to increase transparency of core completion to students and registrars; and to ease the process for institutions' annual revisions to the core.

Dr. Rex C. Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of assessment of course completion requirements. There are no significant economic costs anticipated to persons and institutions who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.827, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the implementation of Texas Education Code §61.822.

§4.22. Authority.

The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, and evaluation of core curricula, field of study curricula, and a transfer dispute resolution process under Texas Education Code §61.826 and §61.827 [~~§61.051(g), and Texas Education Code §§61.821 - 832~~].

§4.28. Core Curriculum.

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

(h) Transcripts. All undergraduate student transcripts should indicate whether a student has completed the core curriculum satisfactorily, and which courses satisfied a requirement of the institution's core curriculum. Identifying numbers recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) must identify each completed core curriculum course on students' transcripts, in order to indicate courses utilized to satisfy core curriculum foundational component area requirements as follows:

(1) Communication = 010;

(2) Mathematics = 020;

(3) Life and Physical Sciences = 030;

(4) Language, Philosophy and Culture = 040;

(5) Creative Arts = 050;

(6) American History = 060;

(7) Government/Political science = 070;

(8) Social and Behavioral Sciences = 080; and

(9) Component Area Option: [= ~~090.~~]

(A) course aligned with Communication = 091;

(B) course aligned with Mathematics = 092;

(C) course aligned with Life and Physical Sciences = 093;

(D) course aligned with Language, Philosophy and Culture = 094;

(E) course aligned with Creative Arts = 095;

(F) course aligned with American History = 096;

(G) course aligned with Government/Political Sciences = 097;

(H) course aligned with Social and Behavioral Sciences = 098; and

(I) course without specific foundational component area = 090.

(i) - (k) (No change.)

§4.31. Implementation and Revision of Core Curricula.

In offering its Board-approved core curriculum, an institution of higher education must list only those courses that have been approved by the Board as compliant with the Texas Core Curriculum.

(1) (No change.)

(2) Revision of Existing Approved Core Curricula.

(A) An institution of higher education may request changes to its core curriculum annually. One comprehensive request may be submitted each academic year, on a schedule that suits the institution's needs[, ~~except that requests received later than March 1 of each year will not be approved to be effective for the upcoming academic year~~].

(B) - (D) (No change.)

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

Filed with the Office of the Secretary of State on July 14, 2014.

TRD-201403196
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 23, 2014
For further information, please call: (512) 427-6114

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SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.272, 4.274, 4.278

The Texas Higher Education Coordinating Board proposes amendments to §§4.272, 4.274, and 4.278, concerning Definitions, Standards and Criteria for Institutions and Implementation, and Functions of Regional Councils, respectively. The purpose of the amendment is to align Chapter 4, Subchapter Q, with statutory requirements of House Bill 5, 83rd Regular Session.

Language has been added limiting the number of dual credit courses a public community college may offer a high school located in the service area of another public community college to three courses per student per academic year. Language was removed that required a public community college to provide a letter to the Regional Council from a school district to which the college offers dual credit courses, but that is located outside of the college's service area, stating that the school district's local community college is not offering dual credit courses to their satisfaction and the school district has invited the other community college to offer the course. Language was also added to accurately reference the Southern Association of Colleges and Schools Commission on Colleges when used in the rule text throughout Chapter 4. In addition, the definition of Workforce Continuing Education Course was changed to maintain consistency throughout the chapter. The amended rules will affect public two-year colleges on or after the 2014 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of the term "Southern Association of Colleges and Schools Commission on Colleges" in the text of Chapter 4 rules. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The amendments do not affect the Texas Education Code.

§4.272. Definitions.

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

(1) - (16) (No change.)

(17) Non-credit course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) [~~(SACS)~~] criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(18) - (31) (No change.)

(32) Workforce continuing education course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A career technical/workforce continuing education course differs from a community service course offered for recreational or a vocational purposes and is not supported by state funding. [~~Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or a vocational purposes.~~]

§4.274. Standards and Criteria for Institutions.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Institutions shall comply with the standards and criteria of the Southern Association of Colleges and Schools Commission on Colleges [~~of the Southern Association of Colleges and Schools~~].

(2) - (8) (No change.)

§4.278. Functions of Regional Councils.

(a) - (d) (No change.)

(e) A public community college may enter into an agreement to offer [~~only a~~] dual credit courses [~~course~~] with a high school located in the service area of another public community college up to a maximum of three courses per student per academic year, except to the extent approved by the Commissioner of Texas Education Agency. This provision does not apply to students enrolled in approved early college high school programs. [~~only if the other public community college is unable to provide the requested course to the satisfaction of the school district and the school district has explicitly invited the institution to do so.~~]

[~~(f) A public community college proposing to offer a dual credit course at a high school outside of the college's service area shall notify the Regional Council in whose service area the high school is located. It must provide a letter from the school district stating that the local community college is not offering the proposed dual credit course to the satisfaction of the school district and that the school district has invited the other community college to offer the course.~~]

(f) [~~(g)~~] Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(g) [~~(h)~~] With the exception of subsections (h) and (i) [~~subsection (i) and (j)~~] of this section, universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(h) [~~(i)~~] Universities, health-related institutions, public community and technical colleges, and Lamar state colleges may offer clinical courses at clinical facilities without Regional Council approval if each of the following criteria is met:

(1) the student(s) enrolled in the clinical course is already employed by the clinical facility;

(2) the institution receives written verification from the clinical facility that there will be no reduction in the number of clinical opportunities available for use by area institutions; and

(3) the institution of higher education shall notify the appropriate Regional Council(s) of the clinical course and provide the Regional Council(s) with written verification from the clinical facility that the course will not reduce the number of clinical opportunities available for use by area institutions.

(i) [~~(j)~~] Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school that makes such a request, and regional council approval is not required in order to offer requested lower-division, dual credit courses.

(j) [~~(k)~~] All institutions of higher education shall provide notice to the Higher Education Regional Councils when planning to offer requested off-campus and/or electronic to groups dual credit courses in the Council's service area.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.6

The Texas Medical Board (Board) proposes an amendment to §163.6, concerning Examinations Accepted for Licensure.

The amendment to §163.6 eliminates an incorrect reference in subsection (f) to another part of the rule.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify the rule by providing accurate citations in the rule.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§163.6. Examinations Accepted for Licensure.

(a) - (e) (No change.)

(f) The time frame [~~to pass each part of the examination~~] described by subsections [~~(b),~~] (c) and (d) of this section does not apply to an applicant who meets the following criteria:

(1) holds a license to practice medicine in another state;

(2) is in good standing in such state;

(3) has been licensed in such state for at least five years;

(4) such license has not been restricted, cancelled, suspended, revoked, or subject to other discipline in that state;

(5) will practice exclusively in a medically underserved area or a health manpower shortage area, as those terms are defined in Chapter 157 of the Texas Occupations Code; and

(6) has never held a medical license that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 182. USE OF EXPERTS

22 TAC §182.8

The Texas Medical Board (Board) proposes an amendment to §182.8, concerning Expert Physician Reviewers.

The amendment to §182.8 adds language to subsection (c), relating to Expert Reviewers' Report, in the form of a new paragraph (3), requiring that an expert report must include notice to the respondent stating that the report is investigative information and is privileged and confidential under §164.007(c) of the Medical Practice Act. This will prevent its use or dissemination outside the informal settlement conference process and make the report inadmissible in civil, judicial, or administrative proceedings. Release of the report to the respondent shall not constitute a waiver of the privileged and confidential status of the report, in accordance with §164.003 and §164.007 of the Medical Practice Act and Board Rule 179. The amendment also adds new subsection (d), providing that such reports are investigative information and privileged and confidential, in accordance with §164.007(c), Texas Occupations Code; and investigative reports by a consulting expert as defined by Texas Rules of Civil Procedure §192.7(d).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is

in effect the public benefit anticipated as a result of enforcing this proposal will be to protect the integrity of the Board's investigative processes, by specifically delineating the statutory authority for the Board's claim of privilege and confidential status of the expert panelists' identity and report, and the rules strictly prohibiting the dissemination of expert panel reports outside of the informal settlement conference process without board consent.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§154.0561, 154.0568, 164.003, and 164.007, Texas Occupations Code.

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

§182.8. Expert Physician Reviewers.

(a) Selection of Reviewers. Any complaint alleging a possible violation of the standard of care will be referred to Expert Physician Reviewers who will review all the medical information and records collected by the board and shall report findings in the prescribed format.

(1) Reviewers shall be randomly selected from among those Expert Panel members who practice in the same specialty as the physician who is the subject of the complaint. The practice area or specialty declared by the subject physician as his area of practice may be the specialty of the expert reviewers.

(2) If there are no Expert Panel Members in the same specialty or if the randomly selected Reviewer has a potential or apparent conflict of interest that would prevent the Reviewer from providing a fair and unbiased opinion, that Reviewer shall not review the case and another Reviewer shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the physician who is the subject of the complaint, after excluding the previously selected Reviewer.

(A) A potential conflict of interest exists if the selected Reviewer practices medicine in the same geographical medical market as the physician who is the subject of the complaint; and

(i) is in direct competition with the physician; or

(ii) knows the physician.

(B) An apparent conflict of interest exists if the Reviewer:

(i) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(ii) has a familial relationship within the third degree of affinity with any party or witness; or

(iii) determines that the Reviewer has knowledge of information that has not been provided by the Board and that the Reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by the Board.

(3) Notwithstanding the provisions of subsection (a)(2) of this section, if no Reviewer agrees to review the case who can qualify under the requirements of that subsection, a Reviewer who has a potential conflict may review the case, provided the Expert Reviewers' Report discloses the nature of the potential conflict.

(4) If any selected Reviewer has a potential or apparent conflict of interest, the Reviewer shall notify board staff of the potential or apparent conflict.

(b) Procedures for Expert Physician Review. The procedure for the use of Reviewers shall comply with Section 154.0561, Tex. Occ. Code. Reviewers shall be specifically informed that they may communicate with other Reviewers selected to review the case and that they should communicate with other Reviewers to attempt to reach a consensus.

(c) Expert Reviewers' Report. A report shall be prepared by the Expert Physician Reviewers to include the following:

(1) the general qualifications of each Reviewer; and

(2) the opinions agreed to by at least a majority of the Reviewers regarding:

(A) relevant facts concerning the medical care rendered;

(B) applicable standard of care;

(C) application of the standard of care to the relevant facts;

(D) a determination of whether the standard of care has been violated; [~~and~~]

(E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports; and[~~.~~]

(3) Notice to Respondent: "PURSUANT TO SECTION 164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THIS DOCUMENT IS PROVIDED FOR USE AT THE INFORMAL SETTLEMENT CONFERENCE ONLY AND MAY NOT BE USED FOR ANY OTHER PURPOSE. THIS DOCUMENT IS NOT SUBJECT TO OPEN RECORDS REQUESTS AND IS NOT ADMISSIBLE AS EVIDENCE IN ANY CIVIL JUDICIAL OR ADMINISTRATIVE PROCEEDING. THIS DOCUMENT MAY NOT BE USED BY OR DISSEMINATED BY ANY LICENSEE OR THEIR REPRESENTATIVE IN ANY CONTESTED CASE PROCEEDING, INCLUDING, BUT NOT LIMITED TO, A PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS. ACCORDINGLY, THIS DOCUMENT SHOULD NOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. PURSUANT TO SECTIONS 164.003 AND 164.007 OF THE MEDICAL PRACTICE ACT AND BOARD RULE 179 (RELATING TO CONFIDENTIALITY), RELEASE OF THIS DOCUMENT, OR ANY PORTION THEREOF, TO A LICENSEE OR THEIR REPRESENTATIVE PURSUANT TO SECTION 164.003 OF THE MEDICAL PRACTICE ACT AND BOARD RULE 187 (RELATING TO PROCEDURAL RULES FOR INFORMAL BOARD PROCEEDINGS), SHALL NOT CONSTITUTE WAIVER OF PRIVILEGE OR CONFIDENTIALITY."

(d) An Expert Reviewers' Report is:

(1) "investigative information" and an "investigative report" and is privileged and confidential, in accordance with §164.007(c), Texas Occupations Code; and

(2) an investigative report by a consulting-only expert as defined by Texas Rules of Civil Procedure §192.3(e) and §192.7(d).

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

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.5

The Texas Medical Board (Board) proposes an amendment §187.5, concerning National Practitioner Databank (NPDB).

The amendment to §187.5 deletes language specifying the types of actions that are reportable and adds language that provides that the board will report according to NPDB guidelines and applicable federal law.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are accurate and unambiguous as to the Board's reporting requirements.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 164, Texas Occupations Code.

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

§187.5. National Practitioner Data Bank (NPDB).

The [~~In accordance with the Health Care Quality Improvement Act, 42 U.S.C. §11132, the~~] board will report a public disciplinary board action [~~subject to reporting~~] to the NPDB according to applicable federal rules and statutes. [~~, including a revocation, suspension, restriction or limitation of a physician's license or public reprimand. The board will not report an action that includes only an administrative penalty, a requirement that a physician obtain additional education, training, or testing, a requirement that a physician's practice be retrospectively monitored (chart monitoring); and/or a requirement that a physician perform community service.~~] All disciplinary actions are public as set out in the Act.

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 14, 2014.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2

The Texas Medical Board (Board) proposes an amendment to §195.2, concerning Certification of Pain Management Clinics.

The amendment to §195.2 corrects the citation to provisions under the Texas Occupations Code related to the regulation of pain management clinics.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that accurately cite applicable statutory provisions.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §168.051 of the Texas Occupations Code.

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

§195.2. Certification of Pain Management Clinics.

(a) Application for Certification.

(1) (No change.)

(2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to §§168.001 - 168.202 [~~§§167.001 - 167.202~~] of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(3) - (7) (No change.)

(b) - (i) (No change.)

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.208

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §5.208, concerning disclosure requirements for named driver personal automobile insurance policies under Insurance Code §1952.0545. Senate Bill 1567, 83rd Legislature, Regular Session (2013) created Insurance Code §1952.0545, which requires written and oral disclosures, and contemporaneous written confirmation of the oral disclosure, for named driver policies.

The commissioner of insurance adopted amendments to 28 TAC §5.204 on April 28, 2014, to implement disclosure requirements for the prescribed auto ID card form under Insurance Code §1952.0545. Section 5.208 implements the named driver policy disclosure requirements in Insurance Code §1952.0545.

EXPLANATION. Insurance Code §1952.0545 requires agents and insurers to provide disclosures to applicants and insureds that named driver policies have coverage restrictions. Section 5.208 is necessary to:

1. clarify the disclosure and applicability requirements; and

2. ensure that agents and insurers issuing new or renewal named driver policies are consistent in applying the disclosure requirements in Insurance Code §1952.0545.

Typically, a standard personal auto policy provides coverage to almost everyone who drives the covered vehicle, unless specifically excluded. In contrast, a named driver policy does not provide coverage for individuals who are residents of the named insured's household and are not named as insureds on the policy. Insurance Code §1952.0545 requires specific disclosures for named driver policies at the time the new or renewal policy is issued.

The disclosures put the applicant or insured on notice that a named driver policy has limitations in coverage and that whether there is coverage depends on who is driving the car. The disclosures alert the applicant or insured to review the extent of coverage with the agent or insurer. Similarly, the disclosure on the auto ID card warns police officers and third parties involved in accidents that a particular driver may not be insured under the policy if that driver is not named on the auto ID card. The disclosures do not say that every driver not named on the policy is not covered--they simply alert people that, unlike a standard auto policy, not all individuals residing in the named insured's household are covered under the policy. Although some named driver policies cover more people than just the named insured, there may be a substantial group of people who could drive the car and be uninsured under that policy, including relatives, unrelated roommates, or other household residents.

TDI has received many inquiries and filings as a result of the disclosure requirements. Additionally, TDI received comments following a stakeholder meeting held on December 2, 2013, and comments on an informal draft posted on TDI's website on April 3, 2014. TDI considered those comments in drafting this proposal.

Definition of "Named Driver Policy" and Applicability of §1952.0545

Section 5.208(a) and (b) clarify the definition of "named driver policy" and the applicability of the disclosure requirements under Insurance Code §1952.0545.

Section 5.208(a)(1) restates the definition of "named driver policy" in Insurance Code §1952.0545(a) for completeness and ease of use. Insurance Code §1952.0545(a) defines a named driver policy as "an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy. The term includes an automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy."

Section 5.208(a)(2) clarifies that the definition of "named driver policy" includes automobile insurance policies that do not cover all household residents. This interpretation is consistent with the intent of §1952.0545, which is to inform the insured or applicant that the policy has coverage restrictions that make it different from a standard personal auto policy.

Under a narrow reading of the definition of "named driver policy," a policy that covers any household residents--even just one--other than the household residents specifically identified by name on the policy is not a named driver policy. However, almost all auto policy forms provide coverage for a resident spouse as a "covered person" under the policy, even if the spouse is not named and the policy does not cover every other

household resident. Reading the definition of "named driver policy" narrowly, to include only policies that cover named drivers but *no other* household residents, would mean that there are virtually no named driver policies approved for use in Texas.

Such a reading is contrary to code construction guidelines under Government Code §311.021(2) and (4), which state that it is presumed that "the entire statute is intended to be effective," and that "a result feasible of execution is intended." Additionally, not requiring disclosures on policies that do not cover all household residents would frustrate the intent of the statute by failing to warn policyholders and other interested parties who might not realize that some household residents are not covered.

Section 5.208(a)(3) states that the definition of "named driver policy" does not include an automobile insurance policy that has been endorsed to exclude specific drivers by name based solely on that exclusion. Those policies are known as "excluded driver policies" or policies with "excluded driver endorsements." A named driver policy that also has an excluded driver endorsement is still a named driver policy. For example, a policy that does not cover every household resident, and that also excludes "John Doe," is a named driver policy with an excluded driver endorsement. Section 5.208(a)(3) clarifies that excluding specific drivers by name does not, by itself, make a policy a named driver policy.

An excluded driver policy is functionally the opposite of a named driver policy. While a named driver policy generally covers drivers residing within the household that are named on the policy and drivers from outside the household operating the vehicle with permission from the insured, an excluded driver policy generally covers all drivers except those specifically excluded from coverage by name. Those who buy excluded driver policies are already informed that the policy does not cover all possible drivers, because the excluded drivers are specifically listed by name.

Section 5.208(b)(1) clarifies that the section applies to all new and renewal named driver policies of any term, to policies in which any type of coverage applies only to named drivers, and to named non-owner policies. Nothing in Insurance Code §1952.0545(a) suggests that it does not apply to all named driver policies, or that it distinguishes between liability and physical damage (collision) coverages.

Insurance Code §1952.0545 applies to every renewal of a named driver policy. Senate Bill 1567, Section 3, states that it applies to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. It does not say "annually at renewal," "at the first renewal after January 1, 2014," or "before accepting the initial premium or fee." Instead, Insurance Code §1952.0545(b) requires an agent or insurer to make oral and written disclosures to the applicant or insured before accepting any premium or fee. If the disclosure requirements were intended to apply only to new policies, only the term "applicant" would appear in the text. If the disclosure requirements were not meant to apply to renewals, the statute would not have included the word "insured" at all. Moreover, if the disclosure requirements were only intended to apply to an insured with an existing policy at the time of SB 1567's effective date and to no renewals thereafter, §1952.0545(b) would state "insured with an existing policy on January 1, 2014."

Government Code §311.021(2) states that, in enacting a statute, it is presumed that the entire statute is intended to be effective. Ignoring the inclusion of the word "insured" would be contrary to this presumption. In addition, the phrase "any premium or fee" in Insurance Code §1952.0545(b) logically includes renewal premiums. Finally, other statutes that require insurers to obtain documents from insureds--for example, Insurance Code §1952.101, pertaining to written rejection of uninsured or underinsured motorist coverage, and §1952.152, pertaining to written rejection of personal injury protection--were amended to include specific language that the insurer is not required to offer the rejected coverage again for reinstated or renewal policies. Insurance Code §1952.0545 contains no such provision. As a result, TDI must conclude that the disclosure requirements apply to renewals.

Section 5.208(b)(3) clarifies that the section applies to all agents and insurers offering automobile insurance in Texas, which is consistent with Insurance Code §1952.0545(b) - (e).

Disclosure Requirements

Section 5.208(c) clarifies the disclosure requirements for named driver policies under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires an agent or insurer, before accepting any premium or fee for a named driver policy, to make the following disclosure, orally and in writing, to the applicant or insured, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

Insurance Code §1952.0545(c) and (d) require an agent or insurer that delivers or issues for delivery a named driver policy in Texas to receive a copy of the disclosure in subsection (b) that is signed by the applicant or insured, and to specifically include in the policy and conspicuously identify on the front of any proof of insurance document issued to the insured the required disclosure under subsection (b).

Insurance Code §1952.0545(e) requires the agent or insurer to require the applicant or insured to confirm contemporaneously in writing the provision of oral disclosure under subsection (b).

Section 5.208(c)(1) restates the statute to list the procedural requirements. It states that an agent or insurer may not accept a premium or fee for a named driver policy until the agent or insurer has made the required oral and written disclosures, received a signed copy of the written disclosure, and received a contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(2) restates the disclosure requirement in Insurance Code §1952.0545(b) to make the rule easier to read and understand.

Section 5.208(c)(3) affirms that an agent or insurer may provide the oral disclosure live or by using a recording, and allows telephone and Internet disclosures. Insurance Code §1952.0545 does not expressly require that the oral disclosure be given and received in person; and Insurance Code §35.003 allows agents and insurers, upon agreement of all parties to the business, to conduct business electronically to the same extent that they are authorized to conduct business otherwise.

Section 5.208(c)(4) reiterates the requirement in Insurance Code §1952.0545(e) for contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(5) reiterates the requirements in Insurance Code §1952.0545 that an agent or insurer must include the written disclosure in the policy and on any proof of insurance document issued to the insured, and must require an applicant or insured to sign a copy of the disclosure.

Section 5.208(c)(6) provides that all signatures that §5.208 requires--and which are required by Insurance Code §1952.0545--must be original or electronic signatures executed for each new and renewal policy. Electronic signatures must comply with Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act), Insurance Code Chapter 35, and any applicable rules. Section 5.208(c)(6) also clarifies certain prohibitions with regard to the signatures required under this section--namely, that signatures must not precede the actual provision of the disclosure, and may not be copied, presumed, or assumed on payment.

Under §5.208(c)(7), agents and insurers must provide the disclosures that Insurance Code §1952.0545 requires in English, and may provide the disclosures in other languages.

Section 5.208(d) provides that accepting installment payments of premium and associated fees does not, by itself, trigger a requirement for a new set of disclosures under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires agents and insurers to comply with the disclosure requirements before accepting any premium or fee for a named driver policy. The statute does not state that the disclosure must be given repeatedly during the term of the policy. Installment payments do not require a new set of disclosures because at the time an insured makes an installment payment the policy has already been issued, and the agent or insurer was required to have already provided the disclosures for that policy's term.

Noncompliance

Section 5.208(e) clarifies that an agent or insurer may not use noncompliance with Insurance Code §1952.0545 or the proposed section as a reason to avoid liability under the policy, and that noncompliance is not grounds for cancellation of the insured's policy under Insurance Code §551.104. Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only for specified reasons, including: nonpayment of premium; fraud; if continuing the policy would be illegal; if there is an increase in hazard within the insured's control; if specific circumstances pertaining to suspension or revocation of a driver's license or motor vehicle registration exist; or, with proper notice, on any 12-month anniversary of the original effective date of the policy. An agent or insurer's failure to comply with the disclosure requirements in Insurance Code §1952.0545 or the proposed section does not fall into any of the categories in Insurance Code §551.104.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed section is in effect, Ms. Hamilton expects that enforcing or administering the proposed section will have the significant public benefits of ensuring that TDI's rules conform to Insurance Code §1952.0545, and ensuring that consumers who purchase named driver policies are informed of the restrictions on coverage under named driver policies. Ms. Hamilton expects that the proposed section will not increase the cost of compliance with Insurance Code §1952.0545 because it does not impose requirements beyond those in the statute. Insurance Code §1952.0545 requires an agent or insurer to make the disclosures and obtain signatures from the applicant or insured for each new and renewal named driver policy. As a result, the costs associated with making the disclosures and obtaining signatures do not result from the enforcement or administration of §5.208.

Ms. Hamilton does not anticipate any adverse economic effect on large or small insurers from the proposed rule. Insurance Code §1952.0545 created the disclosure requirements. Section 5.208 clarifies the applicability for those requirements and specifies some acceptable and unacceptable methods of compliance. Insurers can decide how to comply with the disclosure requirements in Insurance Code §1952.0545, provided that the method falls within the scope of the law. All insurers that write named driver policies need to take basic measures, including filing updated policy forms that contain the written disclosure and adopting procedures to provide the oral disclosure and obtain written confirmation that it was provided. None of these basic measures are more onerous for small and micro businesses than for larger insurers, and all of those measures are necessary to comply with the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that §5.208 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Insurance Code §1952.0545 applies equally to all insurance companies writing named driver policies. The disclosures are mandated by statute, and the rule does not specify any additional requirements. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

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

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on August 25, 2014. TDI requires two copies of your comments. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mark.worman@tdi.texas.gov. The commissioner will also consider written comments and public testimony presented in a public hearing under Docket No. 2770 at 9:00 a.m., Central time, on August 20, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes §5.208 under Insurance Code §§1952.0545, 551.104, and 2301.006; Insurance Code Chapter 35; Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act); Government Code §311.021; and Insurance Code §36.001.

Insurance Code §1952.0545 requires the following disclosure for named driver policies, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS

RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only under certain circumstances.

Insurance Code §2301.006 requires insurers to file policy forms with the commissioner and receive the commissioner's approval of the forms before delivering them or issuing them for delivery.

Insurance Code Chapter 35 allows a regulated entity, upon agreement of all parties, to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise. The chapter also provides requirements for those electronic transactions.

Business and Commerce Code Chapter 322 provides requirements for electronic records and electronic signatures relating to a transaction.

Government Code §311.021 states that, in enacting a statute, it is presumed that the Legislature intended (1) compliance with the constitutions of Texas and the United States; (2) that the entire statute is effective; (3) a just and reasonable result; (4) a result feasible of execution; and (5) to favor public interest over any private interest.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.208 implements Insurance Code §1952.0545, enacted by Senate Bill 1567, 83rd Legislature, Regular Session (2013).

§5.208. Disclosures for Named Driver Automobile Insurance Policies.

(a) Definition.

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

(2) A policy is a named driver policy if it does not provide coverage for one or more individuals who reside in the named insured's household and who are not named on the policy.

(3) An automobile insurance policy that has been endorsed to exclude one or more drivers specifically by name does not fall within the definition of a named driver policy based solely on that exclusion.

(b) Applicability. This section applies to:

(1) All new and renewal named driver policies, including:

(A) policies of any term;

(B) policies in which any type of coverage applies only to named drivers; and

(C) named non-owner policies.

(2) Agents and insurers offering automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan or other insurer, and a county mutual insurance company.

(c) Disclosures.

(1) Disclosure requirements. An agent or insurer may not accept a premium or fee for a new or renewal named driver policy until the agent or insurer has:

(A) made the oral disclosure under paragraph (3) of this subsection;

(B) received a contemporaneous written confirmation of the oral disclosure under paragraph (4) of this subsection;

(C) made the written disclosures under paragraph (5) of this subsection; and

(D) received a signed copy of the written disclosure under paragraph (5)(B) of this subsection.

(2) Content. Oral and written disclosures for named driver policies must include the following, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

(3) Oral disclosure. An agent or insurer may comply with the oral disclosure requirement by delivering the disclosure live or using a recording:

(A) in the presence of the applicant or insured;

(B) over the telephone; or

(C) over the Internet (for example, by Internet video call).

(4) Signed confirmation of oral disclosure. An agent or insurer must require an applicant or insured to sign a written confirmation that the agent or insurer has provided the oral disclosure. The applicant or insured must sign the written confirmation contemporaneously with receiving the oral disclosure.

(5) Written disclosures. An agent or insurer must:

(A) include the disclosure in the policy and on any proof of insurance document issued to the insured, including an auto ID card issued under §5.204 of this title; and

(B) require an applicant or insured to sign a copy of the disclosure.

(6) Signatures. All signatures required by this section must be original or electronic signatures executed specifically for each new and renewal policy.

(A) Electronic signatures must comply with Business and Commerce Code Chapter 322 (Uniform Electronic Transactions Act), Insurance Code Chapter 35 (Electronic Transactions), and any applicable rules.

(B) Signatures must not be:

(i) made before the agent or insurer makes the disclosure;

(ii) reproduced, transferred, or otherwise replicated from a signature on file with the agent or insurer; or

(iii) merely presumed to exist.

(C) An agent or insurer may not require, agree, or assume that a signature requirement is met based on payment received from the applicant or insured.

(7) Language. Agents and insurers must provide the disclosures in English and, in addition, may provide them in other languages.

(d) Installment payments. After complying with the disclosure requirements for each new and renewal policy, an agent or an insurer is not required to comply with subsection (c) of this section each time the agent or insurer accepts an installment payment during that policy's term.

(e) Failure to comply. An agent or insurer may not use noncompliance with Insurance Code §1952.0545 or this section as a reason to avoid liability under the policy. Noncompliance with Insurance Code §1952.0545 or this section is not grounds for cancellation under Insurance Code §551.104.

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 9, 2014.

TRD-201403165
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 24, 2014
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts proposes amendments to §3.432, concerning refunds on gasoline and diesel tax. The title of §3.432 is proposed to be changed to "Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes."

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

Re-lettered subsections (b), (d), (e), and (f), concerning refunds for off-highway or nonhighway use, are amended to delete references to credits or refunds on dyed or undyed diesel fuel. The refund or credit for dyed or undyed diesel fuel used for off-highway purposes, by a lessor of off-highway equipment or in a motor vehicle operated exclusively off-highway, expired on January 1, 2005. In addition, re-lettered subsection (b)(2) is deleted due to the information and 2004 date no longer being relevant.

In addition, subsections are being amended and new subsections are being added to implement House Bill 2148, 83rd Legislature, 2013. Re-lettered subsections (a), (b)(2), (f), (h)(2), and (m) are amended to include compressed natural gas and liquefied natural gas. Re-lettered subsection (b) is amended to include a reference to new Tax Code, §162.369, concerning when compressed natural gas or liquefied natural gas tax refund or credit may be filed. In addition, re-lettered subsection (h) is amended to add new paragraph (3) to address refunds of tax paid on compressed natural gas or liquefied natural gas purchased by a Texas county, pursuant to new Tax Code, §162.365, concerning refund or credit for certain taxes paid.

Re-lettered subsection (c)(4)(D) is amended to change the work "signature" to "identity" to better accommodate electronic as well as manual distribution logs.

Re-lettered subsection (g)(2) is amended to clarify that the paragraph describes the fixed percentage method of determining the amount of refund or credit for state fuel tax paid on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. Subsection (g)(5) is amended to clarify that the paragraph describes the fixed 5.0% method. Subsection (g)(8) is deleted due to the information and 2003 date no longer being relevant.

Re-lettered subsection (i)(3) is amended to remove the effective date as the 2004 date is no longer relevant. A reference to a permissive supplier is also being removed as a permissive supplier does not make export sales from a Texas terminal.

Re-lettered subsection (j)(2)(B) is amended to change the word "next" to "immediately" for readability.

New subsection (o) is added to addresses refunds of tax on compressed natural gas or liquefied natural gas sold on Indian reservations. This new subsection mirrors the provisions of re-lettered subsection (n), addressing refunds of tax on gasoline and diesel fuel sold on Indian reservations.

Finally, non-substantive changes are made throughout the section to correct grammatical errors and to improve readability. For example, the term "state fuel tax" is now used consistently throughout the section to make clear that the tax being refunded is state motor fuel tax and not another state tax.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying statutory provisions and comptroller policy regarding refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§162.125 (Refund or Credit For Certain Taxes Paid), 162.127 (Claims For Refunds), 162.128 (When Gasoline Tax Refund or Credit May Be Filed), 162.227 (Refund or Credit For Certain Taxes Paid), 162.229

(Claims For Refund), 162.230 (When Diesel Fuel Tax Refund or Credit May Be Filed), 162.365 (Refund or Credit for Certain Taxes Paid), 162.367 (Claims For Refunds), and 162.369 (When Compressed Natural Gas or Liquefied Natural Gas Tax Refund or Credit May Be Filed).

§3.432. Refunds on Gasoline, [and] Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes [Tax].

[(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.]

(a) [(b)] Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for state fuel tax [taxes] paid on gasoline, [or] diesel fuel, compressed natural gas, or liquefied natural gas used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(b) [(c)] Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §§[§]162.128, [and §]162.230, and 162.369:

(1) one year from the first day of the calendar month that follows:

(A) purchase;

(B) tax exempt sale;

(C) use, if withdrawn from one's own storage for one's own use;

(D) export from Texas; or

(E) loss by fire, theft, or accident; or

[(2) for dyed and undyed diesel fuel used in off-highway equipment, stationary engines, or for other nonhighway purpose on or after January 1, 2004, a claim for refund on diesel fuel under subsections (e), (f), and (g) of this section must be postmarked no later than December 31, 2004, or]

(2) [(3)] four years from the due and payable date for a tax return on which an overpayment of state fuel tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, [or] blender, or compressed natural gas and liquefied natural gas dealer who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The licensed supplier, permissive supplier, distributor, importer, exporter, [or] blender, or compressed natural gas and liquefied natural gas dealer must establish the credit by filing an amended state fuel tax return for the period in which the error occurred and tax payment was made to the comptroller.

(c) [(d)] Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (b) [(c)] of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the state fuel tax amount paid or a written statement that the price included state fuel tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state fuel tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used; and

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

(A) the date the fuel was removed;

(B) the number of gallons removed;

(C) the type of fuel removed;

(D) identity [signature] of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubometer reading, or description of other off-highway use.

(d) [(e)] Refund or credit for state fuel tax on gasoline [or dyed and undyed diesel fuel] used solely for [an] off-highway purposes [purpose]. A claim for refund or credit for state fuel tax on gasoline [or dyed and undyed diesel fuel] used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (c)(4) [(d)] of this section. [The refund or credit for dyed or undyed diesel fuel used for off-highway purpose expires on January 1, 2005.]

(e) [(f)] Refund or credit for state fuel tax on gasoline [or dyed and undyed diesel fuel] used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state fuel tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (c)(4) [(d)] of this section of the number of gallons of gasoline[, dyed diesel fuel, and undyed diesel fuel] used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state [motor] fuel tax [taxes]. [The refund or credit for dyed or undyed diesel fuel used by a lessor of off-highway equipment expires on January 1, 2005.]

(f) [(g)] Refund or credit for state fuel tax on gasoline, compressed natural gas, or liquefied natural gas [or dyed and undyed diesel fuel] used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline, compressed natural gas, or liquefied natu-

ral gas [~~or dyed and undyed diesel fuel~~] in motor vehicles incidentally on the highway, when the incidental travel on the [~~public~~] highway was [~~is~~] infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair. [~~A refund or credit for dyed or undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use, expires on January 1, 2005.~~]

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(g) [~~(h)~~] Refund or credit for state fuel tax on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for state fuel tax on gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determining [~~determination of~~] the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for state fuel tax on gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

(A) the miles driven as shown by any type of odometer or hubometer;

(B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device;

(2) fixed 30% method for gasoline-powered ready mix concrete trucks and solid waste refuse trucks [~~equipped with power take-off or auxiliary power units~~]. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubometer and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The state fuel tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not-for-highway use must be made on invoices;

(5) fixed 5.0% [~~percentage~~] method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund of the state fuel tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped; or

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval; and

(7) accurate mileage records must be kept regardless of the method used.[~~;~~]

[~~(8) beginning September 1, 2003, motor vehicle air conditioning and heating systems are no longer considered power take-off systems. A person may file a claim for refund of state taxes paid on gasoline used in the operation of an air conditioning or heating system prior to September 1, 2003.~~]

(h) [~~(i)~~] Refund or credit for state fuel tax on gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for state fuel tax [~~taxes~~] paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094; [~~or~~]

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel fuel is used exclusively [~~exclusive~~] to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its

exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates; or

(E) a Texas volunteer fire department when the purchase is for its exclusive use.

(2) An exempt entity enumerated in paragraph (1)(A) - (E) of this subsection, may claim a refund of state fuel tax [~~taxes~~] paid on gasoline, [~~or~~] diesel fuel, compressed natural gas, or liquefied natural gas purchased for its exclusive use.

(3) A Texas county may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased for its exclusive use.

(i) [~~(j)~~] Refund or credit for state fuel tax on gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for state fuel tax [~~taxes~~] paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transportation Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported.[~~;~~]

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for state fuel tax [~~taxes~~] paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) A [~~Effective January 1, 2006, a~~] licensed supplier [~~or permissive supplier~~] must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(j) [~~(k)~~] Refund or credit for state fuel tax on gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for state fuel tax [~~taxes~~] paid on 100 or more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (b)(1) [~~(c)(1)~~] of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) a separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory immediately [~~next~~] preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(k) [~~(l)~~] Refund or credit for state fuel tax on gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for state fuel tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered terminal.

(l) [~~(m)~~] Refund or credit for state fuel tax on gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for state fuel tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(m) [~~(n)~~] Refund or credit for state fuel tax on gasoline, [~~or~~] diesel fuel, compressed natural gas, or liquefied natural gas used outside of Texas by a licensed interstate trucker. A licensed interstate trucker [~~truck~~] may take a credit on a tax return for state fuel tax paid on gasoline, [~~or~~] diesel fuel, compressed natural gas, or liquefied nat-

ural gas purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first; [~~or~~]

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on a return or claimed as a refund before the prescribed deadline expires.

(n) [~~(o)~~] Refund for state fuel tax on gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of state fuel tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state fuel tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state fuel tax was collected or that it was a tax-free sale.

(o) Refund of state fuel tax on compressed natural gas or liquefied natural gas sold on Indian reservations. Tribal entities and tribal members may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased from a compressed natural gas and liquefied natural gas dealer located on an Indian reservation recognized by the United States government. The refund claim must be supported with original purchase invoices that show the state fuel tax was paid and that include:

(1) the name and address of the seller;

(2) the name of the purchaser;

(3) the date of the sale;

(4) the number of diesel gallon equivalents or gasoline gallon equivalents purchased;

(5) the type of fuel purchased; and

(6) the rate and amount of tax, separately stated from the selling price.

(p) Refund or credit for state fuel tax paid on diesel fuel used in moveable specialized equipment operated exclusively in oil field well servicing. [~~A person may claim a refund or a license holder may take a credit on a return for taxes paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if:~~]

(1) A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if the person or license holder has received or is eligible to receive a federal diesel fuel tax refund under Internal Revenue Code, Title 26, and the moveable specialized equipment meet the following specific design-base and use-base tests.

(A) Design-base test.

(i) The chassis has permanently mounted to it (by welding, bolting, riveting, or other means) machinery or equipment to perform oil well servicing operations if the operation of the machinery or equipment is unrelated to transportation on or off the [~~public~~] highways;

(ii) the chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation; and

(iii) the chassis could not, because of its special design, be used as part of a vehicle designed to carry any other load without substantial structural modification. A chassis that can be used for a variety of uses and body types (such as[~~,~~] a dump truck, flat bed, or box truck) is a highway chassis and would not qualify as a specially designed chassis.

(B) Use-base test. The use-based test is satisfied if the vehicle travels less than 7,500 miles on [~~public~~] highways during a calendar year.

(2) Documentation [~~In addition to documentation~~] requirements. In addition to the documentation requirements in Tax Code, §162.229, the person or license holder must maintain:

(A) a mileage or trip log for each moveable specialized equipment on an individual-vehicle basis consisting of:

(i) total miles traveled, evidenced by odometer or hubometer readings;

(ii) date of each trip on the public highways of this state and out of this state (starting and ending);

(iii) beginning and ending odometer or hubometer readings of each trip on the public highway;

(iv) odometer or hubometer readings entering Texas, and odometer or hubometer readings leaving Texas;

(v) power unit number or vehicle identification number or license plate number; or

(vi) vehicles that are not licensed under the International Fuel Tax Agreement may use the Texas Department of Transportation Quarterly Hubometer Permit report in lieu of the records required in clauses (i) - (v) of this subparagraph to document incidental highway travel.

(B) Internal Revenue Service form 4136, if refund of federal excise tax claimed;

(C) verification that limited sales tax was paid on the movable specialized equipment, if purchased in Texas; and

(D) verification that an oversize/overweight permit is used to travel on the [~~public~~] highways of this state.

(3) Computation of refund. One-fourth ~~One forth~~ of one gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(4) Moveable specialized equipment licensed under the International Fuel Tax Agreement (IFTA). An IFTA licensee may only request a refund for state fuel tax paid on diesel fuel used in moveable specialized equipment licensed under the IFTA directly from the comp-

troller and separately from the IFTA tax return. A refund claim must be supported with purchase invoice(s) and trip or mileage logs described in paragraph (2) of this subsection.

(5) Recovery of refund. If a refund has been issued for movable specialized equipment for a partial calendar year, and it is determined that the movable specialized equipment traveled 7,500 miles or more on the [~~public~~] highways in that calendar year then the taxes previously refunded for that vehicle must be repaid to the comptroller.

(q) Refund of state fuel tax paid on diesel fuel used in a medium to remove drill cuttings from a well bore in the production of oil or gas. A refund must be supported with purchase invoice(s) and distribution log described in Tax Code, §162.229.

(r) Refund of state fuel tax paid on diesel fuel used as a feedstock in manufacturing. A person may claim a refund or a license holder may take a credit on a return for state fuel tax [~~taxes~~] paid on diesel fuel used as a feedstock in the manufacturing of tangible personal property for resale, but not as a motor fuel. A refund claim must be supported with purchase invoice(s), records showing the amount of diesel fuel used as feedstock and a description of the tangible personal property manufactured.

(s) The right to receive a refund or take a credit under this section is not assignable.

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 14, 2014.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §3.448

The Comptroller of Public Accounts proposes an amendment to §3.448, concerning transportation services for Texas public school districts.

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section. The title to subsection (a) is amended to "affidavit" from "application" to better describe its contents.

In addition, this section is amended to implement House Bill 2148, 83rd Legislature, 2013. Re-lettered subsections (b), (c), (f), and (g) are amended to add a reference to compressed natural gas and liquefied natural gas. Re-lettered subsection (b) is amended to define an unmanned compressed natural gas or liquefied natural gas retail location and to make clear that an unmanned compressed natural gas or liquefied natural gas dealer location cannot accept an exception letter. Re-lettered subsection (d) is amended to clarify that "fuel" means gasoline or diesel fuel. This subsection is also amended to require a commercial transportation company that forfeits the right to purchase tax-free gasoline and diesel fuel to return its letter of exemption to the comptroller. Re-lettered subsection (f) is also amended to specify that "fuel" means gasoline and diesel fuel. The attached graphic for subsection (g)(2)(C) is amended to delete references to gasoline and diesel fuel.

Re-lettered subsection (g)(2)(A)(vi) is amended to include reference to records required and when claiming a refund of state motor fuel tax paid on compressed natural gas and liquefied natural gas.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by updating and clarifying statutory provisions and comptroller policy regarding companies providing transportation services for Texas public school districts. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§162.356 (Exemptions), 162.363 (Records), 162.365 (Refund or Credit for Certain Taxes Paid), and 162.368 (Refund for Certain Metropolitan Rapid Transit Authorities).

§3.448. Transportation Services for Texas Public School Districts.

[~~(a) Effective date. This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.~~]

(a) Affidavit. [~~(b) Application.~~] To purchase gasoline or diesel fuel less the state tax and not prepay the liquefied gas tax for vehicles equipped to use liquefied gas, a commercial transportation company that provides transportation services to a public school district in Texas must submit to the comptroller an affidavit stating:

(1) that the company has contracted with a specific public school district to provide transportation services (other than charter trips) for the school district;

(2) that motor fuel purchased tax-free [~~tax free~~] will be used exclusively by the company to provide the transportation services for the school district; and

(3) the vehicle identification number and vehicle license plate number for each vehicle equipped to use liquefied gas to furnish transportation services exclusively to public school districts in Texas.

(b) [~~(c)~~] Exception letter. After review and approval of the affidavit required by subsection (a) of this section, the comptroller shall issue to the company a letter of exception specifying that the company may purchase tax-free [~~tax free~~] gasoline and/or diesel fuel used to provide transportation services to a public school district in Texas. The letter of exception may be reproduced for licensed suppliers and licensed distributors. An exception letter shall be issued to the company for specific vehicles operated using liquefied gas, compressed natural gas, or liquefied natural gas. The letter may be furnished to inspectors when a liquefied gas, compressed natural gas, or liquefied natural gas[-]powered bus is undergoing a safety inspection and to liquefied gas dealers or compressed natural gas and liquefied natural gas dealers when the company purchases liquefied gas, compressed natural gas, or liquefied natural gas tax free to be placed into the fuel supply tank of the bus. Compressed natural gas and liquefied natural gas dealers may not accept an exception letter for compressed natural gas or liquefied natural gas delivered into a motor vehicle at an unmanned compressed natural gas or liquefied natural gas retail location. An unmanned compressed natural gas or liquefied natural gas retail location is a location where compressed natural gas or liquefied natural gas is sold to the public and which is completely unstaffed, meaning that there are no personnel routinely working at the site. An unmanned compressed natural gas and liquefied natural gas retail location does not include self-service filling stations at which customers pump their own fuel and have the option of paying an attendant or paying at the pump. A company who pays tax on compressed natural gas and liquefied natural gas delivered into the fuel supply tank of a vehicle issued an exception letter may request refund under §3.432 of this title (relating to Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes).

(c) [~~(d)~~] Records required. A commercial transportation company providing transportation services to a Texas public school district shall keep separate records for tax-free and tax-paid fuels. Both sets of records must show:

(1) the number of gallons of gasoline, diesel fuel, [~~and~~] liquefied gas, compressed natural gas, or liquefied natural gas on hand on the first day of each month;

(2) the number of gallons of gasoline, diesel fuel, [~~and~~] liquefied gas, compressed natural gas, or liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase;

(3) the date and number of gallons of gasoline, diesel fuel, [~~and~~]liquefied gas, compressed natural gas, or liquefied natural gas delivered into the fuel supply tanks of vehicles used to furnish transportation services to public school districts;

(4) the date and number of gallons of gasoline, diesel fuel, [~~and~~] liquefied gas, compressed natural gas, or liquefied natural gas delivered into the fuel supply tanks of vehicles used to furnish transportation services other than to public school districts;

(5) the date and number of miles traveled to provide transportation services for the public school district, including starting point, destination, purpose of trip, beginning and ending odometer readings, vehicle identification number, and the vehicle license plate number; and

(6) the date and number of miles traveled to provide transportation services for customers other than public school district(s), including the beginning and ending odometer readings, vehicle identification number, and vehicle license plate number of the vehicle so used.

(d) [~~(e)~~] Taxable use.

(1) A commercial transportation company forfeits its right to purchase gasoline or diesel fuel tax-free [~~tax free~~] if:

(A) [~~(1)~~] the gasoline or diesel fuel is sold, other than to a Texas public school district for which the commercial transportation company provides transportation services; or

(B) [~~(2)~~] the gasoline or diesel fuel is used in a vehicle for any purpose other than providing transportation services for a Texas public school district.

(2) A commercial transportation company that forfeits its right to purchase gasoline or diesel fuel tax-free under paragraph (1) of this subsection must return to the comptroller the original and all copies of the letter of exception issued to the company under subsection (b) of this section.

(e) [~~(f)~~] Cancellation or completion of contract. A commercial transportation company shall report the following to the comptroller within five days of the cancellation or completion of a contract with a Texas public school district:

(1) the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of motor vehicles, and remit the tax due on the ending tax-free inventory; and/or

(2) in the case of a liquefied gas vehicle, obtain a liquefied gas tax decal for previously excepted vehicles used to provide transportation services under the canceled/completed contract.

(f) [~~(g)~~] Charter trips. A commercial transportation company that charters round-trip transportation to special events for a Texas public school district may claim a refund for the gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used in the charter vehicle.

(1) The refund shall be computed by starting the trip with a full fuel supply tank or tanks, maintaining records of the fuel delivered into the fuel supply tank or tanks of the vehicle during the trip, and filling the fuel supply tank or tanks upon arrival back at the origination point. The number of gallons delivered into the fuel supply tank or tanks after the start of the trip will be the number of gallons upon which the charter company may claim a tax refund.

(2) The records required by subsection (c) [~~(d)~~](5) of this section shall also be maintained for each charter trip.

(3) The commercial transportation company shall keep a copy of the billing to the school district for the trip.

(g) [~~(h)~~] Refunds.

(1) A commercial transportation company providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, [~~and~~] diesel fuel, compressed natural gas, or liquefied natural gas used exclusively for such transportation purposes.

(2) A metropolitan rapid transit authority operating under Transportation Code, Chapter 451, that is party to a contract governed by Education Code, §34.008, and that is providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, diesel fuel, [~~and~~] liquefied gas, compressed natural gas, or liquefied natural gas used for such transportation services.

(A) A claim for refund must contain the following information by month for each vehicle used to provide public student transportation:

(i) total miles traveled, evidenced by odometer or hubometer readings and total miles traveled on public school transportation routes;

(ii) hours of service;

(iii) total fuel consumed;

(iv) total number of student passengers per route;

(v) total number of non-student passengers per route; and

(vi) records required by Tax Code, §§ [§]162.127, [and §]162.229, and 162.367.

(B) A claim for refund cannot be made for a single route in any month of a school year in which the number of non-student passengers for that single route is greater than 5.0% of the total passengers for that single route.

