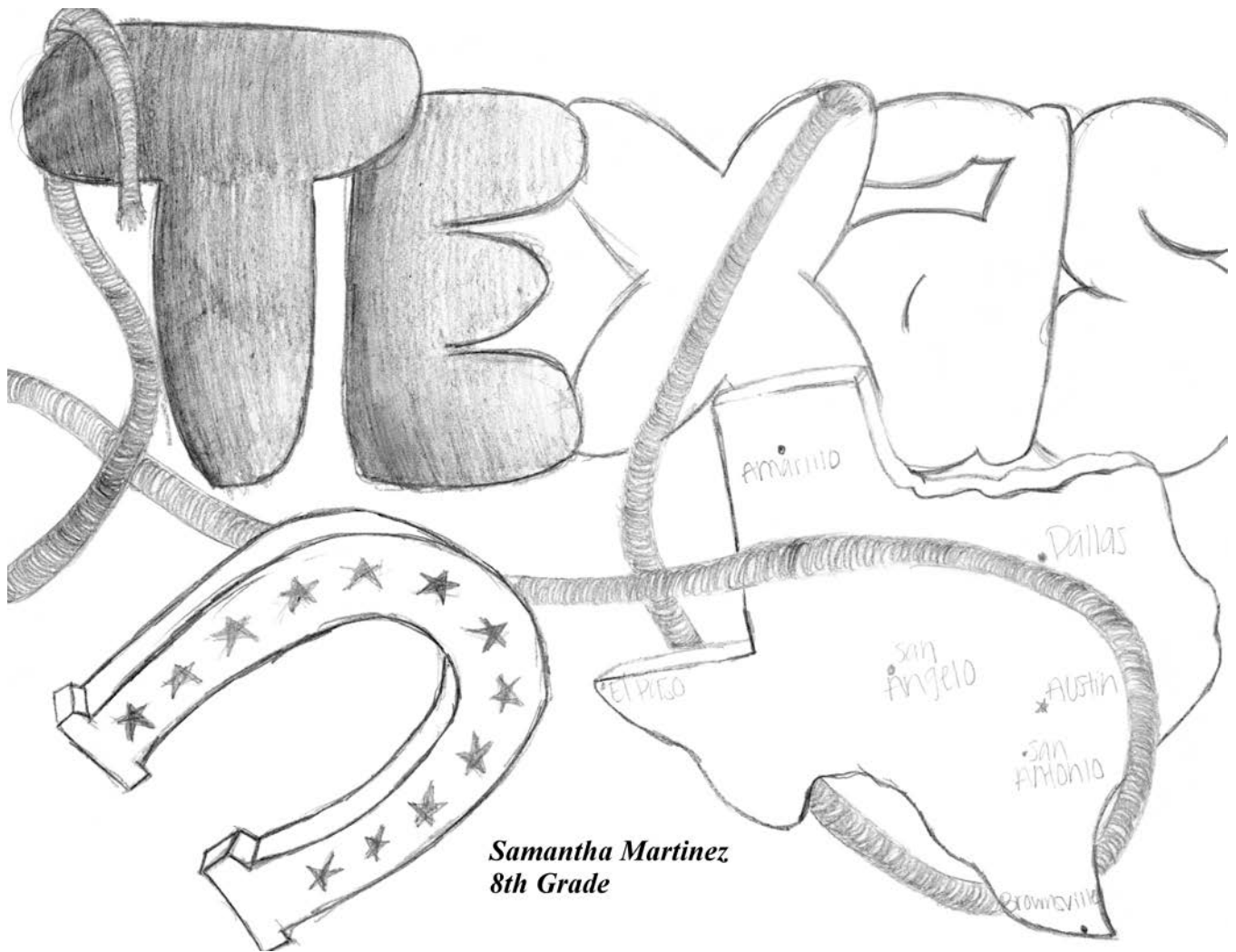

TEXAS REGISTER

Volume 39 Number 33

August 15, 2014

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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

GOVERNOR

Appointments.....	6111
Proclamation 41-3379.....	6112
Proclamation 41-3380.....	6113

ATTORNEY GENERAL

Opinions.....	6115
Opinions.....	6115

TEXAS ETHICS COMMISSION

Advisory Opinion Request.....	6117
Advisory Opinion Request.....	6117

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.725.....	6119
---------------------	------

STATE CHILDREN'S HEALTH INSURANCE PROGRAM

1 TAC §370.604.....	6120
---------------------	------

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.16.....	6123
----------------------------	------