(C) The gallons of gasoline, [or] diesel fuel, compressed natural gas, or liquefied natural gas eligible for refund in a qualifying month for each vehicle is determined by multiplying the vehicle's average miles-per-gallon for that month by the miles traveled for public school transportation during that month.
Figure: 34 TAC §3.448(g)(2)(C)
[Figure: 34 TAC §3.448(h)(2)(C)]

(3) The amount of refund for liquefied gas is determined by dividing the amount paid for an annual liquefied gas tax decal by 12 and then for each qualifying month multiply by the percentage of miles traveled providing public school transportation services.
Figure: 34 TAC §3.448(g)(3)
[Figure: 34 TAC §3.448(h)(3)]

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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Ashley Harden
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

40 TAC §§93.1 - 93.9

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §93.1, concerning the purpose of Chapter 93; §93.2, concerning definitions; §93.3, concerning employment and registry information; §93.4, concerning investigations; §93.5, concerning notice to employee of reportable conduct; §93.6, concerning informal review; §93.7, concerning notice of opportunity for administrative hearing; §93.8, concerning entering information in the employee misconduct registry; and §93.9, concerning removing information from the EMR, in Chapter 93, Employee Misconduct Registry (EMR).

BACKGROUND AND PURPOSE

The proposed amendments revise and clarify rules regarding the employee misconduct registry (EMR), which is maintained by DADS. The proposed amendments also implement House Bill (H.B.) 2683 and Senate Bill (S.B.) 492, 83rd Legislature, Regular Session, 2013.

H.B. 2683 amended Texas Health and Safety Code (THSC), Chapter 253, to make individual employers, financial management service agencies, and employees in the consumer directed services (CDS) option subject to EMR requirements. S.B. 492 also amended THSC, Chapter 253, to make prescribed pediatric extended care centers, which are licensed under THSC, Chapter 248A, and employees of those centers subject to the EMR requirements.

The proposed rules also update terminology and make editorial and organizational changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §93.1 adds that a person listed on the EMR is not employable by an individual employer participating in the CDS option and clarifies the purpose of the chapter.

The proposed amendment to §93.2 revises the definitions of "abuse," "administrative hearing," "employee," "exploitation," and "neglect" and adds definitions of "CDS option," "FMSA," and "individual employer" to address the addition of the CDS option to the requirements of the chapter. The proposed amendment also adds a prescribed pediatric extended care center to the definition of "facility." The proposed amendment revises the definition of "reportable conduct" to more accurately align with THSC, Chapter 253, governing the employee misconduct registry, and updates definitions to include person-first respectful phrasing. The proposed amendment also adds a definition of "THSC," which is the abbreviation for Texas Health and Safety Code. The proposed amendment includes minor editorial changes that make the format of the definitions more consistent.

The proposed amendment to §93.3 specifies that an individual employer or a financial management services agency (FMSA) on behalf of an individual employer must use the EMR to determine if an employee is listed as unemployable; that an individual employer must not hire a person listed in the EMR as unemployable; that an individual employer must provide written information about the EMR to an employee; and that an individual employer or FMSA must search the EMR and Nurse Aide Registry (NAR) annually. The proposed amendment also provides that a copy of a search of the EMR or NAR must be maintained in a facility's, agency's, or individual employer's books and records, but no longer specifies that the copy be maintained in a personnel file.

The proposed amendment to §93.4 adds abuse, neglect, or exploitation by an employee of an individual employer as an allegation that the Department of Family and Protective Services is responsible for investigating. The proposed amendment also clarifies that if DADS determines an employee of a facility has committed reportable conduct, DADS complies with §§93.5 - 93.7, which apply only to an investigation conducted by DADS.

The proposed amendment to §93.5 specifies that DADS sends a summary of a finding of reportable conduct and facts on which the finding is based to an employee who DADS finds to have committed reportable conduct. The amendment clarifies that a request for an informal review (IR) must be made in writing no

later than 10 calendar days after the date an employee received written notice of the finding of reportable conduct from DADS.

The proposed amendment to §93.6 clarifies the description of the informal review process that is available to an employee of a facility, but the amendment does not make any substantive changes to the process.

The proposed amendment to §93.7 clarifies the information that is included in the written notice sent to an employee of a facility after the informal review process is completed. The proposed amendment also states that the THSC requires an administrative hearing to be completed within 120 days after a request by the employee of a facility is received.

The proposed amendment to §93.8 clarifies the due process that is available to an employee before a finding of reportable conduct is entered in the EMR. The information relating to an employee of an individual employer that will be entered in the EMR is added in subsection (c) of the proposed amendment.

The proposed amendment to §93.9 clarifies that an employee's name remains in the EMR unless removed in accordance with this section.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments add only minimal responsibilities for individual employers.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is ensuring that individual employers under the CDS option comply with THSC, Chapter 253, Employee Misconduct Registry, and that the requirements related to the EMR are clear.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Regulatory Services/Policy, Rules and Curriculum Development. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R31, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R31" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the employee misconduct registry.

The amendments affect Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§253.001 - 253.010.

§93.1. Purpose.

(a) This chapter implements THSC [~~Texas Health and Safety Code~~], Chapter 253, Employee Misconduct Registry, regarding investigating an allegation of abuse, neglect, or exploitation, and entering information in the employee misconduct registry (EMR) about a finding [~~to track findings~~] of reportable conduct by an unlicensed employee of a facility, of an [~~or~~] agency, or of an individual employer.

(b) DADS [~~The Department of Aging and Disability Services (DADS)~~] maintains the EMR [~~employee misconduct registry (EMR)~~] and enters information in the EMR in accordance with §93.8 of this chapter (relating to Entering Information in the EMR).

(c) The EMR lists persons who are not employable by [~~in~~] a facility, [~~or~~] agency, or individual employer.

§93.2. Definitions.

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

(1) Abuse--Is defined by the statute or rule that governs the investigation of alleged abuse of an individual using the CDS option or [~~a person~~] receiving facility or agency services.

(2) Administrative law judge--A SOAH attorney who conducts administrative hearings.

(3) Administrative hearing--A hearing held by SOAH to determine whether an employee of a facility, of an [~~or~~] agency, or of an individual employer has committed reportable conduct.

(4) Agency--In this chapter means:

(A) a home and community support services agency licensed under THSC [~~Texas Health and Safety Code~~], Chapter 142, that provides services to an elderly or disabled adult;

(B) a person exempt from licensing under THSC [~~Texas Health and Safety Code~~], §142.003(a)(19);

(C) a facility for persons with an intellectual disability [~~mental retardation~~] or related conditions licensed under THSC [~~Texas Health and Safety Code~~], Chapter 252;

(D) a state supported living center;

(E) a local [~~mental retardation or mental health~~] authority designated under THSC [~~Texas Health and Safety Code~~], §533.035;

(F) a community [~~mental health and mental retardation~~] center as defined in THSC [~~Texas Health and Safety Code~~], §531.002;

(G) a mental health facility operated by the Department of State Health Services;

(H) the intermediate care facility for individuals [~~persons~~] with an intellectual disability [~~mental retardation~~] component of the Rio Grande State Center; or

(I) a contractor of an entity described in subparagraphs (D) - (H) of this paragraph.

(5) CDS option--Consumer directed services option. A service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or legally authorized representative (LAR) employs and retains service providers and directs the delivery of program services.

(6) [~~(5)~~] Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(7) [~~(6)~~] Commissioner--The commissioner of DADS.

(8) [~~(7)~~] DADS--The Department of Aging and Disability Services.

(9) [~~(8)~~] Employee--A person who:

(A) works for an agency, [~~or~~] a facility, or an individual employer;

(B) provides personal care services, active treatment, or any other personal services to an individual using the CDS option or [~~a person~~] receiving facility or agency services; and

(C) is not licensed to perform those services or is a nurse aide.

(10) [~~(9)~~] EMR--Employee Misconduct Registry. The registry described in THSC [~~Texas Health and Safety Code~~], Chapter 253, and available on the DADS Internet website.

(11) [~~(10)~~] Exploitation--Is defined by the statute or rule that governs the investigation of alleged exploitation of an individual using the CDS option or [~~a person~~] receiving facility or agency services.

(12) [~~(11)~~] Facility--In this chapter means:

(A) a nursing facility licensed under THSC [~~Texas Health and Safety Code~~], Chapter 242;

(B) an assisted living facility licensed under THSC [~~Texas Health and Safety Code~~], Chapter 247;

(C) a home and community support services agency licensed under THSC [~~Texas Health and Safety Code~~], Chapter 142, that provides services to a child;

(D) a home and community support services agency licensed under THSC [~~Texas Health and Safety Code~~], Chapter 142, as a hospice inpatient unit of hospice residential unit;

(E) an adult day care facility licensed under Texas Human Resources Code, Chapter 103; [~~or~~]

(F) an adult foster care provider that contracts with DADS; or[~~.~~]

(G) a prescribed pediatric extended care center licensed under THSC, Chapter 248A.

(13) FMSA--A financial management services agency. As defined in §41.103 of this title (relating to Definitions), an entity that contracts with DADS to provide financial management services to individuals who use the CDS option.

(14) Individual employer--An employer, as defined in §41.103 of this title, which is an individual or LAR who participates in the CDS option and is responsible for hiring and retaining service providers to deliver program services.

(15) [~~(12)~~] IR--Informal review. An opportunity for an employee to dispute a finding of reportable conduct by providing testimony and supporting documentation to an impartial DADS staff person.

(16) [~~(13)~~] NAR--Nurse aide registry. The registry described in THSC, §250.001(1), and available on the DADS Internet website.

(17) [~~(14)~~] Neglect--Is defined by the statute or rule that governs the investigation of alleged neglect of an individual using the CDS option or [~~a person~~] receiving facility or agency services.

(18) Reportable conduct--Reportable conduct, as defined in THSC, §253.001, which includes:

(A) abuse or neglect that causes or may cause death or harm to an individual using the CDS option or receiving facility or agency services;

(B) sexual abuse of an individual using the CDS option or receiving facility or agency services;

(C) financial exploitation of an individual using the CDS option or receiving facility or agency services in the amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual using the CDS option or receiving facility or agency services.

[~~(15) Reportable conduct--Is defined by the statute or rule used by the state agency responsible for the investigation.~~]

(19) [~~(16)~~] SOAH--State Office of Administrative Hearings. A state agency responsible for conducting administrative hearings for other state agencies, including DADS.

(20) THSC--Texas Health and Safety Code.

§93.3. Employment and Registry Information.

(a) Before a facility, [~~or~~] agency, or individual employer hires an employee, the facility, the [~~or~~] agency, the individual employer, or an FMSA on behalf of the individual employer must search the EMR and NAR to determine if the person applying for employment is listed as unemployable on either registry.

(b) A facility, [~~or~~] agency, or individual employer must not hire or continue to employ a person listed in the EMR or NAR as unemployable.

(c) Within five working days after hiring an employee, a [~~A~~] facility, [~~or~~] agency, or individual employer must provide the following written information about the EMR to the employee: [~~within five working days after hiring the employee. The information must:~~]

[~~(1) be in writing;~~]

(1) [~~(2)~~] [~~state~~] that a person listed in the EMR is not employable by a facility, [~~or~~] agency, or individual employer be in writing; and

(2) [~~(3)~~] that the EMR is governed by this chapter [~~include a reference to this chapter~~] and THSC, Chapter 253[~~, Texas Health and Safety Code, Employee Misconduct Registry~~].

(d) A facility, or agency, individual employer, or FMSA on behalf of an individual employer must search the EMR and NAR annually to determine if an employee is listed on either registry as unemployable.

(e) A facility, or agency, individual employer, or FMSA on behalf of an individual employer must maintain a copy of the results of the searches required by subsections (a) and (d) of this section in the facility's, agency's, or individual employer's books and records. [~~person's personnel file.~~]

§93.4. Investigations.

(a) DADS investigates allegations of abuse, neglect, and exploitation made against an employee of a facility.

(b) The Department of Family and Protective Services (DFPS) investigates allegations of abuse, neglect, and exploitation made against an employee of an agency or of an individual employer.

(c) If DADS determines that a substantiated allegation of abuse, neglect, or exploitation by an employee of a facility meets the definition of reportable conduct, DADS complies with [~~is responsible for the provision of due process~~] [~~described in~~] §§93.5, 93.6, and 93.7 of this chapter (relating to DADS Investigates: Notice to Employee of Reportable Conduct, DADS Investigates: Informal Review, and DADS Investigates: Notice of Opportunity for Administrative Hearing).

(d) Sections 93.5, 93.6, and 93.7 of this chapter apply only to an investigation conducted by DADS, as described in subsection (a) of this section.

§93.5. DADS Investigates: Notice to Employee of Reportable Conduct.

(a) After an investigation in which DADS finds [~~determines~~] that an employee of a facility has committed reportable conduct, DADS sends the employee a written notice that includes:

(1) a brief summary of the finding of reportable conduct and facts on which the finding is [~~findings and facts on which the findings are~~] based;

(2) a statement that the employee may request an IR by DADS to dispute the finding [~~findings~~];

(3) a statement that a request for an IR must be made in writing no later than 10 calendar days after the date the employee receives the written notice; and

(4) the address and telephone number for the local DADS regional office where an employee may request an IR.

(b) An employee of a facility may dispute the finding [~~these findings~~] by requesting an IR in writing no later than 10 calendar days after the date the employee received the written notice described in subsection (a) of this section [~~within the required time frame to request an IR~~].

§93.6. DADS Investigates: Informal Review.

(a) If an employee of a facility requests an IR in accordance with §93.5(b) of this chapter (relating to DADS Investigates: Notice to Employee of Reportable Conduct), DADS sets an IR date no later than 30 calendar days after the date the request is received by DADS [~~to allow the employee to dispute the findings by providing testimony, in person or by telephone, and supporting documentation to a designated, impartial Regulatory Services Division staff person at the local DADS regional office~~].

(1) DADS designates an impartial Regulatory Services Division staff person at the local DADS regional office to conduct the IR.

(2) The employee may dispute the finding of reportable conduct by providing oral testimony in person or by telephone, and by providing supporting documentation to the designated staff person.

(3) [~~(1)~~] If the designated staff person does not uphold the finding of reportable conduct, DADS notifies the employee of the results of the IR and [~~findings, DADS~~] does not enter [~~record~~] the employee's name or related information in the EMR.

(4) [~~(2)~~] If the designated staff person upholds the finding of reportable conduct, DADS notifies the employee in accordance with [~~findings, DADS notifies the employee of the results of the IR. The employee is then entitled to notice of an opportunity for an administrative hearing, as described in~~] §93.7(a) of this chapter (relating to DADS Investigates: Notice of Opportunity for Administrative Hearing).

(b) If an [~~the~~] employee of a facility does not timely request an IR[~~,~~] or fails to appear for a requested IR, DADS notifies the employee in accordance with §93.7(a) of this chapter, except the notice does not include a summary of the results of an IR. [~~that an IR was not requested. The employee is then entitled to notice of an opportunity for an administrative hearing, as described in §93.7 of this chapter.~~]

§93.7. DADS Investigates: Notice of Opportunity for Administrative Hearing.

(a) Except as provided in §93.6(b) of this chapter (relating to DADS Investigates: Informal Review), written notice sent to an employee in accordance with §93.6(a)(4) or (b) [~~After the information review process is completed for an employee of a facility, DADS reviews the findings and supporting documentation and sends the employee a written notice that~~] includes:

(1) a brief summary of the results of the IR [~~findings~~];

(2) a statement that the employee may request an administrative hearing on the finding of reportable conduct;

(3) a statement that a request for hearing must be made in writing no later than 30 calendar days after the date the employee receives the written notice; and

(4) the address and telephone number for the Health and Human Services Commission Hearings Division where the employee may request an administrative hearing.

(b) If the employee of a facility does not request an administrative hearing [~~or fails to respond timely to the written notice~~], the employee's name and related information are [~~is~~] entered in the EMR.

(c) An employee of a facility may request an administrative hearing conducted in accordance with the Health and Human Services Commission's administrative hearing procedures in Title 1, Texas Administrative Code, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(d) If an employee of a facility timely requests a hearing, the employee is granted an administrative hearing on the finding [~~incident~~] of reportable conduct before an administrative law judge at SOAH. THSC §253.004 requires a hearing to be completed no later than 120 days after the request for the hearing is received.

(e) The administrative law judge issues a proposal for decision finding that the employee of a facility either did or did not commit reportable conduct.

(f) The information described in §93.8(c) of this chapter (relating to Entering Information in the EMR) regarding an employee is entered [~~recorded~~] in the EMR if, after reviewing the proposal for decision, the commissioner or the commissioner's designee issues a final order finding that the employee committed reportable conduct.

§93.8. Entering Information in the EMR.

(a) DADS enters the [~~records~~] information [~~in the EMR~~] described in subsection (c) of this section in the EMR [~~regarding an employee~~]:

(1) when DADS investigates and all due process procedures are completed for a substantiated finding of reportable conduct;

(2) as required by THSC [~~Texas Health and Safety Code~~], §253.0075, when DADS receives notice of a substantiated finding of reportable conduct from the Department of Family and Protective Services (DFPS);

(3) as a finding of reportable conduct when DADS finds that a nurse aide working in a nursing facility has committed abuse, neglect, or misappropriation (as those terms are defined in §94.2 of this title (relating to Definitions)) and DADS lists the nurse aide's certification as revoked on the NAR; or

(4) if a federal or another state governmental entity finds that an employee has committed an act that constitutes reportable conduct.

(b) DADS does not offer an IR as described in §93.6 of this chapter (relating to DADS Investigates: Informal Review) or an administrative hearing as described in §93.7 of this chapter (relating to DADS Investigates: Notice of Opportunity for Administrative Hearing) to an employee regarding a finding of reportable conduct described in subsection (a)(2), (3), or (4) of this section before entering information related to the finding in the EMR.

(1) For a finding under subsection (a)(3) of this section DADS provides due process before listing a nurse aide's certification as revoked in the NAR.

(2) For a finding under subsection (a)(2) or (4) of this section DFPS, a federal agency, or an agency of another state provides the due process required by its laws, rules or regulations before sending a finding to DADS.

~~[(b) The due process procedure offered to an employee by DFPS, a federal or other state governmental entity, or DADS before a finding of abuse, neglect, or misappropriation is entered in the NAR or a finding of reportable conduct is entered in the EMR satisfies the due process required for listing the individual as unemployable in the EMR. DADS does not provide the employee with another informal review or administrative hearing, as described in §93.6 of this chapter (relating to DADS Investigates: Informal Review) or §93.7 of this chapter (relating to DADS Investigates: Notice of Opportunity for Administrative Hearing).]~~

(c) The following information is entered in the EMR in accordance with THSC [~~Texas Health and Safety Code~~], §253.007 (relating to Employee Misconduct Registry):

(1) the employee's name;

(2) the employee's address;

(3) the employee's social security number;

(4) the name of the facility or agency, or a notation that the employee was an employee of an individual employer;

(5) the address of the facility or agency, or the city and state of the individual employer;

(6) the date the reportable conduct was committed; and

(7) a description of the reportable conduct committed.

§93.9. Removing Information from the EMR.

An employee's name remains in the EMR unless [~~DADS may remove an employee's name from the EMR if~~]:

(1) DADS determines that the employee does not meet the requirements for listing in the EMR based on additional information gathered by DADS or notification received from the Department of Family and Protective Services or another referring entity; or

(2) an entry of reportable conduct in the EMR was based on an entry in the NAR and the entry in the NAR is subsequently removed.

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 7, 2014.

TRD-201403116
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 24, 2014
For further information, please call: (512) 438-4466

♦ ♦ ♦

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§380.101, 380.201, 380.203, 380.205, 380.207, 380.209, 380.301, 380.401, 380.501, and 380.502 and new §380.202, concerning the Medical Transportation Program. Sections 380.201, 380.203, 380.207, and 380.501 are adopted without changes to the proposed text as published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3522) and will not be republished. Sections 380.101, 380.202, 380.205, 380.209, 380.301, 380.401, and 380.502 are adopted with changes to the proposed text as published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3522) and will be republished. The changes respond to comments received and do not materially alter issues raised by the proposed rule. Accordingly, HHSC may adopt the new text without republishing the text as a proposed rule.

Background and Justification

The Medical Transportation Program (MTP) provides nonemergency medical transportation services to Medicaid clients and those served by the Children with Special Health Care Needs services program and the Transportation for Indigent Cancer Patients program. MTP services are currently delivered across the state under two delivery models: a full risk broker (FRB) capitated rate model and a Transportation Service Area Provider (TSAP) fee-for-service model. Senate Bill (S.B.) 8, 83rd Legislature, Regular Session, 2013, added §533.00257 to the Government Code, which requires HHSC to provide MTP services on a regional basis through Managed Transportation Organizations (MTOs).

The new and amended rules define the term "managed transportation organization" and specify requirements of participation in MTP as required by S.B. 8. In addition, the amended rules update references to agencies, delete obsolete citations and definitions, and update language to reflect current policies of MTP.

In the May 2, 2014, issue of the *Texas Register* (39 TexReg 3522), HHSC proposed including certain nonemergency ambulance transportation services as a category of services provided by MTP; HHSC listed the services under proposed §380.202 (regarding Program Services) and defined the term "nonemergency ambulance transportation services" in §380.101 (regarding Definitions of Terms).

After considering public comments on the proposed rules, HHSC has determined that entities administering clients' medical benefits are currently in the best position to authorize and reimburse nonemergency ambulance transportation services. For example, managed care organizations (MCOs) participating in the Texas Medicaid Program must arrange for all medically necessary covered services, including ambulance services.

HHSC will restore language in the rule that excludes both emergency and nonemergency ambulance services from MTP. HHSC republishes §380.101 (regarding Definitions of Terms); §380.202 (regarding Program Services); and §380.209 (regarding Program Exclusions) to restore language in the currently effective rules regarding excluded ambulance services.

HHSC has also added §380.502(3)(B) to be consistent with language in transportation provider contracts. The subparagraph states that transportation providers must ensure that motor vehicle operators do not have more than one moving violation in a 12-month period. In addition, HHSC has made typographical edits and clarified the rule in response to public comment.

Comments

HHSC has reviewed and prepared responses to comments received during the comment period and the public hearing held on May 28, 2014.

HHSC received comments opposed to the adoption of the MTP rules, as proposed, from Texas Ambulance Association, Inc., Acadian Ambulance Service, Inc., and a number of emergency medical services (EMS) providers. HHSC also received requests for clarification from LeFleur Transportation of Texas, Inc.

Proposed Rule Preamble

Comment: Several commenters referred to HHSC's assessment of local employment impact, the probable economic cost to persons required to comply with the rule, and any adverse economic effect on small businesses or micro-businesses. The commenters questioned HHSC's calculation of these indicators, citing the impact of rate negotiations with MTOs. The commenters also alluded to a "future" attempt by HHSC to transfer all Medicaid nonemergency ambulance services to MTP, including ambulance services currently reimbursed by managed care organizations (MCOs) and HHSC's claims administrator.

Response: Under Texas Government Code §533.00257(d)(3), an MTO must attempt to contract with medical transportation providers that agree to accept the prevailing contract rate of the MTO. As noted in the proposed rule preamble, the rate negotiated between the MTO and its contracted providers is not within the scope of these rules. The rules, as proposed, clarify existing rules concerning Regional Contracted Brokers and outline the MTO delivery model described in statute. The rules do not

speak to the rate negotiated between participating providers and the transportation provider.

In the May 2, 2014, issue of the *Texas Register* (39 TexReg 3522), HHSC proposed including "nonemergency ambulance transportation services" as an MTP service. In response to public comment, HHSC will adopt final rules without these amendments. MCOs participating in the Texas Medicaid Program will continue to authorize and pay for all covered ambulance services provided to its members, including non-emergency ambulance services. HHSC's claims administrator will authorize and pay for all covered nonemergency ambulance services provided to clients enrolled in Traditional Medicaid, commonly referred to as fee-for-service (FFS) Medicaid.

§380.101 Definitions of Terms

Comment: Several commenters requested that all nonemergency ambulance services be excluded from MTP.

Response: HHSC accepts this change. After considering public comments, HHSC has determined that entities administering clients' medical benefits are currently in the best position to authorize and reimburse nonemergency ambulance transportation services. Under HHSC's initial proposal, two entities would administer nonemergency ambulance transportation services--one entity in situations in which the client requires medical monitoring and another entity in situations in which the client does not require that medical monitoring. Because MTP will not provide "nonemergency ambulance transportation services" at this time, HHSC will remove the definition for this term.

Comment: Several commenters cited Texas Health and Safety Code §773.041(a-1), regarding licensure of a person transporting a patient by stretcher in a vehicle. The commenters objected to the rule's definition of "nonemergency ambulance transportation services" and any suggestion that a transportation provider would not have to be licensed as an EMS provider.

Response: Because MTP will not provide "nonemergency ambulance transportation services" at this time, HHSC will remove the definition for this term.

Comment: A commenter suggested defining the term "patient," as used in Texas Health and Safety Code §773.041(a-1).

Response: DSHS, and not HHSC, administers Texas Health and Safety Code Chapter 773. This suggestion is outside the scope of the MTP rules.

Comment: A commenter suggested that HHSC omit reference to the term "nonemergency ambulance transportation services" and insert "non-medical stretcher transportation services."

Response: HHSC rejects this change. Because MTP will not provide "nonemergency ambulance transportation services" at this time, HHSC will remove the definition for this term.

Comment: Several commenters asked how transportation providers will provide curb-to-curb service if a client needs to be transported in a stretcher. One commenter notes that Texas Government Code §533.00257(a)(3) refers to curb-to-curb service. The commenter also notes that the proposed definition of "passenger assistance" refers to transportation from curb at origin to curb at destination.

Response: MTP will not provide "nonemergency ambulance transportation services" at this time and will not arrange for the transportation of individuals by stretcher. Because MTP will not provide "nonemergency ambulance transportation services" at this time, HHSC will remove the definition for this term.

HHSC notes that Texas Government Code §533.00257(a)(3) only defines "transportation service area provider." While HHSC may contract with a transportation service area provider under Texas Government Code §533.00257(h), HHSC has not elected this option.

Comment: A commenter requested clarification on whether the definition of "passenger assistance" includes lifting or carrying a person.

Response: Passenger assistance does not include lifting or carrying a person.

Comment: A commenter suggested that HHSC amend the definition of MTO to cite 42 C.F.R. §440.170, which relates to a state's nonemergency medical transportation brokerage program. The commenter highlights language in the federal rule that prohibits a broker from referring or subcontracting with a transportation provider with which the broker has a financial relationship.

Response: HHSC declines to make this change. Under Texas Government Code §533.00257(e), an MTO may own, operate, and maintain a fleet of vehicles. HHSC must seek appropriate federal waivers or authorizations to implement this delivery model. As noted in the public notice published in the *Texas Register* on April 11, 2014 (39 TexReg 2990) and the corrected public notice published in the *Texas Register* on June 6, 2014 (39 TexReg 4521), HHSC has submitted a request for a waiver under Social Security Act §1915(b) that would allow an MTO to own, operate, and maintain a fleet of vehicles. The waiver application covers MTOs in five MTO Regions.

Comment: A commenter requested clarification on the scope of the following defined terms in 1 Texas Administrative Code (TAC) §380.101 (relating to Definitions of Terms): "reasonable transportation" and "routine medical transportation." The commenter asked whether these terms include long distance trips.

Response: The terms "routine medical transportation" and "reasonable transportation" do not include long distance trips. "Reasonable transportation" includes transportation within a client's county of residence, county adjacent to a client's county of residence, or Medicaid managed care service delivery area. Under §380.205, a request for routine medical transportation is subject to a different process than a request for a long distance trip. HHSC has amended §380.101 to provide clarification.

Comment: A commenter asked whether a "long distance trip" is always outside of the transportation area of the transportation provider, such as an MTO Region.

Response: A "long distance trip" may be within an MTO Region. HHSC has amended §380.101 to provide clarification.

Comment: One commenter objected to the exclusion of experimental services in the definition of medical necessity.

Response: HHSC believes this change is consistent with other definitions of medical necessity in HHSC's rules, including 1 TAC §353.2(57).

§380.202 Program Services

Comment: Several commenters requested that all nonemergency ambulance services be excluded from the medical transportation program (MTP).

Response: HHSC accepts this change. MTP will not provide nonemergency ambulance transportation services at this time. After considering public comments, HHSC has determined that entities administering clients' medical benefits are currently in the best position to authorize and reimburse nonemergency ambulance transportation services.

Comment: A commenter requested that HHSC outline parameters on determination of need for nonemergency ambulance transportation services provided under MTP.

Response: Under §380.202, as adopted, nonemergency ambulance transportation services are not a category of services provided by MTP.

Comment: A commenter stated that it is a misuse of Texas's EMS resources to engage in the transportation of individuals who are not patients.

Response: HHSC's rules at 1 TAC §354.1115 establish medical necessity criteria for nonemergency ambulance transportation services. MTP will not provide nonemergency ambulance transportation services.

Comment: A commenter suggested that HHSC refer to guidelines issued by the Centers for Medicare and Medicaid Services (CMS) for nonemergency ambulance transportation.

Response: HHSC will consider these guidelines.

Comment: Several commenters compared §380.202 with HHSC's responses to vendor questions discussed in a December 10, 2013, vendor conference associated with HHSC Request for Proposals (RFP) No. 529-15-0002.

Response: MTP will not provide nonemergency ambulance transportation services at this time. RFP No. 529-15-0002, as originally posted, described nonemergency ambulance transportation services, and HHSC's responses to the vendor questions represented that these services were a part of the MTO scope of work. However, MTP will not provide nonemergency ambulance transportation services at this time.

§380.203 Program Requirements

Comment: A commenter requested that HHSC define the elements of a Health Care Provider's Statement of Need.

Response: HHSC declines to make this change. This term is already defined.

Comment: A commenter asked how an MTO would confirm that a provider will not bill Medicaid or another source for the cost of services addressed in §380.203(1)(B).

Response: The MTO may establish an internal procedure to verify this information, such as through an agreement or an attestation.

§380.205 Program Processes

Comment: One commenter requested modification of the one-hour notification requirement in 1 TAC §380.205(7).

Response: To ensure the safety of clients served by MTP, HHSC declines to make this change.

Comment: A commenter asked whether the accident-reporting requirement in 1 TAC §380.205(7) applied to only accidents with injuries sustained by a client or attendant.

Response: This requirement applies to all accidents that involve a transportation provider, performing provider, or an ITP who is not a family member of the client; this paragraph includes accidents in which an individual not affiliated with or served by MTP has been injured.

§380.209 Program Exclusions

Comment: Several commenters requested that HHSC exclude all nonemergency ambulance services from the medical transportation program (MTP). The commenters suggested retaining the program exclusion for emergency and nonemergency ambulance services in §380.209, as currently effective.

Response: HHSC accepts this change. MTP will not provide nonemergency ambulance transportation services at this time.

Comment: A commenter suggested that HHSC amend language in the program exclusion to refer to nonemergency ambulance services for clients who require medical monitoring during transport.

Response: HHSC declines to make this change. MTP will not provide any nonemergency ambulance transportation services at this time.

Comment: A commenter asked whether an ITP may be reimbursed before completion of the enrollment process, citing language in current 1 TAC §380.209.

Response: Payment may only be made to an ITP who has been approved for participation in MTP under the procedures established in §380.401.

§380.301 Client Rights

Comment: A commenter suggested that 1 TAC §380.301(b) state that the return of any unused or unsubstantiated advanced funds be made to HHSC or its designee.

Response: HHSC has accepted this change and amended the proposed text accordingly. Because both an MTO and a Regional Contracted Broker assume financial responsibility for MTP services under a full-risk model, any unused funds may be made to HHSC's designee.

§380.401 Individual Transportation Participant Requirements

Comment: A commenter asked for clarification on processes for individual transportation participants (ITPs) and the level of involvement of an MTO in an ITP's enrollment application under §380.401(a) and (c).

Response: The MTO will act as HHSC's designee and process and approve an ITP application. As noted in the rule, HHSC may reject any application for participation as an ITP or terminate the participation status of any ITP at HHSC's sole discretion.

Comment: A commenter asked whether an ITP may be reimbursed before completion of the enrollment process.

Response: Payment may only be made to an ITP who has been approved for participation in MTP under the procedures established in §380.401.

Comment: A commenter asked for clarification on the definition of "family member" in 1 TAC §380.401(b) and asks whether the term includes a member of the household.

Response: The term "family member" does not include a member of the client's household that is not a family member.

Comment: A commenter asked for clarification on whether MTOs must validate ITPs using 1 TAC §380.501 (relating to

Standards for Motor Vehicles) and §380.502 (relating to Standards for Motor Vehicle Operators).

Response: An MTO must validate ITPs according to the terms of its contract with HHSC. ITPs who are not family members of the transported client are subject to additional validation processes, including compliance with §380.502(1) - (3) of this chapter. HHSC has amended §380.401 to clarify the applicability of §380.502(1) - (3) to certain ITPs. An MTO may refer to its contract with HHSC to determine any additional validation activities for ITPs.

Comment: A commenter asked for clarification on which provisions of 1 TAC Chapter 352 and Chapter 371 apply to ITPs.

Response: ITPs are subject to certain enrollment and validation processes specified in these chapters. HHSC or HHSC's designee will process and approve an ITP application. As noted in the rule, HHSC may reject any application for participation as an ITP or terminate the participation status of any ITP at HHSC's sole discretion.

§380.501 Standards for Motor Vehicles

Comment: One commenter requested clarification on the contents of a first aid kit in 1 TAC §380.501.

Response: The rule requires a "first aid kit" and outlines certain minimum requirements for that kit. The MTO or Regional Contracted Broker may require motor vehicles to keep a first aid kit with additional contents.

§380.502 Standards for Motor Vehicle Operators

Comment: A commenter asked for clarification on what constituted "participation" in Medicaid fraud under 1 TAC §380.502(3)(B)(iv).

Response: HHSC has amended the proposed language to reflect the structure of the rule and to provide clarification. HHSC has relabeled clause (iv) of the proposed rule to subparagraph (D) of the adopted rule. This subparagraph would apply to an individual who has been found liable for or convicted for an act prohibited under Texas Human Resources Code Chapter 36.

Comment: Several commenters suggested amendments to required background checks for attendants.

Response: HHSC declines to make any changes to the proposed rule at this time. However, HHSC's contracts with transportation providers mandate certain background checks for participating providers and their employees.

Other Comments

Comment: One commenter provided testimony on the benefits of transportation provided and arranged by health care providers.

Response: This comment is outside the scope of the proposed rules. MTP provides nonemergency transportation services to and from covered health care services. Federal law prohibits Medicaid providers from offering inducements to Medicaid recipients that are likely to influence the Medicaid recipient's choice of a provider. See Social Security Act §1128A(a)(5). HHSC believes that the offering of transportation by a health care provider is such a prohibited inducement.

Comment: One commenter suggested that HHSC use the term "individual," instead of "client."

Response: HHSC declines to make this change. The change is not necessary under Texas Government Code §531.0227, which requires person first respectful language.

SUBCHAPTER A. PROGRAM OVERVIEW

1 TAC §380.101

Statutory Authority

The amendments are authorized under Texas Government Code §531.02414 and §533.00257, which provide the executive commissioner authority to adopt rules implementing the medical transportation program; Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The adopted amendments implement Texas Government Code Chapters 531 and 533, including Texas Government Code §533.00257 and §531.02414. No other statutes, articles, or codes are affected by this adoption.

§380.101. Definitions of Terms.

The following words and terms are applicable to this Chapter, Medical Transportation Program (MTP):

(1) Abuse--The willful infliction of intimidation or injury resulting in physical harm, pain, or mental anguish.

(2) Accident--An unexpected event or series of events causing loss or injury to person or property (e.g., automobile).

(3) Adjacent county(ies)--The county or counties that share a common county line or point with the client's county of residence.

(4) Advance funds--Funds authorized in advance of travel and provided to the client or attendant to cover authorized transportation services (e.g., gas money, lodging, and/or meals) for travel to a covered health care service.

(5) Ambulance service--A service paid through HHSC or its designee in an emergency, or non-emergency situation in which transportation in a vehicle other than an ambulance could endanger the recipient's health.

(6) Attendant--

(A) an adult required to accompany a prior authorized MTP client under §380.207(4) of this chapter (relating to Program Limitations);

(B) an adult that accompanies a prior authorized MTP client to provide necessary mobility, personal or language assistance to the client during the time that transportation services are provided;

(C) a service animal that accompanies a prior authorized MTP client to provide necessary mobility or personal assistance to the client during the time that transportation services are provided; or

(D) an adult that accompanies a prior authorized MTP client because a health care provider has submitted a statement of need that the client requires an attendant.

(7) Certification Period--A period of time for which a Transportation for Indigent Cancer Patient client is certified for service.

(8) Children with Special Health Care Needs (CSHCN) services program--A program funded with general revenue and federal

funds administered by the Department of State Health Services. Services for eligible children include early identification, diagnosis and evaluation, resulting in early health care intervention.

(9) Covered health care service--A service included in the premium of the health care policy paid by or on behalf of an MTP client.

(10) Demand Response--Transportation that involves using performing provider dispatched vehicles in response to requests from clients or shared one-way trips.

(11) Health and Human Services Commission (HHSC)--The state agency that operates the Medical Transportation Program.

(12) Health Care Provider's Statement of Need--MTP Form 3113 or equivalent submitted by a health care provider which documents the client's need for health care services and/or special transportation accommodations.

(13) Individual Transportation Participant (ITP)--An individual who has been approved for mileage reimbursement at a rate prescribed by HHSC to provide transportation for a prior authorized MTP client to a covered health care service.

(14) Limited Status--A Medicaid client's limitation to a designated provider, either a primary care provider or primary care pharmacy, under the lock-in provisions contained in Chapter 354, Subchapter K of this title (relating to Medicaid Recipient Utilization Review and Control). Clients are limited for specific periods of time as outlined in §354.2405(c) of this title (relating to Utilization Control).

(15) Lodging--A commercial establishment such as a hotel, motel, charitable home or hospital that provides overnight lodging.

(16) Long Distance Trip--Transportation beyond a county adjacent to a client's county of residence or Medicaid managed care service delivery area for the purpose of receiving a covered health care service.

(17) Managed Transportation Organization (MTO)--

(A) a rural or urban transit district created under Chapter 458, Transportation Code;

(B) a public transportation provider defined by §461.002, Transportation Code;

(C) a regional contracted broker defined by Government Code §531.02414;

(D) a local private transportation provider approved by HHSC to provide MTP services; or

(E) any other entity HHSC determines meets the requirements.

(18) Mass transit--Public transportation by bus, rail, air, ferry, or intra-city bus either publicly or privately owned, which provides general or special service transportation to the public on a regular and continuing basis. Mass transit is intercity or intra-city transportation and also includes the use of commercial air service to transport clients to an authorized service.

(19) Medicaid--A health care program provided to eligible individuals under 42 U.S.C. §1396a *et seq.;* 42 C.F.R. §431.53; Texas Human Resources Code, Chapters 22 and 32.

(20) Medically necessary--Services that are:

(A) reasonably necessary to: prevent illness(es) or medical condition(s); maintain function or to slow further functional deterioration; provide early screening, intervention, care, and/or provide care or treatment for eligible clients who have medical condition(s) that cause suffering or pain, physical deformity or limitations in function, or that threaten to cause or worsen a disability, illness or infirmity, or endanger life;

(B) provided at appropriate locations and at the appropriate levels of care for the treatment of the medical condition(s);

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

(D) consistent with the diagnosis(es) of the condition(s);

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

(F) not experimental or investigative; and

(G) not primarily for the convenience of the client.

(21) Medical Transportation Program (MTP)--The program that provides prior authorized nonemergency transportation services to and from covered health care services, based on medical necessity, for categorically eligible Medicaid clients enrolled in Medicaid, and eligible clients enrolled in CSHCN services program, or the Transportation for Indigent Cancer Patients program who have no other means of transportation.

(22) Minor--An individual under 18 years of age who has never been married or emancipated by court ruling.

(23) Passenger assistance--Transportation from curb at origin to curb at destination, including providing assistance, as required, to clients entering and exiting the vehicle.

(24) Performing provider--An entity that arranges or provides transportation services to a prior authorized MTP client, including subcontractors, independent contractors, lodging and meal vendors, and intercity or intra-city bus services.

(25) Prior authorization--Authorization or approval for the provision of transportation services obtained from MTP or a transportation provider before the services are rendered.

(26) Prior authorized MTP client--A client authorized by HHSC as eligible for Medicaid services under a specific category, or identified by either the CSHCN service program or the TICP program as eligible for program services, who has no other means of transportation to covered health care services.

(27) Reasonable transportation--Transportation using the most cost-effective transportation that meets the client's medical needs:

(A) within a client's local community, county of residence, or county adjacent to a client's county of residence where the client wishes to maintain an ongoing relationship or establish a relationship with a health care provider of his or her choice; or

(B) to a provider or facility within a designated Medicaid managed care service delivery area.

(28) Regional contracted broker--An entity that contracts with HHSC to provide or arrange for the provision of nonemergency transportation services under the MTP, including a full risk broker as referenced in 42 C.F.R. §440.170(a)(4) (relating to nonemergency medical transportation brokerage program).

(29) Routine medical transportation--Prior authorized medical transportation trips, other than long distance trips, to and/or from a facility where covered health care services will be provided.

(30) Service animal--A trained guide dog, signal dog, or other animal to provide assistance to a specified MTP client with a disability.

(31) Sexual harassment--Unwelcome sexual advances, requests for sexual favors, or other unwanted verbal or physical conduct of a sexual nature directed toward an individual by another individual during the provision of transportation services.

(32) Significant traditional provider--An individual or entity that has a documented record of providing transportation services for a minimum of two years.

(33) Special needs--A transportation service that requires the use of a vehicle equipped with a ramp or a mechanical lift to provide the client with a means of accessing the vehicle.

(34) Transportation provider--A regional contracted broker or an MTO.

(35) Transportation for Indigent Cancer Patients (TICP) Program--A state-funded program that provides medical transportation services to individuals diagnosed with cancer or a cancer-related illness and who meet residency and financial criteria.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

1 TAC §§380.201 - 380.203, 380.205, 380.207, 380.209

Statutory Authority

The amendments and new rule are authorized under Texas Government Code §531.02414 and §533.00257, which provide the executive commissioner authority to adopt rules implementing the medical transportation program; Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The adopted amendments and new section implement Texas Government Code Chapters 531 and 533, including Texas Government Code §533.00257 and §531.02414. No other statutes, articles, or codes are affected by this adoption.

§380.202. Program Services.

Transportation services prior authorized by the Medical Transportation Program (MTP) or transportation providers include:

(1) Demand response transportation services provided when fixed route services are either unavailable or do not meet the health care needs of clients. Services must be timely and provided by qualified, courteous, knowledgeable, and trained personnel;

(2) Mass transit tickets when determined to be the appropriate mode of transportation for the client, ensuring the client does not live more than a quarter (1/4) mile from a public fixed route stop, the appointment is not more than a quarter (1/4) mile from a public fixed route stop, and that mass transit tickets are received by the client before the client's appointment;

(3) Individual transportation participant services provided by volunteers who enter into an agreement and are reimbursed for mileage if they are prior authorized to drive a client to a covered health care service in a personal car;

(4) Meal and lodging services for clients and an attendant when a covered health care service requires an overnight stay outside the client's county of residence or beyond adjacent counties. Clients and attendants must receive the same quality of services provided to other guests and the lodging services must be equivalent or better than those listed in the Office of the Texas Comptroller's State Travel Management Program;

(5) Transportation to and from renal dialysis services for clients enrolled in the Medicaid program who are residing in a nursing facility, as required by the Human Resources Code;

(6) Advance funds disbursed before the covered health care service to clients when a lack of transportation funds will prevent a child from traveling to the service. Advance funds are for clients through age 20 and Children with Special Health Care Needs services program clients 21 and over who have been diagnosed with cystic fibrosis. Advanced funds may be issued to cover meals, lodging, and/or mileage;

(7) Out-of-state transport to contiguous counties or bordering counties in adjoining states (Louisiana, Arkansas, Oklahoma, and New Mexico) that are within 50 miles of the Texas border, if services are medically necessary and it is the customary or general practice of clients in a particular locality within Texas to obtain services from an out-of-state provider that is enrolled as a Texas Medicaid provider; and

(8) Commercial airline transportation services for a client and attendant to a covered health care service, when it is the most cost effective option or when necessary to meet the client's medical needs.

§380.205. Program Processes.

The following processes must be followed in order to ensure safe, efficient, and cost-effective delivery of transportation services:

(1) a request for routine medical transportation must be received at least two working days in advance of the client's health care service appointment;

(2) a request for a long distance trip must be received at least five working days in advance of the client's health care service appointment;

(3) exceptions to paragraphs (1) and (2) of this section may be granted when the circumstances have been determined to be beyond the client's control. The exception will be documented in the client's record;

(4) clients with recurring visits to a health care provider may receive multiple mass transit tickets or may have more than one transportation appointment authorized in advance;

(5) a certification period for Transportation for Indigent Cancer Patients Program (TICP) clients may be retroactive to the date of the initial request for transportation services if all eligibility requirements are met, and all forms are completed and returned to HHSC. The duration of the certification period is a maximum of 12 consecutive months and minimum of 60 days;

(6) specific certification periods apply to the following applicants of the TICP Program:

(A) applicants on unearned fixed income such as Social Security, workers' compensation, unemployment or U.S. Department of Veterans Affairs benefits can be certified for a 12 month period if there are no anticipated changes in household income;

(B) applicants with earned income can be certified up to an eight month period if there are no anticipated changes in household income;

(C) applicants whose unearned or earned household income is within 10% of the federal poverty guideline can be certified up to a six month period at a time if there are no anticipated changes in household income; or

(D) applicants who have zero income can be certified up to two months at a time. Zero income requires written verification from family members or advocates who can attest that the household receives no monthly earned or unearned income.

(7) transportation providers must report any accidents with injuries to HHSC within one hour and must report any other accidents within 24 hours; and

(8) transportation providers must attempt to contract with significant traditional providers.

§380.209. Program Exclusions.

The following transportation services are not covered by the Medical Transportation Program (MTP):

(1) transportation of deceased clients;

(2) reimbursement for additional travel costs when a client elects to seek care at a more remote facility that is not supported on a Health Care Provider's Statement of Need, Form 3113 or equivalent;

(3) medical care while clients are being transported;

(4) emergency or nonemergency ambulance service;

(5) passenger assistance beyond that which is necessary to ensure that clients enter and leave vehicles safely; and

(6) transportation services for family members not previously authorized for the specific trip.

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 C. CLIENT RIGHTS

1 TAC §380.301

Statutory Authority

The amendments are authorized under Texas Government Code §531.02414 and §533.00257, which provide the executive commissioner authority to adopt rules implementing the medical transportation program; Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The adopted amendments implement Texas Government Code Chapters 531 and 533, including Texas Government Code §533.00257 and §531.02414. No other statutes, articles, or codes are affected by this adoption.

§380.301. Client Rights and Responsibilities.

(a) Client Rights.

(1) Nondiscrimination. The client has a right to receive services in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000d, *et seq.;* §504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794; the Americans with Disabilities Act of 1990, 42 U.S.C.A. §12101, *et seq.;* and all amendments to each, and all requirements imposed by the regulations issued pursuant to these Acts, in particular 45 C.F.R. Part 80 (relating to race, color, national origin), 45 C.F.R. Part 84 (relating to handicap), 45 C.F.R. Part 86 (relating to sex), and 45 C.F.R. Part 91 (relating to age).

(2) Abuse report. Clients should report verbal or physical abuse or sexual harassment committed by other clients, passengers, a transportation provider's employees, or Health and Human Services Commission (HHSC) staff to the Medical Transportation Program (MTP) or the transportation provider upon arrival at the client's destination.

(3) Denial notification. If a service is denied, MTP or the transportation provider shall notify the client in accordance with Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules). This client notification does not apply to transportation services under §380.209 of this title (relating to Program Exclusions).

(4) Appeal request.

(A) For services that have been denied by a transportation provider, a client may request an internal review of the denied services to be conducted by the transportation provider, MTP, or both.

(B) For services that have been denied by MTP, a client may request an administrative review to be conducted by the MTP Program Director.

(C) At any time, a client may request a fair hearing for review of a service denial by an HHSC hearings officer. A request for a fair hearing must be in writing and mailed or hand-delivered to the MTP office in Austin.

(b) Client Responsibilities.

(1) When a client or responsible adult requests transportation, he/she must provide the following information:

(A) client name, address, and, if available, the telephone number;

(B) Medicaid, Transportation for Indigent Cancer Patients Program or Children with Special Health Care Needs services

program client identification number (if applicable) or Social Security number, and date of birth;

(C) name, address, and telephone number of health care provider and/or referring health-care provider;

(D) purpose and date of trip and time of appointment;

(E) affirmation that other means of transportation are unavailable;

(F) special needs, including wheelchair lift or attendant(s);

(G) medical necessity verified by the Health Care Provider's Statement of Need, if applicable; and

(H) affirmation that advance funds are needed when a lack of transportation funds will prevent the child from traveling to a covered health care service, if applicable.

(2) Clients must reimburse HHSC or its designee for any advance funds, and any portion thereof, that:

(A) are not used for the specific prior authorized service; or

(B) when a verification that client attended the covered health services is not submitted.

(3) Clients must refrain from verbal and/or physical abuse or sexual harassment toward another client or passenger, transportation provider or performing provider employees, or HHSC employees while requesting or receiving medical transportation services.

(4) Clients must safeguard all bus tickets and/or tokens from loss and theft and must return unused tickets or tokens to the MTP or the transportation provider issuing the tickets or tokens.

(5) Clients who receive mass transit bus tickets or tokens must complete a verification form. Clients must return this verification form prior to their next request for tickets or tokens. A letter from the health care provider verifying delivery of services may be substituted for the disbursement of mass transit tickets or tokens verification form. Exceptions to this documentation may be granted when circumstances occur that are beyond the client's control. Exceptions will be documented in the client's record.

(6) Clients must not use authorized medical transportation for purposes other than travel to and from health care services.

(7) If the client does not need to use the authorized transportation services, the client or the responsible adult should contact MTP or the transportation provider to cancel the particular trip no less than four hours prior to the time of the authorized trip.

(8) Clients who receive advance funds for meals, lodging, and/or travel must return written documentation from the health care provider verifying services were provided, prior to receiving future advance funds.

(9) Clients must cancel requests for advance funds or lodging when not needed and must refund any disbursed advance funds to HHSC.

(10) Clients must provide the following when seeking reimbursement for lodging in situations where prior authorization could not be obtained in advance:

(A) original receipt from the lodging establishment showing its name and address, the client's name as an occupant, and specific services for which the occupant was charged (e.g., room rent, tax);

(B) letter from the client or attendant requesting reimbursement for out-of-pocket expenses; and

(C) copies of the client or attendant's Social Security card and valid state-issued identification.

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SUBCHAPTER D. INDIVIDUAL TRANSPORTATION PARTICIPATION

1 TAC §380.401

Statutory Authority

The amendments are authorized under Texas Government Code §531.02414 and §533.00257, which provide the executive commissioner authority to adopt rules implementing the medical transportation program; Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The adopted amendments implement Texas Government Code Chapters 531 and 533, including Texas Government Code §533.00257 and §531.02414. No other statutes, articles, or codes are affected by this adoption.

§380.401. Individual Transportation Participant Requirements.

(a) To participate in the Medical Transportation Program (MTP), all individual transportation participants (ITP) must:

(1) submit a complete ITP application to the Health and Human Services Commission (HHSC) or its designee to acquire participation status; and

(2) have and maintain a current driver's license, current vehicle insurance, current vehicle inspection sticker, and current vehicle license tags and meet all other participation requirements.

(b) In addition to the requirements in subsection (a) of this section, ITPs applying to receive mileage reimbursement for transporting eligible MTP clients other than themselves or their family members are subject to:

(1) Chapter 352 of this title (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity), as applicable;

(2) §380.502(1) - (3) of this chapter (relating to Standards for Motor Vehicle Operators); and

(3) any additional validation processes specified by HHSC or its designee as a condition of participation.

(c) HHSC may reject any application for participation as an ITP or terminate the participation status of any ITP at HHSC's sole discretion.

(d) To receive mileage reimbursement for a trip, an ITP must return to HHSC or its designee a completed ITP service record (Form H3017) or its equivalent.

(e) The ITP must refund to HHSC or its designee any funds to which the ITP is not entitled for any reason.

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 E. REGIONAL CONTRACTED BROKERS AND MANAGED TRANSPORTATION ORGANIZATIONS

1 TAC §380.501, §380.502

Statutory Authority

The amendments are authorized under Texas Government Code §531.02414 and §533.00257, which provide the executive commissioner authority to adopt rules implementing the medical transportation program; Texas Government Code §531.033 and §531.0055, which provide the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The adopted amendments implement Texas Government Code Chapters 531 and 533, including Texas Government Code §533.00257 and §531.02414. No other statutes, articles, or codes are affected by this adoption.

§380.502. Standards for Motor Vehicle Operators.

For any motor vehicle operator providing or seeking to provide transportation services, the regional contracted broker or a managed transportation organization (MTO) must:

(1) verify that the motor vehicle operator has a valid driver's license. A motor vehicle operator without a valid driver's license may not provide transportation services under the MTP;

(2) check the driving record information of the motor vehicle operator that is maintained by the Department of Public Safety (DPS) under Chapter 521, Subchapter C, Transportation Code. A motor vehicle operator who does not meet driving history requirements as specified in the contract between the Health and Human Services Commission (HHSC) and the regional contracted broker or MTO may not provide transportation services under the MTP;

(3) check the public criminal record information of the motor vehicle operator that is maintained by DPS and made available to the public through the DPS website. A motor vehicle operator who does not meet criminal history requirements as specified in the contract between HHSC and the regional contracted broker or MTO may not provide transportation services under the MTP. Specifically, a regional contracted broker or an MTO must:

(A) ensure motor vehicle operators do not have any findings by a law enforcement authority of driving while intoxicated or under the influence of any substance that may impair their ability to safely operate a motor vehicle within seven years prior to the initial hire date or any time after the hire date. Any motor vehicle operator who is convicted of these offenses after the hire date is immediately ineligible to provide transportation services for a period of seven years after the date of conviction;

(B) ensure motor vehicle operators do not have more than one moving violation either on or off the job within a 12-month time period;

(C) ensure motor vehicle operators do not have a felony or misdemeanor conviction within seven years of the initial hire date or any time after the hire date of:

(i) an act of abuse, neglect or exploitation of children, the elderly or persons with disabilities as defined in Texas Family Code, as amended, Chapter 261 and Texas Human Resources Code, as amended, Chapter 48;

(ii) an offense under the Texas Penal Code, as amended, against the person; against the family; against public order or decency; against public health, safety or morals; against property; or

(iii) an offense under Chapter 481 of the Texas Health and Safety Code, as amended, (Texas Controlled Substances Act); and

(D) ensure that motor vehicle operators have not been convicted or found liable for an act prohibited by Chapter 36 of the Texas Human Resources Code (Medicaid Fraud Prevention); and

(4) require all motor vehicle operators to receive training on the following topics:

(A) passenger safety (training to occur at least annually);

(B) passenger assistance (training to occur at least annually);

(C) assistive devices, including wheelchair lifts, tie-down equipment, and child safety seats (training to occur at least annually);

(D) non-discrimination, sensitivity, and diversity;

(E) customer service;

(F) defensive driving techniques (training to occur at least every two years);

(G) prohibited behavior by motor vehicle operators, including use of offensive language, use of tobacco, alcohol or drugs, and sexual harassment; and

(H) any other additional training HHSC determines to be necessary.

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 8, 2014.

TRD-201403130
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2014
Proposal publication date: May 2, 2014
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

10 TAC §§25.1 - 25.9

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 25, §§25.1 - 25.9, with changes to the proposed text as published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3533). The changes to the proposed amendments expand reasons for household relocation beyond overcrowding; add the requirement that all Colonia Self-Help Center housing activities require participating households to contribute at least 15% of the labor, including volunteer hours at the Colonia Self-Help Center; delete the 15% self-help requirement in the proposed Contract Budget since this amount will already be contributed by participants in all housing activities; allow participants to make repayable loans for all housing activities; and extend each expenditure threshold deadline by two months.

REASONED JUSTIFICATION FOR THE RULE. The amendments to Chapter 25 concerning the Colonia Self-Help Centers will provide clarification and changes to program requirements to increase beneficiary participation; increase leveraging to maximize impact of program expenditures; and align program rules with the Single Family Programs Umbrella Rule (10 TAC Chapter 20).

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. The Department accepted public comments between May 2, 2014, and June 2, 2014. Comments regarding the amendments were accepted in writing and by e-mail, with comments received from: (1) Irene G. Valenzuela of El Paso County, (2) Juan Vargas of Webb County, (3) Veronica Herrera of Webb County and (4) Juanita Valdez-Cox of La Union del Pueblo Entero (in Hidalgo County).

General Comments

COMMENT SUMMARY: Commenter (3) stated that receiving Small Repairs assistance should not prevent a household from receiving other assistance in the program. Commenter believes such a restriction would discourage eligible participants from seeking any Small Repairs assistance.

STAFF RESPONSE: Staff agrees and Colonia Self-Help Centers must ensure that if a household that received Small Repairs receives any additional housing rehabilitation through the program, the subsequent rehabilitation will not revisit any issues previously addressed by Small Repairs. No changes to the rule have been made in response to this comment.

COMMENT SUMMARY: Commenter (3) provided numerous comments on the existing Colonias Self-Help Center Rule. These comments were not related to the proposed amendments to the rule.

STAFF RESPONSE: Because these comments are not related to the proposed amendments to the rule, no changes to the rule are recommended.

§25.2. Definitions - §25.2(8)

COMMENT SUMMARY: Commenter (3) stated that using HUD Section 8 income limits adjusted for family size will require additional staff training and incur new expenses.

STAFF RESPONSE: Applying HUD Section 8 income limits should require little to no additional effort. No changes have been made in response to this comment.

§25.2. Definitions - §25.2(12)

COMMENT SUMMARY: Commenter (1) sought clarification on the new term "Small Repairs," which appears in the Colonia Self-Help Centers Program Rule but not in the Single Family Programs Umbrella Rule. The commenter inquired if Small Repairs are considered a rehabilitation activity.

STAFF RESPONSE: The term "Small Repairs" only appears in the Colonia Self-Help Center Program Rule definitions because it is a rehabilitation activity that concentrates on health and safety repairs that are exclusive to the Colonia Self-Help Center Program. Small Repairs may not be defined in the Single Family Programs Umbrella Rule because it is not applicable to all of the Department's single family programs. No changes have been made in response to this comment.

§25.3. Eligible and Ineligible Activities - §25.3

COMMENT SUMMARY: Commenters (2, 3) proposed that the Colonia Self-Help Center Program be expanded beyond housing activities to include economic development activities, such as small business development and job training. Commenters believe the program needs to diversify the kind of assistance it offers.

STAFF RESPONSE: To include activities beyond the current scope of improving physical living conditions requires statutory change undertaken by the Texas Legislature. Staff is unable to recommend changes to the scope of program activities.

§25.3. Eligible and Ineligible Activities - §25.3(a)(9)

COMMENT SUMMARY: Commenter (4) supported the current activity of assisting colonia residents to obtain suitable alternative housing outside of a colonia's area to alleviate overcrowding. Commenter proposed that additional reasons for relocation assistance should be recognized, including evacuating flood plains and high-poverty areas, and increasing proximity to better schools, job opportunities and services.

STAFF RESPONSE: Staff agrees and has removed the words "to alleviate overcrowding conditions" in order to expand the reasons for relocating a household outside of their existing colonia. Staff has made changes in response to this comment.

§25.4. Colonia Self-Help Centers Establishment - §25.4(b)(2)

COMMENT SUMMARY: Commenter (4) proposed that the Colonia Self-Help Center Program be permitted to provide assistance beyond designated colonias in order to address new model subdivisions that lack decent housing but otherwise comply with infrastructure requirements. Commenter believes that residents

of new model subdivisions have poor housing and poverty levels that equal or exceed those in designated colonias.

STAFF RESPONSE: Counties seek community input before proposing which colonias to include in the Colonia Self-Help Center Program. The Department follows the definition of colonias found in Subchapter Z, "Colonias," of Chapter 2306 of the Texas Government Code. It is possible for Counties to include a new model subdivision in the program if it meets the Texas Government Code definition of a colonia and has community support to be included. Staff is unable to recommend inclusion of subdivisions that do not meet definition of colonias in Subchapter Z of Chapter 2306 of the Texas Government Code. No changes have been made in response to this comment.

§25.5. Allocation and the Colonia Self-Help Center Application Requirements - §25.5(f)(4)

COMMENT SUMMARY: Commenter (2) proposed that implementation of all housing activities in the program include a mandatory 15% self-help contribution from the household. Commenter believes this requirement would enhance the degree of self-respect and pride in the program participants.

STAFF RESPONSE: Staff agrees and will add the following language to §25.5(f)(4) as follows: *"Participating households must provide at least 15% of the labor necessary to build or rehabilitate the proposed housing by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the Colonia Self-Help Center may also fulfill the 15% labor requirement."* Staff has made changes in response to this comment.

§25.5. Allocation and the Colonia Self-Help Center Application Requirements - §25.5(f)(6)(C)

COMMENT SUMMARY: Commenter (3) proposed further defining "direct Self-Help Activities" to include other types of community service work that households may complete on behalf of their respective Colonia Self-Help Center.

STAFF RESPONSE: Staff agrees and will include volunteer hours at the Colonia Self-Help Center as a way for households to fulfill their self-help requirement. See the STAFF RESPONSE to comment regarding §25.5(f)(4) above. Staff removed section §25.5(f)(6)(C) since it will be addressed in §25.5(f)(4) in response to this comment.

§25.5. Allocation and the Colonia Self-Help Center Application Requirements - §25.5(f)(6)(C)(iii)

COMMENT SUMMARY: Commenters (1, 3) opposed reducing the funding limits for reconstruction and new construction to $50,000 per household. Commenter (1) stated that this limit will decrease property tax revenue and be difficult to implement with existing county procurement policies. Commenter (3) stated that proposed caps on all activities will make implementation infeasible because colonia housing stock is significantly substandard and requires more funding.

STAFF RESPONSE: CDBG funding continues to decline each year and the Department is adjusting program rules accordingly to maintain levels of service and assist as many colonia residents as possible. These funding limits may require leveraging of other funding sources to maximize impact of program expenditures. No changes have been made in response to this comment.

§25.7. Colonia Self-Help Center Contract Operation and Implementation - §25.7(h)

COMMENT SUMMARY: Commenter (4) proposed that the Colonia Self-Help Center Program have the ability to make funds available to households in the form of low-interest, repayable loans instead of deferred, forgivable loans only. Commenter believes the program should revolve funds because by collecting repayments and interest, the program can serve more households.

STAFF RESPONSE: Staff agrees and has added the following language to §25.7(h) as follows: "Every New Construction, Reconstruction, or Rehabilitation Activity exceeding $20,000 per unit that is provided by the Colonia Self-Help Center Program shall have a recorded and enforceable lien placed on the property secured by a deferred Forgivable Loan not shorter than five (5) years *or a repayable mortgage loan not to exceed thirty (30) years."* Staff has made changes in response to this comment.

§25.9. Expenditure Thresholds and Closeout Requirements - §25.9(a)(3)

COMMENT SUMMARY: Commenter (3) proposed that the expenditure threshold for expending 60% of program funds should be extended beyond the current 30 months. It has already been proposed to extend the preceding expenditure threshold (for 30% of program funds) by two months, therefore commenter believes an extension should apply to the 60% expenditure threshold also.

STAFF RESPONSE: Staff agrees and has changed the amendment to extend the three expenditure thresholds for 30%, 60% and 90% of program funds by two months each by adding the following language to §25.9(a)(3) and §25.9(a)(4) as follows: *"Thirty-two (32)-Month* Threshold. To meet this requirement, the Administrator must have expended and submitted for reimbursement to the Department at least sixty (60) percent of the total Colonia Self-Help Center funds awarded within *thirty-two (32)* months from the start date of the Contract; and *Forty-four (44)-Month* Threshold. To meet this requirement, the Administrator must have expended and submitted for reimbursement to the Department at least ninety (90) percent of the total Colonia Self-Help Center funds awarded within *forty-four (44)* months from the start date of the Contract." Staff has made changes in response to this comment.

The Board approved the final order adopting the amendments on June 26, 2014.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§25.1. Purpose and Services.

The purpose of this Chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Texas Government Code, Chapter 2306, Subchapter Z, and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule) and its funding including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the legislature of the annual Texas Community Development Block Grant allocation from the U.S. Department of Housing and Urban Development ("HUD"). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

§25.2. Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306, Chapter 1 of this title (relating to Administration), and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule). Common definitions used under the Community Development Block Grant (CDBG) Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee (C-RAC)--Advises the Department's Governing Board and evaluates the needs of Colonia residents, reviews programs and Activities that are proposed or operated through the Colonia Self-Help Centers to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(4) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(5) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw processes. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(6) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;

(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(D) Other costs as approved in writing by the Department.

(7) Implementation Manual--A set of guidelines designed to be an implementation tool for the Administrator and Colonia Self-Help Center Providers that have been awarded Community Development Block Grant Funds and allows the Administrator to search for terms, regulations, procedures, forms and attachments.

(8) Income Eligible Families--

(A) Low-income families--families whose annual incomes do not exceed 80 percent of the median income of the area as determined by HUD Section 8 income limits adjusted for family size;

(B) Very low-income families--families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined by HUD Section 8 income limits adjusted for family size; and

(C) Extremely low-income families--families whose annual incomes do not exceed 30 percent of the median family income for the area, as determined by HUD Section 8 income limits adjusted for family size.

(9) New Construction--A housing unit that is built on a previously vacant lot that will be occupied by Income Eligible Families.

(10) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.

(11) Public Service Activities--Activities other than New Construction, Reconstruction, Rehabilitation and Small Repair activities that are provided by a Colonia Self Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.

(12) Small Repairs--Minor repairs such as, but not limited to, addressing deficiencies, roof repairs, removal of threats to health and safety, including lead-based paint hazards and removal of barriers for Persons with Disabilities.

(13) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR §92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. A county is considered a unit of general local government under the Colonia Self-Help Center Program.

§25.3. Eligible and Ineligible Activities.

(a) A Colonia Self-Help Center may only serve Income Eligible Families in the targeted Colonias by:

(1) Providing assistance in obtaining Loans or Grants to build, Rehabilitate, repair or Reconstruct a home;

(2) Teaching construction skills necessary to repair or build a home;

(3) Providing model home plans;

(4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) Providing credit and debt counseling related to home purchase and finance;

(8) Applying for Grants and Loans to provide housing and other needed community improvements;

(9) Providing other services that the Colonia Self-Help Center, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a Colonia's area;

(10) Providing assistance in obtaining Loans or Grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;

(11) Providing access to computers, the internet and computer training pursuant to the General Appropriations Act; and

(12) Providing monthly programs to educate individuals and families on their rights and responsibilities as property owners.

(b) Through a Colonia Self-Help Center, a Colonia resident may apply for any direct Loan or Grant program operated by the Department.

(c) Ineligible Activities. Any type of Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(d) A Colonia Self-Help Center may not provide Grants, financing, or Mortgage Loan services to purchase, build, Rehabilitate, or finance construction or improvements to a home in a Colonia if water service and suitable wastewater disposal are not available.

§25.4. Colonia Self-Help Centers Establishment.

(a) Pursuant to Texas Government Code, §2306.582, the Department has established Colonia Self-Help Centers in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick, and Val Verde Counties.

(b) The Department has designated:

(1) Appropriate staff in the Department to act as liaison to the Colonia Self-Help Centers to assist the centers in obtaining funding to enable the centers to carry out the center's Programs;

(2) Five (5) Colonias in each service area to receive concentrated attention from the Colonia Self-Help Centers in consultation with the C-RAC and the appropriate unit of local government; and

(3) A geographic area for the services provided by each Colonia Self-Help Center.

(c) The Department shall make a reasonable effort to secure:

(1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a Colonia Self-Help Centers is located which it serves to support the operation of that Colonia Self-Help Center; and

(2) An adequate level of funding to provide each Colonia Self-Help Center with funds for low interest Mortgage financing, Grants for Self-Help Programs, revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.

(d) The El Paso Colonia Self-Help Center shall establish a technology center to provide internet access to Colonia residents pursuant to the General Appropriations Act for the appropriate biennium.

§25.5. Allocation and the Colonia Self-Help Center Application Requirements.

(a) The Department distributes Colonia Self-Help Center funds to Unit of General Local Governments (UGLGs) from the 2.5 percent set-aside of the annual Community Development Block Grant (CDBG) allocation to the state of Texas.

(b) The Department shall allocate no more than $1 million per Colonia Self-Help Center award except as provided by this chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(c) With a baseline award beginning at $500,000, the Department will add an additional $100,000 for each expenditure threshold, as defined in §25.9 of this chapter (relating to Expenditure Thresholds and Closeout Requirements), met on the current Colonia Self-Help Center Contract, and an additional $100,000 for an accepted Application submitted by the deadline. If an Administrator can demonstrate that any violation of an Expenditure Threshold was beyond the control of the Administrator, it may request of the Board that an individual violation be waived for the purpose of future funding. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the expenditure threshold requirements if the Board finds the waiver is appropriate to fulfill the purposes or policies of the Texas Government Code, or for other good cause as determined by the Board.

(d) The Administrator shall submit its Application no later than three (3) months before the expiration of its current Contract, or when ninety (90) percent of the funds under the current Contract have been expended, whichever comes first. If this requirement is not met, the Department will apply the options outlined in subsection (c) of this section which will result in lost and delayed funding.

(e) Application reviews are conducted on a first-come first-served basis until all Colonia Self-Help Center funds for the current program year and deobligated Colonia Self-Help Center funds are committed. Each complete Application will be assigned a "received date" based on the date and time it is received by the Department.

(f) In order to be accepted, each Application must include:

(1) Evidence of the submission of the Contract Administrator's current annual single audit;

(2) A Colonia identification form for each Colonia to be served, including all required back-up documentation as identified on the form;

(3) A boundary map for each of the five Colonias;

(4) A description of the method of implementation. For each Colonia to be served by the Colonia Self-Help Center, the Administrator shall describe the services and Activities to be delivered. Participating households must provide at least 15% of the labor necessary to build or rehabilitate the proposed housing by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the Colonia Self-Help Center may also fulfill the 15% labor requirement.

(5) The proposed Performance Statement must include the number of Colonia residents to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;

(6) The proposed Contract Budget must adhere to the following limitations:

(A) The Administration line item may not exceed fifteen (15) percent;

(B) Eight (8) percent must be used for the Public Service Activities;

(C) Colonia Self-Help Center Program funds cannot exceed the following amounts per unit (however, additional funds from other sources can be leveraged with Program funds):

(i) $10,000 Small Repairs;

(ii) $40,000 Rehabilitation;

(iii) $50,000 Reconstruction or New Construction.

(D) Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed ten (10) percent per unit provided by the Colonia Self-Help Center Program. Direct Delivery Costs for Rehabilitation, including Small Repair, are limited to fifteen (15) percent per unit provided by the Colonia Self-Help Center Program;

(7) Proposed housing assistance guidelines (includes Small Repair, Rehabilitation, Reconstruction, or New Construction);

(8) Evidence of model subdivision rules adopted by the County;

(9) Written policies and procedures, as applicable, for:

(A) Solid waste removal;

(B) Construction skill classes;

(C) Homeownership classes;

(D) Technology access;

(E) Homeownership assistance; and/or

(F) Tool lending library. All Colonia Self-Help Centers are required to operate a tool lending library;

(10) Authorized signatory form and direct deposit authorization;

(11) UGLG resolution authorizing the submission of the Application and appointing the primary signator for all Contract documents;

(12) Acquisition report (even if there is no acquisition activity);

(13) Certification of exemption for HUD funded projects; and

(14) Initial disclosure report.

(g) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).

(h) The Department may reduce the funding amount requested in the Application in accordance to subsection (c) of this section. Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.

(i) The Department shall execute a four (4) year Contract with the Administrator. No Contract extensions will be allowed. If the Administrator requirements are completed prior to the end of the four (4) year Contract period, the Administrator may submit a new Application.

(j) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of Colonia Self-Help Center funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

§25.6. Colonia Resident Advisory Committee Duties and Award of Contracts.

(a) The Board shall appoint not fewer than five (5) persons who are residents of Colonias to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the commissioner's court of a county in which a Colonia Self-Help Center is located.

(b) The C-RAC members' terms will expire every four (4) years. C-RAC members may be reappointed by the Board; however, the Board shall review and approve all members at least every four (4) years.

(c) The Board shall appoint one committee member to represent each of the counties in which a Colonia Self-Help Center is located. Each committee member:

(1) Must be a resident of a Colonia in the county the member represents; and

(2) May not be a board member, contractor, or employee of the Administrator or have any ownership interest in an entity that is awarded a Contract under this chapter and cannot be in default on any Department obligation.

(3) The Department will conduct a previous participation review on all members.

(d) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(e) The C-RAC shall advise the Board regarding:

(1) The housing needs of Colonia residents;

(2) Appropriate and effective programs that are proposed or are operated through the Colonia Self-Help Centers; and

(3) Activities that might be undertaken through the Colonia Self-Help Centers to serve the needs of Colonia residents.

(f) The C-RAC shall advise the Colonia initiatives coordinator as provided by Texas Government Code, §775.005.

(g) Award of Contracts.

(1) Upon reaching an Agreement with the Administrator, the Department will set the date for the C-RAC meeting. The C-RAC shall meet before the 30th calendar day proceeding the date on which a Contract is scheduled to be awarded by the Board for the operation of a Colonia Self-Help Center and may meet at other times.

(2) The Administrator shall be present at the C-RAC if its Application is being considered to answer questions that C-RAC may have.

(3) After the C-RAC makes a recommendation on an Application, the recommendation will undergo the Department's award process.

(h) Reimbursement of C-RAC members for their reasonable travel expenses in the manner provided by §25.8(1) of this chapter (relating to Administrative Thresholds) is allowable and shall be paid by the Administrator.

§25.7. Colonia Self-Help Center Contract Operation and Implementation.

(a) The Department shall contract with a UGLG for the operation of a Colonia Self-Help Center. The UGLG shall subcontract with a local nonprofit organization, local community action agency, or local housing authority that has demonstrated the ability to carry out all or part of the functions of a Colonia Self-Help Center.

(b) Upon award of Colonia Self-Help Center funds by the Board, the Department shall deliver a Contract based on the scope of work to be performed within thirty (30) days of the award date, unless extenuating circumstances do not allow for delivery. Any Activity funded under the Colonia Self-Help Center Program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract.

(c) Administrators are required to complete their environmental reviews in accordance with 24 CFR Part 58 and receive the Authority to Use Grant Funds from the Department before:

(1) Any commitment of Community Development Block Grant (CDBG) funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review.

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).

(d) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Administrator's full and satisfactory performance of its obligations under the Contract.

(1) $2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw within twelve (12) consecutive months the Contract will be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (i.e., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(e) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth (10th) calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. If an Administrator fails to submit Activity data within twenty-four (24) consecutive months, the Contract will be subject to termination for failure to meet the Contract obligations.

(f) The Department will only reimburse one (1) initial inspection report per unit for Small Repair.

(g) Amendments. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) Contract Time Extensions beyond the four (4) year Contract period will not be allowed for Colonia Self-Help Center Contracts.

(2) Changes in beneficiaries. Reductions in contractual deliverables and beneficiaries shall require a Contract amendment. Increases in contractual deliverables and beneficiaries that do not shift funds, or cumulatively shift less than ten (10) percent of total Contract funds, shall be completed through a Contract modification.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and beneficiaries based on the availability of Colonia Self-Help Center funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the four (4) year Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(h) Every New Construction, Reconstruction, or Rehabilitation Activity exceeding $20,000 per unit that is provided by the Colonia Self-Help Center Program shall have a recorded and enforceable lien placed on the property secured by a deferred Forgivable Loan not shorter than five (5) years or a repayable mortgage loan not to exceed thirty (30) years. The Department will be a lien holder.

(i) The Administrator's initial and any revised housing Activity guidelines shall be approved by commissioners' court and the Department prior to implementation.

(j) Access to all Public Service Activities identified in the Contract shall be provided at least two (2) Saturdays a month during hours preferable to Colonia residents. In addition, access shall be provided at least one day during the workweek after hours for a period long enough to allow Colonia residents to utilize the services.

(k) The purchase of new tools, new computers and computer equipment shall only occur within the first twenty-four (24) months of the Contract period. Any purchases of these items after twenty-four (24) months shall be approved by the Department prior to purchase.

§25.8. Administrative Thresholds.

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:

(1) Threshold 1. The initial administrative Draw request allows up to 10 percent of the administration line item to be drawn down prior to the start of any project Activity included in the Performance Statement of the Contract (provided that all Pre-Draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. Allows up to an additional fifteen (15) percent (twenty-five (25) percent of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.

(3) Threshold 3. Allows up to an additional twenty-five (25) percent (fifty (50) percent of the total) of the administration line item to be drawn down after compliance with the eighteen (18) month threshold requirement has been demonstrated as described in §25.9 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. Allows up to an additional twenty-five (25) percent (seventy-five (75) percent of the total) of the administration line item to be drawn down after compliance with the thirty (30) month threshold requirement has been demonstrated as described in this chapter.

(5) Threshold 5. Allows up to an additional fifteen (15) percent (ninety (90) percent of the total) of the administration line item to be drawn down after compliance with the forty-two (42) month threshold requirement has been demonstrated as described in this chapter.

(6) Threshold 6. Allows an additional five (5) percent (ninety-five (95) percent of the total) of the administration line item to be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. Allows the final five (5) percent (one-hundred (100) percent of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item to be drawn down following receipt of the programmatic close-out letter issued by Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

§25.9. Expenditure Thresholds and Closeout Requirements.

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection:

(1) Six-Month Threshold. An Environmental Assessment that meets the requirements outlined in the environmental clearance requirements of the Contract must be submitted to the Department within six (6) months from the start date of the Contract;

(2) Twenty-Month Threshold. To meet this requirement the Administrator must have expended and submitted for reimbursement to the Department at least thirty (30) percent of the total Colonia Self-Help Center funds awarded within twenty (20) months from the start date of the Contract;

(3) Thirty-two-Month Threshold. To meet this requirement the Administrator must have expended and submitted for reimbursement to the Department at least sixty (60) percent of the total Colonia Self-Help Center funds awarded within thirty-two (32) months from the start date of the Contract; and

(4) Forty-four-Month Threshold. To meet this requirement the Administrator must have expended and submitted for reimbursement to the Department at least ninety (90) percent of the total Colonia Self-Help Center funds awarded within forty-four (44) months from the start date of the Contract.

(b) For purposes of meeting a threshold, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.

(c) The final Draw request and complete closeout documents must be submitted no later than sixty (60) days after the Contract end date. If closeout documents are late, the remaining Contract balance may be subject to Deobligation as the Department's liability for such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw request, the Administrator has ninety (90) days after the Contract end date to submit the final Draw request, with the exception of audit costs which may be reimbursed upon submission of the final single audit.

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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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

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, without changes to the rules as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3015). The sections will not be republished.

The adopted amendments are necessary to update the processing fee provision giving the Department authority to impose a processing fee for charge backs of dishonored electronic payments, including credit cards.

The amendment to §60.10 adds a new definition for "payment device" and renumbers the remainder of the definitions in the section.

Amendments to §60.82 replace all references of the term "checks" with "payment devices" and require the Department to give notice of dishonored payment, and possible enforcement proceedings if the dishonored payment fee remains unpaid.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3015). The deadline for public comments was May 19, 2014. The Department received comments from three interested parties regarding the proposed rules during the 30-day public comment period.

Public Comment: One commenter believes the amendment should not be adopted. This commenter believes the amendment is unreasonable because some licensees are not allowed to pass processing fees on to customers.

Department Response: Whether or not a licensee is allowed to pass on processing fees to a customer is statutory and beyond the Department's control. However, the dishonored electronic payments fee is not a new fee, but rather an update to the existing "return check charge." The updated definition of "return check charge" is reasonable because it merely recognizes the different methods of electronic payments.

Public Comment: Another commenter questions whether "fat finger" mistakes that may occur in processing electronic payments

should result in a processing fee. Otherwise this commenter agrees that an intentional wrong should incur a processing fee.

Department Response: The Department is sensitive to the occasional "fat finger" mistake. However, the Department recognizes electronic payment systems verify the accuracy of the account information before the system will confirm payment, so the rule is not intended to address pre-processing errors. Rather, the rule addresses post-processing charge-backs that are unrelated to fat finger mistakes.

Public Comment: A third commenter agrees with the rule and acknowledges that individuals should be held accountable.

Department Response: The Department agrees with the commenter and notes that the rules as adopted will help keep licensing fees low.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.10

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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SUBCHAPTER F. FEES

16 TAC §60.82

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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 80. LICENSED COURT INTERPRETERS

16 TAC §§80.1, 80.10, 80.20, 80.22, 80.23, 80.25, 80.70, 80.80, 80.90, 80.100

The Texas Department of Licensing and Regulation (Department) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC) Chapter 80, §§80.1, 80.10, 80.20, 80.22, 80.23, 80.25, 80.70, 80.80, 80.90, and 80.100, regarding the Licensed Court Interpreters program, without changes to the proposal as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4077). The repeals will not be republished.

The repeal is necessary as a result of Senate Bill 966, 83rd Legislature, Regular Session (2013), which transferred regulatory authority over the Licensed Court Interpreters (LCI) program from the Texas Department of Licensing and Regulation (Department) to the Judicial Branch Certification Commission effective September 1, 2014.

The Department drafted and distributed the proposed repeal to persons internal and external to the agency. The proposed repeal was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4077). The deadline for public comments was June 30, 2014. The Department received one public comment regarding the proposed repeal during the 30-day public comment period.

Public Comment: The commenter inquired about additional requirements needed for licensees once the program transferred.

Department Response: The comment was forwarded to the Director of Education and Examination for response.

The repeal is adopted under SB 966, 83rd Legislature, Regular Session (2013), which repealed Government Code, Chapter 57, Subchapter C, which authorized the Department to regulate the LCI program; and Texas Occupations Code, Chapter 51, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Government Code, Chapter 57. No other statutes, articles, or codes are affected by the adoption.

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 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.4, §163.5

The Texas Medical Board (Board) adopts amendments to §163.4, concerning Procedural Rules for Licensure Applicants, and §163.5, concerning Licensure Documentation, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3951). The text of the rules will not be republished.

The amendments to §163.4 relocate language from §187.13(a) to §163.4(d) in order to clarify the licensure process and options for applicants prior to appearing before the licensure committee as well as the procedures followed by the board during such process.

The amendment to §163.5 adds language to subsection (b)(11) to clarify the mechanism by which an applicant can remedy a single deficient U.S. clerkship.

No comments were received regarding the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.6

The Texas Medical Board (Board) adopts an amendment to §166.6, concerning Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3954). The text of the rule will not be republished.

The amendment to §166.6 adds language in subsections (g) - (j) which sets forth the process for a retired physician, providing voluntary charity care, to return to active status.

No comments were received regarding the proposed amendments.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.5, §172.8

The Texas Medical Board (Board) adopts amendments to §172.5, concerning Visiting Physician Temporary Permits, and §172.8, concerning Faculty Temporary License, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3955). The text of the rules will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 31, 2014. The comments were incorporated into the proposed rules.

The amendment to §172.5(b)(1)(B) provides that a Visiting Physician Temporary Permit holder participating in KSTAR must be supervised by a physician that has not been the subject of a disciplinary order, unless administrative in nature.

The amendment to §172.8 provides that an applicant for a Faculty Temporary license is ineligible if they hold a license elsewhere that has been subject to disciplinary action.

No comments were received regarding the proposed amendment to §172.5. No one appeared to testify at the public hearing held on June 27, 2014.

The Board received written comments regarding §172.8 from a private consulting company that assists physicians with the licensing process. No one appeared to testify at the public hearing held on June 27, 2014.

The private consulting company opposed the amendment, stating that the rule is overly restricted, as it restricts physicians from obtaining a faculty temporary permit if they have been disciplined in any other state, territory or Canadian province. The concern is that qualified physicians, who may have had disciplinary issues in the past, are prevented from being part of the medical community in Texas.

Board Response: The Board determined that this limitation on applicants for a faculty temporary license holder is an appropriate way to measure the faculty temporary license applicant's basic competency and professionalism since they will be working and teaching in an instructional environment. The Board declines to change the language and adopts the amendment without suggested changes.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 184. SURGICAL ASSISTANTS

22 TAC §184.4, §184.16

The Texas Medical Board (Board) adopts amendments to §184.4, concerning Qualifications for Licensure, and §184.16, concerning Discipline of Surgical Assistants, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3957). The text of the rules will not be republished.

The amendment to §184.4 revises language in subsection (a)(13)(B) in order to correctly identify substantially equivalent surgical assistant programs.

The amendment to §184.16 deletes subsection (c) referencing confidential rehabilitative orders and amends language under subsection (a) so that the Board may enter agreed orders or remedial plans with a surgical assistant.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §§187.13, 187.24, 187.26, 187.28, and 187.29, concerning Procedural Rules, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3959). The text of the rules will not be republished.

The amendment to §187.13, concerning Informal Board Proceedings Relating to Licensure Eligibility, relocates language from subsection (a) to §163.4 of this title (relating to Procedural Rules for Licensure Applicants) in order to organize and group the procedural rules pertaining to the licensure process for an applicant who has been referred to appear before the licensure committee. The amendment adds a definition for "Disciplinary Licensure Investigation" to subsection (b). The amendment adds language to subsection (c)(1) and (2) which sets forth effect of an applicant who withdraws an application or fails to appear before the licensure committee after being referred and the procedure followed by the Board. Additional amendments to §187.13(c)(3) and (4) clarify the outcomes relating to an applicant who is offered licensure with terms and conditions and those who are determined ineligible by the licensure committee.

The amendment to §187.24, concerning Pleadings, adds language to subsection (b) to set forth the procedure for an applicant to request an appeal of the board's ineligibility determination at the State Office of Administrative Hearings (SOAH) and delineates the board's and applicant's duties with respect to order of filings. The amendment further sets forth the effect of an applicant who withdraws their intent to file an appeal at SOAH or fails to timely file the requisite affirmative pleading and the procedure followed by the Board after such events.

The amendment to §187.26, concerning Service in SOAH Proceedings, deletes erroneous language relating to the required notice of default as it pertains to licensure cases at SOAH, due to its inapplicability in licensure cases.

The amendment to §187.28, concerning Discovery, adds language to subsection (a) referencing §164.007(d) of the Medical Practice Act and deletes language under subsection (b)(1)(C) requiring that an expert report be provided in the designation of a testifying expert witness.

The amendment to §187.29, concerning Mediated Settlement Conferences, deletes language under subsection (a)(1) referencing licensure matters.

No comments were received regarding the proposed amendments.

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.13

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 164, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §§187.24, 187.26, 187.28, 187.29

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Chapter 164, Texas Occupations Code. No other statutes are affected by this adoption.

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 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, and §190.14, concerning Disciplinary Sanction Guidelines, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3963). The text of the rules will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on March 31, 2014. The comments were incorporated into the proposed rules.

The amendment to §190.8 revises paragraph (1)(L)(iii)(II) so that physicians are not required to establish a professional relationship prior to prescribing dangerous drugs and/or vaccines for a patient's close contacts if the physician diagnoses the patient with one or more of the listed infectious diseases provided in new items (-a-) - (-g-). The amendments further add language defining a close contact and requiring that the physician document the treatment provided to a close contact in the medical record related to the patient connected to the close contact. The amendments delete language allowing a physician to prescribe medications only to such a patient's family members and delete language allowing a physician to prescribe in the case in which the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's Office to be pandemic.

The amendment to §190.14 revises the range and scope of sanctions for violations of the Medical Practice Act by clarifying and further defining certain categories of violations.

The Board received public written comments regarding §190.8 from the Texas Medical Association (TMA), the Texas Pediatric Society (TPS), the Texas Infectious Diseases Society (TIDS), and an individual. No one appeared to testify at the public hearing held on June 27, 2014.

TMA, TPS, and TIDS supported the amendments in part and opposed amendments in part, recommending several changes. The changes recommended include:

-Substitution of the phrase "antimicrobials and/or immunizations" for the phrase "dangerous drugs and/or vaccines", to allow the prescribing of antimicrobials for postexposure prophylaxis (PEP), and to prevent broader authority to prescribe other drugs that require a prescription.

-Adding the phrase "for [PEP] of disease" to "for close contacts" so that the phrase would mirror other language pertaining to sexually transmitted diseases and clarify that the purpose of the exception is to potentially prevent infection.

-Changing the definition of a "close contact" so that PEP guidance published by the Centers for Disease Control and Prevention (CDC) and local health authority guidance are reflected, because "as stated by CDC, these criteria vary for each of the listed diseases" and so that the particular circumstances of a local outbreak and drug shortages may be accounted for.

-Changing the rule's language so that any physician may prescribe for a patient's close contacts if the patient has received an applicable diagnosis, stating that limiting the exception to the physician that completed the diagnosis "does not address the significant and commonplace barriers physicians and patients face in the community."

-Revising the list of infectious diseases so that scientific names are used and by adding Measles, Hepatitis A, Hepatitis B, and Diptheria, so that "the exceptions...include all of the communicable diseases for which PEP is currently recommended...."

-Retaining language that allows PEP to be administered for any new or emergent disease determined to be a public health threat by state health authorities.

Board Response: The Board determined that the requested amendments would be substantive and require the Board to republish notice of the proposed amendments, delaying a physician's ability to prescribe to a patient's close contacts for certain infectious diseases which are of primary public health concern in Texas, including Pertussis. The current rule (without amendments) limits the medical community's ability to respond effectively or with sufficient speed to such infectious diseases, as it limits a physician to prescribing medications to an affected patient's family member(s) and only in the case in which the patient has been diagnosed with an illness determined by the CDC, World Health Organization (WHO), or the Governor's office to be pandemic, which would indicate the illness represents an ongoing epidemic that has reached state-wide, country-wide, or even global proportions. The amendments improve the medical community's ability to safely, quickly, and effectively respond to infectious diseases that are of primary public health concern in Texas by expanding the category of individuals that may be treated for such diseases and by removing the requirement that such infectious diseases reach pandemic proportions prior to a physician being authorized to provide such treatment, while maintaining appropriate limits so that the public health and welfare will not be jeopardized by the amendments. The Board will continue to work with stakeholders to amend §190.8(1)(L)(iii)(II) so that the rule will further improve the medical community's ability to quickly implement an effective and safe response to infectious diseases that are of primary public health concern in Texas, while maintaining appropriate limits so that the public health and welfare is not jeopardized by the exception. The Board declines to change the language and adopts the amendment without suggested changes.

The individual supported the amendments in part and opposed the amendments in part, stating that, "I propose that the language relating to pandemic declaration be retained in the Code along with the list of specific diseases that were proposed to be added" so that "physicians have the immediate ability to prescribe medications or vaccinations during a public health emergency[.]"

Board Response: The Board determined that the language proposed for deletion is not necessary, as the proposed amendments include a comprehensive list of infectious diseases that are of primary public health concern in Texas. Further, the language proposed for deletion does not allow physicians to respond quickly enough to infectious diseases that might represent a public health emergency prior to reaching a pandemic stage, as once a pandemic has been declared, the epidemic has reached state-wide, country-wide, or even global proportions. The Board will continue to work with stakeholders to amend §190.8(1)(L)(iii)(II) so that the rule will further improve the medical community's ability to quickly implement an effective and safe response to infectious diseases that are of primary public health concern in Texas, while maintaining appropriate limits so that the public health and welfare will not be jeopardized by the amendments. The Board declines to retain the applicable language and adopts the amendments without changes.

No comments were received regarding the proposed amendment to §190.14. No one appeared to testify at the public hearing held on June 27, 2014.

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also adopted under the authority of Chapter 164 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also adopted under the authority of Chapter 164 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 14, 2014.

TRD-201403192
Mari Robinson, J.D
Executive Director
Texas Medical Board
Effective date: August 3, 2014
Proposal publication date: May 23, 2014
For further information, please call: (512) 305-7016

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.32

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.32, concerning Corrective Action Proceedings and Schedule of Administrative Fines. The amendments are adopted without changes to the proposed text as published

in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3964) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code Subchapter N and §301.151, as well as the general authority of Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, and SB 1058, enacted by the 83rd Legislature, Regular Session, effective September 1, 2013, and are necessary to specify additional types of violations for which a corrective action may be imposed.

Background

Senate Bill (SB) 1415, enacted by the 81st Texas Legislature, Regular Session, effective September 1, 2009, authorized the Board, for the first time, to offer a corrective action to an individual for certain violations of the Nursing Practice Act and Board rules. A corrective action was defined by SB 1415 as a confidential, non-disciplinary action that could consist of a fine, remedial education, or a combination of a fine and remedial education. Pursuant to SB 1415, the Board adopted rules in November 2009 that specified the circumstances under which an individual would be eligible to receive a corrective action.

Disciplinary actions under the Nursing Practice Act are public orders, reported by the Board to other state boards of nursing and the National Practitioner Data Bank (NPDB). Corrective actions, however, are not public orders and are not disclosable to the public, except in limited situations involving an individual's non-compliance or subsequent conduct. When adopting its rules in 2009, the Board remained cognizant of the need to balance the private interests of individuals eligible to receive a corrective action with the interests of the general public, particularly given the confidential nature of corrective actions. As a result, the Board adopted rules that limited the availability of corrective actions to minor, administrative violations of the Nursing Practice Act and Board rules. Practice violations, unprofessional conduct, and substance use/abuse and mental health issues were not included in the Board's 2009 rules.

Since the enactment of SB 1415 in 2009, the Board has issued 983 corrective actions. Of these corrective actions, only eight (8) cases have resulted in subsequent orders relating to an individual's non-compliance with the corrective action. Further, since 2009, it preliminarily appears that corrective actions have been successful in resolving many minor violations of the Nursing Practice Act and Board rules. While the Board still believes that corrective actions should only apply to isolated conduct that is not indicative of a pattern of substandard nursing practice, the Board has determined that corrective actions could be safely expanded to include some practice violations at this time. However, the Board remains conservative in its willingness to expand corrective actions to include practice violations. Because corrective actions are confidential and will not be disclosed to the public, nursing employers, other state boards of nursing, or the NPDB, the Board has determined that only those practice violations that are currently appropriate for resolution at the level of Remedial Education, Remedial Education with a Fine, or a Fine, in accordance with the Board's Disciplinary Matrix, should be eligible for consideration for resolution through a corrective action at this time. More serious conduct that poses a higher risk of harm to patients and the public will continue to be evaluated and sanctioned pursuant to the Board's traditional disciplinary policies, procedures, and requirements.

The Board is adopting amended §213.32(2)(H) to include low level practice violations in the list of violations that are eligible for resolution through a corrective action. These types of practice errors do not involve a serious risk of harm to the public or patients. As such, the Board believes that these types of practice violations may be safely resolved through a corrective action. Further, in an effort to ensure that the public remains adequately protected, the Board has determined that the remaining provisions of §213.32(2) will remain unchanged.

Thus, a corrective action remains appropriate for situations where an individual has only committed one of the specified violations of the rule for the first time. If an individual has committed one of the specified violations more than once or has committed more than one of the specified violations, the individual will not be eligible to receive a corrective action. These restrictions ensure that an individual's repeated pattern of conduct will be reviewed under the Board's traditional disciplinary policies and procedures to determine whether a more severe sanction should be imposed against the individual in order to prevent the individual from committing a violation again. Additionally, consistent with the Occupations Code §301.651, a corrective action will still consist of remedial education, a fine, or any combination of remedial education and a fine. Further, the adopted amendments do not alter the existing amount of the fine that may accompany a corrective action, which is currently set at $500. Finally, the Executive Director of the Board still retains sole discretion to offer an individual a corrective action, and a corrective action will not be available as the result of a contested case proceeding under the Government Code Chapter 2001. The remaining adopted amendments to the section are non substantive in nature and clarify existing terms in the current rule text.

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 in support of the proposal, which is further summarized in this adoption order.

How the Sections Will Function.

Adopted §213.32(2)(H) permits violations of the Nursing Practice Act and/or Board rules that are appropriate for resolution at the sanction level of Remedial Education, Remedial Education with a Fine, or a Fine, in accordance with the Board's Disciplinary Matrix, to be eligible for resolution through a corrective action.

Adopted §213.32(2)(G) correctly references the title of Chapter 222.

Adopted §213.32(4) clarifies that the opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

Summary of Comments and Agency Response.

Comment: A commenter representing The American Association of Nurse Attorneys, Texas Chapter (TAANA-Texas) states that it is the position of TAANA-Texas that any disciplinary action by the Texas Board of Nursing should address the violations found by the Board and not be unduly burdensome on the nurse being disciplined. The members of TAANA-Texas have been concerned in recent years by what appears to be a slow

process of increasing the severity of disciplinary actions for relatively minor violations of the Nursing Practice Act and Board of Nursing Rules and Regulations. The commenter states that TAANA-Texas agrees with the Board that corrective actions can safely be expanded to include certain low risk practice violations. The commenter further states that the negative consequences of any public Board order in disciplinary matters, including potential inability to find jobs, can be devastating to a nurse receiving a public Board order. However, limiting these potential corrective actions to those practice violations eligible for one of the Remedial Education-level orders balances the confidentiality needs of the nurse and the public disclosure concerns of the Board associated with higher-level violations. The commenter concludes by stating that TAANA-Texas supports the proposed rule changes.

Agency Response: The Board appreciates the comment in support of the proposed amendments.

Names of Those Commenting For and Against the Proposal.

For: The American Association of Nurse Attorneys, Texas Chapter.

Against: None.

For, with changes: None.

Neither for nor against, with changes: None.

The amendments are adopted under the Occupations Code §§301.651 - 301.657 and 301.151.

Section 301.651(1) defines "corrective action" as a fine or remedial education imposed under §301.652.

Section 301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466.

Section 301.652(b) provides that the Board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

Section 301.653 states that, if the executive director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the executive director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice.

Section 301.654 provides that, not later than the 20th day after the date the person receives the notice under §301.653, the person may (i) accept in writing the executive director's determination and recommended corrective action; or (ii) reject the executive director's determination and recommended corrective action.

Section 301.655(a) provides that, if the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed.

Section 301.655(b) provides that, if the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the executive director's notice as provided by §301.654, the executive director shall: (i) terminate corrective action proceedings; and (ii) dispose of the matter as a complaint under Subchapter J.

Section 301.656 states that the Executive director shall report periodically to the Board on the corrective or deferred actions imposed under the subchapter, including: (i) the number of actions imposed; and (ii) the types of violations for which actions were imposed.

Section 301.657(a) states that except to the extent provided by §301.657, a person's acceptance of a corrective or deferred action under the subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.

Section 301.657(b) states that the Board may treat a person 's acceptance of corrective or deferred action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

Section 301.657(c) states that the Board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under Chapter 301 when imposing a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

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 10, 2014.