TEXAS EDUCATION AGENCY

COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071.....	6132
----------------------	------

CURRICULUM REQUIREMENTS

19 TAC §74.1030.....	6133
----------------------	------

CHARTERS

19 TAC §§100.1, 100.101, 100.103, 100.105.....	6134
19 TAC §100.1.....	6135

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH

19 TAC §§114.31, 114.47 - 114.52.....	6135
---------------------------------------	------

TEXAS MEDICAL BOARD

ACUPUNCTURE

22 TAC §183.4.....	6144
22 TAC §183.11.....	6145

TEXAS MIDWIFERY BOARD

MIDWIFERY

22 TAC §831.25.....	6145
---------------------	------

TEXAS DEPARTMENT OF INSURANCE

PRIVACY

28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, 22.26, 22.27.....	6147
---	------

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.827.....	6158
--------------------	------

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

40 TAC §748.61.....	6165
40 TAC §§748.4501, 748.4503, 748.4505, 748.4507.....	6166
40 TAC §§748.4551, 748.4553, 748.4555.....	6166
40 TAC §748.4601, §748.4603.....	6167
40 TAC §§748.4651, 748.4653, 748.4655, 748.4657, 748.4659.....	6167
40 TAC §748.4701, §748.4703.....	6168
40 TAC §§748.4751, 748.4753, 748.4755, 748.4757, 748.4759, 748.4761, 748.4763, 748.4765, 748.4767.....	6169

MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §749.43.....	6175
40 TAC §§749.343, 749.347, 749.349, 749.353.....	6178
40 TAC §749.741.....	6179
40 TAC §749.743.....	6179
40 TAC §749.881.....	6180
40 TAC §749.931, §749.941.....	6180
40 TAC §749.1003.....	6181
40 TAC §749.1135.....	6181
40 TAC §749.1187.....	6181
40 TAC §749.1291.....	6182
40 TAC §§749.1309, 749.1311, 749.1313.....	6182
40 TAC §749.1927.....	6183
40 TAC §749.2001.....	6183
40 TAC §§749.2472, 749.2473, 749.2475, 749.2497.....	6184
40 TAC §§749.2550, 749.2551, 749.2566.....	6185
40 TAC §749.2551, §749.2561.....	6186
40 TAC §749.2593, §749.2594.....	6186
40 TAC §749.2625, §749.2635.....	6187
40 TAC §749.2801.....	6188
40 TAC §749.2908.....	6188

MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §749.61	6193
40 TAC §§749.4001, 749.4003, 749.4005, 749.4007	6193
40 TAC §§749.4051, 749.4053, 749.4055	6194
40 TAC §749.4101, §749.4103	6194
40 TAC §§749.4151, 749.4153, 749.4155, 749.4157	6195
40 TAC §§749.4251, 749.4253, 749.4255, 749.4257, 749.4259, 749.4261, 749.4263, 749.4265, 749.4267	6196
MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES	
40 TAC §750.161, §750.169	6197
TEXAS DEPARTMENT OF TRANSPORTATION	
REGIONAL MOBILITY AUTHORITIES	
43 TAC §26.2	6200
43 TAC §26.36	6202
TEXAS DEPARTMENT OF MOTOR VEHICLES	
PUBLIC INFORMATION	
43 TAC §§207.1 - 207.5	6203
EMPLOYMENT PRACTICES	
43 TAC §§208.1 - 208.6	6204
43 TAC §§208.21 - 208.27	6204
43 TAC §208.41, §208.43	6205
43 TAC §§208.51 - 208.66	6205
43 TAC §208.1	6206
43 TAC §208.11, §208.12	6206
FINANCE	
43 TAC §209.1, §209.2	6207
43 TAC §209.21, §209.22	6210
43 TAC §209.31, §209.32	6210
CONTRACT MANAGEMENT	
43 TAC §210.1, §210.2	6211
43 TAC §210.21	6213
43 TAC §210.21, §210.22	6213
43 TAC §210.41, §210.42	6214
43 TAC §§210.61 - 210.65	6214
VEHICLE TITLES AND REGISTRATION	
43 TAC §217.93	6215
MOTOR CARRIERS	
43 TAC §218.72	6216
43 TAC §218.75	6217
43 TAC §218.78	6217

WITHDRAWN RULES

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §749.43	6219
----------------------	------