TRD-201403171
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: July 30, 2014
Proposal publication date: May 23, 2014
For further information, please call: (512) 305-6822

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22 TAC §213.34

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.34, concerning Deferred Discipline. The amendments are adopted without changes to the proposed text published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3967) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code Subchapter N and §301.151, as well as the general authority of Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, and SB 1058, enacted by the 83rd Legislature, Regular Session, effective September 1, 2013, and are necessary for

consistency with the newly enacted legislation and to implement deferred discipline as a permanent disciplinary option under the Board's rules.

Background of Pilot Program

The 80th Texas Legislature enacted SB 993, Regular Session, effective September 1, 2007, in order to promote a less punitive regulatory environment for individuals who commit minor violations of the Nursing Practice Act (the Occupations Code Chapter 301) and Board rules. SB 1415, which was enacted by the 81st Texas Legislature, was intended to build upon the principles established in SB 993 by authorizing the deferral of final disciplinary actions against individuals as an alternative method of resolving certain violations of the Nursing Practice Act and Board rules. See Texas Senate State Affairs Committee, Bill Analysis (Enrolled), SB 1415, 81st Legislature, Regular Session (October 8, 2009).

Specifically, SB 1415 directed the Board to determine the feasibility of conducting a pilot program to evaluate the efficacy and effect of deferring a final disciplinary action against an individual for minor violations of the Nursing Practice Act and Board rules. Further, if the Board determined that such a pilot program was feasible, SB 1415 required the Board to develop and implement the pilot program no later than February 1, 2011. SB 1415 also established several parameters for the pilot program.

First, SB 1415 authorized the Board to defer a final disciplinary action against an individual for a violation of the Nursing Practice Act and Board rules. If the individual successfully completed all of the conditions of the deferred disciplinary action, SB 1415 authorized the Board to dismiss the originating complaint filed against the individual.

Second, SB 1415 prohibited the pilot program from including any disciplinary case that was serious enough to warrant resolution through the issuance of a reprimand or the denial, suspension, or revocation of an individual's nursing license. Thus, the types of disciplinary cases that were eligible for the pilot program included those in which the Board proposed to issue a disciplinary action that was less serious than a reprimand, such as a fine, remedial education, remedial education with a fine, a warning, a warning with a fine, a warning with stipulations, or a warning with stipulations and a fine.

Third, SB 1415 made clear that a deferred disciplinary action under the pilot program would not be confidential until such time as an individual completed all of the conditions of the deferred disciplinary action and the originating complaint filed against the individual was dismissed by the Board. At that time, the deferred disciplinary action would become confidential by law, to the same extent that a complaint is confidential under the Occupations Code §301.466. Pursuant to §301.466, a complaint is confidential and generally not subject to public disclosure, except that a complaint may be disclosed to: (i) a person involved with the Board in a disciplinary action against a nurse; (ii) a nursing licensing or disciplinary board in another jurisdiction; (iii) a peer assistance program approved by the Board under the Health and Safety Code Chapter 467; (iv) a law enforcement agency; and (v) a person engaged in bona fide research, if all information identifying a specific individual has been deleted from the complaint.

Finally, SB 1415 authorized the Board to treat a deferred disciplinary action under the pilot program as prior disciplinary history if an individual committed a subsequent violation of the Nursing Practice Act and Board rules and was subject to Board discipline. SB 14 also required the Board to appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation.

Feasibility Study

Before the pilot program began, SB 1415 required the Board to determine the feasibility of conducting the pilot program. The Board reviewed the requirements of SB 1415 at its October, 2009, and January, 2010, meetings. At that time, the Board identified several factors that were relevant to its determination of the feasibility of a pilot program under SB 1415.

First, the Board reviewed the results of a nationwide survey of other state boards of nursing. The survey was conducted to determine if any other state nursing board had implemented a program similar to the pilot program contemplated by SB 1415. While several states reported the implementation of expungement programs in their states, no other state nursing board reported the implementation of a deferred disciplinary action program. As such, the expungement programs of the responding state boards were also reviewed by the Board for other commonalities.

The Board also considered the mandatory reporting requirements of the Nurse Licensure Compact (Compact), authorized under the Occupations Code Chapter 304, and the rules regarding membership of the Compact, as set forth in Chapter 220 of this title (relating to Nurse Licensure Compact), in conjunction with the confidentiality requirements of SB 1415. Although the Board determined that it could be difficult to fully control the dissemination of information related to a deferred action beyond the shared state database (NURSYS database), the Board did not find that such a risk would make the pilot program infeasible.

The Board also considered the mandatory reporting requirements of the federal reporting database, which, at that time, was known as the Healthcare Integrity and Protection Data Bank (HIPDB). The Board determined that it would be unable to prevent the disclosure of information concerning a deferred disciplinary action to other federal and state agencies and employers utilizing this database, even after the action was confidential under state law. The disclosure of this information, although completely outside of the Board's control, could be inconsistent with the confidentiality provisions of SB 1415. The Board, however, ultimately determined that this risk did not make the pilot program infeasible.

Finally, the Board considered the recommendations of its Eligibility and Disciplinary Advisory Committee (Advisory Committee). The Advisory Committee convened on September 17, 2009, and December 7, 2009, to consider the provisions of SB 1415 and to discuss the feasibility of a deferred disciplinary action pilot program. While the Advisory Committee generally agreed that such a program was feasible, the Advisory Committee was concerned about the implementation of such a program, particularly regarding the confidentiality of a completed deferred disciplinary action. In an effort to address such concerns, the Advisory Committee recommended that the Board establish certain limitations for the pilot program.

First, the Advisory Committee recommended that the pilot program only be available to individuals with no prior disciplinary history. Second, the Advisory Committee recommended that the pilot program only include disciplinary cases that were capable of being resolved through a remedial education order or the issuance of a warning with stipulations. Third, the Advisory Committee recommended that an individual be eligible to participate in the pilot program only if the individual demonstrated that a

program of remediation could address the individual's practice deficit, knowledge deficit, or situational awareness. Fourth, the Advisory Committee recommended that a deferred disciplinary action be available to the public for a minimum of five years. Finally, the Advisory Committee recommended that violations of the Nursing Practice Act and Board rules that involved certain intentional acts, falsification, deception, and chemical dependency or substance abuse not be included in the pilot program.

The Board reviewed the recommendations of the Advisory Committee at its January, 2010, meeting. After carefully considering the results of the survey of other state boards of nursing, the mandatory reporting requirements of the Compact and HIPDB, and the recommendations of the Advisory Committee, the Board determined that the pilot program was feasible. However, the Board agreed with the concerns of the Advisory Committee and also determined that the pilot program should be limited in nature to protect the safety of the public.

In addition to approving and adopting the limitations recommended by the Advisory Committee, the Board also determined that additional limitations were necessary to adequately balance the private interests of individuals eligible for the pilot program with the interests of the general public. First, the Board determined that the pilot program should only be available to individuals as a condition of settlement by agreement prior to initiating proceedings in a contested case matter before the State Office of Administrative Hearings (SOAH). Second, the Board determined that the pilot program should not include violations of the Nursing Practice Act or Board rules that involved sexual misconduct or criminal conduct. Third, the Board determined that a deferred disciplinary action should be treated as prior disciplinary history if an individual committed a subsequent violation of the Nursing Practice Act and Board rules. Finally, the Board determined that an action should no longer be treated as a deferred disciplinary action under the pilot program if an individual violated or failed to meet one of the conditions of a deferred disciplinary action. The Board adopted rules to implement parameters for the pilot program on July 12, 2010.

Results of the Pilot Program

On January 27, 2011, the Board approved the formation of the Deferred Disciplinary Action Pilot Program Advisory Committee (Deferred Committee), who was tasked with evaluating the efficiency of the pilot program (whether the pilot program reduced Staff time and/or resources); the perception/satisfaction of the individuals and employers involved in the program; and the efficacy of the program (whether the confidential nature of deferred orders would negatively affect the public health and safety). The pilot program began on February 1, 2011. A little more than a year's worth of pilot program data was recorded (February 1, 2011, through April 30, 2012) and reviewed by the Deferred Committee. The pilot program data was compared with data involving traditional disciplinary orders and corrective actions. The Deferred Committee also reviewed data related to non-compliance rates and the amount of time Staff spent in resolving complaints related to various types of disciplinary and corrective actions. The Deferred Committee also reviewed survey data obtained from 123 nurses and 51 employers involved in the pilot program. The Committee also reviewed collateral source information relating to nursing discipline and recidivism rates. After its review, the Deferred Committee found that the pilot program was preliminarily successful, reducing the Board's case resolution time and providing a less punitive, viable alternative to the Board's traditional disciplinary processes for eligible nurses. Additionally, the Deferred Committee recommended that deferred discipline be made a permanent part of the Nursing Practice Act.

At its October 2012 meeting, the Board considered the Deferred Committee's recommendations regarding the success of the pilot program and recommendations for its continuation. In October, 2012, the Board filed its final report regarding the pilot program and its recommendations regarding the program's continuance with the Executive and Legislative branches. Like the Deferred Committee, the Board recommended that deferred discipline be made a permanent part of the Nursing Practice Act. During the last legislative session, the Legislature enacted SB 1058, effective September 1, 2013, which made deferred discipline a permanent part of the Nursing Practice Act. The proposed rule amendments are necessary for consistency with the provisions of SB 1058 and to implement deferred discipline as a permanent option for discipline under the Board's rules.

The Adopted Amendments

The adopted amendments are not substantive in nature. The Board has determined that the originally adopted parameters of the pilot program should remain unchanged. The Board agrees that the pilot program was preliminarily successful. Deferred disciplinary orders reduced Staff case resolution time during the pilot period and appeared to result in a decreased rate of non-compliance in the deferred discipline population. Further, the parameters originally adopted by the Board appeared to adequately protect the interests of the public. The data from the pilot program showed that the requirements of deferred orders were perceived to be necessary and adequate to remediate the underlying deficiencies of the nurses; were consistent with requirements employers might themselves impose on nurses; successfully taught nurses ways to avoid making the same mistakes again, and resulted in changes in nurses' practice. Additionally, based upon the confidential nature of deferred orders, the Board has determined that it appropriate for deferred orders to remain public for at least a five year time period, particularly since there is insufficient longevity of the pilot program to render recidivism rates sufficient to justify a lesser period of time. As such, the adopted amendments do not substantively change the parameters that were in place during the pilot program. Rather, the adopted amendments are intended to clarify the existing rule text and parameters of the program and eliminate references to "pilot program" throughout the rule.

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 in support of the proposal, which is further summarized in this adoption order.

How the Sections Will Function.

The adopted amendments to the title of the section eliminate reference to "pilot program" and instead reference "deferred discipline".

Adopted §213.34(a) eliminates references to the "pilot program" and clarifies that deferred discipline may be imposed by the Board pursuant to the terms of the rule.

Adopted §213.34(b) eliminates references to the "pilot program" and clarifies that the opportunity to enter into a deferred disciplinary order is at the sole discretion of the Executive Director as a condition of settlement by agreement, and is not available as

a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001.

Adopted §213.34(c) clarifies that individuals with prior disciplinary history with the Board or any other licensing board and/or disciplinary authority in another jurisdiction or under federal law are not eligible for deferred discipline. This clarification is consistent with the original parameters of the pilot program that deferred discipline should only be offered to individuals with no prior history of practice violations. The adopted amendments to this subsection also eliminate redundant language that is being re-organized under adopted §213.34(b) and eliminate confusing and unnecessary language from the rule text.

Adopted §213.34(d) eliminates references to the "pilot program" and correctly references use of the term "substance use disorder".

Adopted §213.34(e) eliminates references to the "pilot program".

Adopted §213.34(f) clarifies the confidential nature of a deferred order by specifically referencing the Occupations Code §301.466, which is also referenced in §301.6555.

Adopted §213.34(g) corrects the use of terminology in the rule text.

The remaining adopted amendments to the section eliminate existing subsection (i), as it relates to the pilot program, and re-orders the subsections appropriately.

Summary of Comments and Agency Response.

Comment: A commenter representing The American Association of Nurse Attorneys, Texas Chapter (TAANA-Texas) states that it is the position of TAANA-Texas that any disciplinary action by the Texas Board of Nursing should address the violations found by the Board and not be unduly burdensome on the nurse being disciplined. The members of TAANA-Texas have been concerned in recent years by what appears to be a slow process of increasing the severity of disciplinary actions for relatively minor violations of the Nursing Practice Act and Board of Nursing Rules and Regulations. The commenter further states that the change in Board Rule §213.34 addresses a similar concern of TAANA-Texas. The successful pilot project involving deferred disciplinary actions has shown that the program was successful, at least in the short term, in providing guidance to nurses with certain types of violations of the Nursing Practice Act and limiting recidivism, while allowing a nurse a certain amount of confidentiality in the future. Notwithstanding the continuing concerns that TAANA-Texas has regarding the Healthcare Integrity and Protection Data Bank, the National Practitioner Data Bank, and Nursys' handling of the deferred action orders, TAANA-Texas believes that making this program permanent is well justified by the successful pilot program. The commenter concludes by stating that TAANA-Texas supports the proposed rule changes.

Agency Response: The Board appreciates the comment in support of the proposed amendments.

Names of Those Commenting For and Against the Proposal.

For: The American Association of Nurse Attorneys, Texas Chapter.

Against: None.

For, with changes: None.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the Occupations Code Subchapter N and §301.151.

Section 301.651(2) defines deferred action as an action against a person licensed or regulated under Chapter 301 that is deferred by the Board as provided by Subchapter N.

Section 301.6555(a) provides that, for any action or complaint for which the Board proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, the Board may: (i) defer the final action the Board has proposed if the person conforms to conditions imposed by the Board, including any condition the Board could impose as a condition of probation under §301.468; and (ii) if the person successfully meets the imposed conditions, dismiss the complaint.

Section 301.6555(b) states that, except as provided by §301.6555, a deferred action by the Board is not confidential and is subject to disclosure in accordance with Chapter 552, Government Code. If the person successfully meets the conditions imposed by the Board in deferring final action and the Board dismisses the action or complaint, the deferred action of the Board is confidential to the same extent as a complaint is confidential under §301.466.

Section 301.656 states that the Executive director shall report periodically to the Board on the corrective or deferred actions imposed under this subchapter, including: (i) the number of actions imposed; and (ii) the types of violations for which actions were imposed.

Section 301.657(a) states that except to the extent provided by this section, a person's acceptance of a corrective or deferred action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.

Section 301.657(b) states that the Board may treat a person 's acceptance of corrective or deferred action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

Section 301.657(c) states that the Board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under Chapter 301 when imposing a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

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 10, 2014.

TRD-201403172
Jena Abel
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Texas Board of Nursing
Effective date: July 30, 2014
Proposal publication date: May 23, 2014
For further information, please call: (512) 305-6822

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22 TAC §213.35

Introduction. The Texas Board of Nursing (Board) adopts new §213.35, pertaining to Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program. The new section is adopted without changes to the proposed text published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4371) and will not be republished.

Reasoned Justification. The new section is adopted under the authority of the Occupations Code §301.1605(a) and §301.453 and effectuates a two-year pilot program designed to evaluate the use of individualized competency assessments and targeted remediation plans as a form of disciplinary action for nursing practice violations of the Nursing Practice Act (NPA).

Background

In October of 2013, the Board approved a two-year pilot in consultation with Texas A&M Health Sciences Center College of Nursing and the Rural and Community Health Institute (RCHI) to offer the KSTAR program for nurses with practice violations as a form of discipline that would ordinarily result in a disciplinary sanction of a warning and below.

The Disciplinary Matrix adopted in Board Rule 213.33 discusses certain forms of discipline, including those for violations related specifically to practice breakdowns. When practice breakdowns occur, a nurse's level of competency is questioned and the Board must attempt to ensure minimum competency. The sanctions that may be imposed range from remedial education to revocation. However, if revocation is not appropriate based on the nature of the violation, the disciplinary remedy usually includes remedial education and monitoring under the supervision of another nurse for at least one year.

The Board has continued to explore regulatory options consistent with Just Culture concepts and has considered alternatives to conventional disciplinary orders that may provide correction of knowledge deficits, yet also be viewed as less punitive. The Board's Deferred Discipline pilot and Corrective Action strategies are examples. Staff and RCHI, for the last few years, have engaged in discussions aimed at utilizing innovative alternatives to discipline that may remediate a nurse's practice and eliminate the on-going monitoring and supervisory requirement.

RCHI has been involved in the development of KSTAR for Nurses, which is a comprehensive program designed to perform a competency assessment and provide individualized remediation to ensure minimum nurse competency. The program, with Staff input, is designed to assess a nurse's knowledge base and level of expertise; and if deficits exist, develop an individualized education plan that includes a period of monitoring and follow-up. In addition, the program may also be customized for nurses who desire to re-enter practice after an extended period of time.

The KSTAR pilot program may provide evidence based research to someday design a non-punitive alternative to discipline for nurses with practice related errors. A more individualized approach to education and demonstration of competency may enhance the Texas Board of Nursing's (BON) ability to reassure the public that a nurse's practice can be remediated.

Under the adopted section, the KSTAR pilot disciplinary orders will be offered as an alternative to conventional disciplinary sanctions of warning with probationary stipulations as authorized by §301.453 of the Occupations Code. The pilot will permit the evaluation of this alternative form of discipline to determine if individualized competency assessments combined with a designed remedial plan can effectively address competency questions and reduce the need for extended probation and monitoring of disciplined nurses.

How the Sections Will Function.

Adopted new §213.35(b) sets forth the purpose of the adopted pilot program. The purpose of the adopted new rule is to evaluate the effectiveness of the KSTAR program, or an equivalent, as an alternative method of discipline. The pilot will develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the NPA and use targeted remedial education to correct identified deficiencies in order to ensure minimum competency. Additionally, the pilot will develop an alternative extensive orientation program consistent with Rule 217.6(b) and Rule 217.9(g) of this title that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of an alternative extensive orientation will provide evidence-based assurance of minimum nurse competency before returning to practice.

Adopted new §213.35(c) sets forth the approval process for pilot program providers under the adopted new rule. Adopted new §213.35(c) gives discretion to the Executive Director to approve a pilot program provider that meets the minimum requirements of this rule.

Adopted new §213.35(d) clarifies that the KSTAR pilot program order will be considered a method of discipline pursuant to Texas Occupations Code §301.453 or §301.6555. Adopted new §213.35(d) clarifies that the KSTAR pilot program order will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

Adopted new §213.35(e) clarifies that participation in the KSTAR pilot program will only be through an agreed order and the opportunity to enter into a KSTAR pilot program is at the sole discretion of the Executive Director.

Adopted new §213.35(f) establishes the responsibilities of nurses participating in the KSTAR pilot program. Adopted new §213.35(f) makes clear that each nurse will be responsible for the entire cost of participation in the KSTAR pilot program. Each nurse subject to a KSTAR order must: (i) enroll in the pilot program within 45 days of the date of the order unless otherwise agreed; (ii) submit to an individualized assessment designed to evaluate nurse practice competency and to support a targeted remediation plan; (iii) follow all requirements within the remediation plan, if any; (iv) successfully complete the KSTAR order within one year from the effective date of the agreed order; and (v) provide written proof of successful completion of the KSTAR pilot program to the Board.

Adopted new §213.35(g) establishes the minimum requirements of the KSTAR pilot program provider. Adopted new §213.35(g) sets forth that the KSTAR pilot program provider should be capable of meeting the following requirements: (i) provide reasonable intake and assessment options within 45 days of enrollment; (ii) perform an individualized comprehensive assessment designed to evaluate nurse practice competency; (iii) develop a written individualized remediation plan to ensure minimum competency that may include a period of monitoring and follow-up; (iv) if requested by the Board, provide the remediation plan to the Board for review and approval; (v) provide the education, resources,

tools and support that the remediation plan requires; and (vi) provide a written report to the nurse and the Board upon the successful completion of the remediation plan.

Adopted new §213.35(h) establishes that every KSTAR pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing jurisprudence and ethics.

Adopted new §213.35(i) sets forth that if the individualized assessment identifies further violations of the NPA, including inability to practice nursing safely, further disciplinary action may be taken based on such results in the assessments.

Adopted new §213.35(j) sets forth that a KSTAR pilot program action under the pilot program will be available: (i) for individuals with no prior disciplinary history with the Board; (ii) for violations of the NPA and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or any deferred order issued pursuant to §213.34; (iii) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings; (iv) only if the probationary stipulations outlined in the KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and (v) for violations of the NPA and/or Board rules that were pending with the Board on January 1, 2014, or after.

Adopted new §213.35(k) sets forth that violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a KSTAR pilot program action under the pilot program.

Adopted new §213.35(l) establishes that KSTAR pilot program action under the pilot program will not be available to: (i) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure); (ii) an individual whose application under §217.2 of this title (relating Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its territories, or Possessions), §217.4 of this title (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or (iii) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Adopted new §213.35(m) sets forth that if an individual fails to comply with a probationary stipulation required by the KSTAR pilot program order or if a subsequent complaint is filed against an individual during the pendency of the KSTAR pilot program order, the Board may treat the KSTAR pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

Adopted new §213.35(n) establishes that the outcome and effectiveness of the pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

Finally, adopted new §213.35(o) sets forth that the Board may contract with a third party to perform the monitoring and evaluation of the KSTAR pilot program.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The new section is adopted under the Occupations Code §§301.151, 301.1605(a) and 301.453.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1605(a) authorizes the Board to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

Section 301.453(a) authorizes the Board to enter an order imposing one or more of the following if the Board determines that a person has committed an act listed in §301.452(b): (i) denial of the person's application for a license; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including (A) limiting to or excluding from the person's practice one or more specified activities of nursing or (B) stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) authorizes in addition to or instead of an action under Subsection (a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education of counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol of the use of drugs an submit to random periodic screening for alcohol or drug use.

Section 301.453(c) authorizes the Board to probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) authorizes the Board to impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license if the Board suspends, revokes, or accepts surrender of a license.

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 10, 2014.

TRD-201403173
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: July 30, 2014
Proposal publication date: June 6, 2014
For further information, please call: (512) 305-6822

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION

25 TAC §229.661

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §229.661, concerning the regulation of cottage food production operations. The amendment to §229.661 is adopted without changes to the proposed text as published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 578) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendment to §229.661 implements House Bill (HB) 970, 83rd Legislature, Regular Session, 2013. HB 970 amends Health and Safety Code, Chapter 437 relating to cottage food production operations. HB 970 added and revised definitions, expanded the types of foods that a cottage food production operation may produce, identified locations where cottage foods may be sold, clarified packaging and labeling requirements, prohibited sales by mail or at wholesale, and required a cottage food production operator to complete basic food safety training.

A cottage food production operation is an individual who operates out of the individual's home; produces at the individual's home certain non-potentially hazardous foods; has an annual gross income of $50,000 or less from the sale of foods; sells the foods produced only directly to consumers at the individual's home, a farmers' market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and delivers products to the consumer at the point of sale or another location designated by the consumer.

SECTION-BY-SECTION SUMMARY

Section 229.661(b)(1) revises the definition for baked good by deleting the statement, "A baked good does not include a potentially hazardous food..."

Section 229.661(b)(2)(A) revises the definition for cottage food production operation by expanding the foods that may be produced to include candy; coated and uncoated nuts; unroasted nut butters; fruit butters, fruit pie, dehydrated fruit or vegetables, including dried beans; popcorn and popcorn snacks; cereal, including granola; dry mix; vinegar; pickles; mustard; roasted coffee or dry tea; and dried herbs or dried herb mix; and deletes the phrase "for sale at the person's home."

Section 229.661(b)(2)(C) allows cottage food to be sold from an individual's home; a farmers' market; a farm stand; a municipal fair, festival or event; a county fair, festival or event; or a nonprofit fair, festival or event.

Section 229.661(b)(2)(D) allows cottage foods to be delivered to the consumer at the point of sale or another location designated by the consumer.

Section 229.661(b)(5) adds a new definition for "farm stand."

Section 229.661(b)(6) adds a new definition for "farmers' market."

Section 229.661(b)(10) adds a new definition for "pickles."

Section 229.661(b)(11) revises the definition for potentially hazardous food with the definition in HB 970.

Section 229.661(d) adds packaging to the labeling requirements to require all cottage foods to be packaged and labeled in a manner that prevents product contamination, except when food is too large or bulky for conventional packaging.

Section 229.661(e) is amended to prohibit the sale of cottage foods by mail and wholesale.

The new §229.661(f) clarifies that a cottage food production operation is not exempt from meeting the application of Health and Safety Code, §431.045 - Emergency Order, §431.0495 - Recall Orders, and §431.247 - Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

The new §229.661(g) prohibits a cottage food production operation from selling potentially hazardous foods.

The new §229.661(h) requires an individual who operates a cottage food production operation to complete a basic food safety education or training program for food handlers accredited under Health and Safety Code, Chapter 438, Subchapter D.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was from the City of Baytown local health department. The commenter was not against the rule in its entirety; however, the commenter wanted to know how the department was going to enforce specific sections of this rule. A public hearing to receive comments on the proposed rule was held at the department on March 3, 2014. No comments were received at the public hearing.

Comment: Concerning §229.661(b)(2)(B), the commenter stated that the requirement for a cottage food production operation that "has an annual gross income of $50,000 or less from the sale of food described by subparagraph (A) of this paragraph" is not enforceable.

Response: The commission agrees that the department and local health authority may not regulate the annual gross income of a cottage food production operation. Health and Safety Code, §437.0192 prohibits the local government authority from regulating the production of food at a cottage food production operation. However, an individual operating a cottage food production operation is required to comply with Health and Safety Code, §437.0192. No change was made to the rule text as a result of this comment.

Comment: Concerning §229.661(e), the commenter stated that the prohibition for certain sales of food through the Internet, by mail order or at wholesale, and the prohibition on making health claims in advertising media is not enforceable.

Response: The commission agrees that the department and local health authority may not regulate the sale of food through the Internet, by mail order or at wholesale. Additionally, the department and local health authority may not regulate health claims made on advertising media of finished products produced by a cottage food production operation. Health and Safety Code,

§437.0192, prohibits the local government authority from regulating the production of food at a cottage food production operation. However, an individual operating a cottage food production operation is required to comply with Health and Safety Code, §437.0192. Furthermore, new §229.661(f) clarifies that a cottage food production operation is not exempt from meeting the application of Health and Safety Code, §431.045, Emergency Order; §431.0495, Recall Orders; and §431.247, Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health. No change was made to the rule text as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized under the Health and Safety Code, §437.0193, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to labeling requirements for cottage food production operations; Health and Safety Code, §438.042, which requires the department to adopt standards for accreditation of education and training programs for persons employed in the food service industry; and Government Code, §531.0055(e), 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.

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 14, 2014.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: February 7, 2014
For further information, please call: (512) 776-6990

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SUBCHAPTER FF. FARMERS' MARKETS

25 TAC §§229.701 - 229.704

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department) adopts new §§229.701 - 229.704, concerning the regulation of food at farmers' markets. Section 229.703 and §229.704 are adopted with changes to the proposed text as published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 582). Section 229.701 and §229.702 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The purpose of the new rules is to implement Senate Bill (SB) 81 of the 82nd Legislature, Regular Session, 2011, and House Bill (HB) 1382 of the 83rd Legislature, Regular Session, 2013, that amends Health and Safety Code, Chapter 437, relating to requirements for farmers' markets. SB 81 and HB 1382 directs the department to adopt rules under Health and Safety Code, §437.020 and §437.0202, as they relate to food temperature requirements and permits at farmers' markets that sell to consumers.

SECTION-BY-SECTION SUMMARY

New §229.701 sets forth the purpose and applicability of this subchapter.

New §229.702 defines and clarifies the intended meaning of words and terms used in the subchapter.

New §229.703 sets forth permit requirements for a person who sells potentially hazardous food at a farmers' market.

New §229.704 sets forth temperature and cook time controls for the safety of food at farmers' markets, along with the maintenance of proper storage of food.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. A public hearing to receive comments on the proposed rules was held at the department on March 3, 2014. The commenters were Representative David Simpson and an individual with The Farm and Ranch Freedom Alliance. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning sampling at a farmers' market, a commenter asked that a section be added to the rule that sets out the conditions for providing samples at the farmers' markets.

Response: The commission disagrees with adding a section to the rule as SB 81 does not allow the department to adopt rules that regulate the provision of samples. No change was made to the rules as a result of this comment.

Comment: Concerning the issuance of a temporary food establishment permit for cooking demonstrations for a bona fide educational purpose without requiring a fee, one commenter asked that a new section be added to state that a fee not be charged.

Response: The commission disagrees with adding a section as HB 1382 does not allow the department to adopt rules that regulate cooking demonstrations. No change was made to the rules as a result of this comment.

Comment: Concerning mobile food vending permits, one commenter asked that the rules be considered for revision to encourage more mobile food vending permits being issued.

Response: The commission disagrees that additional revision is necessary because the proposed §229.703 includes language that allows local health jurisdictions to issue different types of permits to farmers' market vendors, including a mobile food vending license. No change was made to the rules as a result of this comment.

Comment: Concerning adding a definition to §229.701, a commenter asked for a definition for "bona fide educational purpose."

Response: The commission disagrees with adding the definition. Health and Safety Code, §437.0203(b)(2) prohibits the adoption of a rule regulating cooking demonstrations at a farmers' market. No change was made to the rules as a result of this comment.

Comment: Concerning §229.703, two commenters were not in favor of this rule and asked for local jurisdictions to have the ability to issue permits to vendors at farmers' markets as they determine.

Response: The commission agrees and revised §229.703 to add "the department or the local health department may issue a permit to" a person who sells potentially hazardous food (time/temperature control for safety food) at a farmers' market. Adding this language clarifies that local health jurisdictions may issue the appropriate type of permit for a famers' market. Placing a time frame on a temporary food establishment permit would not be necessary as it is already in statute.

Comment: Concerning §229.704, temperature requirements, a commenter asked that a new section be added stating that the method of achieving and maintaining the mandatory temperatures be at the discretion of the individual.

Response: The commission disagrees with adding a section to the rule mandating a method for temperature control. Health and Safety Code, §437.0202(c) prohibits the department from mandating a specific method for complying with temperature control. No change was made to the rules as a result of this comment.

Section 229.704(d)(5)(B) was revised for consistency with rule text formatting by deleting the word "and" at the end of the subparagraph.

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.

STATUTORY AUTHORITY

The new rules are authorized under the Health and Safety Code, Chapter 437, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines under §§437.020, 437.0201, and 437.0202; and Government Code, §531.0055(e), 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.

§229.703. Permits.

The department or the local health department may issue a permit to a person who sells potentially hazardous food (time/temperature control for safety food) at a farmers' market.

§229.704. Temperature Requirements.

(a) Potentially hazardous food (time/temperature control for safety food) sold, distributed, or prepared on-site at a farmers' market, and potentially hazardous food (time/temperature control for safety food) transported to or from a farmers' market shall meet the requirements of this section.

(b) Frozen food. Stored frozen foods shall be maintained frozen.

(c) Hot and cold holding. All potentially hazardous food sold at, prepared on site at, or transported to or from a farm or farmers' market at all times shall be maintained at:

(1) 5 degrees Celsius (41 degrees Fahrenheit) or below; or

(2) 54 degrees Celsius (135 degrees Fahrenheit) or above.

(d) Cooking of raw animal foods. Raw animal foods shall be cooked to heat all parts of the food to the following temperatures:

(1) poultry, ground poultry, stuffing with poultry, meat and fish to 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds;

(2) ground meat, ground pork, ground fish, and injected meats to 68 degrees Celsius (155 degree Fahrenheit) for 15 seconds;

(3) beef, pork, meat, fish and raw shell eggs for immediate service to 63 degrees Celsius (145 degrees Fahrenheit) for 15 seconds;

(4) prepackaged, potentially hazardous food (time/temperature control for safety food), that has been commercially processed, to 57 degree Celsius (135 degrees Fahrenheit);

(5) a raw or undercooked whole-muscle, intact beef steak may be served if:

(A) the steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as defined in §229.162(115) of this title (relating to Definitions); or

(B) the steak is cooked on both the top and bottom to a surface temperature of 63 degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces.

(6) raw animal foods cooked in a microwave oven shall be:

(A) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(B) covered to retain surface moisture;

(C) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; and

(D) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(e) Cooking fruits and vegetables. Fruits and vegetables that are cooked shall be heated to a temperature of 57 degrees Celsius (135 degrees Fahrenheit).

(f) Eggs. A farmer or egg producer that sells eggs directly to the consumer at a farm or farmers' market shall maintain the eggs at an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) as specified in §229.164(c)(1)(C) of this title (relating to Food).

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 14, 2014.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6990

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance (TDI) adopts amendments to 28 TAC Chapter 34, Subchapter E, Fire Extinguisher Rules, §§34.501, 34.507, 34.510, 34.511, 34.517, and 34.520; Subchapter F, Fire Alarm Rules, §§34.604, 34.607, 34.610, 34.611, 34.613, 34.616, 34.620, 34.623, and 34.630; and Subchapter G, Fire Sprinkler Rules, §§34.707, 34.711, 34.716, 34.718, 34.719, and 34.721. TDI adopts §§34.510, 34.511, 34.517, 34.520, 34.604, 34.607, 34.610, 34.611, 34.613, 34.616, 34.623, 34.630, 34.711, 34.716, 34.718, 34.719, and 34.721 with changes to the proposed text published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3362). TDI adopts §§34.501, 34.507, 34.620, and 34.707 without changes.

REASONED JUSTIFICATION. These amendments are necessary to implement statutory revisions; adopt National Fire Protection Association (NFPA) codes and standards, and UL standards; clarify the intent of the regulations; delete obsolete references; revise tags, labels, stamps, and standardize signage requirements; allow for optional adhesive tags; and correct form numbers.

In response to written comments on the published proposal, TDI has adopted changes to the proposed text in §34.616. TDI does not adopt proposed §34.616(c)(7). TDI adopts nonsubstantive changes to §§34.510, 34.511, 34.517, 34.520, 34.604, 34.607, 34.610, 34.611, 34.613, 34.616, 34.623, 34.630, 34.711, 34.716, 34.718, 34.719, and 34.721 for clarity and to conform to agency style guidelines.

TDI adopts an amendment to rename Subchapter E, Fire Extinguisher and Installation, "Fire Extinguisher Rules," to provide clarity and to be consistent with the captions for Subchapters F and G.

TDI adopts an amendment to §34.501 to conform it to HB 2447, 83rd Legislature, Regular Session, 2013. In accord with Insurance Code Chapter 6001, fire extinguisher equipment must be listed by a testing laboratory approved by the commissioner, and not merely labeled.

TDI adopts an amendment to §34.507 to update current standards and include additional standards. The amendment revises 10 applicable NFPA standards and adopts one new NFPA standard. The revised standards are: NFPA 10-2013, Standard for Portable Fire Extinguishers; NFPA 12-2011, Standard on Carbon Dioxide Extinguishing System; NFPA 15-2012, Standard for Water Spray Fixed Systems for Fire Protection; NFPA 16-2011, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; NFPA 17-2013, Standard for Dry Chemical Extinguishing Systems; NFPA 17A-2013, Standard for Wet Chemical Extinguishing Systems; NFPA 18-2011, Standard on Wetting Agents; NFPA 25-2014, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems; NFPA 96-2014, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations; and NFPA 2001-2012, Standard on Clean Agent Fire Extinguishing Systems. TDI also adopts the new NFPA 33-2011, Standard for Spray Application Using Flammable or Combustible Materials and NFPA 2010-2010, Standard for Fixed Aerosol Fire-Extinguishing Systems. The updated standards are necessary to better protect the health and safety of the public

TDI adopts an amendment to §34.510 to standardize signage across all industry certificate holders in Texas. The requirements would only apply to vehicles regularly used, modifies the placement of the registration number, and modifies the format of the displayed registration number.

An adopted amendment to §34.511 deletes subsection (b) relating to the posting of licenses on the wall of the firm's business establishment. The requirement is obsolete and duplicative of pocket license requirements. The subsections in §34.511 are redesignated. TDI also amends subsection (f) to clarify that a license must not be expired for the license holder to engage in the business for which the license is granted.

TDI adopts an amendment to §34.517 to clarify that writing the date on a seal with a marker is not permissible. The amendment requires the date to be stamped into the tamper seal. The amendment also is made so that language pertaining to the anti-tampering flag matches NFPA 10. Subsection (k) is deleted because NFPA 17 already references UL 1254.

TDI adopts an amendment to §34.520 to add information required on service tags to accommodate NFPA 96-11.2.5. As amended, the service tag requires the year of manufacture for new fusible links and the date of installation for new fusible links. In addition, TDI adopts new subsection (h) to allow optional use of an adhesive label type tag for environments where standard tags are easily damaged or lost.

TDI adopts an amendment to §34.604 to clarify that professional engineers are responsible for designing to adopted standards. In accord with Insurance Code §6002.155, professionally exempt persons are exempt from licensing requirements, but the provisions of that chapter and these rules relating to adopted safety standards for fire detection and fire alarm devices are applicable.

TDI adopts an amendment to §34.607 to update current standards and include additional standards. The amendment revises applicable NFPA or UL standards: NFPA 12-2011, Standard on Carbon Dioxide Extinguishing Systems; NFPA 13-2013, Standard for the Installation of Sprinkler Systems; NFPA 13D-2013, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; NFPA 13R-2013, Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies; NFPA 15-2012, Standard for Water Spray Fixed Systems for Fire Protection; NFPA 16-2011, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; NFPA 17-2013, Standard for Dry Chemical Extinguishing Systems; NFPA 17A-2013, Standard for Wet Chemical Extinguishing Systems; NFPA 25-2014, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; NFPA 70-2014, National Electrical Code; NFPA 72-2013, National Fire Alarm Code; NFPA 90A-2012, Standard for the Installation of Air Conditioning and Ventilating Systems; NFPA 101(r)-2012; UL 827 October 1, 2008, Standard for Central Station Alarm Services; and NFPA 2001-2012, Standard on Clean Agent Fire Extinguisher Systems. The amendments and addition of the new standards are necessary to better protect the health and safety of the public.

TDI adopts an amendment to §34.610 to standardize language across regulated fire protection industries in Texas.

TDI adopts an amendment to §34.611 to clarify that a license must not be expired for the license holder to engage in the business for which the license is granted.

TDI adopts an amendment to §34.613 to conform it with HB 458, 83rd Legislature, Regular Session, 2013, which created new types of licenses. HB 458 added two new license types: the residential fire alarm technician license and the residential fire alarm superintendent license.

TDI adopts amendments to §34.620, including Figure: 28 TAC §34.620(e) and Figure: 28 TAC §34.620(g), to combine both labels into a single label. The modification eliminates the one- or two-family residence installation label, and combines it with the commercial building or non-one- or two-family residence installation label so that it is just one label. The resulting change also adds a place for planner information on one- or two-family residential installations. The additional information will help with further inspections, and TDI licensing oversight.

TDI adopts an amendment to §34.623 and Figure: 28 TAC §34.623(h) to remove reference to codes at time of installation. On older systems, it is often difficult to determine when the alarm system was installed and what standards were in place at the time.

TDI adopts an amendment to §34.630 to correct the referenced form number.

TDI adopts an amendment to §34.707 to update current standards and include additional standards. The adopted amendment revises applicable NFPA standards. The adopted standards are: NFPA 13-2013, Standard for the Installation of Sprinkler Systems; NFPA 25-2014, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; NFPA 13D-2013, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; NFPA 13R-2013, Standard for the Installation of Sprinkler Systems in Low-Rise Residential; NFPA 14-2013, Standard for the Installation of Standpipe and Hose Systems; NFPA 15-2012, Standard for Water Spray Fixed Systems for Fire Protection; NFPA 16-2011, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; NFPA 20-2013, Standard for the Installation of Stationary Pumps for Fire Protection; NFPA 22-2013, Standard for Water Tanks for Private Fire Protection; NFPA 24-2013, Standard for the installation of Private Fire Service Mains and Their Appurtenances; NFPA 30-2012, Flammable and Combustible Liquids Code; NFPA 214-2011, Standard on Water-Cooling Towers; NFPA 409-2011, Standard on Aircraft Hangars. TDI also adopts new NFPA 750-2010, Standard on Water Mist Fire Protection Systems. The updated standards are necessary to better protect the health and safety of the public.

TDI adopts an amendment to §34.711 to clarify that a license must not be expired for the license holder to engage in the business for which the license is granted.

TDI adopts an amendment to §34.716 to standardize signage across all industry certificate holders. The requirements would only apply to vehicles that are regularly used, modify the placement of the registration number, and modify the format of the displayed registration number. Another amendment deletes an obsolete year reference. The amendment also removes underground fire main reference for consistency with the statute, and it clarifies which licensed responsible managing employee (RME) may affix a certificate for installation.

TDI adopts an amendment to §34.718 to require the signature and license number of the RME for the installation tag. This change will assist in the documentation and enforcement of the rules. Another adopted amendment to the section clarifies that the system must comply with the applicable standard before tagging with an installation tag.

TDI adopts an amendment to §34.719 to clarify the intent of the service tag is to apply to both impairment and noncompliant conditions.

TDI adopts an amendment to §34.721 to clarify that the intent of the yellow tag and assist local authorities having jurisdiction in enforcing the maintenance requirements of NFPA 25. Another amendment clarifies that any service person or inspector may attach yellow tags. TDI also removes references to "impairments" to amend the wording on removal to match the language used on red tags.

The adopted amendments also make numerous editorial changes to improve readability and consistency, and conform to current agency style. These changes include replacing "shall" with "must" or "will" and amending inconsistent capitalization.

Summary of Changes to Adopted Standards

NFPA 10 - NFPA 10 revised the 2013 edition of this standard, which addresses Class D extinguishing agents and the phase out of listed Halon extinguishers. NFPA 10 expands the definition of halocarbons to permit the use of any halocarbon agent acceptable under the U.S. EPA Significant New Alternatives Policy program. For easy reference, NFPA 10 expands the list of NFPA documents that contain additional requirements that supersede those found in this standard. Added are new travel distances for obstacle, gravity or three-dimensional, and pressure fire hazards. Chapter 7, Inspection, Maintenance, and Recharging, and Annex E, Distribution, have been significantly revised and restructured. NFPA 10 adds to Annex F Selection of Residential Fire-Extinguishing Equipment instructions for inspection and maintenance of residential extinguishers.

NFPA 12 - The 2011 edition of this standard is a partial revision that includes a modification to the requirements for system operational tests.

NFPA 13 - The 2013 edition of NFPA 13 included changes to many technical requirements as well as the reorganization of multiple chapters. One significant change that NFPA made to the administrative chapter of NFPA 13 was to clarify that water mist systems were not covered in NFPA. A series of new requirements address the need for a compatibility review where nonmetallic piping and fittings are installed in systems also using petroleum-based products such as cutting oils and corrosion inhibitors. NFPA 13 made several modifications to the standard pertaining to freeze protection. New NFPA 13 prohibits using antifreeze in sprinkler systems unless the solution used has been listed, and the listing indicates that the solution is unable to ignite. Other freeze protection modifications to the standard include clarification on the use of heat tracing and required barrel length for dry sprinklers, allowing submission of engineering analyses to support an alternate freeze protection scheme. NFPA 13 added new sprinkler omission requirements for elevator machine rooms and other elevator-associated spaces meeting certain criteria. Chapter 9 includes updated information on shared support structures, as well as a revised seismic bracing calculation form. NFPA 13 reorganizes Chapters 16 and 17 to make the chapters easier to follow and to create more consistency among the various storage chapters. NFPA 13 adds a new chapter on alternative approaches for storage applications to provide guidance on performance-based approaches for dealing with storage arrangements.

NFPA 13D - The 2013 edition of NFPA 13D includes a restructuring to make the document easier to use. It adds four new chapters that break out freeze protection, acceptance testing, maintenance, and discharge criteria into their own chapters. This edition includes modification to the definitions of "multipurpose" and "stand-alone" systems, and a new definition for "passive purge" systems. NFPA 13D adds new language addressing the number of heads to be calculated for certain sloped-ceiling and beamed-ceiling configurations, based on a Fire Protection Research Foundation Report. NFPA 13D also updates antifreeze requirements.

NFPA 13R - The 2013 edition revised the title to address low-rise residential occupancies instead of addressing the number of stories outlined in the document scope. NFPA 13R added several sections to address the concept of shadow areas in different configurations in NFPA 13R-protected structures. TDI updated the requirements for sprinkler locations to provide specific direction on protection of porte cocheres, closets, and areas outside of the dwelling unit. NFPA 13R adds new language addressing the number of heads to be calculated for certain sloped-ceiling and beamed-ceiling configurations, based on a Fire Protection Research Foundation Report. Also note that the title of the code has been amended.

NFPA 14 - The 2013 edition revises clearance requirements around hose valve handles where hose valves are located within cabinets and where they are adjacent to objects. NFPA also defined travel distance, as it applies to this standard. NFPA 14 adds the term "horizontal standpipe" to the requirement for pipe protection. NFPA 14 clarified heat-tracing requirements, along with added requirements for the pitching of pipe used in a dry system. The valve and drain requirements have been extensively revised, providing greater guidance and clarification. NFPA 14 also adds new criteria and a new figure regarding horizontal exists.

NFPA 15 - The 2012 edition provides updated rules for grooved couplings to comply with changes in the 2010 edition of NFPA 13. Other changes include an expanded section on designing for flammable vapor mitigation and the addition of new contractor's material and test certificates.

NFPA 16 - The 2011 edition updates and clarifies the criteria for acceptance testing of the concentration of foam to specific tolerance ranges. The standard clarifies that the orifice indicator tabs or nameplate must be permanently marked. The 2011 edition also makes the hose stream allowance consistent with NFPA 13, Standard for the Installation of Sprinkler Systems. In addition, the alcohol-resistant foams do not follow the Darcy-Weisbach formula because they are non-Newtonian fluids.

NFPA 17, 17A - The 2013 edition of this standard clarifies the requirements for inspection and maintenance and provides new requirements for installation acceptance.

NFPA 18 - The 2011 edition also has undergone extensive technical and editorial revision. Technical changes include limits for aquatic toxicity for parity and consistency with other product standards. NFPA 18 has undergone editorial changes that include updating the structure of the standard to comply with the Manual of Style for NFPA Technical Committee Documents.

NFPA 20 - The 2013 edition clarifies and adds new requirements for water mist positive displacement pumping units. Chapter 5 of the standard has been reorganized. NFPA has revised the limited service controller requirements and removed the component replacement table.

NFPA 22 - The 2013 edition adds sizing requirements for break tanks in Chapter 4 and sizing procedures for pressure tanks in the Chapter 7 annex material. NFPA has defined the term "suction tank," and revised the requirements for anti-vortex plates. NFPA 22 also updates Table 5.4 to align it with current industry standards.

NFPA 24 - The 2013 edition of NFPA 24 includes clarifications on the requirements for running piping under buildings, including annex figures depicting clearances. It modifies the Contractors Material and Test Certificate for Underground Piping (Figure 10.10.1) to include confirmation that the forward flow test of the backflow preventer has been conducted. NFPA 24 adds a provision that requires the automatic drip valve to be located in an accessible location that permits inspections according to NFPA 25.

NFPA 25 - The 2014 edition of NFPA 25 includes significant changes, many specific to the chapter on fire pumps. The operating test requirements now consider a baseline weekly test for all pumps with a series of exceptions that allow for a modified testing frequency. NFPA 25 added new language to address confirmation of pressure recordings and a new fuel quality test for diesel-driven pumps. NFPA 25 added definitions for the various frequencies of inspection, testing, and maintenance tasks to create a time frame for completion of the task. NFPA modified the concept of "internal inspection" to an internal assessment concept, where a performance-based assessment frequency is explicitly addressed. NFPA 25 updated the scope of the Technical Committee on Inspection, Testing, and Maintenance of Water-Based Systems to address water mist systems. Because the material on water mist systems in this chapter is now in the jurisdiction of NFPA 25, the water mist system extract tags in NFPA 750 have been removed from that chapter. NFPA 25 also adds a new chapter to address NFPA 13D systems installed outside of one- and two-family homes. NFPA 25 updates requirements for inspecting antifreeze systems to include the latest information from the Fire Protection Research Foundation testing on standard spray sprinklers. The table providing examples of classifications for deficiencies and impairments has been relocated from Annex E to Annex A, and is attached to the definition of "deficiency."

NFPA 30 - The 2012 edition of NFPA 30 incorporates several technical changes, as follows. (1) Use and installation of alcohol-based hand rub dispensers have been exempted from the standards. (2) NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, has been added to section 1.5 as one of the NFPA codes and standards deemed equivalent to the UL standards, for purposes of installation of fuel tanks for diesel-driven fire pumps. (3) Amended definitions for the various building occupancies conform to the preferred definitions in NFPA 101, Life Safety Code. (4) Definitions of "fire-resistant tank" and "protected aboveground tank" have been relocated to Chapter 22, Storage of Liquids in Tanks - Aboveground Storage Tanks. (5) New provisions require that Class II and Class III liquids that are stored, handled, processed, or used at temperatures at or above their flash points follow all applicable requirements in the code for Class I liquids unless an engineering evaluation deems otherwise (supplementary information has been included in Annex A, and a direct reference to this provision has been added at appropriate locations in subsequent chapters). (6) A new annex item in 6.5.1 explains that use of spark-resistant tools must be evaluated on a case-by-case basis. (7) New section 6.10 and the accompanying Annex G address management of facility security by means of a mandatory security and vulner-

ability assessment (Annex G provides an outline of a suggested assessment process). (8) Annex guidance for selecting a safe location for venting flammable liquid storage cabinets has been added to 9.5.4.2. (9) Amended provisions for flammable liquids storage cabinets incorporate more extensive marking requirements. (10) A footnote added to Table 9.9.1, Fire Resistance Ratings for Liquid Storage Areas, indicates that no fire resistance rating is required for separation walls for accessory use areas of a small floor area. (11) Revisions to section 13.3 more clearly establish the required separation between detached unprotected liquids storage buildings, and both protected and unprotected exposed properties. (12) Numerous minor amendments clarify application of the provisions in Chapter 16. (13) New subsection 17.3.7 has been added to address process vessels used to heat liquids to temperatures at or above their flash points, as suggested by the U.S. Chemical Safety and Hazard Investigation Board. (14) An Annex A item has been added to 18.6.3 to provide guidance for selecting a safe location to which a flammable liquids dispensing area can be vented. (15) Amended subsection 21.4.3, Normal Venting for Storage Tanks, clarifies its application (an Annex A item is included to clarify that the interstitial space of a secondary containment tank does not require normal venting). (16) A new 21.5.2.1 clarifies that tightness testing is not required for an interstitial space of a secondary containment tank that maintains factory-applied vacuum. (17) A note and Annex A item added to Table 22.4.2.1, Minimum Shell-to-Shell Spacing of Aboveground Storage Tanks, explains the term "sum of adjacent diameters" and its determination. (18) Amended subsection 22.17.4 provides additional guidance on handling floating roof pontoons that have been breached by liquids or vapors. Finally, (19) amended section 23.14 no longer allows the use of water ballasts to secure underground tanks in areas subject to flooding.

NFPA 33 - The 2011 edition of the code provides requirements to mitigate fire and explosion hazards of spray application processes that use flammable or combustible materials. The code also includes specific requirements for powder coating processes, vehicle undercoating and body lining, limited finishing workstations, and hand lay-up and spray fabrication of glass fiber-reinforced plastics.

NFPA 70 - The 2014 edition of the code provides the latest benchmark for safe electrical design, installation, and inspection to protect people and property from electrical hazards. The revised edition makes technical and editorial revisions.

NFPA 72 - The 2013 edition of the codes and standards builds on the organizational changes made in the 2010 edition. New Chapter 7 adds "documentation" to improve the usability of the document. The chapter provides a central location for all the documentation requirements of the codes. The new chapter contains the documentation provisions and provides references to documentation requirements contained in other chapters. As an example, the new chapter contains the minimum documentation requirements that apply to any system covered by the codes and standards, while additional document requirements that might apply from other parts of the codes or from other governing laws, codes, or standards, are listed with an appropriate reference. The Record of Completion and Record of Inspection, Testing, and Maintenance forms are revised so they are easier to use. NFPA has reorganized Chapter 10, Fundamentals, in the 2013 edition of the codes and standards to provide a more user-friendly flow of requirements. In addition, requirements for circuit monitoring found in the previous edition of Chapter 10 have been moved to Chapter 12, Circuits and Pathways, a more logical location. NFPA made extensive usability changes in the inspection and testing tables of Chapter 14, Inspection, Testing, and Maintenance. The updated visual inspection table adds new inspection methods for each component along with the inspection frequency. The combined test methods and test frequency tables are now a single table in which the test method appears along with the test frequency for each component. The component listings in both tables are reorganized and coordinated so that components and equipment are easier to find. The 2013 edition of the codes and standards also includes many technical updates. Among these are changes in Chapter 10, Fundamentals, requiring supervising station operators and fire alarm system service providers to report to the authority having jurisdiction over certain conditions of system impairment. Updated requirements for inspection, testing, and service personnel qualifications better reflect the level of qualification needed for each type of activity. Revised Chapter 18, Notification Appliances, now requires documentation of the locations that require audible notification appliances. The revised code adds area of coverage requirements for visible notification appliances. Changes in Chapter 21, Emergency Control Function Interfaces, address requirements for elevator recall when sprinklers are installed in elevator pits. The requirements for occupant evacuation elevators have also been completely revised to conform to changes being made in ASME A.17.1/B44, Safety Code for Elevators and Escalators. Changes in Chapter 24, Emergency Communications Systems, regarding the use of microphones, address the use of textual and graphical visible notification appliances for primary or supplemental notification, and update the requirements for emergency command centers. Changes in Chapter 26, Supervising Station Alarm Systems, address alarm signal verification, alarm signal content, restoration of signals, and update the communications methods. In addition, new definitions for unwanted alarms more precisely identify the sources of unwanted alarms. Changes in Chapter 29, Single- and Multiple-Station Alarms and Household Fire Alarm Systems, address the connection of sprinkler waterflow switches to multiple-station alarms, and add new requirements addressing the smoke alarm resistance to common nuisance sources.

NFPA 90A - The 2012 edition updates many reference standards and corrects various terms to properly align with the standards from which they came.

NFPA 96 - The 2014 edition introduces new requirements for the use of solid fuel as a flavor enhancer. It also adds a listing requirement for fans used in exhaust systems, a diagram of a wall-mounted fan, and a requirement for exhaust fan activation for any appliance under an exhaust hood. NFPA 96 adds criteria that affect existing dry or wet chemical systems not in compliance with ANSI/UL 300 when significant changes are made to a system, and that establish a deadline for fire protection systems to meet the minimum requirements.

NFPA 101 - The 2012 edition expands what had been the definitions of "noncombustible material" and "limited-combustible material," and moves the material to new subsections in Chapter 4. The material addressing elevators for occupant-controlled evacuation that had comprised Annex B is moved to Chapter 7. A new section is added to Chapter 7 to address normally unoccupied building service equipment support areas. Chapter 8 expands the table addressing minimum fire protection ratings for opening protectives. Added to Chapter 9 are provisions for carbon monoxide detection. Added to some of the occupancy chapters are requirements for carbon monoxide detection. The health

care occupancies provisions are modified to permit the health care setting to be made more homelike.

NFPA 214 - The 2011 edition has made several clarifications to improve the standard's functionality for the user and to coordinate with other documents.

NFPA 409 - The 2011 edition of this standard is also a partial revision It added criteria to clarify where sprinklers are required for smaller hangars such as those used by general aviation entities. It removed unenforceable terms to comply with the Manual of Style for NFPA Technical Committee Documents.

NFPA 750 - The 2010 edition includes new annex material providing guidance on obstructions to nozzle discharge, and a number of editorial revisions.

NFPA 2001 - The 2012 edition includes a complete revision of Annex C. In addition, more information on the environmental impact of clean agents is added to Annex A.

NFPA 2010 - The 2010 edition contains minimum requirements for fixed aerosol fire extinguishing systems. The standard is intended for use by those who purchase, design, install, test, inspect, approve, list, operate, and maintain fixed aerosol fire-extinguishing systems so that such equipment will function as intended throughout its life.

UL 827 - the revised standard makes technical and editorial revisions.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comment

Comment: One commenter states that although the fire extinguisher, fire alarm, and fire sprinkler rules require the licensed system contractor to notify the authority having jurisdiction (AHJ) in writing to report red- and yellow-tagged systems, there is no requirement for the licensee to correct the deficiencies, replace the tags, and report the corrections to the AHJ. The commenter states that the requirements could have similar reporting time limitations to existing reporting of deficiencies.

Agency Response: TDI declines to make the suggested change. Adding a requirement to correct a deficiency, retag a device, and report the correction may be a substantive change requiring a new proposal to provide the proper notice. The scope of the suggested change also would exceed the authority of the state fire marshal. Fire protection regulations in Insurance Code Chapters 6001 - 6003 apply to regulated persons. Generally, the applicability of those statutes is not directly on the property owner. The state fire marshal has the authority, in certain situations, to order the correction of a dangerous condition. However, in most instances the responsibility and authority for addressing deficiencies is with the authority having jurisdiction. The purpose of regulations requiring the tagging of fire protection deficiency is to notify the authority having jurisdiction so that the authority is aware of the issue and can take action to require the property owner to correct the deficiency.

Section 34.616

Comment: Several commenters suggest that TDI not adopt the proposed amendment to §34.616(c)(7). One commenter states that while there can be need for expedience in obtaining information in investigations, the proposed amendment creates several problems. The commenter suggests that confidential information could be contained in the reports. Any information received by an AHJ could potentially be released through an open records request. The commenter suggests that this information may contain private security information held in confidence by the alarm monitoring station and the installer. The commenters also state that the proposed amendment may violate the Fourth and Fifth Amendment of the United States Constitution. One commenter states that if civil or criminal issues are raised, the AHJ or state fire marshal should obtain a warrant. One commenter also states they are concerned with the ability of an AHJ to harass an alarm dealer. Another commenter also suggests that AHJs have had adversarial relationships with registered monitoring service firms and installing companies. One commenter also states that the definition of an local authority having jurisdiction is too broad with respect to who would be able to request information under the proposed amendment. Additionally, one commenter states that the issue is for the Legislature to decide.

Agency Response: TDI agrees that proposed amendments to §34.616(c)(7) are not necessary at this time. TDI has revised the section as adopted accordingly.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: American Security Devices; City of Richardson; Commercial & Industrial Electronics Inc; Defender Protection Inc.; Dispatch Center Ltd; Intruder Alert Systems of San Antonio Inc.; Southwest Dispatch Center; and Texas Burglar and Fire Alarm Association.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.501, 34.507, 34.510, 34.511, 34.517, 34.520

STATUTORY AUTHORITY.

The amendments to Subchapter E are adopted under Government Code §417.004 and §417.005, and Insurance Code §§6001.051, 6001.052, and 36.001. Government Code §417.004 specifies that the commissioner of insurance performs the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson, and in the performance of other duties for the commissioner.

Insurance Code §6001.051(a) specifies that the department administers Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association, recognized by federal law or regulation, published by any nationally recognized standards-making organization, or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner must adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing

portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.510. Certificates of Registration.

(a) Required. Each firm and each branch office engaged in the business must obtain a certificate of registration from the state fire marshal.

(b) Properly equipped licensed person. Before engaging in the business, each registered firm must have at least one licensed person who shall be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate is limited to the business activities authorized under the license of its employees. A separate Type C registration is required to engage in the business of hydrostatic testing of DOT specification fire extinguisher cylinders.

(d) Business location. A specific business location must be maintained by each registered firm, the location of which must be indicated on the certificate.

(e) Shop. A registered firm must establish and maintain a shop, whether at a specific location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum, a firm must maintain the following:

(1) a copy of the most recently adopted edition of NFPA 10;

(2) a copy of the most recently adopted Insurance Code Chapter 6001 and this chapter;

(3) a list of manufacturers and/or types of portable extinguishers serviced with their respective manuals and/or part lists;

(4) portable weight scale to accurately measure extinguisher gross weights;

(5) seals or tamper indicators;

(6) temporary fire extinguishers replacements;

(7) if performing annual maintenance on carbon dioxide extinguishers, at a minimum, the following additional items are required:

(A) conductivity tester, and

(B) conductivity test label.

(8) if performing internal maintenance for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

(A) appropriate tools to remove and reinstall a valve head;

(B) charging adapters;

(C) Teflon tape, silicone grease, solvent or other lubricant used;

(D) supply of spare parts for respective manufacturers and type of fire extinguishers serviced;

(E) appropriate recharge agents;

(F) agent fill funnels;

(G) light designed to be used for internal inspections;

(H) dry chemical closed recovery system or sufficient new dry chemical;

(I) leak test equipment;

(J) dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

(K) verification collar rings; and

(L) six year maintenance labels.

(9) if performing hydrostatic testing for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the test or, at a minimum, the following additional items are required:

(A) working hydrostatic test pump, with flexible connection, check valves and fittings;

(B) protective cage or barrier;

(C) calibrated gauges;

(D) drying equipment;

(E) hydrostatic test log; and

(F) hydrostatic test labels.

(10) if performing maintenance for DOT specification portable fire extinguishers, a written notice must be kept on file indicating the registered firm that would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

(A) a current Type C registration issued through the State Fire Marshal's Office; and

(B) verification of registration through the US DOT.

(11) if installing or servicing a fixed fire extinguisher system, at a minimum, the following additional items are required:

(A) a copy of the latest adopted edition of applicable NFPA standards with respect to the type of system installed or serviced;

(B) applicable manufacturer's service manuals for the type of system; and

(C) any special tools or parts as required by the manufacturer's manual.

(f) Business vehicles. All vehicles used regularly in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one inch in height and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate-of-registration number must be designated in the following format: TX ECR-number.

(g) Branch Office Initial Certificate of Registration Fees and Expiration Dates. The initial fee for a branch office certificate of registration is $100 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(h) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, the new owners must submit an application for a new certificate to the state fire marshal 14 days prior to the change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(i) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require an application for a new or revised certificate.

(j) Duplicate certificates. A certificate holder must obtain a duplicate certificate from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(k) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the registered firm must submit written notification of the necessary change accompanied by the required fee to the State Fire Marshal's Office.

(l) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(m) Initial Alignment of the Expiration and Renewal Dates of Existing Branches. For branch offices in existence as of the effective date of this rule, branch office certificates of registration will expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration will prorate accordingly.

§34.511. Fire Extinguisher Licenses.

(a) Types of licenses. Each license must be identified by type, which indicates the business activity authorized under the license.

(1) Type PL--For planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems. A system planning licensee may also perform, supervise, or certify the installation or servicing of all pre-engineered fixed systems and portable fire extinguishers.

(2) Type A--For certifying or servicing the installation of all fixed fire extinguisher systems, other than pre-engineered systems; or for installing, certifying, or servicing all pre-engineered fixed fire extinguisher systems, and certifying and servicing of portable extinguishers.

(3) Type B--For servicing, certifying, and low-pressure hydrostatic testing of portables.

(4) Type K--For installing, certifying, or servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas, and certifying and servicing portable extinguishers.

(5) Type R--For installing, certifying, or servicing pre-engineered fixed residential range top fire extinguisher systems.

(b) Pocket license. A licensee must carry a pocket license for identification while engaged in the activities of the business.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction, accompanied by the required fee.

(d) Revised license. The change of a licensee's registered firm or mailing address requires a revised license. Within 14 days after the change requiring the revision, the license holder or registered firm must submit written notification of the necessary change accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A license is neither temporarily nor permanently transferable from one person to another.

(3) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.

(4) A Type A or Type K license will not be issued to an individual unless the individual has held an apprentice permit or a Type B license for at least six months or has held a license to service fixed extinguisher systems for at least six months from another state.

(5) It will not be necessary for the applicant of a Type R license to hold an apprentice permit prior to the issuance of a Type R license.

§34.517. Installation and Service.

(a) The following requirements are applicable to all portable extinguishers.

(1) Portable extinguishers must be installed, serviced, and maintained in compliance with the manufacturer's instructions and with the applicable standards adopted in this subchapter.

(2) A service tag certifying the work the licensee performed must be securely attached to the portable extinguisher on completion of the work.

(3) When requested in writing by the owner, a portable fire extinguisher of the type described in subparagraphs (A), (B), and (C) of this paragraph may be serviced according to the requirement of this subchapter, regardless of whether it carries the label of approval or listing of a testing laboratory approved according to this subchapter.

(A) All portable fire extinguishers serviced according to the requirements of the United States Coast Guard and installed for use in foreign shipping vessels;

(B) all portable carbon dioxide fire extinguishers serviced according to the requirements of the United States Department of Transportation; or

(C) cartridge actuated portable fire extinguishers used exclusively by employees of the firm owning the extinguishers.

(4) A licensee who services portable fire extinguishers according to paragraph (3) of this subsection, must comply with the following:

(A) The back of the service tag must be plainly marked with the words "No Listing Mark."

(B) All missing markings, code symbols, instructions, and information required by the applicable performance standard and fire test standard specified in §34.507(1) of this subchapter (relating to Adopted Standards), except for the approving or listing mark of the testing laboratory, must be affixed to each extinguisher in the form of a label designated in the standard.

(b) The following requirements are applicable to all fixed fire extinguisher systems.

(1) Fixed systems must be planned, installed, and serviced in compliance with the manufacturer's installation manuals and specifications or the applicable standards adopted in this subchapter.

(2) On completion of the installation of a pre-engineered fixed fire extinguisher system, a licensee authorized to certify pre-engineered fixed fire extinguishing systems under the provisions of this subchapter must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(3) On completion of the installation of a fixed fire extinguisher system other than a pre-engineered system, a Type A or Type PL licensee must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications, plans developed by a Type PL licensee or professional engineer, or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(4) A service tag certifying the work the licensee performed must be securely attached to the system on completion of the work.

(c) Pre-engineered fixed fire extinguisher systems must be installed and serviced by a licensee authorized to install or service pre-engineered fixed fire extinguishing systems under the provisions of this subchapter.

(d) A pre-engineered fixed fire extinguisher system, except those covered by subsection (f) of this section, which has been previously installed in one location may be reinstalled in another location if:

(1) the system is of the size and type necessary to protect all hazards;

(2) all parts and equipment, when installed, will function as designed by the manufacturer; and

(3) the system must comply with all applicable adopted standards.

(e) Fixed fire extinguisher systems other than pre-engineered systems must be planned, installed, or serviced by a Type PL licensee or professional engineer. Installation and servicing of such a system may also be performed by or supervised by a Type A licensee. An employee of the registered firm may install such systems, under the direct supervision of a Type A or PL licensee, without obtaining a license or permit.

(f) All pre-engineered fixed fire extinguishing systems, installed or modified after July 1, 1996, according to NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300). After January 1, 2008 all existing pre-engineered fixed fire extinguishing systems, installed in according to NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of UL Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300) or a red tag must be attached following the procedures in §34.521 of this subchapter (relating to Red Tags).

(g) If the installation or servicing of a fixed fire extinguishing system includes the installation or servicing of any part of a fire alarm or detection system or a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or actuation devices in connection with the fire extinguishing system, the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003 must be satisfied.

(h) The fixed temperature-sensing elements of the fusible metal alloy type, replaced while servicing a kitchen hood fire extinguishing system, must bear the manufacturer's date stamp, which must be within one year of the date of the replacement. The year of manufacture for new fusible links must be listed on the service tag under service performed.

(i) The disposable actuation cartridge, replaced while servicing a kitchen hood fire extinguisher system, must bear the date of replacement.

(j) After operating the pull pin or locking device during maintenance of a portable fire extinguisher, the flag of the new tamper seal must bear the year it was attached. The date must be imprinted or embossed on the flag of the new tamper seal. Dates applied with a marker are not allowed.

§34.520. Service Tags.

(a) After any service, the licensee must complete a service tag in detail, indicating all work that done, and then attach the tag to the portable or fixed system in such a position as to permit convenient inspection and not hamper its actuation or operation. The signature of the licensee on the service tag certifies that the service performed complies with requirements of law.

(b) A new service tag, yellow tag or red tag, as applicable, must be attached each time service is performed.

(c) Service tags must bear the following information in the format of the tag shown in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and telephone number;

(3) firm's certificate-of-registration number;

(4) licensee's name and license number;

(5) licensee's signature (a stamped signature is prohibited);

(6) month and year (to be punched);

(7) type of work (to be punched);

(8) service performed;

(9) name and address of owner or occupant; and

(10) extinguisher type, size, and location.

(d) Tags must be 5-1/4 inches in height and 2-5/8 inches in width. Service tags must not be red in color.

(e) Tags may be printed and established for any five-year period.

(f) A service tag may be removed only by an authorized employee of a registered firm, an employee of the state fire marshal's office, or an authorized representative of a governmental agency with regulatory authority.

(g) Service tag:
Figure: 28 TAC §34.520(g) (No change.)

(h) Adhesive label type tags are permitted. The label must bear all information required by subsection (c) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
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Texas Department of Insurance
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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.604, 34.607, 34.610, 34.611, 34.613, 34.616, 34.620, 34.623, 34.630

STATUTORY AUTHORITY.

The amendments to Subchapter F are adopted under Government Code §417.004 and §417.005, and Insurance Code §§6002.051, 6002.052, and 36.001. Government Code §417.004 specifies that the commissioner performs the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association, standards recognized by federal law or regulation, or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner must also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter and that in adopting these standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.604. Exceptions.

The exceptions of Insurance Code §6002.155 are applicable to the sections of this subchapter. Professionally exempt individuals or organizations are exempt from license requirements only and will be responsible for ensuring that planning and installation of fire detection or fire alarm devices are performed according to standards adopted in §34.607 of this chapter except when the planning and installation complies with a more recent edition of an adopted standard.

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance with sections of this subchapter, Insurance Code Chapter 6002, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards will be available for public inspection at the State Fire Marshal's Office.

(1) NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam.

(2) NFPA 12-2011, Standard on Carbon Dioxide Extinguishing Systems.

(3) NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems.

(4) NFPA 13-2013, Standard for the Installation of Sprinkler Systems.

(5) NFPA 13D-2013, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(6) NFPA 13R-2013, Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies.

(7) NFPA 15-2012, Standard for Water Spray Fixed Systems for Fire Protection.

(8) NFPA 16-2011, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems.

(9) NFPA 17-2013, Standard for Dry Chemical Extinguishing Systems.

(10) NFPA 17A-2013, Standard for Wet Chemical Extinguishing Systems.

(11) NFPA 25-2014, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(12) NFPA 70-2014, National Electrical Code.

(13) NFPA 72-2013, National Fire Alarm Code.

(14) NFPA 90A-2012, Standard for the Installation of Air Conditioning and Ventilating Systems.

(15) NFPA 101(r)-2012, or later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code)®, or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section instead of NFPA 101.

(16) UL 827 October 1, 2008, Standard for Central Station Alarm Services.

(17) NFPA 2001-2012, Standard on Clean Agent Fire Extinguisher Systems.

(b) The acceptable alternative model code sets are:

(1) the International Building Code®-2003 or later editions, and the International Fire Code-2003 or later editions; or

(2) the International Residential Code® for One- and Two-Family Dwellings-2003 or later editions.

§34.610. Certificates of Registration.

(a) Business location. A specific business location must be maintained by each registered firm. The location must be indicated on the certificate.

(b) Designated Employee. Each registered firm must specify one full-time employee holding a license under this subchapter as the firm's designated employee on their Fire Alarm Certificate of Registration Application, Form No. SF031, and on their Renewal Application for Fire Alarm Certificate of Registration, Form No. SF084. Any change in the designated employee under this section must be submitted in writing to the State Fire Marshal's Office within 14 days of its occurrence. An individual may not serve as a designated employee for more than one registered firm.

(c) Business vehicles. All vehicles regularly used in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate number. The numbers and letters must be at least one inch high and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format: TX ACR-number.

(d) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, a complete application for a new certificate must be submitted to the state fire marshal at least 14 days prior to such change.

(2) A partial change in a firm's ownership requires a revised certificate if it affects the firm's name, location, or mailing address.

(e) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require a revised certificate.

(f) Branch Office Initial Certificate of Registration Fees and Expiration Dates. The initial fee for a branch office certificate of registration is $150 and not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(g) Duplicate certificates. A duplicate certificate must be obtained from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(h) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the certificate holder must submit written notification of the necessary change accompanied by the required fee.

(i) Initial Alignment of the Expiration and Renewal Dates of Existing Branches. For branch offices in existence as of the effective date of this rule, branch office certificates of registration must expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration must prorate accordingly.

§34.611. Licenses and Approvals.

(a) Types of licenses and approvals. The following licenses and approvals are issued by the State Fire Marshal's Office according to Insurance Code Chapter 6002 and this subchapter. As required by Insurance Code Chapter 6002, an individual or entity must be licensed or approved to lawfully perform the functions for which the license or approval is issued.

(1) Fire alarm technician license--For installing, inspecting, servicing, testing, maintaining, monitoring, and certifying fire alarm or fire detection devices and systems.

(2) Fire alarm monitoring technician license--For the monitoring of fire alarm or fire detection devices and systems.

(3) Instructor approval--For providing training at an approved training school in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences.

(4) Residential fire alarm superintendent single station license--For planning, installing, certifying, inspecting, testing, servicing, and maintaining single station smoke or heat detectors which are not a part of or connected to any other detection device or system in single-family or two-family residences.

(5) Residential fire alarm superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices and systems in single-family or two-family residences. A residential fire alarm superintendent may act as a fire alarm technician.

(6) Fire alarm planning superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices.

(7) Residential fire alarm technician license--For installing, certifying, inspecting, and servicing, but not planning, fire alarm or fire detection devices and systems in single-family or two-family residences.

(8) Training school approval--For conducting required training necessary for obtaining a residential fire alarm technician license.

(b) Pocket license and approval.

(1) A licensee must carry a pocket license for identification while engaged in the activities of the business.

(2) An instructor must carry the instructor's approval while providing training in an approved training school on the installing, certifying, inspecting, and servicing of fire alarm or detection systems in single-family or two-family residences.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Licensee responsibilities relating to revised licenses. A change in the licensee's name, the licensee's mailing address, or a new or additional registered firm employing the licensee requires a revised license. Within 14 days after the change requiring the revision, the license holder must submit written notification of the necessary change accompanied by the required fee.

(e) Registered firms' responsibilities relating to licensees. A registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

(f) Restrictions on licensees and registered firms.

(1) A licensee must not engage in any act of the business unless employed by or as an agent of a registered firm and holding an unexpired license.

(2) Each person who engages in the activities of the business must have the appropriate license issued by the state fire marshal unless excepted from the licensing provisions by Insurance Code §6002.155.

(g) Restrictions on approval holders. Approvals are not transferable.

(h) Responsibilities relating to revised approvals. A change in an instructor's name or mailing address requires a revised approval. The change in the mailing address of a fire alarm training school requires a revised approval. Within 14 days after the change requiring the revision, the approval holder must submit written notification of the necessary change accompanied by the required fee.

§34.613. Applications.

(a) Approvals and Certificates of Registration.

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this subchapter (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by the Insurance Code Chapter 6002 and this subchapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or his representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of the Insurance Code Chapter 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25 percent of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business; and a copy of the corporation's current franchise tax certificate of good standing issued by the comptroller.

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation, partners, if any, or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner and a statement that the monitoring service is in compliance with NFPA 72 as adopted in §34.607 of this subchapter (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire Alarm Licenses.

(1) To be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by Insurance Code Chapter 6002 and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test regarding Insurance Code Chapter 6002 and the Fire Alarm Rules, as designated by the State Fire Marshal's Office. The qualifying test given as part of a training school for residential fire alarm technician license must include questions regarding Chapter 6002 and the Fire Alarm Rules.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from NICET confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for NICET certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and Training School Approvals.

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent's license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems, unless the applicant has held a fire alarm planning superintendent's license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal Applications.

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in §34.630 of this subchapter and must be accompanied by all fees, documents, and information required by Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license; however, the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete Applications. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

§34.616. Sales, Installation, and Service.

(a) Residential Alarms (Single Station).

(1) Registered firms may employ persons exempt from the licensing provisions of the Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of the Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of said employees regarding the provisions of the Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire Detection and Fire Alarm Devices or Systems Other than Residential Single Station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to the Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent, for the work permitted by the license. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system and/or a fire extinguisher system other than inspection and testing of detection or supervisory devices, the licensing requirements of the Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning and installation of fire detection or fire alarm devices or systems, including monitoring equipment, must be according to standards adopted in §34.607 of this chapter (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of an adopted standard or a Tentative Interim Amendment published as effective by the NFPA.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined

by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the current adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local authority having jurisdiction must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring Requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.25.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local authority having jurisdiction a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two-family-dwelling, notification of the local authority having jurisdiction is not required.

§34.623. Yellow Labels.

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and adopted standards or is not being tested or maintained according to those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable codes and standards.

(c) After attaching a yellow label, the licensee or the registered firm must notify the property owner, occupant or their representative and the local authority having jurisdiction in writing indicating the conditions with which the system does not comply with the applicable codes and standards. The notification must be postmarked, emailed, faxed or hand delivered within five business days of the attachment of the yellow label.

(d) Yellow labels must remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The yellow label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority.

(e) Yellow labels must be approximately three inches in height and three inches in width and must have an adhesive on the back that allows for label removal.

(f) Labels must be yellow in color with printed black lettering.

(g) Yellow labels must bear the following information in the format of the label as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters in at least 10-point bold face type);

(2) "SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS" (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the yellow label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the yellow label;

(h) Yellow label:

Figure: 28 TAC §34.623(h)

§34.630. Application and Renewal Forms.

(a) The commissioner adopts by reference the License Application for Individuals For All Types of Fire Alarm Licenses, Form Number SF032, which contains instructions for completion of the form and requires information to be provided regarding the applicant and the applicant's employer.

(b) The commissioner adopts by reference the Renewal Application For Fire Alarm Individual License, Form Number SF094, which contains instructions for completion of the form; information regarding late fees; and requires information to be provided regarding the renewing applicant.

(c) The commissioner adopts by reference the Instructor Approval Application, Form Number SF247, which contains instructions for completion of the form and requires information to be provided regarding the applicant.

(d) The commissioner adopts by reference the Renewal Application For Instructor Approval, Form Number SF255, which contains instructions for completion of the form and requires information to be provided regarding the applicant.

(e) The commissioner adopts by reference the Training School Approval Application, Form Number SF246, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule.

(f) The commissioner adopts by reference the Renewal Application for Training School Approval form, which contains instructions for completion of the form, provides information regarding necessary filing documents by business entity type, and requires the training entity applicant to provide information regarding the applicant, course location, and schedule.

(g) The commissioner adopts by reference the Fire Alarm Certificate of Registration Application, Form Number SF031, which contains instructions for completion of the form, provides information regarding necessary filing documents by business entity type, and requires information to be provided regarding the applicant.

(h) The commissioner adopts by reference the Renewal Application For Fire Alarm Certificate of Registration, Form Number SF084, which contains instructions for completion of the form and requires information to be provided regarding the applicant.

(i) The forms adopted by reference in this section are available at the department's website at www.tdi.texas.gov.

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 9, 2014.

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Sara Waitt
General Counsel
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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.707, 34.711, 34.716, 34.718, 34.719, 34.721

STATUTORY AUTHORITY.

The amendments to Subchapter G are adopted under Government Code §417.004 and §417.005 and Insurance Code §§6003.051, 6003.052, 6003.054, and 36.001. Government Code §417.004 specifies that the commissioner performs the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson, and in the performance of other duties for the commissioner.

Insurance Code §6003.051(a) specifies that the department administers Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal must implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.711. Responsible Managing Employee (RME) License.

(a) Required. Each person designated as a responsible managing employee by a registered firm must have a license issued by the state fire marshal.

(b) Pocket License. An RME must carry a pocket license for identification while engaged in the activities of an RME.

(c) Duplicate License. An RME must obtain a duplicate license from the state fire marshal to replace a lost or destroyed license. The license holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Revised Licenses. The change of licensee's employer, home address, or mailing address requires a revised license. The license holder must submit written notification of the necessary change within 14 days of the change accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A registered firm must notify the state fire marshal within 14 days after termination of employment of an RME.

(3) A license is neither temporarily nor permanently transferable from one person to another.

(f) Types.

(1) RME-General--A license issued to an individual who is designated by a registered firm to ensure that any fire protection sprinkler system, as planned, installed, maintained, or serviced, meets the standards provided by law.

(2) RME-Dwelling--A license issued to an individual who is designated by a registered firm to ensure that the fire protection sprinkler system for a one- and two-family dwelling, as planned, installed, maintained, or serviced, meets the standards provided by law.

(3) RME-Underground Fire Main--A license issued to an individual who is designated by a registered firm to ensure that the underground fire main for a fire protection sprinkler system, as installed, maintained, or serviced, meets the standards provided by law.

(4) RME-General Inspector--A license issued to an individual who is designated by a registered firm to perform the inspection, test, and maintenance service for a fire protection sprinkler system according to the standards adopted in this subchapter.

§34.716. Installation, Maintenance, and Service.

(a) All fire protection sprinkler systems installed under Insurance Code Chapter 6003 must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An "RME-General" may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An "RME-Dwelling" may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An "RME-Underground Fire Main" may only supervise the installation of an assembly of underground piping or conduits, that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

(b) On completion of the installation, the licensed responsible managing employee type G, D or U (as applicable) must have affixed a contractor's material and test certificate for aboveground or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must be obtained from the State Fire Marshal's Office. The certificate must be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's Material and Test Certificates." The certificates must be available for examination by the state fire marshal or the state fire marshal's representative on request. The certificates must be retained for the life of the system; and

(3) third copy to be sent to the local authority having jurisdiction within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. The inspection, test, and maintenance service of a fire protection sprinkler system, except a one- and two-family dwelling, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) The firm must keep complete records of all service, maintenance, testing, and certification operations. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

(e) All vehicles regularly used in service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one inches in height and must be permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format TX: SCR-number.

(f) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed by the firm.

(g) The planning of an automatic fire protection sprinkler system must be performed under the direct supervision of the appropriately licensed RME.

(h) The planning, installation, or service of a fire protection sprinkler system must be in accord with the minimum requirements of the applicable adopted standards in §34.707 of this title (relating to Adopted Standards) except when the plan, installation, or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

§34.718. Installation Tags.

(a) On completion of the installation of a fire protection sprinkler system, all information for an installation tag must be completed in detail to indicate the water supply test data obtained during the time of installation. The tag must be securely attached by a durable method to the riser of each system. The fire protection system must not be tagged until the system complies with the applicable NFPA installation standard, including freeze protection methods.

(b) On completion of the installation of a fire protection sprinkler system and after performing the required initial tests and inspections, an ITM tag, in addition to the installation tag, must be attached to each riser in accordance with the procedures in this subchapter for completing and attaching ITM tags.

(c) A new installation tag must be attached, in addition to the existing installation tag, each time more than twenty sprinkler heads are added to a system.

(d) Installation tags must remain on the system for the life of the system.

(e) Installation tags may be printed for multiple years.

(f) Installation tags must be white in color, 5-1/4 inches in height, and 2-5/8 inches in width. The tag and attaching mechanism must be sufficiently durable to remain attached to the system for the life of the system.

(g) Installation tags must contain the following information in the format of the sample tag in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, phone number, and certificate of registration number;

(3) day, month, and year (to be punched);

(4) "THIS TAG CONTAINS IMPORTANT INFORMATION ABOUT THIS SPRINKLER SYSTEM AND MUST REMAIN ATTACHED TO THE SYSTEM FOR THE LIFE OF THE SYSTEM." (All capital letters, at least 10-point boldface type.);

(5) name and address of owner or occupant;

(6) building number, location, or system number;

(7) static and flowing pressure of the main drain test taken at the riser or lead-in;

(8) static and residual pressure with the measured in gallons per minute flowing of the water supply flow test used to hydraulically design the system;

(9) signature of RME-G or D; and

(10) license number of RME-G or D.

(h) Sample installation tag:
Figure: 28 TAC §34.718(h)

§34.719. Service Tags.

(a) After any service, all sections of a service tag must be completed in detail, indicating all the services that have been performed, and then the tag must be attached to the respective riser of each system.

(b) After any service, if noncompliant conditions or impairments exist, the service person must attach, in addition to attaching a service tag, the appropriate yellow tag or red tag according to the procedures in this subchapter for completing and attaching yellow and red tags.

(c) A new service tag must be attached each time service is performed.

(d) Service tags must remain on the system for five years, after which they may only be removed by an authorized employee of a registered firm. An employee of the state fire marshal's office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess tags at any time.

(e) Tags may be printed for multiple years.

(f) Tags must be white, 5-1/4 inches in height, and 2-5/8 inches in width.

(g) Service tags must contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address and phone number;

(3) firm's certificate of registration number;

(4) applicable RME's name and license number;

(5) signature of service person;

(6) day, month, and year (to be punched);

(7) type of work (to be punched);

(8) name and address of owner or occupant;

(9) building, location or system number;

(10) a list of services performed;

(11) date any yellow tag conditions were corrected (punch if applicable); and

(12) date any red tag conditions were corrected (punch if applicable).

(h) Sample service tag:
Figure: 28 TAC §34.719(h) (No change.)

§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with applicable NFPA standards, is not being tested or maintained according to adopted standards, or found to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency impairment, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and to indicate that corrective action is necessary.

(b) The signature of the service person or inspector on a yellow tag certifies the conditions listed on the tag cause the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the service person or inspector must notify the building owner or the building owner's representative and the authority having jurisdiction in writing of all noncompliant conditions. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the noncompliant conditions were corrected.

(e) Yellow tags may be printed for multiple years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of items not compliant with NFPA standards.

(g) Sample yellow tag:
Figure: 28 TAC §34.721(g)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
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Texas Department of Insurance
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§116.13, 116.710, 116.711, 116.715, 116.716, 116.717, 116.718, 116.721, and 116.765.

Section 116.710 and §116.711 are adopted *with changes* to the proposed text as published in the February 28, 2014, issue of the *Texas Register* (39 TexReg 1339). Sections 116.13, 116.715, 116.716, 116.717, 116.718, 116.721, and 116.765 are adopted *without changes* to the proposed text and therefore will not be republished.

Sections 116.13; 116.710; 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) - (J), and (L) - (N); 116.715(a) - (e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; 116.721; and 116.765 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The Texas Flexible Permit Program (FPP) rules (Chapter 116, §116.13 and Subchapter G, Flexible Permits) first became effective on December 8, 1994. The FPP was developed in response to direction from the commission at the January 21, 1994, policy agenda meeting. The FPP rules were developed after considering the positional papers presented by industry, environmental groups, and local government environmental programs under the supervision of Task Force 21, a regulatory negotiation committee of the Texas Water Commission and the Texas Natural Resource Conservation Commission (predecessor agencies of the TCEQ), which was comprised of representatives of legal and engineering professions, public utilities, business associations, local chambers of commerce, city and county government, consumer and environmental groups, and community organizations for the purpose of advising the agency on industrial air quality, water quality, and waste management issues. The rules created a new type of minor New Source Review (NSR) permit called a flexible permit, which functions as an alternative to the traditional preconstruction permits that are authorized in Chapter 116, Subchapter B, New Source Review Permits. Flexible permits were designed to exchange flexibility for emission reductions with the final goal being a well-controlled facility, without relaxation of any control requirements. At the time the FPP was developed, the commission lacked the authority to require an air quality permit for grandfathered facilities. The FPP was intended to provide grandfathered facilities with a voluntary authorization mechanism that would reduce emissions, and significant reductions were achieved that were otherwise not required by either state or federal law. Although that feature was environmentally beneficial, the program was not limited to use by grandfathered facilities. Many of the FPP rules were repealed and readopted in 1998, and various amendments to the FPP rules were adopted during the period 1999 - 2003.

Only one flexible permit can be issued for a particular plant or active account. However, multiple emission caps, multiple individual emission limits, or any combination thereof can be included in a flexible permit. The applicant for a flexible permit can combine existing facilities and new facilities into the flexible permit. The flexible permit then becomes the controlling authorization for some or all facilities included in the permit, succeeding any existing minor NSR permits that may have been applicable to some or all of the facilities. The flexible permit is not and has never been a substitute for or in lieu of major NSR permitting if major NSR review is triggered, nor can the flexible permit be used to circumvent or ignore compliance with other federal requirements, such as a national emission standard for hazardous air pollutants. The FPP is intended to eliminate the need for owners or operators of participating facilities to submit an amendment application each time certain operational or physical changes are made at a permitted facility. This type of flexibility without backsliding from various requirements and without environmental harm provides owners and operators options for their operations. The environmental benefits of the FPP have included the permitting of grandfathered facilities, substantial emission reductions from the installation of controls, and a comprehensive evaluation of emission impacts.

On September 23, 2009, the EPA published notice in the *Federal Register* (74 *FR* 48480) (hereafter "Notice") of its intent to disapprove the TCEQ FPP rules that were first submitted to the EPA as a proposed SIP revision in 1994 as well as subsequent rule amendments that were submitted several times between 1998 and 2003. Although the Federal Clean Air Act (FCAA) requires that proposed revisions to the SIP be reviewed within 18 months after submittal *(See* 42 United States Code (USC), §7410(k)(1)(B) and (2)), more than 15 years passed from the initial submittal before the EPA took any formal action, and EPA did so only in response to litigation brought by holders of flexible permits *(See* BCCA Appeal Group, *et al* v. United States EPA *et al,* No. 3-08CV1491-G (N.D. Texas)). In the Notice, the EPA cited several assertions as the basis for disapproval of the FPP as a minor NSR revision. The EPA published final notice of disapproval of the FPP in the *Federal Register* on July 15, 2010 (75 *FR* 41311), hereafter "Disapproval Notice."

While maintaining that its FPP rules, as adopted and implemented prior to this rulemaking, are fully approvable as revisions to the SIP, the commission adopted, on December 14, 2010, rule amendments to address the deficiencies alleged in the EPA's proposed disapproval notice and to provide even greater clarity that the FPP rules operate as a minor NSR program in the state of Texas. The commission also adopted new §116.765. This new section provided that the FPP rules as amended would be applicable 60 days after final approval by the EPA, and that the rules as they existed prior to January 5, 2011, would continue in effect until the EPA's approval.

Subsequently, the State of Texas, various Texas and national industry groups and the Chamber of Commerce of the United States challenged the EPA's disapproval. On August 13, 2012, the United States Court of Appeals for the Fifth Circuit held that the EPA's disapproval action did not withstand Federal Administrative Procedure Act review. The court granted the petition for review, vacated the EPA's final rule, and remanded the matter for EPA's further consideration. EPA did not appeal the court's decision. Based on that opinion, the TCEQ requested, by letter dated September 21, 2012, that the EPA re-consider the rules that the EPA formally disapproved.

On September 24, 2013, the commission adopted a SIP revision consisting of resubmittal of the FPP rules adopted 1994 - 2003, which were, mostly, resubmitted in whole. The exceptions to that were portions of rules and three subsections that the EPA returned to TCEQ, all regarding hazardous air pollutant permitting and a rule regarding compliance history. In addition, the commission withdrew from EPA consideration the existing facility flexible permit rules, which were part of the suite of rules for grandfathered sources adopted in 2002. As of May 2013, all of the permits issued under the existing facility flexible permit rules have been converted "de-flexed" to Chapter 116, Subchapter B permits. These rules were withdrawn from SIP consideration, or not resubmitted for SIP consideration, because they are not requirements under the FCAA. Finally, the commission submitted portions of the rule amendments adopted in 2010. This submittal was transmitted to EPA on October 21, 2013. On February 12, 2014, EPA published a notice in the *Federal Register* which proposes conditional approval of the TCEQ's October 21, 2013, submittal.

As the EPA recognizes, under the applicable federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the National Ambient Air Quality Standards (NAAQS). The development of

NSR requirements and procedures tailored for the air quality needs of each state is not only consistent with the FCAA, it is encouraged under the law and the EPA's implementing regulations *(See* 42 USC, §7407(a) and 40 Code of Federal Regulations (CFR) §51.101(e) and (g); *See* also *Safe Air for Everyone v. United States EPA,* 488 F.3d 1088, 1092 (9th Cir. 2007)). States have significant discretion to tailor minor NSR requirements that are consistent with the requirements of 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and may also provide a rationale for why the rules are at least as stringent as the 40 CFR Part 51 requirements where the revisions are different from 40 CFR Part 51. The commission continues to maintain that the FPP rules as adopted and implemented prior to this rulemaking are approvable as a minor NSR permit program revision to the Texas SIP. Based on the opinion of the Fifth Circuit, the commission now adopts amendments to several rules in Subchapter G to ensure that the rules can be approved as part of the Texas SIP. Specifically, these amendments remove text that is not necessary for EPA approval, restore rule text removed in 2010, make non-substantive changes, and ensure that the rules conform to requirements of the Texas Administrative Code (TAC).

Sections 116.720, 116.740(a), and 116.750 were amended by the commission and adopted as revisions to the SIP in 2010, but have not been formally submitted to the EPA. Those will be submitted to the EPA together with the rule amendments that are part of this rulemaking.

The remainder of the rules in Subchapter G have also been conditionally approved by the EPA. These rules were not amended in 2010 nor are amended in this rulemaking. Specifically, those rules are §§116.714, 116.722, and 116.760. Section 116.730 remains an FPP rule, but is not required for the SIP.

On June 26, 2014, EPA signed notice of final conditional approval of TCEQ's FPP, effective 30 days after publication of the notice in the *Federal Register.* The condition requires TCEQ to conduct rulemaking and submit it to EPA no later than November 30, 2014. This rulemaking satisfies that condition.

Section by Section Discussion

§116.13, Flexible Permit Definitions

The commission adopts the deletion of the definitions of continuous emission monitoring system (CEMS), continuous parameter monitoring system (CPMS), and predictive emissions monitoring system (PEMS) under §116.13(1), (2), and (6), respectively. These definitions were added in 2010 to support more detailed monitoring requirements that were also added at that time, in response to the EPA's Disapproval Notice. The 2010 monitoring language which referred to CEMS, CPMS, and PEMS has also been deleted as part of this rulemaking, so it is no longer necessary to maintain these definitions in §116.13. The remaining definitions in §116.13 have been renumbered accordingly.

§116.710, Applicability

The commission adopts an amendment to §116.710(a)(3), to replace the phrase, "a flexible permit" with the phrase "an existing flexible permit." This change was made in response to a comment about the consistency of §116.710(a)(3) with similar language in §116.710(a)(2), and has no substantive effect on the rule requirements.

The commission adopts the deletion of §116.710(a)(5), which contains language stipulating that applications and permits under Subchapter G must comply with applicable requirements of Subchapter B, Division 5 and 6 of Chapter 116 (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively), and stipulating that no person shall use Subchapter G to circumvent applicable requirements of Prevention of Significant Deterioration (PSD) or Nonattainment NSR permitting. This language was added to this section in 2010 in response to the EPA's Disapproval Notice, which alleged that the existing rules did not sufficiently address PSD and Nonattainment NSR applicability and did not clearly prohibit circumvention of those requirements. However, the applicability of PSD and Nonattainment NSR are clearly spelled out elsewhere in Chapter 116 and in federal regulations, and it is redundant and unnecessary to maintain this language in §116.710, so TCEQ has removed this language.

§116.711, Flexible Permit Application

The commission adopts an amendment to §116.711(2)(E), to delete the phrase "as defined in 40 CFR Part 61" and replace it with the phrase "subject to 40 CFR Part 61." This change was made in response to a comment suggesting that the revised language would be more appropriate for identifying facilities which were subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. This change to the rule language has no substantive effect on the rule requirements.

The commission adopts the deletion of language in §116.711(2)(H) and (I) which specifies that before Subchapter G can be used, a project analysis to determine the applicability of federal Nonattainment NSR or PSD review is required. This language was added in 2010 in response to comments made by the EPA in the Disapproval Notice, which stated that Texas' rules must require this analysis before an applicant could proceed with an application for a flexible permit. However, the commission maintained and continues to take the position that this additional language is not required under the FCAA for SIP approval of the FPP rules. In addition, other portions of Chapter 116 and federal regulations already sufficiently address the applicability of federal NSR requirements. Therefore, the commission has removed this requirement.

The commission also adopts the deletion of language in §116.711(2)(J), which specifies that any flexible permit application or permit amendment shall include an air quality analysis to demonstrate that the proposed action will not interfere with attainment and maintenance of the NAAQS. This language was added in 2010 to address comments in the EPA's Disapproval Notice which alleged that the FPP did not sufficiently protect the NAAQS. However, the commission maintained and continues to take the position that this additional language is not required under the FCAA for SIP approval of the FPP rules. In addition, other portions of Chapter 116 and federal regulations already sufficiently address the applicability of federal NSR requirements. Therefore, the commission has deleted this requirement.

The commission adopts the deletion of existing §116.711(2)(M)(vi), which specifies that a permit application for a new flexible permit must include calculations used to determine the controlled emission rates from each facility, in accordance with TCEQ Air Permits Division guidance. This language is not necessary because other portions of §116.711 already specify that the applicant must provide emission calculations based on the proposed control technology.

The commission also adopts minor revisions throughout this section, to correct and update various references.

§116.715, General and Special Conditions

The commission adopts the deletion of §116.715(c)(6)(A)(iv), which requires the permit holder to maintain records of any air quality analysis required under §116.718(c). This recordkeeping requirement was added in 2010, in support of other 2010 rule changes which required the permit holder to conduct an air quality analysis for any changes conducted under §116.718(c). This language is no longer necessary because the commission is also deleting the air quality analysis requirement in §116.718(c) as part of this rulemaking.

The commission adopts the amendment to §116.715(c)(6)(E) such that permit records will be required to be maintained for only two years after the date the information or data is obtained, rather than five years. This recordkeeping period was increased from two years to five years in 2010, in response to comments in the EPA's March 12, 2008, correspondence. However, a five-year retention period for minor NSR is not a requirement of the FCAA, so the commission is restoring the two-year recordkeeping period that was in the rule prior to the 2010 amendments. However, flexible permit holders who are subject to the requirements of the Federal Operating Permit (Title V) Program are required to maintain records for five years under the requirements of that program.

The commission adopts an amendment to remove the last sentence of §116.715(c)(8), relating to flexible permit representations. This sentence was added in 2010 in response to EPA's comments in its disapproval of the TCEQ's FPP. This text is not necessary in this rule for the commission to effectively enforce permits. As stated in the TCEQ's interpretative letter to EPA dated December 9, 2013, which accompanies the flexible permit SIP revision discussed earlier in this preamble, the commission's rule §116.715(c)(11) provides that acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all applicable rules and orders of the commission issued in conformity with the Texas Clean Air Act (TCAA) and the conditions precedent to the granting of the permit, which necessarily includes representations in applications submitted to the commission. In addition, §116.721(a) provides that all representations with regard to construction plans and operation procedures in an application for a flexible permit become conditions upon which the permit is issued. TCEQ has the authority to enforce all permit conditions, including all representations. Therefore, even with the deletion of this language, the TCEQ's position is that noncompliance with the representations is noncompliance with the permit and may lead to appropriate enforcement action.