ADOPTED RULES

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ADMINISTRATION

10 TAC §1.20	6221
10 TAC §1.206	6221

UNIFORM MULTIFAMILY RULES

10 TAC §10.1004	6221
-----------------------	------

TEXAS HIGHER EDUCATION COORDINATING BOARD

RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

19 TAC §4.81, §4.85	6223
---------------------------	------

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.1	6224
--------------------	------

ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §§89.21 - 89.28, 89.30 - 89.35	6225
19 TAC §89.45, §89.46	6226
19 TAC §89.46	6226

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHILD PROTECTIVE SERVICES

40 TAC §700.203, §700.204	6226
40 TAC §700.211	6227

LICENSING

40 TAC §745.623	6228
40 TAC §745.651, §745.657	6229
40 TAC §745.681	6229
40 TAC §745.735	6229

MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §749.101, §749.103	6232
40 TAC §749.667	6232
40 TAC §§749.2447, 749.2449, 749.2453	6232
40 TAC §749.2471	6233
40 TAC §749.2815	6233

TEXAS DEPARTMENT OF MOTOR VEHICLES

VEHICLE TITLES AND REGISTRATION

43 TAC §217.23 6234
43 TAC §217.28 6234
43 TAC §217.30 6235

OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

43 TAC §219.3 6236
43 TAC §219.32 6236
43 TAC §219.33 6238

EXEMPT FILINGS

Texas Department of Insurance

Final Action on Rules 6241

RULE REVIEW

Proposed Rule Reviews

Office of the Governor 6245
Texas Department of Motor Vehicles 6245

Adopted Rule Reviews

Texas Education Agency 6246
Texas Department of Licensing and Regulation 6246

TABLES AND GRAPHICS

..... 6249

IN ADDITION

Texas Department of Agriculture

Request for Applications: Texans Feeding Texans: Home-Delivered Meal Grant Program 6269

Office of Consumer Credit Commissioner

Notice of Rate Ceilings 6270

East Texas Council of Governments

Request for Proposals - Senior Nutrition Services 6270

Texas Commission on Environmental Quality

Agreed Orders 6270
Enforcement Orders 6274
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions 6276
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions 6277
Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions 6279
Notice of Water Quality Applications 6280
Notice of Water Rights Applications 6281

Proposal for Decision 6282

Texas Health and Human Services Commission

Public Notice 6282
Public Notice 6282
Public Notice 6283
Public Notice 6283
Public Notice 6283
Public Notice of Intent to Submit State Plan Amendment for Day Activity and Health Services 6284
Public Notice of Intent to Submit State Plan Amendment for Nursing Facilities 6284
Public Notice of Intent to Submit State Plan Amendment for Primary Home Care 6284

Texas Department of Housing and Community Affairs

Announcement of Public Comment Period and Public Hearing for Comment on the Draft 2015 Regional Allocation Formula Methodology for the HOME, Housing Tax Credit, and Housing Trust Fund Programs 6285
HOME Investment Partnerships Program 6285
Notice of Public Hearing on the Section 8 PHA 2015 5-Year and Annual Plan 6286
Proposed Changes to the Texas Minimum Construction Standards 6287

Texas Department of Licensing and Regulation

Vacancy on Licensed Breeders Advisory Committee 6287

Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement 6287
Notice of Receipt of Application for Importation of Waste and Import Agreement 6288
Notice of Receipt of Application for Importation of Waste and Import Agreement 6288
Notice of Receipt of Revised Amendment Request for Importation of Waste and Import Agreement 6288

Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority 6288
Notice of Application to Partially Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider 6289
Notice of Proceeding for 2014 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund 6289
Notice of Proceeding for 2014 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds 6289

Sam Houston State University

Notice of Intent to Seek Consulting Services	6290	Application for August 7, 2014	6293
Texas Department of Transportation		Applications for August 13, 2014.....	6293
Aviation Division - Request for Qualifications for Professional Archi- tectural/Engineering Services	6290	Texas Windstorm Insurance Association	
Aviation Division - Request for Qualifications for Professional Ser- vices	6291	Request for Information.....	6293
Texas Water Development Board		Request for Qualifications.....	6294

THE GOVERNOR

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

Appointments

Appointments for June 13, 2014

Appointed to the Texas Alcoholic Beverage Commission for a term to expire November 15, 2019, Ida Louise "Weisie" Clement Steen of San Antonio (replacing Melinda Fredricks of Conroe whose term expired).

Appointed to the East Texas Regional Review Committee for a term to expire at the pleasure of the Governor, John D. Shipp of Gladewater (replacing Walter Derrick of Gladewater).