The commission adopts the deletion of §116.715(c)(12), which contains detailed monitoring and reporting requirements associated with facilities which are under an emissions cap. These provisions were added to the rule in 2010, in response to comments in the EPA's Disapproval Notice, and the EPA's March 12, 2008, correspondence, which alleged that the FPP rules did not provide sufficient monitoring, recordkeeping, and reporting mechanisms to ensure accountability and to allow TCEQ to determine compliance. With the deletion of these requirements, TCEQ will continue to specify appropriate monitoring and recordkeeping requirements through permit conditions, on a case-by-case basis, as was done prior to the 2010 amendments.

The commission amends §116.715(d) by relocating the text of existing §116.715(d)(1) to within §116.715(d). The text being relocated requires that monitoring systems accurately determine all emissions in terms of mass per unit of time, and that monitoring systems authorized for use in a permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. The commission also adopts the deletion of §116.715(d)(1), as this requirement is now located under §116.715(d).

The commission adopts the deletion of §116.715(d)(2) and (3), which contain detailed requirements for monitoring systems and monitoring procedures used to determine compliance with flexible permit emission caps. These requirements were added in 2010 in response to the EPA's Disapproval Notice, which alleged that the FPP rules did not provide sufficient mechanisms for monitoring and compliance determinations. However, as the FPP is a minor NSR program, these detailed monitoring requirements are not required by the FCAA or by implementing regulations. This change will allow TCEQ to specify appropriate monitoring provisions and compliance provisions within each permit on a case-by-case basis.

§116.716, Emission Caps and Individual Emission Limitations

The commission adopts an amendment to §116.716(f) which removes unnecessary language referring to practical enforceability. The commission also adopts an amendment to §116.716(f)(1) by replacing the term "lowering" with the more appropriate term, "decreasing." The commission also amends §116.716(f)(3), by relocating the requirement to file an amendment application to authorize an increase in an emission cap, into §116.716(f)(2). The remaining portion of current §116.716(f)(3), relating to major NSR applicability and the adjustment of emission caps, has been deleted as this is not required for compliance with the FCAA and major NSR applicability is addressed elsewhere in Chapter 116. Existing §116.716(f)(4), relating to the adjustment of an emission cap as a result of new state or federal regulations, has been renumbered as §116.716(f)(3).

The commission adopts the deletion of §116.716(g), which requires that each emission cap or individual emission limitation in a flexible permit shall specify an annual emission limitation and a practically enforceable short-term emission limitation. This language was added in 2010, in response to statements in the EPA's March 12, 2008, letter concerning alleged deficiencies in the FPP with regard to practical enforceability of permits. The commission has deleted this requirement because flexible permits contain appropriate and enforceable annual limitations or short-term limitations, established on a case-by-case basis.

The commission adopts the deletion of §116.716(h), which specifies that when an emission cap is established or adjusted, major NSR requirements must be met for the new or modified sources prior to issuance, amendment, or alteration of the flexible permit. This language was added in 2010 in response to the EPA's Disapproval Notice, which alleged that the FPP rules did not sufficiently address major NSR applicability, and did not provide specific, replicable procedures for the adjustment of an emission cap. However, other portions of Chapter 116 and applicable federal regulations already require compliance with major NSR requirements, so the commission has eliminated this unnecessary language.

§116.717, Implementation Schedule for Additional Controls

The commission adopts an amendment to §116.717 by deleting language added in 2010 in response to the EPA's March 12, 2008, letter, and restoring the rule language that was in place prior to the 2010 amendments. The language which has been deleted specified that control technology required by federal major NSR requirements must be operational at start of operation

and is not eligible for an implementation schedule under this section. This language is unnecessary because other state and federal regulations concerning major NSR already require that federally-required control equipment be in place prior to the operation of the facility. In addition, the commission is deleting language adopted in 2010 which requires that the permit holder obtain a permit amendment or alteration to modify a control implementation schedule. This change provides improved flexibility for the permit holder and for the commission in making revisions to a control implementation schedule.

§116.718, Significant Emission Increase

The commission adopts the deletion of §116.718(b) and (c), and has renumbered §116.718(a) as §116.718. Section 116.718(b) relates to determining if a significant emission increase has occurred at a facility or project that is subject to major NSR. Section 116.718(c) requires the completion of an air quality analysis to demonstrate that a proposed action will not interfere with attainment and maintenance of the NAAQS. These subsections were adopted in 2010 in response to alleged deficiencies identified in the EPA's Disapproval Notice and in the EPA's March 12, 2008, letter. The commission is deleting these subsections because other regulations already address major NSR requirements, and because it is not necessary to specifically require an air quality analysis for every change at minor NSR facilities covered by a flexible permit. With the deletion of these subsections, §116.718 has effectively been restored to the rule language that was in place prior to the 2010 amendments. The commission also adopts a minor grammatical revision to §116.718 that would replace the word "nor" with the word "or."

§116.721, Amendments and Alterations

The commission adopts the deletion of language in §116.721(a) and (c), which requires a permit amendment prior to the addition of a new facility or facilities, or any change that constitutes a major modification as defined by §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions. The language being deleted was adopted in 2010, in response to the EPA's Disapproval Notice and the EPA's March 12, 2008, letter. The language is not necessary because other rules in Subchapter G and Chapter 116 already require a permit amendment to add a new facility, and require compliance with applicable major NSR requirements.

The commission has also corrected a cross reference in §116.721(b)(3), which should refer to the best available control technology requirements of §116.711(2), not paragraph (3).

§116.765, Compliance Schedule

The commission adopts the deletion of the text of existing §116.765(a), which contains language adopted in 2010 to clarify the compliance date of these rule sections. The commission adopts the relettering of existing §116.765(b) as §116.765(a), and amends the text to reflect the sections being submitted to the EPA for approval as a SIP revision. The compliance date is 60 days after publication in the *Federal Register* of the final approval by the EPA of all or portions of the sections submitted for approval.

The commission also adopts the relettering of existing §116.765(c) as §116.765(b). This rule specifies that until the EPA approves the sections submitted for SIP approval, the rules as they existed immediately before January 5, 2011, are continued in effect.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rules is to amend various sections of Chapter 116, Subchapters A and G to address the opinion issued by the United States Court of Appeals for the Fifth Circuit on August 13, 2012, and to ensure that the rules can be a federally approved part of the Texas SIP. Specifically, these amendments remove text that is not necessary for EPA approval, restore rule text removed in 2010, make non-substantive changes, and ensure that the rules conform to requirements of the TAC.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." The specific intent of the adopted rules is to amend various sections of Chapter 116, Subchapters A and G to address the opinion issued by the United States Court of Appeals for the Fifth Circuit on August 13, 2012, and to ensure that the rules can be a federally approved part of the Texas SIP. Specifically, these amendments remove text that is not necessary for EPA approval, restore rule text removed in 2010, make non-substantive changes, and ensure that the rules conform to requirements of the TAC. This rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the Texas SIP, and the requirements of the FCAA and its associated regulations, and is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the TCAA, and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments on the draft regulatory impact analysis determination were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to

the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to amend the rules related to flexible permits in order to obtain federal approval of the rules into the Texas SIP. The adopted rules will not create any additional burden on private real property. The rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and commission rules in 30 TAC Chapter 281, Applications Processing, Subchapter B. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The rule amendments will benefit the environment by ensuring that the rules meet applicable federal and state requirements, and is adequately enforceable so that air quality is protected. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 116 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 116 requirements.

Public Comment

The commission held a public hearing on the proposed rules in Austin on March 18, 2014. The comment period closed March 24, 2014. The commission received comments from the Business Coalition for Clean Air Appeal Group (BCCA), ExxonMobil (EM), the Texas Industry Project (TIP), and the Texas Oil and Gas Association (TXOGA). All commenters supported the proposed rulemaking. EM suggested specific changes to portions of the rule language.

Response to Comments

Comment:

TXOGA expressed support for the proposed amendments, and stated that the updated rule will help provide certainty in the air permitting process for Texas industry while maintaining compliance with the FCAA. BCCA and TIP expressed support for the proposed amendments, and stated that the FPP complies with the FCAA. BCCA and TIP also stated that flexible permits are an essential part of the Texas permitting program, and have contributed to marked and sustained improvements in Texas air quality. BCCA and TIP submitted supplemental information from TCEQ's web site detailing the progress which has been made in emission reductions of criteria pollutants and air toxics resulting in improved ambient air quality in Texas. BCCA and TIP also submitted information regarding reductions in ozone formation and emissions of certain air pollutants in the Houston area. EM indicated that it supports the comments submitted by BCCA and TIP.

Response:

The commission appreciates the commenters' support of the proposed amendments, and agrees with the commenters that the FPP and underlying rules meet FCAA requirements. The commission also agrees that flexible permits are a key component of the Texas air permitting program, and the use of flexible permits has resulted in substantial emission reductions. The FPP has been one important part of the overall strategy for clean air, and the state's efforts have resulted in improved ambient air quality in Texas. No changes were made to the rules in response to this comment.

Comment:

EM suggested a revision to the text of §116.710(a)(3) for consistency with similar language in §116.710(a)(2). Specifically, EM suggested that the phrase, "a flexible permit" be replaced with the phrase "an existing flexible permit."

Response:

The commission agrees that the suggested revision improves the readability and consistency of the rule language, while not substantively affecting the rule requirements. The commission has revised the rule text as suggested by the commenter.

Comment:

EM stated that because §116.711 is applicable to both a proposed facility and to physical and operational changes to an existing facility, the term "proposed facility" in §§116.711, 116.711(2)(A)(i), 116.711(2)(B), 116.711(2)(G), 116.711(2)(H), 116.711(2)(I), and 116.711(2)(L) should be revised to "facility" to ensure clarity and consistency.

Response:

The commission acknowledges that the application requirements of §116.711 apply to new facilities and to permit amendments related to the modification of existing facilities. Within the context of this section, the terms "proposed facility" and "facility" are appropriately used and can apply to both a proposed new facility or to an existing facility which is undergoing a proposed change that requires a permit amendment. No changes were made to the rules in response to this comment.

Comment:

EM suggested that §116.711(2)(E), which requires that facilities applying for a flexible permit meet the requirements of any applicable NESHAP under 40 CFR Part 61, be revised by deleting the phrase, "as defined in 40 CFR Part 61..." and replacing it with the phrase "subject to 40 CFR Part 61."

Response:

The commission agrees that the language suggested by EM is more consistent with terminology typically used to describe the applicability of 40 CFR Part 61, while not substantively affecting the rule requirements. The commission has revised the rule text as suggested by the commenter.

Comment:

EM suggested that the last two sentences in §116.711(2)(G) relating to the submission of additional engineering data, calculations, test data, or monitoring data after a flexible permit has been issued, be relocated to §116.715 (specifically §116.715(e)), which addresses General or Special Conditions in the permit. EM noted that §116.711 relates to information which is required to be submitted with the permit application, while the selected language relates to information which must be submitted after the permit has been issued.

Response:

The commission acknowledges that the language in §116.711(2)(G) which EM has suggested be relocated relates to information and data which would be submitted after the permit has been issued, rather than with the application. As such, the commission understands EM's concern that the location of these requirements in a section relating to the permit application could be confusing. However, this language has been located within §116.711 for many years without known issues. In addition, the commission does not agree that the language in question can be easily relocated to §116.715 without substantial reorganization and renumbering of that section. EPA has issued a conditional approval of the FPP program based on the 2013 SIP submittal and February 2014 rule proposal, and the commission is not making any changes which might put at risk the SIP approvability of the adopted rule. No changes to the rules were made in response to this comment.

Comment:

EM suggested that the term "source" as used in §116.715(f), should be replaced with "facility" for clarity and consistency. Section 116.715(f) specifies that the executive director may require a special condition requiring written approval before a source can be constructed under a standard permit or permit by rule (PBR).

Response:

Although permits under Chapter 116 and PBRs under Chapter 106 generally authorize emissions from facilities and not "sources," there are situations where a non-facility source (such as a plant road, parking area, or raw material stockpile) which is associated with a permitted facility may be regulated by the associated permit. The commission is retaining the term "source" in §116.715(f) in order to ensure that the commission retains the authority to limit the use of PBRs and standard permits for sources which are associated with a flexible permit facility, when it is necessary to protect human health and the environment. No changes to the rules were made in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.13

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and Title I of the Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*

This adopted amendment implements THSC, §§382.002, 382.003, 382.011, 382.012, 382.051, and 382.0513.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §§116.710, 116.711, 116.715 - 116.718, 116.721, 116.765

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §7.101, concerning Violation, which provides that a person may not violate a statute or rule under the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; THSC, §381.0511, concerning Permit Consolidation and Amendment; THSC, §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification; THSC, §382.0515, concerning Application for Permit; THSC, §382.0517, concerning Determination of Administrative Completion of Application; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and Title I of the Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*

This adopted rulemaking implements THSC, §§382.002, 382.003, 382.011, 382.012, 382.051, 381.0511, 382.0512, 382.0513, 382.0514, 382.0515, 382.0517, and 382.0518.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Changes to Facilities). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

(1) only one flexible permit may be issued for an account;

(2) modifications to existing facilities included in a flexible permit may be authorized by the amendment of an existing flexible permit;

(3) a new facility may be authorized by the amendment of an existing flexible permit; and

(4) a flexible permit may not cover facilities at more than one account.

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(e) of this title, provided however, that all facilities authorized by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission.

(c) Submittal under seal of Texas licensed professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(f) of this title.

(d) Responsibility for flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.711. Flexible Permit Application.

In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit a permit application which must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following:

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility, group of facilities, or account as determined under §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all applicable rules of the commission and with the intent of the Texas Clean Air Act, including protection of the health and physical property of the people.

(ii) In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(B) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT).

(i) All facilities authorized by the flexible permit shall utilize BACT consistent with the following:

(I) All new facilities must utilize BACT.

(II) Existing facilities must utilize BACT with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions. Control technol-

ogy that is more stringent than BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of existing facilities, provided however, that the existing level of control may not be lessened for any facility from its current authorization.

(ii) For pollutants from new or modified facilities that constitute a new major stationary source or major modification as defined by §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), control technology shall be demonstrated as required by §§116.150, 116.151, or 116.160 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas; New Major Source or Major Modification in Nonattainment Area Other Than Ozone; and Prevention of Significant Deterioration Requirements, respectively), as applicable, for each new or modified facility.

(iii) For new facilities and proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the use of BACT shall be demonstrated for the individual facility or affected source.

(D) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the United States Environmental Protection Agency under authority granted under the Federal Clean Air Act, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility subject to 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

(F) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing shall be required as specified in each flexible permit.

(H) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements concerning nonattainment review in this chapter.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling or ambient monitoring may be required by the commission's Air Permits Division to determine the air quality impacts from the facility, group of facilities, or account. In conducting a review of a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed source is an affected source (as defined in §116.15(1) of this title), it shall comply with all applicable requirements under Subchapter E of this chapter.

(L) Mass cap and trade allocations. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(M) Application content. In addition to other requirements of this chapter, the applicant shall:

(i) identify each air contaminant for which an emission cap is desired;

(ii) identify each facility to be included in the flexible permit;

(iii) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(iv) for each emission cap, identify all associated EPNs and facilities (including description, common name, and facility identification number) and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(v) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology; and

(vi) if the flexible permit application includes facilities currently authorized by a permit issued under Subchapter B of this chapter (relating to New Source Review Permits), the applicant shall identify any terms, conditions, and representations in the Subchapter B permit or permits which will be superseded by or incorporated into the flexible permit. The applicant shall include an analysis of how the conditions and control requirements of Subchapter B permits will be carried forward in the proposed flexible permit.

(N) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each facility and demonstrate compliance with all emission caps at expected maximum production capacity.

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 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.32 - 321.34, 321.36 - 321.40, 321.44, 321.46, 321.47

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§321.32 - 321.34, 321.36 - 321.40, 321.44, 321.46, and 321.47.

Sections 321.32 and 321.36 are adopted *with changes* to the proposed text as published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1868). Sections 321.33, 321.34, 321.37 - 321.40, 321.44, 321.46, and 321.47 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

These rules implement the federal Concentrated Animal Feeding Operation (CAFO) Regulations and Effluent Guidelines in accordance with the Texas Memorandum of Agreement (MOA) with the United States Environmental Protection Agency (EPA) regarding delegation of the federal National Pollutant Discharge Elimination System (NPDES) CAFO Program.

The primary purpose of the adopted amendments is to implement revised federal CAFO Regulations and Effluent Guidelines in this subchapter that were published in the *Federal Register* on November 20, 2008, and were effective on December 22, 2008, in accordance with the MOA with the EPA regarding delegation of the federal NPDES CAFO Program. Due to court challenges that successfully vacated portions of the rules, EPA did not finalize these rules until July 19, 2012.

The commission adopted this subchapter in July 2004 for NPDES purposes and to make the Texas rules consistent with federal regulations. The commission modified the CAFO rules in October 2006 to allow dry litter poultry operations located in a sole-source surface drinking water protection zone to obtain authorization under the CAFO general permit rather than by individual permit, to remove the duty to apply for permit coverage for other dry litter poultry CAFOs based on a potential to discharge, and to add a requirement for all CAFOs to develop and implement a Nutrient Management Plan (NMP). The EPA adopted changes to the federal CAFO Regulations and Effluent Guidelines in response to the order issued by the United States Court of Appeals for the Second Circuit in *Waterkeeper Alliance, et al. v. EPA,* 399 F.3d 486 (2d Cir. 2005). The federal rules became effective on December 22, 2008, changing the requirements to operate CAFOs under the Federal Clean Water Act (See 73 *Federal Register* 70418 (November 20, 2008) (to be codified at 40 Code of Federal Regulations (CFR) Parts 9, 122, and 412)). Due to various court challenges that vacated portions of the new rules, the new CAFO rules were not finalized until July 19, 2012. Specifically, the new federal regulations: 1) require permitted CAFOs to submit their NMPs with their applications for individual permits or notices of intent for authorization under general permits; 2) require permitting authorities to review the NMPs and provide the public with an opportunity for meaningful public review and comment; 3) require incorporation of the terms of the NMP into the NPDES permit; 4) establish a list of changes to the NMP that would constitute a substantial change to the terms of a facilities NMP, thus triggering permit modification and public notice; 5) delete the provision that allowed CAFOs to use a 100-year, 24-hour containment structure to fulfill the no discharge requirement for new source swine, veal calf, and poultry operations and replaced it with a requirement that the facility demonstrate through a rigorous modeling analysis that it has designed a containment system that will comply with the no discharge requirement; and 6) delete the voluntary superior performance new source performance standard (NSPS) for new swine, veal calf, and poultry operations.

Also, EPA adopted two approaches to determine rates of application of manure, litter, and wastewater in NMPs: the linear rate approach and the narrative rate approach. The commission incorporates only the narrative rate approach.

The EPA recognized in the NPDES delegation MOA with TCEQ that Subchapter B is the authority for the Texas Pollutant Discharge Elimination System (TPDES) CAFO program. The MOA requires that TCEQ adopt federal regulation changes into its state regulations and requirements. Therefore, amendments to the subchapter are necessary to establish the requirements that will allow TCEQ to continue to authorize CAFOs and for consistency with the federal CAFO rules.

The commission took into consideration the following state and federal actions in proposing these amendments to Subchapter B: 1) changes to the federal NPDES CAFO Regulations adopted December 22, 2008, under 40 CFR Parts 122 and 412 and finalized on July 19, 2012; and 2) the NPDES MOA between TCEQ and EPA Region VI (September 14, 1998), which establishes policies, responsibilities, and program commitments to allow for continued assumption of the NPDES program by the TCEQ.

Section by Section Discussion

The commission adopts administrative changes throughout the rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These adopted changes include correcting rule structure, certain terminology, and grammatical errors. These changes are non-substantive and generally are not specifically discussed in this preamble.

§321.32, Definitions

Adopted §321.32 amends several definitions with slight modifications to enhance understanding and readability. The adopted amendment to §321.32 also adds definitions for Annual(ly); Bypass; Cooling pond; Design rainfall event; Dry litter poultry operation; Operational; Substantial change; and Upset, which are common terms used in the adopted amendments to this subchapter. The following terms are no longer used or needed in the adopted amendments and were deleted from this section: Air contaminant; 100-year, 24-hour rainfall event; and Waste.

§321.33, Applicability and Required Authorizations

The adopted amendment to §321.33 deletes subsection (g) that allowed CAFOs that filed an application for an individual permit before July 27, 2004, to continue to operate until the commission acts upon the application because this provision no longer applies to any CAFOs. The adopted amendment adds "increasing application acreage" and "using a crop or yield goal to determine maximum application rates for manure, sludge, or wastewater that is not authorized by the permit or authorization" in adopted subsection (g) (formerly subsection (h)), as activities that trigger a permit amendment. Section 321.33(j) was deleted from this section and moved to adopted §321.40(l) for organizational pur-

poses. The provision in adopted §321.33(j) (formerly subsection (l)), relating to permits with no expiration date, was deleted because there are no longer any CAFO permits in the state without expiration dates.

§321.34, Permit Applications

The adopted amendment to §321.34(f)(3) revises the description of the recharge feature certification requirements to clarify that the recharge feature certification shall be developed in accordance with TCEQ guidance document RG-433 and to modify wording to be more consistent with use of the guidance documents.

§321.36, Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs)

The adopted amendment to §321.36 deletes subsection (c) because the requirements are located in §321.37 and §321.38. The adopted amendment to §321.36(c)(1) (formerly subsection (d)(1)) deletes the deadline to develop and implement an NMP, as this date is already past. Subsection (c)(1) is also revised to clarify that only large CAFOs are required to develop and implement an NMP and identify who can certify an NMP. The adopted amendment modifies §321.36(c)(1) (formerly subsection (d)(1)) to incorporate the requirements of the narrative rate approach for developing application rates for manure, sludge, and wastewater. The adopted amendment also adds §321.36(c)(2) to incorporate terms of the NMP; §321.36(c)(3) to incorporate requirements for changes to the NMP; and §321.36(c)(4) - (6) to incorporate requirements for substantial and non-substantial changes to the NMP. Section 321.36(e)(1) and (4) were moved to adopted §321.40(m) and §321.36(e)(2) and (3) were moved to adopted §321.46(d)(2) for organizational consistency. Adopted §321.36(g) was modified to apply only to dairy CAFOs in sole-source impairment zones. Adopted §321.36(g)(3) was revised to reflect the correct name of RG-408. Section 321.36(h) was moved to adopted §321.46(c) for organizational consistency. Section 321.36(i) was moved to adopted §321.46(d) for organizational consistency. Adopted §321.36(g) was revised to add the following requirements to the annual report: actual crop(s) planted and actual yield(s) for each land management unit (LMU); analyses of manure, litter, and wastewater that were land applied; amount of any supplemental fertilizer applied during the reporting period; and results of application rate calculations for each LMU. In addition, the February 15 submission date for the annual report was moved to March 31 and the reporting period from January 1 to December 31 was modified to reflect the actual 12-month reporting period used by the CAFO. Section 321.36(k) was moved to adopted §321.39(b); §321.36(l) was moved to adopted §321.39(g); and §321.36(m) was moved to adopted §321.39(h), all for organizational consistency.

§321.37, Effluent Limitations for Concentrated Animal Feeding Operation (CAFO) Production Areas

Adopted §321.37 changes the title "Effluent Limitations for Discharges from Production Areas" to "Effluent Limitations for Concentrated Animal Feeding Operation (CAFO) Production Areas." The adopted amendment to §321.37(c) replaces the 100-year, 24-hour design rainfall event as a design criteria for new source swine, veal, and poultry CAFOs with a no discharge design criteria, and would add a statement that the upset/bypass requirements in 40 CFR §122.41(m) and (n) apply to new source swine, veal, and poultry CAFOs. Section 321.37(g), which describes voluntary superior environmental performance standards for new source swine, veal, and poultry CAFOs, was deleted for consistency with the federal rule.

§321.38, Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)

Adopted §321.38(a) was revised to clarify that any CAFO operator that does not use a retention control structure (RCS) is not subject to §321.38(e) - (g). Adopted §321.38(e)(7)(A) was reorganized to improve readability and delete the 100-year, 24-hour design criteria for new source swine, veal, and poultry CAFOs. Adopted §321.38(e)(7)(B) was added to provide the design and modeling criteria for new source swine, veal, and poultry CAFOs. Adopted §321.38(g) was revised to incorporate more detailed design, construction, and testing requirements for RCSs.

§321.39, Operational Requirements Applicable to Concentrated Feeding Operations (CAFOs)

Adopted §321.39 changes the title from "Control Facility Operational Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)" to "Operational Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)." Adopted §321.39(a) was revised to clarify that any CAFO operator that does not use an RCS is not subject to §321.39(b) and (c). Adopted §321.39(b)(2) and (4) were revised to replace references to "25-year or 100-year," and "required rainfall event" with the newly defined term "design rainfall event." Adopted §321.39(b)(5) was revised to clarify liner recertification requirements. Adopted §321.39(b)(6) was moved from §321.36(k). Adopted §321.39(e) was revised to clarify requirements for temporary storage of manure and sludge. Adopted §321.39(g)(3) was moved from §321.36(l).

§321.40, Concentrated Animal Feeding Operation (CAFO) Land Application Requirements

The adopted amendment to §321.40(h) makes revisions for readability and to clarify that land application of manure, sludge, and wastewater into surface water in the state is not authorized even though buffers are not required in certain circumstances. The adopted amendment deletes §321.40(k) as the deadline has passed. Adopted §321.40(k) (formerly subsection (l)) was changed to "Nutrient requirement." Adopted §321.40(k) was also revised and reformatted for readability and to clarify that nutrient utilization plan (NUP) requirements remain in effect for state-only CAFOs and dairy CAFOs located in major sole-source impairment zones. All other TPDES CAFOs would no longer be required to develop a NUP due to new NMP requirements in adopted §321.36(c) superseding the NUP requirements. Adopted §321.40(l) was moved from §321.33(j). Adopted §321.40(m) was amended to require TPDES CAFOs other than those in a major sole source impairment zone to acquire soil samples at a 0-6-inch depth only.

§321.44, Concentrated Animal Feeding Operation (CAFO) Notification Requirements

The adopted amendment to §321.44(a) adds paragraph (6), which adds any upset that exceeds an effluent limitation to the required discharge notification for consistency with federal regulations. The adopted amendment to §321.44(b)(1) deletes the requirements to analyze for fecal and total coliform bacteria and replace it with a requirement to analyze for *Escherichia coli.* The adopted amendment also clarifies that samples must be analyzed by a National Environmental Laboratory Accreditation Conference (NELAC) accredited lab. Adopted §321.44(b)(3) was added to clarify the procedures required in the event of a

discharge outside normal business hours when maximum hold times for certain parameters are exceeded.

§321.46, Concentrated Animal Feeding Operation (CAFO) Pollution Prevention Plan, Site Evaluation, Recordkeeping, and Reporting

The adopted amendment revises §321.46(a) to improve readability and to clarify the requirements for what must be included in the pollution prevention plan. Adopted §321.46(c) was revised to incorporate inspection requirements moved from §321.36(h). Adopted §321.46(d) was revised to incorporate recordkeeping requirements moved from 321.36(i).

§321.47, Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated A Concentrated Animal Feeding Operations (CAFOs)

Adopted §321.47(b)(3) was amended to include examples of alternative practices that may be used instead of a control facility, and §321.47(b)(3)(A) and (B) were deleted and their requirements incorporated into adopted §321.47(c). Section 321.47(c)(3) was moved to adopted §321.47(d)(2) and §321.47(d)(2) was moved to adopted §321.47(c)(3) for organizational consistency. Other provisions in adopted §321.47(c) and (d) were revised for consistency with adopted §321.38 and §321.40. Adopted §321.47(e)(3), (5), and (6) were revised to replace references to "25-year or 100-year," and "required rainfall event" with the newly defined term "Design rainfall event." Adopted §321.47(e)(6) was revised for consistency with adopted §321.39. Adopted §321.47(f) was revised for consistency with adopted §321.40. Adopted §321.47(g) was revised for consistency with adopted §321.36(f) and §321.40(m). Adopted §321.47(k) was revised for consistency with §321.41. Adopted §321.47(l)(1) was revised to clarify that inspections of the control facility and land application equipment would be conducted on a weekly basis. Section 321.47(n) was revised for consistency with adopted §321.39(h).

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule changes are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule that has the specific intent of protecting the environment or reducing risks to human health from environmental exposure; and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

These rules implement the federal CAFO Regulations and Effluent Guidelines in accordance with the MOA with the EPA regarding delegation of the federal NPDES CAFO Program.

The primary purpose of the adopted amendments is to implement revised federal CAFO Regulations and Effluent Guidelines in this subchapter that were published in the *Federal Register* on November 20, 2008, and were effective on December 22, 2008, in accordance with the MOA with the EPA regarding delegation of the federal NPDES CAFO Program. Due to court challenges that successfully vacated portions of the rules, EPA did not finalize these rules until July 19, 2012.

The specific intent of the adopted rule changes is to implement revised federal CAFO Regulations and Effluent Guidelines in accordance with the MOA between the state of Texas and EPA delegating the NPDES program to the state. The federal CAFO rule revisions were originally effective on December 22, 2008, but due to various court challenges EPA did not finalize the rules until July 19, 2012. TCEQ is required by the MOA to adopt rule changes within one year or within two years if a statutory change is necessary to implement the rule changes.

These changes require CAFOs seeking permitting to submit an NMP with their applications for an individual permit or with their NOI for authorization under the CAFO general permit. The revised rules require TCEQ to review the NMPs, incorporate terms of the NMP into CAFO permits, and provide the public with an opportunity for public review and comment. The amendments also revise the NSPSs for swine, veal, calf, and poultry CAFOs, so that these facilities must evaluate the design of their RCSs to show that there will not be a discharge from those structures under any conditions. Therefore, it is not anticipated that the rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this rulemaking does not meet the definition of a "major environmental rule."

Additionally, the rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to rules adopted by an agency that: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an assessment of whether the adopted rule changes constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rule changes are to incorporate the terms of the NMP into CAFO permits and increase public participation in the CAFO permitting process. Additionally, the rulemaking would require new source swine, veal, calf, and poultry operations to size their RCSs so that they do not discharge in any size rain event. The adopted rule changes would substantially advance this stated purpose by inserting and changing current rule language to comply with the stated purpose of the rulemaking.

Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property because it only affects real property to the extent of requiring

new source swine, veal, calf, and chicken CAFOs to have larger RCSs to prevent discharges of contaminated wastewater.

There are no burdens imposed on private real property, and the benefits to society are increased by preventing discharges from new source swine, veal, calf, and poultry CAFOs. The rule changes do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond what would otherwise exist in the absence of the regulation. Therefore, these rule changes, if adopted, do not constitute a taking under the Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et seq.,* and therefore, it must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules at 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the adopted rules include: that discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

These adopted rules are consistent with CMP goals and policies because these adopted rules do not allow a discharge or allow disposal of manure, litter, or wastewater from Animal Feeding Operations (AFOs) into or adjacent to water in the state, except in accordance with an individual permit, the CAFO general permit, or other authorization issued by the commission. Further, these adopted rules require that manure, litter, and wastewater generated by an AFO under these adopted rules be retained and used in an appropriate and beneficial manner as provided by commission rules, orders, authorizations, the CAFO general permit, or individual permits.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies. These rules do not create or have a direct or significant adverse effect on any coastal natural resource areas because the adopted rules were developed to reduce the possibility of discharges into coastal waters by ensuring that AFOs in all regions of the state, including coastal areas, are properly designed, constructed, operated, and maintained to protect all water bodies, including coastal waters.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on April 8, 2104 in Austin, Texas. The comment period closed on April 14, 2104. The commission received comments from the: Texas Association of Dairymen, Texas Cattle Feeders Association, Texas Farm Bureau, Texas Pork Producers Association and Texas Poultry Federation (CAFO Industry Groups).

Generally, the CAFO Industry Groups supported the rule. The CAFO Industry Groups suggested specific changes to the rulemaking as noted in the Response to Comments section of this preamble.

Response to Comments

The CAFO Industry Groups comment that the group appreciates the efforts of TCEQ staff to maintain consistency between the TCEQ CAFO General Permit and TCEQ CAFO rules, supports the current TCEQ permitting system and process for both TPDES individual permits and the CAFO General Permit as both permitting programs have been effectively implemented by the TCEQ and the CAFO permittees for the past decade. The CAFO Industry Groups appreciate the ability to apply for permits based on regulatory provisions that are clearly articulated in writing, which minimizes the need for special permit conditions. The CAFO Industry Groups note that the proposed changes to the CAFO rule, while not insignificant, appear to be incorporated in a reasonable and effective manner.

The commission acknowledges these comments.

The CAFO Industry Groups comment that §321.36(c)(3) - (6) should be clarified in the CAFO rule as to what constitutes a substantial versus non-substantial change to the terms of the NMP.

The commission agrees that additional clarity would help provide CAFO owners/operators a better understanding of what constitutes a substantial versus non-substantial change to the terms of the NMP. In response to this comment the following changes were made. The definition of "Substantial change" was moved from §321.36(c)(4) to §321.32(56), so that it is grouped with the other definitions. The definition was also clarified by adding the phrase "other changes are considered non-substantial." Additionally, §321.36(c)(4) was revised to clarify a substantial versus non-substantial change and now reads as follows: "(4) Substantial change vs. non-substantial change. Those changes that constitute a substantial change are defined in §321.32(56). Non-substantial changes include, but are not limited to, changes to the site-specific LMU information in the Phosphorus index Worksheet, changes to the maximum application rate of nitrogen or phosphorus to be land applied or changes in the phosphorus index rating."

The CAFO Industry Groups comment that since the NRCS no longer uses Code 633 for manure-related management activities, TCEQ should revise §321.36(c)(1)(C) to delete the reference to Code 633. In addition, the CAFO Industry Groups comment that since CAFOs have accurate and reliable site-specific historic crop yield data, TCEQ should allow CAFOs to use this data.

In response to the comment, §321.36(c)(1)(C) was revised and now reads as follows: "(C) determine the crop requirement or the crop removal rate, as appropriate, from the S Crops Table as contained in the Texas NRCS 590 software Tool, site-specific historic CAFO yield data, or other sources as approved by the executive director;..." This updates the applicable code currently

in use for calculating crop yields and allows CAFOs to use site-specific historic crop yield data, where appropriate.

The CAFO Industry Groups comment that §321.36(f)(2) and (3)(B) describing soil sample collection procedures for dairy CAFOs in major sole-source impairment zones are not consistent and should be revised.

In response to the comment, §321.36(f)(2) of the rule was revised and now reads as follows: "(2) Annual sampling. The TCEQ or its designee shall annually collect soil samples according to the following procedures, for each LMU owned, operated, controlled, rented or leased by the CAFO operator where manure, litter, or wastewater was applied during the preceding year. The results of these analyses shall be used in determining the application rates for manure, sludge and wastewater."

The CAFO Industry Groups comment that on several occasions, it has proven to be difficult to meet the February 15 deadline for submission of annual reports to the TCEQ. This is especially true of those crop rotations that require collection of soil samples in December, where the delay in shipment and laboratory analysis can be significant during the holiday season. Also, the additional records and reporting requirements now required by EPA will increase the amount of time necessary to complete the TCEQ Annual Report. The CAFO Industry therefore requests that TCEQ revise the reporting deadline to be March 31 of each year. In addition, the reporting form should allow for the actual 12-month reporting period to be entered by the permittee.

In response to the comment, the reporting deadline was changed from February 15 of each year to March 31 of each year and the reporting period from January 1 to December 31 was modified to reflect the actual 12-month reporting period used by the CAFO.

The CAFO Industry Groups comment that in the years when no manure or wastewater is land applied, especially in drought years, there may not be a laboratory analysis to submit to TCEQ every year. Therefore, the CAFO Industry Groups recommend revising §321.36(g)(12) to add the phrase "that was land applied."

In response to the comment, §321.36(g)(12) was revised as suggested and now reads as follows: "(12) the actual nitrogen and phosphorus content of manure, sludge, or process wastewater that was land applied."

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general authority necessary to carry out its duties and general powers under its jurisdiction; TWC, §5.103 and §5.105, which provides the commission with the general authority to adopt rules; TWC, §26.011, regarding the commission's authority over water quality in the state; TWC, §26.027, regarding the commission's authority to issue permits for discharges into or adjacent to water in the state; TWC, §26.0286, regarding the procedures applicable to permits for certain Concentrated Animal Feeding Operation; TWC, §26.040, which provides the commission the authority to issue general permits to authorize the discharge of waste into or adjacent to water in the state; TWC, §26.041, which allows the commission to use any means provided by TWC, Chapter 26 to prevent a discharge of waste that is injurious to public health; and TWC, §26.121, which prohibits the discharge of waste into or adjacent to any water in the state except as authorized with a commission permit or other authorization.

These amendments implement the TWC, §§5,103, 26.026, and 26.040 in addition to the Federal Clean Water Act, §303 (33 United States Code, §1313).

§321.32. Definitions.

All definitions in Texas Water Code (TWC), Chapter 26 and Chapter 3 and Chapter 305 of this title (relating to Definitions and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agronomic rates--The land application of animal manure, sludge, or wastewater at rates of application in accordance with a plan for nutrient management which will enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth based upon a realistic yield goal.

(2) Animal feeding operation (AFO)--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the lot or facility. Two or more AFOs under common ownership are a single AFO if they adjoin each other, or if they use a common area or system for the beneficial use of manure, sludge, or wastewater. A land management unit is not part of an AFO.

(3) Annual(ly)--Once per calendar year with required events not more than 18 months apart, unless approved in writing by the executive director on a case-by-case basis.

(4) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels, permeable sedimentary rocks such as sandstones and limestones, and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(5) Area land use map--A map that identifies property lines, permanent odor sources, and distances and direction to any occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park within a one-mile radius of the permanent odor sources at the animal feeding operation. The map shall include the north arrow, scale of map, buffer distances, and date that the map was generated and the date that the distances were verified.

(6) Beneficial use--Application of manure, sludge, or wastewater to land in a manner that does not exceed the agronomic need or rate for a harvested or cover crop. Application of manure, sludge, or wastewater on the land at a rate below or equal to the optimal agronomic rate is considered a beneficial use.

(7) Best management practices (BMPs)--The schedule of activities, prohibitions of practices, maintenance procedures, and other management and conservation practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, land application, or drainage from raw material storage.

(8) Bypass--The intentional diversion of waste streams from any portion of a treatment facility.

(9) Catastrophic conditions--Conditions that cause structural or mechanical damage to the animal feeding operation from nat-

ural events including high winds, tornadoes, hurricanes, earthquakes, or other natural disasters, other than rainfall events.

(10) Certified nutrient management specialist--An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service, Texas Certified Crop Advisor's Board or Texas AgriLife Extension Service recognized certification program.

(11) Chronic or catastrophic rainfall event--A series of rainfall events that do not provide opportunity for dewatering a retention control structure and that are equivalent to or greater than the design rainfall event or any single rainfall event that is equivalent to or greater than the design rainfall event.

(12) Certified water quality management plan--A site-specific plan for agricultural or silvicultural lands that includes appropriate land treatment practices, production practices, management measures, technologies, or combinations thereof that when implemented, will achieve a level of pollution prevention or abatement determined by the Texas State Soil and Water Conservation Board, in consultation with the local Soil and Water Conservation District, to be consistent with state water quality standards.

(13) Comprehensive Nutrient Management Plan (CNMP)--A resource management plan containing a grouping of conservation practices and management activities that, when implemented in a conservation system, will help ensure that both agricultural production goals are achieved, and natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality are minimized.

(14) Concentrated animal feeding operation (CAFO)--Any animal feeding operation (AFO) defined as follows:

(A) Large CAFO--Any AFO that stables or confines and feeds or maintains for a total of 45 days or more in any 12-month period equal to or more than the numbers of animals specified in any of the following categories:

(i) 1,000 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs;

(ii) 1,000 veal calves;

(iii) 700 mature dairy cattle (whether milkers or dry cows);

(iv) 2,500 swine, each weighing 55 pounds or more; 10,000 swine, each weighing less than 55 pounds;

(v) 500 horses;

(vi) 10,000 sheep or lambs;

(vii) 55,000 turkeys;

(viii) 125,000 chickens (other than laying hens, if the operation does not use a liquid manure handling system);

(ix) 30,000 laying hens or broilers (if the operation uses a liquid manure handling system), or 82,000 laying hens (if the operation does not use a liquid manure handling system); or

(x) 5,000 ducks (if the operation uses a liquid manure handling system), or 30,000 ducks (if the operation does not use a liquid manure handling system).

(B) Medium CAFO--Any AFO that discharges pollutants into water in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into water in the state with the following number of animals:

(i) 300 to 999 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs;

(ii) 200 to 699 mature dairy cattle (whether milking or dry cows);

(iii) 300 to 999 veal calves;

(iv) 750 to 2,499 swine each weighing 55 pounds or more, or 3,000 to 9,999 swine each weighing less than 55 pounds;

(v) 150 to 499 horses;

(vi) 3,000 to 9,999 sheep or lambs;

(vii) 16,500 to 54,999 turkeys;

(viii) 37,500 to 124,999 chickens (other than laying hens if the operation does not use a liquid manure handling system);

(ix) 9,000 to 29,999 laying hens or broilers (if the operation uses a liquid manure handling system), or 25,000 to 81,999 laying hens (if the operation does not use a liquid manure handling system); or

(x) 1,500 to 4,999 ducks (if the operation uses a liquid manure handling system), or 10,000 to 29,999 ducks (if the operation does not use a liquid manure handling system).

(C) Small CAFO--Any AFO that is designated by the executive director as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state and is not a large or medium CAFO.

(D) State-only CAFO--An AFO that falls within the range of animals in subparagraph (B) of this paragraph and that is located in the dairy outreach program areas or an AFO designated by the executive director as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state. A state-only CAFO is authorized under state law.

(15) Control facility--Any system used for the collection and retention of manure, sludge, or wastewater at the permitted facility until their ultimate use or disposal. This includes all collection ditches, conduits, and swales for the collection of manure, sludge, or wastewater, and all retention control structures.

(16) Cooling Pond--A shallow man-made structure filled with water for the specific purpose to keep animals cool and promote animal comfort.

(17) Crop removal--The amount of nutrients contained in and removed by harvest of the adopted crop.

(18) Crop requirement--The amount of nutrients that must be present in the soil in order to ensure that the crop nutrient needs are met, while accounting for nutrients that may become unavailable to the crop due to adsorption to soil particles or other natural causes.

(19) Dairy outreach program areas--The area including all of the following counties: Bosque, Comanche, Erath, Hamilton, Hopkins, Johnson, Rains, and Wood.

(20) Design rainfall event--A design parameter corresponding to precipitation frequency values for a given rainfall duration and return period based on United States Department of Commerce, Weather Bureau, Technical Paper 40 or 49, May 1961.

(21) Dry litter poultry operation--A poultry animal feeding operation that does not use a liquid manure handling system.

(22) Edwards Aquifer--As defined in §213.3 of this title (relating to Definitions).

(23) Edwards Aquifer recharge zone--As defined in §213.3 of this title (relating to Definitions).

(24) Groundwater--Subsurface water that occurs below the water table in soils and geologic formations that are saturated other than underflow of a stream or an underground stream.

(25) Historical waste application field--An area of land located in a major sole-source impairment zone that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation (CAFO), and on which agricultural manure or wastewater from a CAFO has been applied.

(26) Hydrologic connection--The connection and exchange between surface water and groundwater.

(27) Lagoon--A retention control structure used for the biological treatment of liquid organic manure. Lagoons can be aerobic, anaerobic, or facultative depending on their design and can be used in a series to produce a higher quality effluent. Treatment volume must be included in the lagoon design.

(28) Land application--The act of applying manure, sludge, or wastewater associated with the animal feeding operation including distribution to, or incorporation into, the soil mantle primarily for beneficial use purposes.

(29) Land management unit (LMU)--An area of land owned, operated, controlled, rented, or leased by an animal feeding operation (AFO) owner or operator where manure, sludge, or wastewater from the AFO is or may be applied. This includes land associated with a single center pivot system or a tract of land where similar soil characteristics exist and similar management practices are being used. LMUs include historical waste application fields. The term "land management unit" does not apply to any lands not owned, operated, controlled, rented, or leased by the AFO operator for the purpose of off-site land application of manure, where the manure is given or sold to others for land application.

(30) Letter of consent--A document signed by the owner or the authorized legal representative of the owner(s) of an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park, or a document signed by the governmental entity or the authorized legal representative of the entity responsible for the operation of a school or public park. The document specifically consents to location and operation of permanent odor sources of an animal feeding operation within the minimum buffer distance required under §321.43 of this title (relating to Air Standard Permit for Animal Feeding Operations (AFO)).

(31) Liner--Any barrier in the form of a layer; membrane; or blanket; naturally existing, constructed, or installed, to prevent a significant hydrologic connection between wastewater contained in retention control structures and water in the state.

(32) Liquid manure handling system--A system in which freshwater or wastewater is used for transporting and land applying manure.

(33) Major sole-source impairment zone--A watershed that contains a reservoir:

(A) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(B) at least half of the water flowing into is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended:

(i) at least in part because of concerns regarding pathogens and phosphorus; and

(ii) where the commission has developed and adopted a total maximum daily load.

(34) Manure--Feces and/or urine excreted by livestock and poultry. Manure includes litter, bedding, compost, feed, and other raw materials commingled with feces and/or urine.

(35) New source--As defined in §305.2 of this title (relating to Definitions). The criteria for new source determination are located in §305.534(b) of this title (relating to New Sources and New Dischargers).

(36) Nuisance--Any discharge of air contaminant(s), including but not limited to odors of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation, or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.

(37) Nutrient management plan (NMP)--A plan based on the Natural Resources Conservation Service Practice Standard Code 590, for Texas, to address the amount, rate, source, placement, method of application, and timing of the application of plant nutrients, and soil amendments.

(38) Nutrient utilization plan (NUP)--A nutrient management plan to evaluate and address site-specific characteristics of a land management unit to ensure that the beneficial use of manure, sludge, or wastewater is conducted in a manner to prevent adverse impacts on water quality.

(39) One-hundred-year flood plain--Any land area that is subject to a 1.0% or greater chance of flooding in any given year from any source.

(40) Open lot--Pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein livestock or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas and that do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season. For the purposes of this subchapter, the term "open lot" is synonymous with the terms "dirt lot" or "dry lot," for livestock or poultry, as these terms are commonly used in the agricultural industry.

(41) Operational--The facility is constructed such that animals may be stabled, confined, fed, and maintained in accordance with the permit or authorization. The facility does not have to be operating at the maximum number of animals allowed in the permit or authorization.

(42) Operator--The owner or person responsible for the overall operation of a facility or part of a facility, subject to the provisions of this subchapter.

(43) Permanent odor sources--Those odor sources that may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include, but are not limited to, pens, confinement buildings, lagoons, retention control structures, manure stockpile areas, and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment, or land management units.

(44) Permittee--Any person issued an individual permit or order or authorized under a general permit.

(45) Pesticide--A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. Pesticide includes insecticides, nematicides, rodenticides, fungicides, and herbicides.

(46) Playa--A flat-floored, clayey bottom of an undrained basin that is located in an arid or semi-arid part of the state, is naturally dry most of the year, and collects runoff from rain, but is subject to rapid evaporation.

(47) Process-generated wastewater--Any water directly or indirectly used in the operation of an animal feeding operation (such as spillage or overflow from animal or poultry watering systems that comes in contact with manure washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) including water used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat, or eggs).

(48) Production area--That part of an animal feeding operation that includes, but is not limited to, the animal confinement area, the manure storage area, the raw materials storage area, and the control facilities.

(49) Protection zone--The area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation, as shown on a United States Geological Survey (USGS) 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation, as shown on a USGS 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir; or

(C) within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point.

(50) Recharge feature--Those natural or artificial features either on or beneath the ground surface at the site under evaluation that provide or create a significant hydrologic connection between the ground surface and the underlying groundwater within an aquifer. Significant artificial features include, but are not limited to, wells and excavation or material pits. Significant natural hydrologic connections include, but are not limited to: faults, fractures, sinkholes, or other macro pores that allow direct surface infiltration; a permeable or shallow soil material that overlies an aquifer; exposed geologic formations that are identified as an aquifer; or a water course bisecting an aquifer.

(51) Retention control structure (RCS)--Any basin, pond, pit, tank, conveyance, or lagoon used to hold, store, or treat manure, wastewater, and sludge. The term RCS does not include conveyance systems such as irrigation piping or ditches that are designed and maintained to convey but not store any manure, or wastewater, nor does it include cooling ponds located in the production area.

(52) Significant expansion of concentrated animal feeding operation (CAFO)--Any change to a CAFO that increases the manure production at the CAFO by more than 50%, above the maximum operating capacity stated in the initial authorization for the facility under TXG920000.

(53) Sludge--Solid, semi-solid, or slurry manure generated during the treatment of or storage of any manure or wastewater. The term includes material resulting from treatment, coagulation, or sedimentation of manure in a retention control structure. Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) rules covering sludge do not apply to this subchapter.

(54) Soil Plant Air and Water (SPAW) Field Pond Hydrology--SPAW is a Natural Resources Conservation Service (NRCS) water budgeting tool for farm fields, ponds, and inundated wetlands. The SPAW model may be used to perform daily hydrologic water budgeting using the NRCS Runoff Curve Number method.

(55) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - E) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(56) Substantial change--The following changes to the terms of the Nutrient Management Plan are considered substantial; other changes are considered non-substantial:

(A) changing animal type or authorized head count;

(B) adding Land Management Units or increasing application acreage; and

(C) using a crop or yield goal to determine maximum application rates for manure, sludge or wastewater that is not authorized by the permit or authorization.

(57) Technical service provider--An individual, entity, or public agency certified and placed on an approved list by the Natural Resources Conservation Service (NRCS) to provide technical services to program participants or the NRCS.

(58) Twenty-five-year, ten-day rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of ten days, as defined by the National Weather Service in Technical Paper Number 49 United States Weather Bureau and United States Department of Agriculture, Two-to-Ten Day Precipitation for Return Periods of 2 to 100 Years in the Contiguous United States (1964); or equivalent regional or state rainfall information.

(59) Twenty-five-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961; or equivalent regional or state rainfall information.

(60) United States Department of Agriculture (USDA)--Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture that provides assistance to agricultural producers for planning and installation of conservation practices through conservation and technical programs.

(61) Upset--An exceptional incident where there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(62) Wastewater--Any water, including process-generated wastewater and precipitation, which comes into contact with any ma-

nure, sludge, bedding, or any raw material or intermediate or final material or product used in or resulting from the production of livestock or poultry or direct products (e.g., milk, meat, or eggs).

(63) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(64) Well--Any artificial excavation into or below the surface of the earth whether in use, unused, abandoned, capped, or plugged that may be further described as one or more of the following:

(A) an excavation designed to explore for, produce, capture, recharge, or recover water, any mineral, compound, gas, or oil from beneath the land surface;

(B) an excavation designed for the purpose of monitoring any of the physical or chemical properties of water, minerals, geology, or geothermal properties that exist or may exist below the land surface;

(C) an excavation designed to inject or place any liquid, solid, gas, vapor, or any combination of liquid, solid, gas, or vapor into any soil or geologic formation below the land surface; or

(D) an excavation designed to lower a water or liquid surface below the land surface either temporarily or permanently for any reason.

§321.36. Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs).

(a) Applicability. These requirements apply to a concentrated animal feeding operation (CAFO) subject to the requirements of the Texas Pollutant Discharge Elimination System, unless otherwise noted.

(b) Permits. A CAFO shall comply with §305.125 of this title (relating to Standard Permit Conditions) and all applicable permit conditions contained in commission rules. Requirements to provide for and ensure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in an individual water quality permit on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment.

(c) Nutrient management plan (NMP).

(1) The operator of a large CAFO shall develop and implement an NMP certified by a person or entity identified in §321.32(10) of this title (relating to Definitions) to be in accordance with the Texas Natural Resources Conservation Service NRCS Practice Standard Code 590. The plan shall include site-specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in the manure, sludge, or wastewater. The NMP shall be updated annually. The operator shall determine the amount, in tons/acre or acre-inches/acre, of manure, sludge, and wastewater for each land management unit (LMU) using the following methodology:

(A) determine the phosphorus index rating using the Agronomy Technical Note No. 15 Phosphorus Assessment Tool of Texas;

(B) determine the maximum annual application rate using Appendix 5 of the NRCS Practice Standard Code 590 for Texas;

(C) determine the crop requirement or the crop removal rate, as appropriate, from the S Crops Table as contained in the Texas NRCS 590-Software Tool, site-specific historic CAFO yield data, or other sources as approved by the executive director; and

(D) account for:

(i) the results of soil tests required by §321.40(m)(1)(B) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements);

(ii) credits for all nitrogen in the soil that will be available for plant use;

(iii) the amount of nitrogen and phosphorus in the manure and wastewater to be applied;

(iv) consideration of multi-year phosphorus application (for any LMU where nutrients are applied at a rate based on crop phosphorus requirement, the methodology must account for single-year nutrient applications that supply more than the crop's annual phosphorus requirement); and

(v) all other additions of plant available nitrogen and phosphorus to the LMU (i.e., from sources other than manure or wastewater or credits for residual nitrogen).

(2) Terms of the NMP include the following:

(A) animal type and authorized head count;

(B) LMU and application acreage for each LMU;

(C) crops (including alternative crops) identified in the NMP with their yield goals for each LMU;

(D) the maximum application rates for nitrogen and phosphorus for each crop in each LMU;

(E) the methodology in paragraph (1) of this subsection (including formulas, sources of data, protocols for making determinations, etc.) and actual data used to calculate application rates; and

(F) any other factors necessary to determine the amounts of nitrogen and phosphorus to be applied.

(3) Changes to a NMP. Any changes, except changes resulting from annual recalculation, must be submitted to the executive director. The NMP will be reviewed by the executive director to determine if changes require revisions to the terms of the NMP. Revisions to terms of the NMP can be substantial or non-substantial.

(4) Substantial and non-substantial changes. Those changes that constitute a substantial change are defined in §321.32(56) of this title. Non-substantial changes include, but are not limited to, changes to the site-specific LMU information in the Phosphorus index Worksheet, changes to the maximum application rate of nitrogen or phosphorus to be land applied or changes in the phosphorus index rating.

(5) If changes to the terms of the NMP are determined to be substantial, the changes must be incorporated into the permit in accordance with §321.33(g) of this title (relating to Applicability and Required Authorizations).

(6) If changes to the terms of the NMP are determined to be non-substantial, the executive director will notify the permittee and include the revised permit in the permit record.

(7) The CAFO operator shall create, maintain for five years, and make available to the executive director, upon request, a copy of the site-specific NMP and records of manure and wastewater application.

(d) Compliance with the requirements of this section and applicable requirements of this subchapter constitute compliance with the provisions of 40 Code of Federal Regulations (CFR) §122.42(e)(1)(i) - (ix).

(e) Buffers for LMUs. A sinkhole shall be protected with a 100-foot buffer from manure, sludge, and wastewater application. Alternatively, the CAFO may substitute a 35-foot wide vegetative buffer around a sinkhole where alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot buffer.

(f) Soil sampling and testing procedures for dairy CAFOs, both state-only and Texas Pollutant Discharge Elimination System, located in a major sole-source impairment zone.

(1) Initial sampling. Before commencing land application of manure, sludge, or wastewater on an LMU, the operator shall collect and analyze at least one representative soil sample from each of the LMUs according to the following procedures. The CAFO operator is not required to collect soil samples or report on LMUs where manure, litter, or wastewater has not been applied during the preceding year. The CAFO operator must comply with the initial sampling requirement before resuming land application to such LMUs.

(2) Annual sampling. The TCEQ or its designee shall annually collect soil samples, according to the following procedures, for each LMU owned, operated, controlled, rented or leased by the CAFO operator where manure, litter, or wastewater was applied during the preceding year. The results of these analyses shall be used in determining the application rates for manure, sludge and wastewater.

(3) Sampling procedures. Soil sampling procedures shall employ sampling procedures using accepted techniques of soil science for obtaining representative samples and analytical results.

(A) Samples shall be collected using approved procedures described in this section and the agency's publication, RG-408 entitled "Soil Sampling for Concentrated Animal Feeding Operations."

(B) Samples shall be collected by the Texas Commission on Environmental Quality or its designee and analyzed by a soil testing laboratory within the same 45-day time frame each year (from 45 days prior to until 45 days after the date of the previous year's sampling date), except when crop rotations or inclement weather require a change in the sampling time frame.

(C) One composite sample shall be obtained for each soil depth zone per uniform soil type (soils with the same characteristics and texture) within each LMU.

(D) Composite samples shall be comprised of 10 - 15 randomly sampled cores obtained from each of the following soil depth zones:

(i) Zone 1: zero to six inches (for an LMU where the manure is incorporated directly into the soil) or zero to two inches (for an LMU where the manure is not incorporated into the soil). Wastewater is considered to be incorporated. If a zero to two-inch sample is required under this subsection, then an additional sample from the two to six-inch soil depth zone shall be obtained in accordance with the provisions of this section; and

(ii) Zone 2: six to 24 inches.

(4) Laboratory analysis. Laboratory analysis of the soil samples shall be performed for physical and chemical parameters to include: nitrate as nitrogen in parts per million (ppm), extractable phosphorus (ppm, using Mehlich III with Inductively Coupled Plasma (ICP)), potassium (extractable, ppm); sodium (extractable, ppm); magnesium (extractable, ppm); calcium (extractable, ppm); soluble salts (ppm) or electrical conductivity (deciSiemens/meter (dS/m) or millimhos/cm (mmhos/cm) - determined from extract of 2:1 volume to volume (v/v) water/soil mixture); and soil water pH.

(g) Annual report required. An annual report shall be submitted to the executive director's Office of Compliance and Enforcement, Enforcement Division, by March 31 of each year (for the reporting period of January 1 to December 31 of the previous year, or the actual 12-month reporting period used by the CAFO) from each CAFO authorized under a CAFO general permit or through an individual water quality permit in accordance with this subchapter. The report shall be submitted on forms prescribed by the executive director and shall include, but is not limited to, the following information:

(1) number and type of animals, whether in open confinement or housed under roof;

(2) estimated total manure, sludge, and wastewater generated during the reporting period;

(3) total manure, sludge, and wastewater land applied during the reporting period;

(4) total manure, sludge, and wastewater transferred to other persons during the reporting period;

(5) total number of acres for land application under the control of the CAFO operator, including both the acres included in the NMP for the CAFO and the total number of acres used during the reporting period for land application;

(6) summary of discharges of manure, sludge, or wastewater from the production area that occurred during the reporting period including dates, times, and approximate volume;

(7) a statement indicating that the NMP under which the CAFO is operating was developed or revised and approved by a certified nutrient management specialist;

(8) a copy of the initial soil analysis for each LMU, regardless of whether manure, sludge, or wastewater has been applied;

(9) soil monitoring reports of all soil samples collected in accordance with the requirements of this subchapter;

(10) groundwater monitoring reports if applicable;

(11) the actual crop(s) planted and yield(s) for each LMU;

(12) the actual nitrogen and phosphorus content of the manure, sludge, and process wastewater that was land applied;

(13) the data used in calculations and the results of calculations conducted in accordance with subsection (c) of this section;

(14) the amount of manure, sludge, and wastewater applied to each LMU during the reporting period;

(15) any supplemental fertilizer applied during the reporting period; and

(16) any other information requested by the executive director.

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 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§330.7, 330.671, 330.673, and 330.675 *without changes* to the proposed text as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 466), and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts this rulemaking to amend existing rules pertaining to a permit by rule (PBR) authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings. The commission also adopts amendments to the existing rules pertaining to the waste disposal fees at municipal solid waste (MSW) disposal facilities, such as landfills and incinerators, and to the waste disposal fee exemption/credit for material diverted from disposal and processed into compost or mulch.

Senate Bill (SB) 819, 83rd Legislature, 2013, effective June 14, 2013, revised the Texas Health and Safety Code (THSC), §361.126. THSC, §361.126 allows the commission to issue a PBR for a county or municipality, with a population of 12,000 people or less, to dispose of demolition waste from properties owned or controlled by the county or municipality with nuisance or abandoned buildings. The population limit was increased from 10,000 to 12,000 people.

House Bill (HB) 7, 83rd Legislature 2013, effective June 14, 2013, revised the THSC, §361.013. THSC, §361.013 requires MSW disposal facilities to submit reports on the amount of solid waste brought into the facility and requires the commission to collect fees on the amount of solid waste disposed of at the facility. The solid waste disposal fee is often referred to as the tipping fee. For disposal of waste by landfilling, the fee is reduced by 25%, from $1.25 to $0.94 per ton of solid waste, from $0.40 to $0.30 per cubic yard of compacted solid waste, and from $0.25 to $0.19 per cubic yard of uncompacted solid waste. For disposal of waste by methods other than landfilling - incineration, land application, composting, etc. - the fee is reduced by 25%, from $0.62 and one-half cent to $0.47 per ton of solid waste, from $0.20 to $0.15 per cubic yard of compacted solid waste, and from $0.12 and one-half cent to $0.09 and one-half cent per cubic yard of uncompacted solid waste.

HB 7 also revises the allocation percentage of the tipping fee revenue received by the commission. Revenue received by the commission shall be deposited in the state treasury to credit the commission. Of that revenue, 66.7% shall be dedicated to the commission's Waste Management Account 0549 and the remaining 33.3% to the commission's Solid Waste Disposal Fee Account 5000. The previous allocation percentage was a 50%/50% split between the two accounts.

HB 7 revises THSC, §361.013 to expand the tipping fee exemption - from exemption of source-separated yard waste to exemption of source-separated material. Additionally, material processed into compost or mulch may receive a fee credit. Previously only material processed into compost could receive the credit.

Section by Section Discussion

§330.7, Permit Required

The commission adopts the amendment to §330.7(i), which would authorize a county or municipality with 12,000 people or less, located in an arid-exempt area, to dispose of demolition waste from nuisance and abandoned buildings under a PBR.

The nuisance and abandoned building must have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal of the demolition waste must occur on property that is owned or controlled by the county or municipality. The disposal property must qualify for an arid exemption with less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period or on another method approved by the executive director. To be authorized to dispose of the solid waste under this PBR, the county or municipality must adhere to the conditions set forth in §330.7(i)(1) and (2).

The population limit was increased from 10,000 people to 12,000 people. This allows additional counties and municipalities a less costly, environmentally secure means of disposing of waste from nuisance and abandoned buildings. The PBR was adopted in 2012 to address a short-term issue facing small West Texas communities.

§330.671, Purpose and Applicability

The commission adopts the amendment to §330.671(b)(1) relating to the tipping fee exemption or credit on material that is processed into compost or mulch. The amendment replaces "source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill" with "source separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill." The amendment removes the language defining "source separated yard waste." The amendment replaces "and converted to compost product for composting through a composting process" to "and processed to compost or mulch product at the facility." The amendment replaces "any compost product for composting that is not used as compost and is deposited in a landfill" with "any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill."

Facilities that divert source-separated material to composting or mulching facilities are exempt from the tipping fee based on the amount of material diverted. Previously the language only authorized the exemption for the diversion of source-separated yard waste processed into compost. These revisions allow a wider variety of source-separated material to be exempted from tipping fees. Yard waste and brush continue to qualify for the fee exemption when diverted. Clean wood material can now qualify for this exemption. Clean wood material is considered wood or wood materials, including roots, or vegetation with intact rootballs, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean

wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal and sheetrock. The definition of source-separated yard waste was removed from the rule to reduce the limitations on the type of material diverted.

Facilities that divert non source-separated material from the landfill and process the material into compost or mulch, can be credited half of the tipping fee when the facility demonstrates to the commission that the material has been processed for beneficial use. In order to qualify for the tipping fee credit, the processed material cannot be disposed of in a landfill, used in the operation of the landfill, or be used as daily cover. If the material is used in such a way, the facility will not receive the credit. Additionally, the material received must be processed into compost or mulch at the landfill facility to qualify for the fee credit.

Including mulch processing with composting for both the fee exemption and fee credit allows disposal facilities greater flexibility in diverting material away from landfills. Although not defined in this chapter, mulch is defined in §332.2(33), as ground, course, woody yard trimmings and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

§330.673, Fees

The commission adopts the amendment to §330.673, relating to the fee, collected by the commission, on solid waste disposed of at a MSW disposal facility. The fee rate for solid waste disposed of by landfilling is reduced from $1.25 to $0.94 per ton, from $0.40 to $0.30 per compacted cubic yard, and from $0.25 to $0.19 per uncompacted cubic yard. If the landfill operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from $1.25 to $0.94 per ton.

For MSW facilities that dispose of solid waste by means other than landfilling, the fee, collected by the commission, is reduced from $0.62 and one-half cent to $0.47 per ton, from $0.20 to $0.15 per compacted cubic yard, and from $0.12 and one-half cent to $0.09 and one-half cent per uncompacted cubic yard. If the facility operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from $0.62 and one-half cent to $0.47 per ton.

These changes will reduce the overall amount of fees collected. However, due to current allocations and the increase in distribution to Fund 0549 from 50% to 66.7%, appropriations from these funds for the 2014 - 2015 biennium will be funded.

§330.675, Reports

The commission adopts the amendment to §330.675 relating to the reports submitted to the commission by MSW disposal facilities on the amount of solid wasted diverted and disposed of. The amendment replaces "yard waste converted" with "material processed" and replaces "to compost or product for composting" with "to compost or mulch product." These changes are made to coincide with the amendments made in §330.671. The changes in §330.671 are made to provide a fee exemption or credit for a greater variety of materials that are diverted. The changes to the report forms are needed to ensure the correct amount of diverted material is reported to the commission.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement amendments to statutory provisions. The authority to issue a PBR for a county or municipality with a population of 10,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings, is increased to allow this authorization for populations of 12,000 or less. The fee due to the state from landfill operators for the amount of solid waste disposed at landfills is reduced by 25%. A provision is added to require the commission to issue biennial reports on how that fee money is spent. The existing exemption from these fees for composting source-separated yard waste is expanded to exempt composting or mulching source separated material. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to increase protections of the environment or reduce risks to human health from environmental exposure.

Furthermore, the adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements: there are no corresponding standards set by federal law and the adoptions are either allowed or required by state law; the adopted amendment does not exceed an express requirement of state law: the rule does not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.013 and §361.014, which require the commission to charge fees and report on how the fees are spent. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Comments were received during the comment period, but no comments addressed the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted amendments are to reduce fees the state charges landfills and to require the commission to report how fees are spent; authorize the commission to issue a PBR for a county or municipality with a population of 12,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings; and, expand the existing exemption from these fees for composting or mulching source separated material. The amendments do not impose a burden on a recognized real property interest and therefore do not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the §§330.671, 330.673, and 330.675 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission determined that the amendment in §330.7 will not affect any coastal natural resource areas because the rule only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. Comments were received during the comment period, but no comments addressed the coastal management program.

Public Comment

The commission held a public hearing on February 18, 2014, in Austin. No comments were provided at the public hearing. The comment period closed on March 3, 2014. The commission received comments from the City of Houston (COH) and the Lone Star Chapter of the Solid Waste Association of North America (TXSWANA). Their comments opposed the reduction in the solid waste disposal fee and the reduction in the allocation percentage to Account 5000.

Response to Comments

Comment

TXSWANA commented that the solid waste disposal fee should not be reduced by 25%.

Response

THSC, §361.013, as amended by HB 7, requires the commission to charge a fee on all solid waste that is disposed of within the state. As stated in THSC, §361.013(a), the fee is $0.94 per ton received, $0.30 per compacted cubic yard and $0.19 per uncompacted cubic yard. The commission is required to implement the statute. No change was made in response to this comment.

Comment

The COH and TXSWANA commented that the reduction in the allocation percentage to Account 5000 would negatively affect the commission's Regional Solid Waste Grants Program (RSWGP) and funds available for local solid waste reduction programs.

Response

THSC, §361.014(b), as amended by HB 7, states that 33.3% of the solid waste disposal fee revenue is dedicated to local and regional solid waste projects. The RSWGP awards grants to the 24 council of governments to fund the solid waste projects. The RSWGP appropriation amount for each biennium is set by the legislature. The commission is required to implement the statute. No change was made in response to this comment.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.7

Statutory Authority

The amendment is adopted under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.013, Solid Waste Disposal and Transportation Fees; THSC, §361.014, Use of Solid Waste Fee Revenue; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.126, Disposal of Demolition Waste from Abandoned or Nuisance Building.

The adopted amendments implement THSC, §§361.013, 361.014, 361.061 and 361.126.

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 11, 2014.

TRD-201403177
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 31, 2014
Proposal publication date: January 31, 2014
For further information, please call: (512) 239-2141

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SUBCHAPTER P. FEES AND REPORTING

30 TAC §§330.671, 330.673, 330.675

Statutory Authority

The amendments are adopted under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.013, Solid Waste Disposal and Transportation Fees; and THSC, §361.014, Use of Solid Waste Fee Revenue.

The adopted amendments implement THSC, §361.013 and §361.014.

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 11, 2014.

TRD-201403178
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 31, 2014
Proposal publication date: January 31, 2014
For further information, please call: (512) 239-2141

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CHAPTER 339. GROUNDWATER PROTECTION RECOMMENDATION LETTERS AND FEES

30 TAC §§339.1 - 339.3

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the repeal of §§339.1 - 339.3 *without changes,* as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 478), and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The TCEQ Sunset Legislation, House Bill (HB) 2694, Article 2, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Texas Natural Resources Code to revise §91.011, add §§91.0115, 91.020, and 91.1015, and amended the Texas Water Code (TWC), §27.033. On September 1, 2011, the law transferred from the commission to the RRC those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

The TCEQ Surface Casing Program and staff transferred to the RRC on September 1, 2011. The RRC's Surface Casing Program was renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin.

The RRC has adopted amendments to their regulations to reflect the changes in law made under HB 2694, Article 2. The rules in Chapter 339 authorized the commission to provide groundwater protection letters to the RRC for use in various activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. Because the commission no longer provides the groundwater protection letters to the RRC, the commission's rules in Chapter 339 are no longer necessary. The RRC adopted amendments to their regulations on May 24, 2013. These regulations became effective January 1, 2014. Therefore, the commission adopts the repeal of §§339.1 - 339.3 in their entirety.

Section by Section Discussion

§339.1, Purpose

The commission adopts the repeal of §339.1. This section authorized the executive director to provide groundwater protection letters to the RRC. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

§339.2, Applicability

The commission adopts the repeal of §339.2. This section explained the applicability for the types of applications for which a recommendation to the RRC was provided on depth or depths to usable-quality groundwater. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

§339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee

The commission adopts the repeal of §339.3. This section authorized the executive director to establish procedures and to collect fees for the processing of applications for groundwater protection recommendations. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the

public health and safety of the state or a sector of the state. The adoption does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking action is intended to repeal Chapter 339, which is no longer necessary because the functions and authorization provided in the rules were transferred by statute from the commission to the RRC.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The adopted action implements legislative requirements in HB 2694, 82nd Legislature, 2011, which transferred duties from the commission to the RRC relating to the preparation of groundwater protection letters for certain activities and applications before the RRC. The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The adopted repeals do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on February 18, 2014. The comment period closed on March 3, 2014. No comments were received.

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeals implement House Bill 2694, 82nd Legislature, 2011.

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 11, 2014.

TRD-201403179
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 31, 2014
Proposal publication date: January 31, 2014
For further information, please call: (512) 239-2141

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for readoption, revision, or repeal Chapter 95, §95.100 (Definitions), §95.101 (Share and Depositor Insurance Protection), §95.102 (Qualifications for an Insuring Organization, §95.103 (General Powers and Duties of an Insuring Organization), §95.104 (Notices), §95.105 (Reporting), §95.106 (Amount of Insurance Protection), §95.107 (Sharing Confidential Information), §95.108 (Examinations), §95.109 (Fees and Charges), §95.110 (Enforcement; Penalty; and Appeal), §95.200 (Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights), §95.205 (State not Liable for any Deficiency), §95.300 (Share and Deposit Guaranty Credit Union), §95.301 (Authority for a Guaranty Credit Union), §95.302 (Powers), §95.303 (Subordination of Right, Title, or Interest), §95.304 (Capital Contributions; Membership Investment Shares; Termination), §95.305 (Audited Financial Statements; Accounting Procedures; Reports), §95.310 (Fees and Charges), and §95.400 (Requirements of Participating Credit Unions) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to info@cud.texas.gov. The deadline for comments is September 1, 2014.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

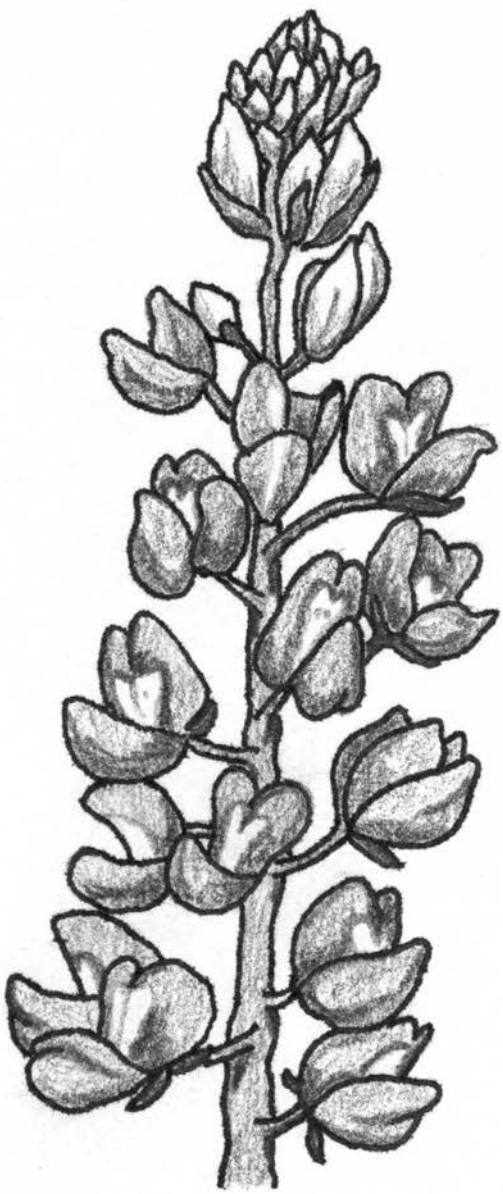
* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201403167
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 9, 2014

♦ ♦ ♦

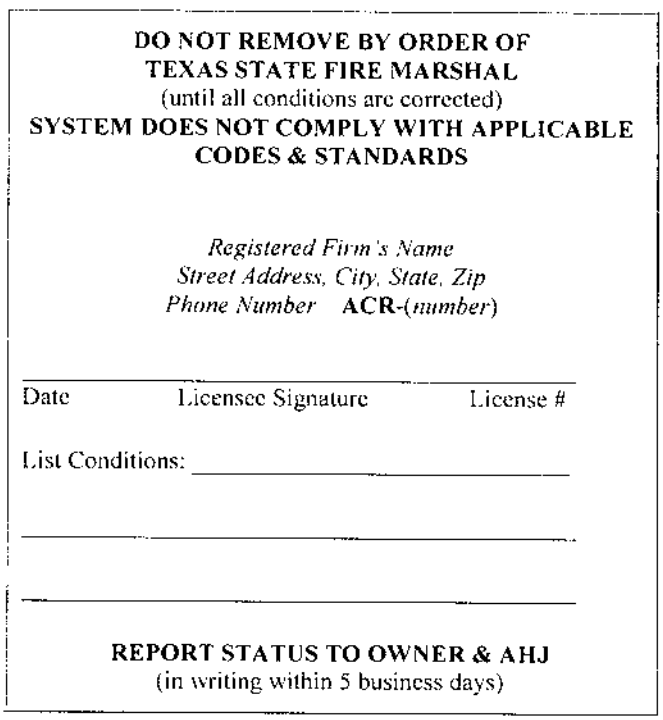


TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §34.623(h)



DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL
(until all conditions are corrected)
SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS

Registered Firm's Name
Street Address, City, State, Zip
Phone Number **ACR-**(*number*)

Date Licensee Signature License #

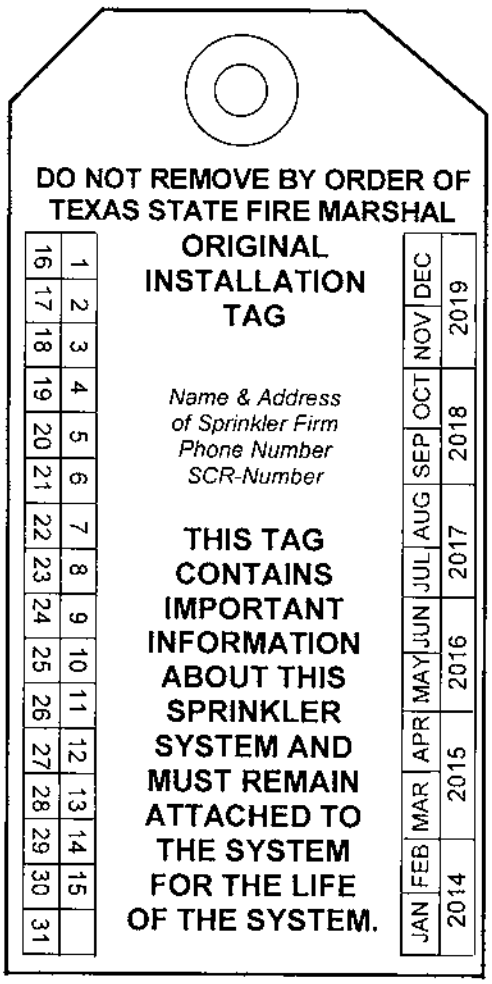
List Conditions: _____

_____

_____

REPORT STATUS TO OWNER & AHJ
(in writing within 5 business days)

Figure: 28 TAC §34.718(h)



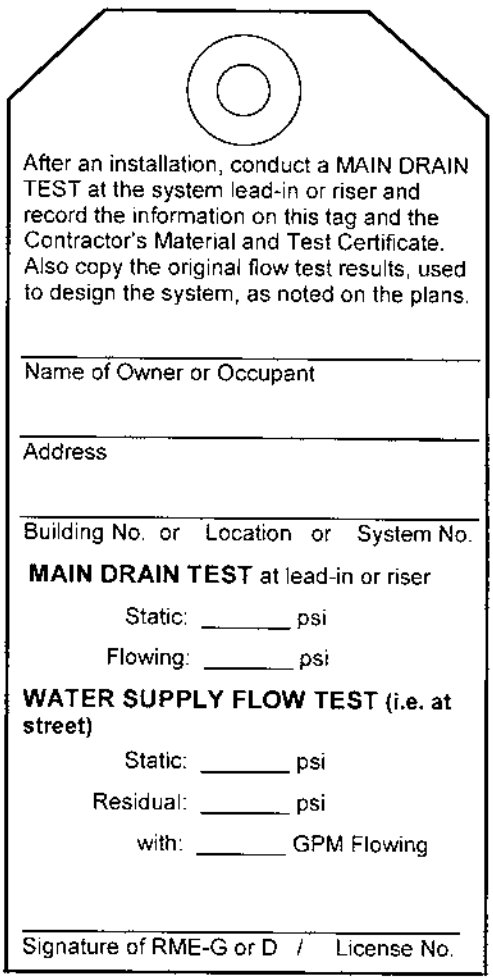
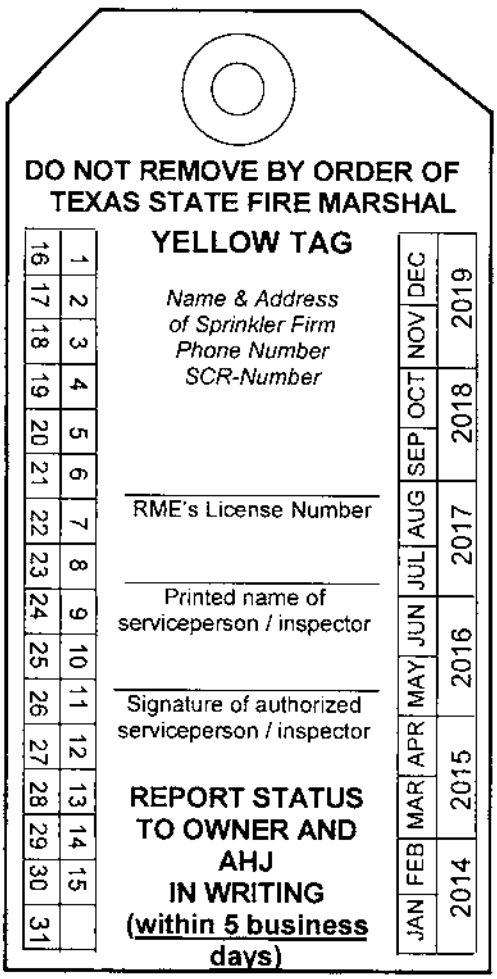


Figure: 28 TAC §34.721(g)



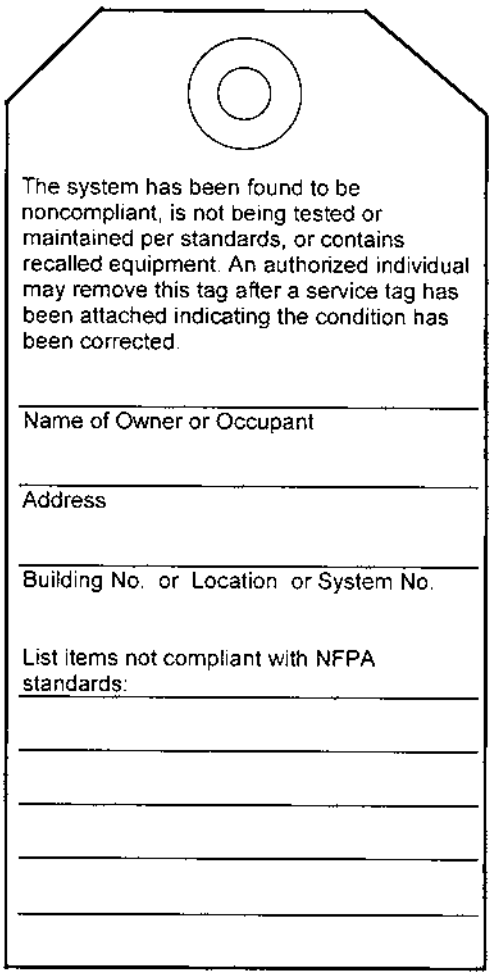


Figure: 34 TAC §3.448(g)(2)(C)

Refundable gallons based on the following formula:
Total miles traveled / Total fuel consumed = Average fleet MPG
Miles traveled on school routes / Average MPG = Refundable gallons

A	B	C	D	E	F	G	H
Month	> %5 Non-students	Veh ID	Total miles	Total gallons consumed	Vehicle avg. MPG (D/E)	School route miles	eligible refund gals (G / F)
Jan	NO	# 205	4,300	850	5.059	1,200	237
Feb	NO	#205	4,500	900	5.000	1,200	240
May	YES	#205	4,500	900	5.000	-0-	-0-

Figure: 34 TAC §3.448(g)(3)

LG DECAL

A	B	C	D	E	F	G	H
Month	> %5 Non-students	Veh ID	Total miles	School route miles	% school miles (E/D)	($444/12) x F	Refund
Jan	NO	#102	3,200	1,100	34%	$37 x 34%	$12.58
Feb	NO	#102	3,400	1,100	32%	$37 x 32%	$11.84
May	YES	#102	3,600	-0-	0%	$37 x 0%	-0-

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Johenry Limited Partnership, James Henry Dieffenwierth II, Mayco, Inc., and William Lafon Musgrove,* Cause No. D-1-GV-13-001408; in the 201st Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: Defendants Johenry, Dieffenwierth and Musgrove are joint owners/operators of a precious metal recovery facility located at 1137 W. Hurst Blvd. in Hurst, Tarrant County, Texas (the Site). Defendant Mayco owns the real property at the Site. The State initiated this suit on behalf of the Texas Commission on Environmental Quality (TCEQ) to enforce Texas statutes and rules pertaining to precious metal recycling operations and site remediation. Defendants subsequently undertook a preliminary site investigation.

Proposed Agreed Final Judgment: The parties propose an Agreed Final Judgment, which assesses civil penalties against Defendants in the amount of $20,000, and orders Defendants to timely complete the remedial investigation work at the Site and to cease operating any precious metal recovery operations at the Site or at any other location without TCEQ's authorization. The proposed Agreed Final Judgment also includes an award of the State's reasonable attorney's fees incurred in prosecuting this case in the amount of $5,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Craig J. Pritzlaff, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201403170
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 10, 2014

♦ ♦ ♦

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. United Casing, Inc.,* Cause No. D-1-GV-07-000723, in the 98th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant United Casing, Inc. owns and operates an oil field pipe storage and repair facility in Corpus Christi, Nueces County, Texas. The State initiated this suit on behalf of Texas Commission on Environmental Quality (TCEQ) to enforce Texas statutes and rules governing municipal hazardous waste and storm water discharge associated with the regulated industrial activity, as well as a TCEQ order. Claims settled include allegations that Defendant failed to investigate, manage, and remediate hazardous waste piles, and to obtain TCEQ authorization for storm water discharges.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction orders United Casing, Inc. to set up a system of spill prevention and remediation at its facility, and to train its employees on such procedures. The proposed Agreed Final Judgment further assesses against Defendant $41,500 in civil penalties, and $8,500 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Heather D. Hunziker, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201403212
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 11, 2014

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - June 2014

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period June 2014 is $75.21 per barrel for the three-month period beginning on March 1, 2014, and ending May 31, 2014. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2014 from a qualified low-producing oil lease is not eligible

for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2014 is $3.56 per mcf for the three-month period beginning on March 1, 2014, and ending May 31, 2014. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2014 from a qualified low-producing well is not eligible for an exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2014 is $105.15 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2014 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2014 is $4.59 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2014 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201403239
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: July 15, 2014

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Notice of Contract Award

Pursuant to Chapter 403, and Chapter 404, Subchapter G; and Chapter 2254, Subchapter A, and Chapter 2256 of the Texas Government Code and Chapter 15, §433 of the Texas Water Code, the Texas Comptroller of Public Accounts ("Comptroller"), as sole officer, director, and shareholder of Texas Treasury Safekeeping Trust Company ("Trust Company"), announces the award of a contract to Padgett, Stratemann & Co., L.L.P., 811 Barton Springs Road, Suite 550, Austin, Texas 78704, as a result of Request for Proposals ("RFP 207p") for professional certified public accountant services to Trust Company for the purpose of providing financial audits and compliance attestation services with respect to certain Trust Company managed funds.

The total maximum amount of the contract is $200,000.00. The term of the contract is July 11, 2014 through August 31, 2015, with three (3) options to renew one (1) year at a time.

The notice of issuance was published in the April 11, 2014, issue of *Texas Register* (39 TexReg 2974).

TRD-201403267
Jette Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 16, 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 07/21/14 - 07/27/14 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 07/21/14 - 07/27/14 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-201403246
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 15, 2014

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from Tarrant County Credit Union, Fort Worth, Texas. The credit union is proposing to change its name to Tarrant County's Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201403263
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 16, 2014

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Texas Trust Credit Union, Mansfield, Texas - See *Texas Register* issue dated April 25, 2014.

Application for a Merger or Consolidation - Approved

Hospitality Federal Credit Union (Memphis, Tennessee) and InTouch Credit Union (Plano) - See *Texas Register* issue dated February 28, 2014.

FMC Technologies Federal Credit Union (Houston) and Texas Dow Employees Credit Union (Lake Jackson) - See *Texas Register* issue dated March 28, 2014.

TRD-201403264
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 16, 2014

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Commission on State Emergency Communications

Public Notice of Workshop and Request for Comments: Accessing 9-1-1 Service Via a Multi-Line Telephone System

Staff of the Commission on State Emergency Communications ("CSEC") will conduct a workshop regarding Accessing 9-1-1 Service Via a Multi-line Telephone System ("MLTS") on Wednesday, August 27, 2014, from 1:00 p.m. to 5:00 p.m., in the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin, Texas 78701. Registration information is provided below. All 9-1-1 Entities, businesses (including hotels, hospitals, and schools), MLTS vendors, communications service providers, third party provider community, and interested persons are invited to attend this public workshop.

To register for the workshop, please contact Donna McCain via e-mail at **donna.mccain@csec.texas.gov** or by phone at (512) 305-6930. Please indicate whether you will attend in person or via audio conference. Please go to our website at www.csec.texas.gov to view additional information on "Accessing 9-1-1 Service Via a Multi-line Telephone System ("MLTS") Workshop." All information, including workshop updates and replies to requests for comment will be posted to this webpage.

Audio Registration: **http://bit.ly/911MLTS** (Please note that the audio bridge is a one-way audio-only broadcast of the workshop.)

In preparation for the workshop, staff requests comments from interested parties in response to the questions listed below. Written comments may be submitted electronically to Robert Gonzalez at **robert.gonzalez@csec.texas.gov,** by mail to CSEC at 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, or by fax to (512) 305-6937. Please include "Comments for MLTS Workshop" in the subject line of your filing. Please limit comments to 10 pages.

BACKGROUND AND PURPOSE

The workshop is the culmination of efforts by CSEC staff and that of the state's 9-1-1 Entities to investigate the accessing of 9-1-1 service from MLTSs in the wake of the murder of Kari Hunt in a motel room in Marshall, Texas. Ms. Hunt's 9-year-old daughter tried to call 9-1-1 for help four times from an MLTS phone. The call never went through because she did not know to dial 9 for an outside line before dialing 9-1-1.

At CSEC's May 14, 2014, open meeting staff addressed the need to have a workshop on accessing 9-1-1. Staff also reported the results of a survey (view at "Accessing 9-1-1 Service Via a Multi-line Telephone System ("MLTS") Workshop" referenced above) where a total of 232 test calls were made from businesses including hospitals, schools and hotels. The test calls to 9-1-1 were made from each business to determine if a call would be delivered directly to a PSAP. Only 73% were able to demonstrate a successful call to a PSAP.

Accordingly, the purpose of the workshop will be to identify and address barriers preventing a person from directly accessing 9-1-1 service from an MLTS, or from having their 9-1-1 call routed to and answered by a trained call-taker at a designated PSAP.

The August 27th workshop will facilitate dialogue and develop a working relationship with industry, including the business, hospitality, and medical communities; independent school districts and college/university school systems; MLTS equipment vendors and third-party service providers; and communications service providers.

DEFINITIONS AND TERMINOLOGY

9-1-1 Entity: The entity authorized to provide 9-1-1 service in a geographically defined area and to designate the PSAP where each 9-1-1 call within its area is to be routed to and answered. In Texas, there are two types of 9-1-1 Entities: The state 9-1-1 service program is overseen by CSEC and provisioned by 23 of the state's 24 Regional Planning Commissions. The state program provides 9-1-1 service in 214 of Texas' 254 counties, covering approximately two-thirds of the geography and one-fourth of the state's population. 9-1-1 service in the more populated regions of the state is provided by either an Emergency Communication District (ECD) established under Health and Safety Code Chapter 771 or an ECD acting under its home-rule city authority (ECD is defined in Health and Safety Code §771.001(3).

9-1-1 Service: A communications service that connects users to a public safety answering point through a 9-1-1 system.

Multi-Line Telephone System (MLTS): A system comprised of common control unit(s), telephone sets, control hardware and software and adjunct systems used to support the capabilities outlined herein. This includes network and premises based systems. e.g., Centrex, VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the FCC under Part 68 Requirements) and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses.

MLTS Operator: The entity responsible for ensuring that a 9-1-1 call placed from an MLTS is transmitted and received regardless of the MLTS technology used to generate the call. The MLTS Operator may be the MLTS Manager or a third-party acting on behalf of the MLTS Manager.

MLTS Manager: The entity authorized to implement an MLTS, either through purchase or lease of an MLTS or the purchasing of MLTS services, as the means by which to make 9-1-1 calls.

MLTS Hardware/Software Provider: An entity that manufactures MLTS equipment or develops software utilized in an MLTS.

Public Safety Answering Point (PSAP): A continuously operated communications facility that is designated by a 9-1-1 Entity to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.

REQUESTS FOR COMMENT:

1. Respondent information So that CSEC may better understand comments, please identify who you are or represent:

a) MLTS Operator;

b) MLTS Manager;

c) MLTS Equipment/Software Provider;

d) MLTS End-user; and/or

e) Other Interested Party _____,

f) General Public

2. Multi-line Telephone System (MLTS) Awareness and Action:

a) Are you aware of any issues regarding dialing 9-1-1 from an MLTS without first accessing an outside line such as by dialing an initial "9"? If so, please list and describe those issues.

b) Are you aware of or involved in any efforts to resolve issues relating to dialing 9-1-1 from an MLTS? If so, please describe the efforts.

c) What information or support can CSEC or 9-1-1 Entities you to ensure that 9-1-1 service is accessed directly through MLTSs?

d) In the E911 Scope Report and Order, the Federal Communications Commission (FCC) noted that "the lack of effective implementation of MLTS E911 could be an unacceptable gap in the emergency call system" but ultimately declined to adopt federal rules to address the issue, because the record demonstrated that state and local governments were in a better position to devise rules for their jurisdictions. The FCC stated that it may re-visit the issue, depending upon whether states demonstrate a willingness to correct the problem. Should Texas wait for an FCC timeline to pursue resolution of accessing 9-1-1 service via an MLTS? Please explain your answer.

e) Does CSEC have the authority under state or federal law to adopt a rule making clear that 9-1-1 service is accessed by dialing the digits 9, 1, and 1 (or their equivalent) without first having to dial an access number? Please explain your answer.

3. MLTS Programming:

a) Are MLTSs (legacy and next generation) programmable to include 911 and 9+9-1-1 dialing? Please provide detail as to why or why not.

b) Describe the process for reprogramming an MLTS to allow for direct 9-1-1 dialing.

c) What costs, if any, are associated with reprogramming an MLTS to allow for direct 9-1-1 dialing? Please provide specific, known, and quantifiable costs for MLTS revisions.

4. MLTS Services/Capabilities:

a) Do all 9-1-1/9+9-1-1 calls from your MLTS route directly to the PSAP designated to receive calls from your area? If not, please explain the routing of the call and identify the entity or individual responsible for answering the call.

b) Does your MLTS provide "on-site alerting", where the 9-1-1 call is routed to the PSAP and concurrently notice is sent to an on-site contact when a 9-1-1 call is placed?

c) If the answer to b) is "Yes," please describe the type of business served by the MLTS and information about the contact notified that a 9-1-1 call has been placed.

5. Awareness, Education, Responsibilities

a) How can, and should, awareness and education contribute to the MLTS solution to ensure the accessibility of 9-1-1 service when dialing from an MLTS?

b) Who are the responsible parties to ensure direct 9-1-1 service access from an MLTS and that 9-1-1 calls are directly routed to the designated PSAP for the area?

c) Implementing an MLTS frequently involves the interaction of multiple parties. What are, or should be, the responsibilities of each of the following: 1) communications service provider; 2) MLTS Hardware/Software vendor; and 3) MLTS Operator; and 4) MLTS Manager?