Appointed to the Panhandle Regional Review Committee for a term to expire at the pleasure of the Governor, Ricky White of Friona (replacing John C. Taylor of Friona).

Appointed to the North Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Patrick L. "Pat" Davis of Highland Village (replacing Jim Thorp of Aledo who is deceased).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2017, Susan Simpson Hull of Grand Prairie (replacing L. Curtis Culwell of Garland who resigned).

Appointed as Judge of the 258th Judicial District Court for Polk, San Jacinto and Trinity Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Ernest L. "Ernie" McClendon of San Antonio. Mr. McClendon is replacing Judge Elizabeth E. Coker who resigned.

Appointed as Judge of the 311th Judicial District Court, Harris County, for a term until the next General Election and until her successor shall be duly elected and qualified, Alicia Kathryn Franklin of Houston. Ms. Franklin is replacing Judge Denise V. Pratt who resigned.

Appointed as Judge of the 144th Criminal District Court, Bexar County, for a term until the next General Election and until her successor shall be duly elected and qualified, Lorina Ingari Rummel of San Antonio. Ms. Rummel is replacing Judge Angus K. McGinty who resigned.

Appointed as San Jacinto County Criminal District Attorney, effective July 1, 2014, for a term until the next General Election and until his successor shall be duly elected and qualified, Robert H. Trapp of Coldspring. Judge Trapp is replacing Richard Countiss who resigned.

Appointments for June 23, 2014

Appointed to the Texoma Regional Review Committee to expire at the pleasure of the Governor, Joey Anderson of Muenster (replacing Henry Weinzapfel of Muenster).

Appointed to the Texoma Regional Review Committee to expire at the pleasure of the Governor, Dean Lackey of Dodd City (replacing Mike Towery of Bonham).

Appointed to the East Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Cole Hefner of Gilmer (replacing Lloyd A. Crabtree of Big Sandy).

Appointed to the East Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Rex D. White of Grand Saline (replacing Stephen Ashley of Grand Saline).

Appointed to the North Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Robert A. "Rob" Watson of Aledo (replacing Patrick L. "Pat" Davis of Highland Village).

Appointments for June 24, 2014

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Carmen S. Dusek of San Angelo.

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Eric Alan Higginbotham of Austin.

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Leticia E. Martinez of Fort Worth.

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Robin D. Sage of Longview. Judge Robin D. Sage will serve as presiding officer of the commission at the pleasure of the Governor.

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Marian Sokol of San Antonio.

Appointed to the Protect Our Kids Commission, pursuant to SB 66, 83rd Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Luanne R. Southern of Austin.

Appointed to the West Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, David C. Davis of Haskell (replacing Rod Waller of Snyder).

Appointed to the West Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Sam Scott of Wingate (replacing Marilyn Egan of Ballinger).

Appointed to the West Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Gary Wayne Worley of Brownwood (replacing Steve Adams of Brookesmith).

Appointed as presiding officer of the Cameron County Regional Mobility Authority for a term to expire February 1, 2016, David Allex of Harlingen (Mr. Allex is being reappointed).

Appointed as presiding officer of the Grayson County Regional Mobility Authority for a term to expire February 1, 2016, Will Rich Hubbard, Jr. of Tioga (Mr. Hubbard is being reappointed).

Appointed as presiding officer of the Alamo Regional Mobility Authority for a term to expire February 1, 2016, John G. Clamp of San Antonio (Mr. Clamp is being reappointed).

Appointed as presiding officer of the North East Texas Regional Mobility Authority for a term to expire February 1, 2016, Linda Ryan Thomas of Longview (Ms. Thomas is being reappointed).

Appointments for June 30, 2014

Appointed to the Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Sandra K. Sheperd-Cain of Gatesville (replacing Cynthia Grubb Keller of Gatesville).

Appointed to the State Independent Living Council for a term to expire October 24, 2016, Karen Swearingen of Rowlett (Ms. Swearingen is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2016, Calvin J. Turner of Austin (Mr. Turner is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2016, Teresa Richard of Austin (pursuant to the U.S. Rehabilitation Act).

Appointed to the State Independent Living Council for a term to expire October 24, 2017, Wesley Yeager of Austin (replacing Marc Gold of Austin who no longer qualifies).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Victoria Camp of Austin (Ms. Camp is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Rodman F. Goode of Cedar Hill (Mr. Goode is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Henry Porretto of Galveston (Chief Porretto is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Richard L. Reynolds of Austin (Mr. Reynolds is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Debbie Unruh of Austin (Ms. Unruh is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Mary Anne Wiley of Austin (Ms. Wiley is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Dorothy J. "Dottie" Carmichael of College Station (replacing Ben Crouch of College Station whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2016, Blanca E. Burciaga of Fort Worth (replacing Nancy Ghigna of Magnolia who resigned).