TRD-201403248

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: July 15, 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 **August 25, 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. August 25, 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: Arlies Holliefield; DOCKET NUMBER: 2014-0036-MLM-E; IDENTIFIER: RN106679301; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to comply with the general prohibition of outdoor burning within the state of Texas; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,650; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: B&M MARUTI LLC dba Shell Food Store; DOCKET NUMBER: 2014-0704-PST-E; IDENTIFIER: RN101846863; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CENTRAL FOODS, INCORPORATED dba Pik Nik Foods 29; DOCKET NUMBER: 2013-0521-PST-E; IDENTIFIER: RN102383106; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475 and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.50 (b)(2) and TWC, §26.3475 (a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,882; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Byers; DOCKET NUMBER: 2014-0623-PWS-E; IDENTIFIER: RN101236404; LOCATION: Byers, Clay County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Robert Lee; DOCKET NUMBER: 2014-0417-MWD-E; IDENTIFIER: RN101920163; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013901001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Other Requirements Number 7, by failing to properly document the required daily inspections at the facility; and 30 TAC §305.125(1) and TPDES Permit Number WQ0013901001, Other Requirements Number 9, by failing to timely submit the quarterly progress reports for total dissolved solids and chlorides for Outfall Number 001; PENALTY: $3,136; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2014-0377-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 20204, Special Conditions Number 1, and Federal Operating Permit Number O2055, General Terms and Conditions and Special Terms and Conditions Number 12, by failing to prevent unauthorized emissions; PENALTY: $25,000; Supplemental Environmental Project offset amount of $12,500 applied to Texas Congress of Parents and Teachers Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2014-0456-AIR-E; IDENTIFIER: RN101926822; LOCATION: Boling, Wharton County; TYPE OF FACILITY: natural gas storage plant; RULE VIOLATED: 40 Code of Federal Regulations §63.6640(a), 30 TAC §§101.20(2), 113.1090, and 122.143(4), Federal Operating Permit Number O281/General Operating Permit Number 514, Site-Wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to reduce carbon monoxide emissions by 93%; PENALTY: $5,625; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Grace International Churches and Ministries, Incorporated dba Center for Empowerment; DOCKET NUMBER: 2014-0666-PWS-E; IDENTIFIER: RN106679616; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of October 2013 - February 2014, and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct coliform monitoring during the months of October - December 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct coliform monitoring during the months of June - August 2013; and 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 91013510 for Fiscal Year 2014; PENALTY: $1,035; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Grand Harbor Water Supply Corporation; DOCKET NUMBER: 2014-0560-PWS-E; IDENTIFIER: RN104497946; LOCATION: Chico, Wise County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; and 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to provide facility records to commission personnel at the time of an investigation; PENALTY: $155; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Greenville Electric Utility System; DOCKET NUMBER: 2014-0610-AIR-E; IDENTIFIER: RN100223023; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: electrical power generation, transmission/distribution; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1, General Terms and Conditions, by failing to certify compliance for at least each 12-month period following initial permit issuance; PENALTY: $3,075; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: John Webb Linne and Aubrey Arthur Linne; DOCKET NUMBER: 2014-0440-WR-E; IDENTIFIER: RN103926481; LOCATION: Erath County; TYPE OF FACILITY: own property with water rights; RULE VIOLATED: 30 TAC §297.82, by failing to inform the executive director of a transfer of Water Right Certificate of Adjudication Number 2239; PENALTY: $250; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: LANXESS Corporation; DOCKET NUMBER: 2014-0352-PWS-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(m) and (4), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly

intervals; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; and 30 TAC §290.39(l)(4), by failing to meet the operation, maintenance, and reporting requirements for an issued exception; PENALTY: $853; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Lincoln Manufacturing, Incorporated; DOCKET NUMBER: 2014-0571-AIR-E; IDENTIFIER: RN105610448; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: steel pipe manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain proper authorization to construct and operate a thermal oxidizer; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain proper authorization to operate a coating booth; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2014-0336-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.104(a)(1), Texas Health and Safety Code (THSC), §382.085(b), Permit Numbers 8404 and PSDTX1062M1, Special Conditions (SC) Numbers 6 and 61, and Federal Operating Permit (FOP) Number O1386, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1A and 16A, by failing to limit the concentration of hydrogen sulfide in the refinery fuel gas to 160 parts per million by volume (ppmv) on a rolling three-hour basis and 120 ppmv on a rolling 24-hour basis; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Numbers 8404 and PSDTX1062M1, SC Number 38A, and FOP Number O1386, GTC and STC Number 16A, by failing to limit the annual concentration of nitrogen oxide (NOx) to 42.8 ppmv on a rolling 365-day basis at Emission Point Number SFCCU3-2; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.44(a)(1), THSC, §382.085(b), Permit Number 3415, SC Numbers 1B and 4, and FOP Number O1386, GTC and STC Numbers 1A and 16A, by failing to limit NOx emissions to 0.20 pound per million British thermal units when firing gaseous fossil fuel at Boiler 34; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.42(a)(2), THSC, §382.085(b), Permit Number 3415, SC Numbers 1B and 6, and FOP Number O1386, GTC and STC Numbers 1A and 16A, by failing to limit opacity to 20% at Boilers 34 and 35; PENALTY: $67,500; Supplemental Environmental Project offset amount of $33,750 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Northside Subdivision Water Plant and Distribution Corporation; DOCKET NUMBER: 2012-2342-MWD-E; IDENTIFIER: RN101190643; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014735001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports by the 20th day of the following month for the monthly monitoring periods ending March 31, 2012 - June 30, 2012; 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0014735001, Monitoring and Reporting Requirements Number 1, by failing to submit effluent quality data for total residual chlorine and ammonia nitrogen for the monitoring periods ending November 30, 2011 and December 31, 2011; and for total residual chlorine for the monitoring periods ending January 31, 2012 and February 29, 2012; 30 TAC §30.350(d) and (j) and §305.125(1), and TPDES Permit Number WQ0014735001, Other Requirements Number 1, by failing to employ at least one licensed operator who holds a category C license or higher; 30 TAC §319.4 and TPDES Permit Number WQ0014735001, Monitoring and Reporting Requirements Number 1, by failing to conduct analysis/testing of effluent for *Escherichia coli* for the quarterly monitoring periods ending January 31, 2012, April 30, 2012, July 31, 2012, and October 31, 2012; and TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0014735001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $20,150; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: ONE WAY DIRECTION CORPORATION dba Somerville Mart; DOCKET NUMBER: 2014-0616-PST-E; IDENTIFIER: RN101672665; LOCATION: Somerville, Burleson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Orange County Water Control and Improvement District Number 1; DOCKET NUMBER: 2014-0369-MWD-E; IDENTIFIER: RN102182755; LOCATION: Vidor, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010875001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010875001, Final Effluent Limitations and Monitoring Requirements Number 1, and interim effluent limitations and monitoring requirements meets 1 and 2 by failing to comply with permitted effluent limits; PENALTY: $25,000; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: PHW, EMW, AWB & EB TEXAS, LLC dba House Water System; DOCKET NUMBER: 2014-0502-PWS-E; IDENTIFIER: RN102318557; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water system; RULE 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 the quarter and failed to provide public notification for failure to provide DLQORs; 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect annual nitrate monitoring samples for the 2012 monitoring period; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees for fiscal year 2014, including any associated late fees and penalties for TCEQ Financial Administration Account Number 92200320; PENALTY: $805; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Regency Field Services LLC; DOCKET NUMBER: 2014-0343-PWS-E; IDENTIFIER: RN102904547; LOCATION: Coyanosa, Pecos County; TYPE OF FACILITY: public water sup-

ply; RULE VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample during the month of November 2010; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; 30 TAC §290.106(c) and (e), by failing to provide the results of annual nitrate sampling to the executive director for the 2012 and 2013 monitoring periods; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; 30 TAC §290.117(i)(1), by failing to provide the results of lead and copper tap sampling to the executive director for the January 1, 2013 - June 30, 2013 monitoring period; and 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of triennial metals, minerals, synthetic organic chemical (methods 504, 515.4, and 531.1) contaminants, and volatile organic chemical contaminants sampling to the executive director; PENALTY: $1,397; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(20) COMPANY: STROEHER & SON, INCORPORATED dba Stroeher & Son Bulk Plant; DOCKET NUMBER: 2014-0409-MLM-E; IDENTIFIER: RN101764603; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: retail fuel station; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; 30 TAC §334.76, by failing to take immediate action to prevent any further releases of the regulated substance into the environment, including reporting the release to the TCEQ within 24 hours and shutting down the leaking aboveground storage tank system if necessary; and 30 TAC §334.77, by failing to perform initial abatement measures; PENALTY: $31,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: THE CAMP RECOVERY CENTERS, L.P. dba Starlite Recovery Center; DOCKET NUMBER: 2014-0492-PWS-E; IDENTIFIER: RN101262962; LOCATION: Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.117(i)(5) and (k), by failing to deliver the public education materials in the event of an exceedance of the lead action level and to continue the delivery of the public education materials for as long as the lead action level was not met; and 30 TAC §290.117(i)(5) and (k), by failing to timely deliver the public education materials in the event of an exceedance of the lead action level and to continue the timely delivery of the public education materials for as long as the lead action level was not met; PENALTY: $3,177; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201403240
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 15, 2014

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Enforcement Orders

A default order was entered regarding EL VIAJE RETREAT, LLC, Docket No. 2013-0681-PWS-E on July 2, 2014 assessing $2,718 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding AKTHER GAFFAR, INC, R.D.N. Inc., and Amhurst Business, LLC, dba First Stop, Docket No. 2013-0747-PST-E on July 2, 2014 assessing $8,881 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Miguel Enriquez dba La Zacatecana Market, Docket No. 2013-1171-PST-E on July 2, 2014 assessing $9,803 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company and Shell Chemical LP, Docket No. 2013-1205-AIR-E on July 2, 2014 assessing $48,750 in administrative penalties with $9,750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John C. Moore and John L. Moore dba Moore's Water System fka Moore's Water System of Beaver Lake, Inc., Docket No. 2013-1351-PWS-E on July 2, 2014 assessing $6,362 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alma Roman, Docket No. 2013-1400-MSW-E on July 2, 2014 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zaed Business Inc dba Shoppers First Choice Mini Mart, Docket No. 2013-1478-PST-E on July 2, 2014 assessing $8,879 in administrative penalties with $1,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRITCHETT OIL, LLC dba Pritchett Oil & Grocery, Docket No. 2013-1517-PST-E on July 2, 2014 assessing $9,792 in administrative penalties with $1,958 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHORE-TECH, INC., Docket No. 2013-1613-PWS-E on July 2, 2014 assessing $1,904 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rebecca Creek Municipal Utility District, Docket No. 2013-1630-PWS-E on July 2, 2014 assessing $366 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abaco Operating L.L.C., Docket No. 2013-1721-AIR-E on July 2, 2014 assessing $32,596 in administrative penalties with $6,519 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Malcolm Martin, Docket No. 2013-1804-PST-E on July 2, 2014 assessing $7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kenedy, Docket No. 2013-1852-MLM-E on July 2, 2014 assessing $12,297 in administrative penalties with $2,459 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 City of Caddo Mills, Docket No. 2013-1857-MWD-E on July 2, 2014 assessing $16,312 in administrative penalties with $3,262 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 Bloomington Independent School District, Docket No. 2013-1909-MWD-E on July 2, 2014 assessing $9,350 in administrative penalties with $1,870 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald E. Crane dba Sherwood Estates Manufactured Townhome Community, dba Westgate Manufactured Townhome Community, and dba Country Village Mobile Home Estates, Docket No. 2013-1915-PWS-E on July 2, 2014 assessing $1,355 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Margarito Flores and Lucia Flores dba Royal Oaks Apartments, Docket No. 2013-2005-PWS-E on July 2, 2014 assessing $1,087 in administrative penalties with $1,087 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 City of Rosebud, Docket No. 2013-2088-PWS-E on July 2, 2014 assessing $486 in administrative penalties with $486 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 PINKIE'S INC., Carol Fritz, Kenneth Wayne Fritz, and David L. Fritz dba Pinkie's Mini Mart 51 and dba Pinkie's Mini Mart 53, Docket No. 2013-2119-PWS-E on July 2, 2014 assessing $2,808 in administrative penalties with $2,808 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Key Energy Services, LLC, Docket No. 2013-2125-PWS-E on July 2, 2014 assessing $630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stepping Stone Ministry, Inc., Docket No. 2013-2140-PWS-E on July 2, 2014 assessing $660 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMCO, LLC, Docket No. 2013-2188-AIR-E on July 2, 2014 assessing $3,500 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.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2013-2189-AIR-E on July 2, 2014 assessing $50,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ropesville, Docket No. 2014-0028-PWS-E on July 2, 2014 assessing $1,228 in administrative penalties with $1,228 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLOMOT WATER SUPPLY CORPORATION, Docket No. 2014-0030-PWS-E on July 2, 2014 assessing $9,100 in administrative penalties with $9,100 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 Monarch Utilities I L.P., Docket No. 2014-0068-PWS-E on July 2, 2014 assessing $1,404 in administrative penalties with $1,404 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose O. Beltran and Maria A. Beltran dba 1017 Café, Docket No. 2014-0095-PWS-E on July 2, 2014 assessing $270 in administrative penalties.

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 Hochheim Prairie Hermann Sons Hall Association, Docket No. 2014-0232-PWS-E on July 2, 2014 assessing $1,380 in administrative penalties with $1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201403262
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 16, 2014

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Notice of Water Quality Applications

The following notices were issued on July 3, 2014 through July 11, 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

EXXON MOBIL CORPORATION which operates the Baytown Chemical Plant (a petrochemical manufacturing plant), has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001215000 to authorize correct the associated SIC codes, increase the daily maximum effluent limitation for total suspended solids at Outfall 003, remove daily average effluent limitations for all limited parameters, clarify the required monitoring frequencies for limited parameters, and clarify the description of hydrostatic test water authorized to be discharged via Outfall 003. The current permit authorizes the discharge of stormwater (commingled with other wastewaters), fire water control system test and flush water, other de minimis losses from fire water control system (freeze protection, minor leaks awaiting repair), other de minimis losses from the decorative ponds, hydrostatic test water (new and clean equipment), potable water system flush water, irrigation water from the landscape sprinkler system, steam condensate and air conditioner condensate, other de minimis losses of potable water, and other de minimis losses of clarified water, and previously monitored effluents (stormwater commingled with other wastewaters) from Outfalls 103 and 203 on an intermittent and flow variable basis via Outfall 003. The facility is located at the intersection of Burleson Street and Wooster Cedar Bayou County Road in the City of Baytown, Harris County, Texas 77520. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

UNIMIN CORPORATION which operates a sand mining and processing operation, has applied for a renewal of TPDES Permit No. WQ0001401000, which authorizes the discharge of mine seepage and storm water via Outfalls 001, 002, and 003 at a daily average flow not to exceed 500,000 gallons per day. The facility is located on County Road 308 approximately 3/4 miles north of the intersection of County Road 308 and U.S. Highway 67 in the northeast corner, Somervell County, Texas 76033.

SEASIDE AQUACULTURE INC which operates Seaside Aquaculture has applied for a renewal of TPDES Permit No. WQ0003660000, which authorizes the discharge of process wastewater (aquaculture pond effluent) at a daily average flow not to exceed 6,000,000 gallons per day via Outfalls 001-009. This facility is located at 5000 FM 3280, on the on the eastern side of Farm-to-Market Road 3280 where Farm-to-Market Road 3280 terminates at Matagorda Bay, approximately 6 miles south-southwest of the City of Palacios in Matagorda County, Texas 77465.

LINDE GAS NORTH AMERICA LLC 11603 Strang Road, La Porte, Texas 77571, which operates Linde Gas La Porte Syngas Facility, a carbon monoxide, hydrogen, and methanol manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0004092000 to authorize adding the following: (1) discharges of previously monitored effluent (treated process wastewater from the methanol stripper tail waste stream, via internal Outfall 101 at a daily average flow not to exceed 65,000 gallons per day and treated domestic wastewater via internal Outfall 201 at a daily average flow not to exceed 4,000 gallons per day) and process wastewater (process wastewater from three partial oxidation units (POX), methanol water column bottoms, steam condensate from process areas, process area wash down water, and safety shower drains within the process areas) via Outfall 001; (2) a reduction in the monitoring frequencies for total silver at Outfalls 001 and 002; and (3) changes to the requirements and wording in the Other Requirements section of the permit that adjusts the effluent limitation pH range of 5.0 to 11.0 standard units in discharges of utility wastewater made via Outfall 001 and adds language that requires the permittee to route the utility wastewater to a retention pond and then on-site or off-site for treatment and disposal when either or both of the following will occur in discharges of utility wastewater made via Outfall 001: a) excursions in pH that will exceed the effluent limitations and requirements for pH, including the requirements for excursions in pH, in the permit; and b) exceedances in the effluent limitations and monitoring require-

ments for temperature or total organic carbon in the permit. The existing permit authorizes the discharge of cooling tower blowdown, boiler blowdown, utility wastewater (condensate, demineralizer regenerate streams, and belt-press wash water), wash down water from process areas and non-process areas, sample cooler water, and stormwater at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001; and stormwater on an intermittent and flow-variable basis via Outfall 002. The facility is located at 11603B Strang Road, approximately one-half mile east of the intersection of Strang Road and Miller Cut-Off Road, La Porte, Harris County, Texas 77571.

LUMINANT MINING COMPANY LLC which operates Monticello-Leesburg Lignite Mining Area, has applied for a renewal of TPDES Permit No. WQ0004681000, which authorizes the discharge of surface water runoff from active mining areas, ground water seepage, and dewatering well water on an intermittent and flow-variable basis via Outfalls 001M, 002M, 003M, 004M, and 005M and post-mining area runoff on an intermittent and flow-variable basis via Outfalls 001R, 002R, 003R, 004R, and 005R. The draft permit authorizes the discharge of surface water runoff from active areas, ground water seepage, and dewatering well water on an intermittent and flow-variable basis via Outfall 001 and post-mining area runoff and previously monitored effluent from post mining sedimentation ponds on an intermittent and flow-variable basis via Outfall 101. The facility is located 1.5 miles east of Leesburg, southeast of the intersection of the Kansas City Southern Railroad and County Road 3106, Camp County, Texas.

CITY OF SCHULENBURG has applied for a renewal of TPDES Permit No. WQ0010115001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 460,000 gallons per day. The facility is located in the 800 block of Kallus Street near its intersection with Hillje Street in the City of Schulenburg in Fayette County, Texas 78956.

CITY OF WOLFFORTH has applied for a renewal of TCEQ Permit No. WQ0010321002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 410,000 gallons per day via surface irrigation of non-public access land consisting of 54 acres of pecan trees and 100 acres of 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 approximately 2,600 feet southwest of the intersection of Farm-to-Market Road 179 and Farm-to-Market Road 1585, approximately three miles east of the intersection of U.S. Highway 82 and Farm-to-Market Road 1585 in Lubbock County, Texas 79382.

CITY OF GIDDINGS has applied for a renewal of TPDES Permit No. WQ0010456002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 464,000 gallons per day. The facility is located on South Sewer Plant Road, approximately 2,200 feet southeast of Farm-to-Market Road 448 and 4,000 feet southwest of U.S. Highway 77, Giddings, in Lee County, Texas 78942.

CITY OF COAHOMA has applied for a renewal of TCEQ Permit No. WQ0010723001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 86,800 gallons per day via surface irrigation of 95 acres of farmland on the R.L. Powell Farm and 100 acres of farmland on the J.L. Metcalf Farm. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located adjacent to the west side of Farm-to-Market Road 820, approximately 1.2 miles south of the intersection of Interstate Highway 20 and Farm-to-Market Road 820 in Howard County, Texas 79511.

CITY OF BOLING has applied for a renewal of TPDES Permit No. WQ0010843001 which authorizes the discharge of treated domestic wastewater at a daily flow not to exceed 133,000 gallons per day. The facility is located adjacent to Caney Creek, west of and adjacent to Rycade Avenue in the City of Boling in Wharton County, Texas.

CITY OF FREEPORT has applied for a renewal of TPDES Permit No. WQ0010882002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 123 Slaughter Road north of State Highway 36, approximately 1 mile south of the Brazos River in Freeport, in Brazoria County, Texas 77541.

CITY OF BASTROP has applied for a renewal of TPDES Permit No. WQ0011076001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 300 Water Street, Bastrop in Bastrop County, Texas 78602.

MOUNT HOUSTON ROAD MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0011154001 to authorize relocation of the existing point of discharge to a point approximately 100 meters downstream. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day, and the applicant is not proposing to increase the volume of water discharged. The facility is located at 2265 Stuebner Park Lane, Houston, approximately 1.3 miles northwest of the intersection of State Highway 249 and Veterans Memorial Drive, on the east bank of Halls Bayou in Harris County, Texas 77038.

CITY OF TEMPLE AND CITY OF BELTON have applied for a renewal of TPDES Permit No. WQ0011318001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The current permit authorizes marketing and distribution of composted sewage sludge and land application of Class A sludge on property-owned, leased or under the direct control of the permittee. The facility is located at 2405 East Sixth Avenue, Belton, approximately 400 feet south of Farm-to-Market Road 93 and approximately 1 mile southeast of the intersection of Farm-to-Market Road 93 and Interstate Highway 35 in Bell County, Texas 76513. The sludge treatment works are located within and adjacent to the southwest corner of the wastewater treatment facility. The applicants have also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program.

SYED NOORIDUN HYDER has applied for a renewal of TPDES Permit No. WQ0011778001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located at 475 Higgs Drive, approximately 2.5 miles southwest of the intersection of Farm-to-Market Road 2818 and Farm-to-Market Road 1688 (Leonard Road), 2000 feet southwest of the intersection of Leonard Road and Jones Road, five miles southwest of the City of Bryan in Brazos County, Texas 77807.

AQUA TEXAS INC has applied for a major amendment to TPDES Permit No. WQ0014194001 to authorize the relocation of the existing discharge point to an unnamed drainage tributary. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located in Water House Court approximately three miles southwest of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 1093 in Fort Bend County, Texas 77485.

AQUA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014223001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 207 Pershing Boulevard, on the west side of an unnamed road, 0.49 mile east of State Highway 95 and Pershing Drive, and approximately 2.78 miles north of the intersection of State Highway 95 and Farm-to-Market Road 1441 in Bastrop County, Texas 78602.

EAST MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TPDES Permit No. WQ0014311001, 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 4,000 feet northwest of the intersection of U.S. Highway 59 and State Highway 242 in Montgomery County, Texas 77357.

LEON INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014659002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 12168 U.S. Highway 79, Jewett, in Leon County, Texas 75846.

VAM USA LLC has applied for a renewal of TPDES Permit No. WQ0015008001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 16031 Miller Road 1, one mile southwest of the intersection of US Highway 90 and Sheldon Road, in Houston in Harris County, Texas 77049.

TOWN OF ROUND TOP has applied for a renewal of TPDES Permit No. WQ0015025001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 27,000 gallons per day. The facility is located approximately 1.0 mile northeast of the intersection of Farm-to-Market Road 1457 and State Highway 237, at the dead end of Marcia Lane in Fayette County, Texas 78954.

PULTE HOMES OF TEXAS LP has applied for a new permit, proposed Permit No. WQ0015222001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located 0.5 mile north of the intersection of Stockdick School Road and Porter Road and 0.1 mile to the west of Porter Road in Harris County, Texas 77493.

PRAXAIR INC which operates Praxair, a cryogenic air separation plant producing oxygen, nitrogen and argon, has applied for a renewal of TPDES Permit No. WQ0002529000, which authorizes the discharge of utility wastewater (including cooling tower blowdown and atmospheric condensate), treated domestic wastewater, truck and maintenance wash water, and storm water at a daily average dry-weather effluent flow not to exceed 540,000 gallons per day via Outfall 001. The facility is located at the intersection of Strang Road and State Highway 225 in the City of La Porte, Harris County, Texas.

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.

SAN ANTONIO RIVER AUTHORITY has applied for a minor amendment to TPDES Permit No. WQ0010749004 to remove the authority to land apply wastewater treatment plant sludge for beneficial use on 63.1 acres of land where the treatment facility is located and to add the authority to conduct sludge composting and heat drying on the same site. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,500,000 gallons per day. The facility is located at 1720 Farm-to-Market Road 1516 North, approximately 1.15 miles south of the intersection of Interstate Highway 10 and Farm-to-Market Road 1516, in Bexar County, Texas 78109.

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-201403261
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 16, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: 8-day Special Runoff Report due May 19, 2014 for Candidates and Officeholders

Ricardo R. Godinez, 2415 N. 10th St., McAllen, Texas 78501

Deadline: Personal Financial Statement due January 21, 2014

Melanie W. Flowers, 440 Louisiana, Ste. 1150, Houston, Texas 77002

George Hardy IV, 1518 Stone Trail Dr., Sugar Land, Texas 77479

Brandin Lea, 6946 Chinook Dr., Austin, Texas 78736

Jesus A. Mendoza, 2533 Windsor Castle Way, Lewisville, Texas 75056

Hank Paine, 101 S. Woodrow, Denton, Texas 76205

Bonnie Rangel, 500 E. San Antonio, Ste. 601, El Paso, Texas 79901

Ted Seago, 12345 Lake Vista Dr., Willis, Texas 77318

Deadline: Personal Financial Statement due April 30, 2014

Sada Cumber, 6202 Duke Trail Ln., Sugar Land, Texas 77479

Nicole D. Lostracco, P.O. Box 635065, Nacogdoches, Texas 75963

Evelyn Miller, 6805 Lebanon Rd. #1135, Frisco, Texas 75034

Jay R. Winter, 7801 E. County Road 6300, Lubbock, Texas 79403

Deadline: Lobby Activities Report due February 10, 2014

James Frinzi, 4611 Bee Caves Rd., Ste. 211, Austin, Texas 78746

Deadline: Lobby Registration due April 7, 2014

Paul Charles Dunn, 701 8th St., Levelland, Texas 79336

TRD-201403166
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: July 9, 2014

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 12, 2014 through July 14,

2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, July 18, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, August 18, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: City of League City; Location: The project route begins a point within Interurban Channel, near the Farm-to-Market (FM) 518 Bridge and continues downstream for a 1,960-linear-foot reach of Interurban Channel, near its confluence with Clear Creek. The project site is located in League City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: LEAGUE CITY, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.50931 North; Longitude: 95.10436 West. Project Description: The applicant proposes to place approximately 200 cubic yards of fill material, in the form of a box culvert and rip-rap, into a 1,595-linear-foot section of Interurban Channel, for the purpose of bank stabilization. This project includes the following impacts: 44 linear feet of buried concrete rip-rap with concrete side slopes; 1,115 linear feet of 8-foot by 8-foot reinforced box culverts (RBC); concrete lining 300 linear feet of channel bottom; 30 linear feet of buried concrete rip-rap; and grass-lined overflow channel over the RBC. CMP Project No: 14-1800-F1. Type of Application: U.S.A.C.E. permit application #SWG-2014-00322. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Pinto-Lion Jacintoport II, L.P.; Location: The project site is located in wetlands adjacent to Carpenter's Bayou, southeast of the Market Street and Appelt Drive intersection, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Jacinto City, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.769041 North; Longitude: 95.142456 West. Project Description: The applicant proposes to discharge 1,613 cubic yards of concrete and earthen fill material into 1.00 acre of wetlands adjacent to Carpenters Bayou to facilitate the construction of a commercial development. CMP Project No: 14-1784-F1. Type of Application: U.S.A.C.E. permit application #SWG-2013-00072. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project is located in the Houston Ship Channel (HSC), along 37 wharves in the turning basin and two wharves in the Manchester area, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: Settegast, Park Place and Galena Park, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29. 733986 North; Longitude: 95.277391 West. Project Description: The applicant proposes to deepen 37 wharves around the HSC and turning basin and two wharves in the Manchester Wharf area to a depth of 36 feet below mean low tide (MLT) plus 1 foot of overdepth and 1 foot of advanced maintenance dredging for a total depth of 38 feet below MLT. Depths at the wharves are currently authorized at differing depths ranging from 28 feet below MLT to 36 feet below MLT. This project will authorize these wharves to be dredged to the same depth as the adjoining Federally-maintained channel. All dredged material will be placed in previously approved Port Authority-owned placement areas. CMP Project No: 14-1799-F1. Type of Application: U.S.A.C.E. permit application #SWG-2005-01296. This application will be reviewed pursuant to Section 10 of the Rivers and harbors Act of 1899.

Applicant: The Nature Conservancy; Location: The project site is located in Corpus Christi Bay, at Shamrock Island, approximately 8.6 miles southwest of Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: PORT INGLESIDE, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.75827 North; Longitude: 97.17113 West. Project Description: The applicant proposes to construct Phase II of the Shamrock Island Restoration Project which consists of constructing rubblemound (rock) breakwaters, placing shoreline breach fill, and constructing a feeder mound. The three rubblemound breakwaters will span a total length of 1,500 linear feet including 90- to 95-foot gaps between breakwaters. The crest of the breakwaters will be constructed to +4.0 feet NAVD88 with a crest width of 6 feet and side slopes of 2H:1V. The total volume for the breakwaters is approximately 9,800 cubic yards (CY). The breakwaters will consist of armor stone and bedding stone placed on a geotextile fabric. The breach fill will be constructed to +4.0 feet NAVD88 and the feeder mound will be constructed to a maximum of + 1.5 feet NAVD88. The volumes for the breach and feeder mound are approximately 900 and 45,000 CY respectively. The sand material for the breach fill and feeder mound will be hydraulically dredged from a south and north borrow areas and transported via pipeline to the respective placement areas. The borrow areas and 150-foot-wide access channel will be dredged up to -8.0 feet NAVD88 with a 4H:1V side slope. The volume of the access channel is approximately 10,500 CY which will be restored after construction. The total areas for the north and south borrow areas are 57 and 59 acres, respectively. An access corridor is located between the access channel and the breach fill which has been limited in width to reduce any disturbances to the island. CMP Project No: 14-1850-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00854. This application will be reviewed pursuant to Section 10 of the Rivers and harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201403270
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 16, 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, dated April 4, 2014, by Michael Hoover, Licensed State Land Surveyor, delineating the line of Mean Higher High Water of remnant portions of the Samuel C. Bundick League,

Abstract 7. The survey is associated with and in support of a project that involves placing fill on submerged land and installing water exchange culvert pipe, as proposed under Texas General Land Office permit ME20140056, situated approximately 200 feet northeasterly from the northbound service road of Interstate Highway No. 45 and 2000 feet southeasterly from the southerly limits of the Bayou Vista subdivision at coordinates N 29° 19' 27", W 94° 55' 25", WGS84. A copy of the survey is recorded in Book 1, at Page 236, Galveston County Surveyor's Records.

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-201403266
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 16, 2014

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Golden Crescent Workforce Development Board

Request for Proposals

The Golden Crescent Workforce Development Board (GCWDB) is accepting proposals for Fiscal Monitoring Services.

To obtain a Request for Proposals (RFP) package, call (361) 576-5872. Response deadline is August 5, 2014.

GCWDB is an Equal Opportunity Employer/Program.

TRD-201403180
Henry Guajardo
Executive Director
Golden Crescent Workforce Development Board
Filed: July 11, 2014

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Cardiovascular System Surgery

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Cardiovascular System Surgery.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for Cardiovascular System Surgery are proposed to be effective October 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

1 TAC §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403217
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for G Codes (Procedures/Professional Services (Temporary))

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for G Codes (Procedures/Professional Services (Temporary)).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for G Codes (Procedures/Professional Services (Temporary)) are proposed to be effective October 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403218
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Influenza Vaccines (90685 and 90687)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Influenza Vaccines (90685 and 90687).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for Influenza Vaccines (90685 and 90687) are proposed to be effective October 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403222
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Neurostimulators and Neuromuscular Stimulators

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Neurostimulators and Neuromuscular Stimulators.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for Neurostimulators and Neuromuscular Stimulators are proposed to be effective October 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8061, which addresses payment for hospital services;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403219
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rate for Physician-Administered Drug - Kadcyla (J9354)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rate for Procedure Code J9354.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rate for Physician-Administered Drug - Kadcyla (J9354) is proposed to be effective July 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

1 TAC §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403226
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Sleep Studies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Sleep Studies.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for Sleep Studies are proposed to be effective October 1, 2014.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403220
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 21, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at http://www.hhsc.state.tx.us/news/meetings.asp. The broadcast will be archived and can be accessed on demand at the same website.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective October 1, 2014, for the following services:

(1) Family Planning

(2) General and Integumentary System Surgery

(3) Orthotics and Prosthetics

(4) Physician Administered Drugs - Oncology

(5) Physician Administered Drugs - Nononcology

(6) Respiratory Therapists

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

§355.8581, which addresses the reimbursement methodology for Family Planning Services

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 7, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201403221
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 14, 2014

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment of the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver, under the authority of §1115 of the Social Security Act. CMS has approved this waiver through September 30, 2016. The proposed effective date for the amendment is March 1, 2015, with no changes to budget neutrality.

This amendment request proposes the following changes:

HHSC is proposing a new way to serve people who are eligible for both Medicare and Medicaid, known as dual eligibles. The amendment will add provisions referencing the State's Dual Eligible Integrated Care Demonstration Project, which will allow one health plan to provide both Medicare and Medicaid services to dual-eligible individuals enrolled in STAR+PLUS in the THTQIP waiver. The goal of the project is to make it easier for dual eligibles to get care, improve the quality of care received, and promote independence in the community.

The project is scheduled to begin March 1, 2015, and individuals may choose not to participate. To participate, an individual must be:

- Receiving Medicare Part A, B, and D,

- Receiving full Medicaid benefits through the STAR+PLUS program or receiving STAR+PLUS Home and Community Based Services (HCBS) waiver services,

- Age 21 or older, and

- Residing in one of the following six Texas counties (Bexar, Dallas, El Paso, Harris, Hidalgo, and Tarrant).

The THTQIP waiver allows the State to expand managed care throughout the state, while preserving an important revenue source for certain qualifying hospitals that currently receive Upper Payment Limit payments.

To obtain copies of the proposed waiver amendment, interested parties may contact Tiffany Kirts by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 424-6574, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201403258
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 15, 2014

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-020 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to implement Senate Bill 8, 83rd Legislature, Regular Session, 2013, which requires the Texas Health and Human Services Commission to provide Medical Transportation Program services on a regional basis through Managed Transportation Organizations. The requested effective date for the amendment is September 1, 2014.

To obtain copies of the proposed amendment and information relating to the effect and cost of the change, any possible cost savings, the criteria for receiving services, and the number of people to be served, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201403269
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: July 16, 2014

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Department of State Health Services

Amendment to the Texas Schedules of Controlled Substances

This amendment to the Texas Schedules of Controlled Substances was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services, on July 2, 2014, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

The Administrator of the Drug Enforcement Administration (DEA) issued a final order placing 5[alpha]-pregnan-3[alpha]-ol-11,20-dione (alfaxalone), including its salts, isomers, and salts of isomers, into schedule IV of the United States Controlled Substances Act (CSA) effective March 31, 2014. This final order was published in the *Federal Register,* Volume 79, Number 39, pages 10985 - 10989. The Administrator has taken action based on the following.

1. 5[alpha]-pregnan-3[alpha]-ol-11,20-dione (alfaxalone) has a low potential for abuse relative to the drugs or other substances in schedule III; the overall abuse potential of alfaxalone is comparable to the schedule IV controlled substances diazepam, midazolam, phenobarbital, methohexital, and propofol (proposed to be controlled as a schedule IV);

2. 5[alpha]-pregnan-3[alpha]-ol-11,20-dione (alfaxalone) has a currently accepted medical use in treatment in the United States; alfaxalone was approved for marketing by the FDA as a veterinary anesthetic product for the induction and maintenance of anesthesia in cats and in dogs; and

3. Abuse of 5[alpha]-pregnan-3[alpha]-ol-11,20-dione (alfaxalone) may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

The Deputy Administrator DEA issued a final order placing fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the CSA effective November 5, 2009. This final order was published in the *Federal Register,* Volume 74, Number 192, pages 51234 - 51236. The Deputy Administrator has taken the action based on the following:

1. Fospropofol has a low potential for abuse relative to the drugs or substances in schedule III. Although there is no direct comparison to a schedule III substance, this finding is based on the demonstration of the abuse potential of propofol, the active metabolite, relative to the schedule IV substances, methohexital and midazolam;

2. Fospropofol has a currently accepted medical use in treatment in the United States; and

3. Abuse of fospropofol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. This finding is based on the symptoms exhibited upon withdrawal from propofol.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register;* and David L. Lakey, M.D., in his capacity as Commissioner of the Texas Department of State Health Services, hereby orders that the substances 5[alpha]-pregnan-3[alpha]-ol-11,20-dione (alfaxalone), including its salts, isomers, and salts of isomers and fospropofol including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, be placed into Schedule IV of the schedules of controlled substances.

SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

*(1) Alfaxalone (5[alpha]-pregnan-3[alpha]-ol-11,20-dione)

(2) Alprazolam;

(3) Barbital;

(4) Bromazepam;

(5) Camazepam;

(6) Chloral betaine;

(7) Chloral hydrate;

(8) Chlordiazepoxide;

(9) Clobazam;

(10) Clonazepam;

(11) Clorazepate;

(12) Clotiazepam;

(13) Cloxazolam;

(14) Delorazepam;

(15) Diazepam;

(16) Dichloralphenazone;

(17) Estazolam;

(18) Ethchlorvynol;

(19) Ethinamate;

(20) Ethyl loflazepate;

(21) Fludiazepam;

(22) Flunitrazepam;

(23) Flurazepam;

*(24) Fospropofol;

(25) Halazepam;

(26) Haloxazolam;

(27) Ketazolam;

(28) Loprazolam;

(29) Lorazepam;

(30) Lormetazepam;

(31) Mebutamate;

(32) Medazepam;

(33) Meprobamate;

(34) Methohexital;

(35) Methylphenobarbital (mephobarbital);

(36) Midazolam;

(37) Nimetazepam;

(38) Nitrazepam;

(39) Nordiazepam;

(40) Oxazepam;

(41) Oxazolam;

(42) Paraldehyde;

(43) Petrichloral;

(44) Phenobarbital;

(45) Pinazepam;

(46) Prazepam;

(47) Quazepam;

(48) Temazepam;

(49) Tetrazepam;

(50) Triazolam;

(51) Zaleplon;

(52) Zolpidem; and

(53) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

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Schedule IV narcotics

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Changes to the schedules are designated by a single asterisk (*)

TRD-201403216
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 14, 2014

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Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Woodlands Specialty Hospital, P.L.L.C.	L06656	Houston	00	06/20/14
Webster	Bay Area Regional Medical Center, L.L.C.	L06655	Webster	00	06/13/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Northwest Texas Healthcare System, Inc. dba Northwest Texas Healthcare System	L02054	Amarillo	87	06/17/14
Austin	Seton Family of Hospitals dba University Medical Center at Brackenridge	L00268	Austin	130	06/24/14
Austin	St. Davids Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	121	06/16/14
Austin	Austin Heart, P.L.L.C. dba Austin Heart	L04623	Austin	79	06/30/14
Austin	Arise Healthcare System, L.L.C. dba Arise Austin Medical Center	L06621	Austin	01	06/16/14
Cedar Park	Cedar Park Health System, L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	11	06/20/14
Clifton	Goodall Witcher Hospital Authority dba Goodall Witcher Hospital	L06574	Clifton	02	06/30/14
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	123	06/18/14
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	55	07/01/14
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	116	06/26/14
Dallas	Petnet Solutions, Inc.	L05193	Dallas	42	06/17/14
Dallas	Triad Isotopes, Inc.	L06334	Dallas	07	06/26/14
Dallas	Peloton Therapeutics, Inc.	L06490	Dallas	04	06/26/14
Dallas	Dufek Masif Hospital Corporation dba University General Hospital Dallas	L06577	Dallas	02	06/16/14
Dallas	Walnut Hill Physicians Hospital, L.L.C. dba Walnut Hill Medical Center	L06579	Dallas	03	06/30/14
Edinburg	Doctors Hospital at Renaissance, Ltd.	L05761	Edinburg	33	06/24/14
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	116	06/20/14
Fort Worth	Baylor All Saints Medical Center Radiology Department	L02212	Fort Worth	92	06/16/14
Fort Worth	Heart Center of North Texas, P.A.	L05338	Fort Worth	17	07/01/14
Fort Worth	Texas Oncology, P.A.	L05545	Fort Worth	52	06/30/14
Garland	E+ PET Imaging XII, L.P. dba PET Imaging of Garland	L05875	Garland	07	06/16/14
Harlingen	VHS Harlingen Hospital Company, L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	07	06/17/14
Harlingen	VHS Harlingen Hospital Company, L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	08	06/26/14
Houston	Texas Southern University	L03121	Houston	31	06/16/14
Houston	Memorial Hermann Health System dba Memorial Hermann Sugar Land Hospital	L03457	Houston	45	06/23/14

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	University of Texas Health Science Center at Houston	L03685	Houston	34	06/27/14
Houston	Texas Childrens Hospital	L04612	Houston	62	06/23/14
Houston	Willowbrook Cardiovascular Associates, P.A.	L05093	Houston	15	06/23/14
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	101	06/16/14
Houston	Petnet Houston L.L.C.	L05542	Houston	32	06/16/14
Houston	Nuclear Imaging Services, L.L.C.	L05791	Houston	14	06/25/14
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	31	06/20/14
Houston	Surefire Industries USA, L.L.C.	L06385	Houston	05	06/20/14
Houston	Qualitek, L.L.C.	L06564	Houston	01	06/19/14
Irving	Dallas-Ft Worth Veterinary Imaging Center dba Animal Imaging	L04602	Irving	14	06/26/14
La Porte	Total Petrochemicals & Refining USA, Inc.	L04640	La Porte	30	06/24/14
Lubbock	Covenant Medical Center	L00483	Lubbock	152	06/19/14
Lubbock	Mohammad Fawwaz Shoukfeh M.D., P.A. dba Texas Cardiac Center	L05276	Lubbock	19	06/20/14
Lufkin	East Texas Hematology and Oncology, P.A.	L06039	Lufkin	04	06/30/14
McAllen	Valley Cardiology, P.A.	L04692	McAllen	25	06/20/14
Pasadena	Arkema, Inc.	L06321	Pasadena	02	06/27/14
Plano	Health Texas Provider Network dba Cardiovascular Consultants - Plano	L06494	Plano	03	06/23/14
San Antonio	VHS San Antonio Imaging Partners, L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	89	06/19/14
San Antonio	Sonterra Cardiovascular Institute, P.A.	L06264	San Antonio	02	06/25/14
Sugar Land	U.S. Imaging, Inc. dba Fort Bend Imaging	L04459	Sugar Land	42	06/18/14
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	24	06/18/14
Sweetwater	Ludlum Measurements, Inc.	L01963	Sweetwater	103	06/18/14
Taylor	Scott & White Hospital - Taylor	L03657	Taylor	34	06/19/14
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	08	06/30/14
Throughout TX	Anderson Perforating Services, L.L.C.	L06587	Albany	04	06/27/14
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Andrews	27	06/27/14
Throughout TX	Berry GP, Inc.	L01575	Corpus Christi	61	06/24/14
Throughout TX	Alliance Geotechnical Group, Inc.	L05314	Dallas	25	06/25/14
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists L.L.C.	L05972	Flint	105	06/27/14
Throughout TX	Terracon Consultants, Inc.	L05268	Fort Worth	47	06/27/14
Throughout TX	Fugro Consultants, Inc.	L05843	Fort Worth	11	06/25/14
Throughout TX	DMS Health Technologies, Inc.	L05594	Garland	23	06/24/14
Throughout TX	Tolunay Wong Engineers, Inc.	L04848	Houston	19	06/16/14
Throughout TX	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	95	06/25/14
Throughout TX	French Engineering, L.L.C.	L06329	Houston	01	06/20/14
Throughout TX	Quality Inspection & Testing, Inc.	L06371	Houston	06	06/26/14
Throughout TX	Baker Hughes Oilfield Operations, Inc.	L06453	Houston	11	06/18/14
Throughout TX	Multi Phase Meters, Inc.	L06458	Houston	06	06/30/14
Throughout TX	Link Field Services, Inc.	L05383	Olney	28	06/20/14
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	28	06/20/14
Throughout TX	American Electric Power - Public Service Company of Oklahoma	L03481	Vernon	26	06/20/14
Tomball	Tomball Texas Hospital Company, L.L.C. dba Tomball Regional Medical Center	L06472	Tomball	08	06/30/14
Trinity	East Texas Medical Center Trinity	L05392	Trinity	12	04/20/14
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	193	06/18/14

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	R. Leldon Sweet, M.D., P.A. dba Outpatient Cardiovascular Services	L05029	Beaumont	11	06/24/14
Dallas	The Center for Molecular Imaging, L.P. dba Southwest Diagnostic Center for Molecular Imaging	L05715	Dallas	07	06/17/14
The Woodlands	E+ PET Imaging, VIII., L.P. dba PET Imaging of The Woodlands	L05747	The Woodlands	13	06/23/14

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Cambridge Heart Center, P.A.	L05623	Houston	17	06/20/14
Lubbock	Rosa of the South Plains, L.L.P. dba Rosa of the South Plains	L05484	Lubbock	20	06/18/14
Weatherford	City of Weatherford Comm. Development	L04571	Weatherford	13	06/24/14
Winnsboro	Mother Frances Hospital-Winnsboro	L03336	Winnsboro	38	06/18/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b) it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under tis chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and
(2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201403247
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 15, 2014

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified organizations with demonstrated success in helping young people from low-income families finish high school and pursue and complete post-secondary education and training. A bidder's conference is scheduled for Wednesday, July 30, 2014 beginning at 10:00 a.m. in H-GAC's Conference Room B (3555 Timmons Lane, 2nd floor, Houston, Texas).

Prospective proposers may obtain a copy of the RFP (beginning at 12:00 noon on Monday, July 14, 2014) online at www.h-gac.com or www.wrksolutions.com or by contacting Carol Kimmick at (713) 627-3200 or by email at carol.kimmick@h-gac.com. Proposals are due at H-GAC offices by 12:00 noon Central Daylight Time on Thursday, August 21, 2014. Late proposals will not be accepted. There will be no exceptions.

TRD-201403169
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: July 10, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of PHYSICIANS LIABILITY INSURANCE COMPANY to PLICO, INC., a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

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-201403268
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: July 16, 2014

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published a notice for Instant Game Number 1651 "Ultimate Crossword" in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5653).

The two words "per grid" were omitted from the end of Section 2.2R on page 5656. The text should read as follows:

R. GAME 1 and GAME 2 will not have more than 9 complete words per grid.

TRD-201403271

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Notice of Additional Comment Period and Public Comment Hearing

On January 8, 2014, the Texas Lottery Commission (Commission) received a petition from K&B Sales, Inc. and the Veterans of Foreign Wars - Department of Texas requesting the adoption of amendments to 16 TAC §§402.321 (Card-Minding Systems--Definitions), 402.322 (Card-Minding Systems--Site System Standards), 402.323 (Card-Minding Systems--Device Standards), and 402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements). The primary purpose of the requested amendments is to allow, but not require, licensed authorized organizations to offer bingo patrons the opportunity to set up individual customer accounts at the bingo premises that could then be used by the patrons to track the deposit of funds into the account and to purchase bingo products from those funds. The proposed amendments (with modifications made by Commission staff) were published in the February 28, 2014, issue of the *Texas Register* (39 TexReg 1325). The Commission previously solicited public comments on the proposed amendments, and on March 19 conducted a public comment hearing.

The Charitable Bingo Operations Division Director now requests that any additional public comments on the proposed amendments be submitted during a reopened comment period beginning July 28 and continuing through August 4. In addition, another public hearing to receive public comments regarding the proposed amendments will be conducted on Monday, August 4, 2014, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Eric Williams at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201403274
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 16, 2014

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Texas Board of Professional Engineers

Policy Advisory Regarding the Engineering Aspects of Construction Management

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 Water Quality Planning. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of water quality planning, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The following Policy Advisory, "Policy Advisory Regarding 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-201403259

Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: July 16, 2014

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Policy Advisory Opinion Regarding Water Quality Planning

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 Water Quality Planning. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of water quality planning, has developed a stakeholder process to gather information from professional engineers, architects 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-201403260
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: July 16, 2014

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 9, 2014, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of GS Texas Ventures, LLC for Designation as an Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP). Docket Number 42660.

The Application: GS Texas Ventures, LLC requests ETC/ETP designation to be eligible for federal and state universal service funds to assist the company in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.418 and P.U.C. Substantive Rule §26.417, the commission designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. The company seeks ETC/ETP designation within 417 AT&T Texas wire centers and 272 Verizon wire centers and their associated exchanges and study areas in their entirety as identified in Attachment A to the application.

GS Texas Ventures, LLC holds Service Provider Certificate of Operating Authority Number 60933. The company has requested approval of the application to be effective no earlier than 30 days after completion of notice in the *Texas Register;* in this instance, the proposed effective date is August 25, 2014.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas no later than August 14, 2014. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42660.

TRD-201403223
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2014

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 9, 2014, for an amendment to certificated service area boundaries within Upton and Sutton Counties, Texas.

Docket Style and Number: Joint Application of AEP Texas North Company (AEP TNC) and Southwest Texas Electric Cooperative, Inc. (SWTEC) to Amend Certificates of Convenience and Necessity for Service Area Boundaries within Upton and Sutton Counties. Docket Number 42658.

The Application: AEP TNC and SWTEC filed an application for service area boundary changes to allow SWTEC to provide service to a specific customer currently located within the singly certificated service area of AEP TNC and to allow AEP TNC to extend service near the City of Sonora that is currently within the singly certificated service area of SWTEC. AEP TNC and SWTEC have provided affidavits agreeing to the proposed changes.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 1, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42658.

TRD-201403225
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2014

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On July 10, 2014, InfoHighway (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60293. Applicant seeks to relinquish the certificate. Applicant stated that all operations and customers have been under Broadview Networks, Inc. since November of 2008.

The Application: Application of InfoHighway to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 42661.

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 1, 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 42661.

TRD-201403224
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 14, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Uvalde through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Uvalde, TxDOT CSJ No. 15MPUVLDE. Scope: Prepare an Airport Master Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. The TxDOT Project Manager is Megan McLellan.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SIX completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 9, 2014, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of TXDOT staff and one local representative. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or Megan McLellan, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201403265
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 16, 2014

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Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department) may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $50 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Reg-*

ister. The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I, relating to design-build contracts (Rules). The enabling legislation and the Rules govern the submission and processing of qualifications submittals, provide for publication of notice that the department is requesting qualifications submittals, and set forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary in the request for qualifications. The commission has authorized the issuance of a request for qualifications (RFQ) to design, construct and potentially maintain SH 99 (Grand Parkway) Segments H & I-1, and all or part of Segment I-2, in Chambers, Harris, Liberty and Montgomery counties, through a design-build contract and, potentially, a maintenance agreement. The project is a toll highway project, and serves as a continuation of the existing SH 99, which is the outer circumferential highway serving the Houston area. The SH 99 project described in the RFQ will include the design and construction of a new two-lane, controlled access tolled facility from US 59 North to I-10 East (Segments H & I-1) and a four-lane controlled access facility from FM 1405 to SH 146 (Segment I-2) and has estimated design-build costs of approximately $750 million (2014). This notice represents the next step in the procurement process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design-build contract and, potentially, a maintenance agreement. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a design-build contract and, potentially, a maintenance agreement. The department will accept for consideration any QS received in accordance with the enabling legislation, the Rules, and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and potentially a maintenance agreement for the project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on July 31, 2014. Copies of the RFQ will be available at the following locations:

Texas Department of Transportation

Beaumont District Office

8350 Eastex Freeway

Beaumont, TX 77708-1701

and

Texas Department of Transportation

Houston District Office

7600 Washington Avenue

Houston, TX 77007

or on the following website:

http://www.txdot.gov/business/partnerships/current-cda/sh99-grand-parkway/99hi-rfq.html

QSs will be due by 3:00 p.m. CST on September 18, 2014 at the address specified in the RFQ.

TRD-201403273
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 16, 2014

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Workforce Solutions Capital Area

Request for Proposals for Leased Telephone and Voicemail System

Workforce Solutions Capital Area Workforce Board (Workforce) is soliciting proposals from qualified telephone vendors to replace and/or upgrade current Private Branch Exchange (PBX) telephone systems and voicemail systems. Proposals must be for a leased option solution.

The Request for Proposals (RFP) may be obtained by contacting Angelica Benavides by fax at (512) 719-4710, or email at angelica.benavides@wfscapitalarea.com beginning at 12:00 p.m. on July 21, 2014. The RFP will be mailed or sent electronically as requested by the interested party. The RFP may also be picked up in person at the offices of Workforce from 8:00 a.m. - 4:00 p.m., Monday through Friday (except for holidays) or online at http://www.wfscapitalarea.com.

The response deadline for this RFP is no later than 12:00 p.m. on August 22, 2014. Proposals, whether mailed or hand-delivered, must be officially received at 6505 Airport Blvd., Suite 101-E, Austin, Texas 78752 by this deadline. Facsimile responses will not be accepted. **NO PROPOSALS WILL BE ACCEPTED AFTER THIS DEADLINE.**

All inquiries regarding this procurement should be directed to Angelica Benavides, Chief Information Officer, at (512) 597-7200 or e-mailed as follows: angelica.benavides@wfscapitalarea.com.

TRD-201403245
Donna Crenshaw
Director of Human Resources
Workforce Solutions Capital Area
Filed: July 15, 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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Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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