Appointments for July 7, 2014

Appointed to the Middle Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Joe Luna of Crystal City (replacing Victor Bonilla of Crystal City).

Appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2015, Dora G. Alcalá of Del Rio (replacing Dennis D. Golden of Carthage who resigned).

Appointments for July 14, 2014

Appointed to the South Texas Regional Review Committee for a term at the pleasure of the Governor, Jose Emilio Vela of Zapata (replacing Rosalva Guerra of Zapata).

Appointed to the Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, John E. King of Rockdale (replacing John Shoemake of Rockdale).

Appointments for July 15, 2014

Appointed to the Manufactured Housing Board for a term to expire January 31, 2017, Brenda J. Swinney of Paige (replacing Anthony Burks of Fort Worth who resigned).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2019, Myeshi V. Williams-Briley of Spring (replacing Bobby Ray McCarn of Port Lavaca who resigned).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2017, Amy Vavra of Mansfield (replacing Timothy McCullough of Friendswood who resigned).

Appointments for July 28, 2014

Appointed to the Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Fred Brown of Salado (replacing Cliff Price of Gatesville).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors, effective August 31, 2014, for a term to expire August 31, 2016, Lamont Meaux of Stowell (reappointed).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors, effective August 31, 2014, for a term to expire August 31, 2016, Stanley Cromartie of League City (reappointed).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2017, Leon L. Leal of Grapevine (replacing Christine Pogue of Buda who resigned).

Appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Arturo Cabello, Jr. of Brownsville (replacing Frank "Jo Jo" White of Mercedes who resigned).

Appointed as Commissioner of Workers' Compensation, effective August 1, 2014, for a term to expire February 1, 2015, William "Ryan" Brannan of Austin (replacing Roderick Bordelon, Jr. of Austin who resigned).

Appointed to the Gulf States Marine Fisheries Commission for a term to expire March 17, 2017, Troy B. Williamson, II of Portland (Mr. Williamson is being reappointed).

Appointments for August 4, 2014

Appointed to the Golden Crescent Regional Review Committee for a term to expire at the pleasure of the Governor, Raymond F. "Raymie" Zella of Cuero (replacing Edwin Goodman of Cuero).

Rick Perry, Governor
TRD-201403567



Proclamation 41-3379

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

WHEREAS, this state of disaster includes the counties of Archer, Armstrong, Bailey, Bandera, Baylor, Borden, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Deaf Smith, Denton, Dickens, Donley, Eastland, Edwards, El Paso, Erath, Fannin, Fisher, Floyd, Foard, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Hood, Hudspeth, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Lubbock, Lynn, Mason, Matagorda, McLennan, Medina, Menard, Mills, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Roberts, Rockwall, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Travis, Val Verde, Walker, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, and Young

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of July, 2014.

Rick Perry, Governor
TRD-201403569



Proclamation 41-3380

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of The Honorable Robert Duncan, and its acceptance, has caused a vacancy to exist in Texas Senate District No. 28, which consists of Baylor, Borden, Childress, Coke, Coleman, Concho, Cottle, Crane, Crosby, Dawson, Dickens, Eastland, Fisher, Floyd, Foard, Garza, Hale, Hardeman, Haskell, Hockley, Irion, Jones, Kent, Kimble, King, Knox, Lamb, Lubbock, Lynn, McCulloch, Mason, Menard, Mitchell, Motley, Nolan, Reagan, Runnels, Schleicher,

Scurry, Shackelford, Stephens, Sterling, Stonewall, Sutton, Taylor, Terry, Throckmorton, Tom Green, Upton, Ward, and Wilbarger counties; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that the governor may order a special election before the appropriate uniform election date; and

WHEREAS, because the 84th Legislative Session is approaching and there are ongoing interim legislative committee hearings, it is imperative to fill this vacancy to ensure that Senate District No. 28 is fully represented as soon as possible; and

WHEREAS, Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the governor; and

WHEREAS, the vacancy occurred on July 3, 2014, and Section 203.004(b) of the Texas Election Code provides that if the election to fill the vacancy is to be held as an emergency election, the election shall be held on a Tuesday or Saturday on or after the 36th day and before the 50th day after the date the election is ordered; and

WHEREAS, by this proclamation, the emergency election ordered on this 22nd day of July, 2014, must be held on a Tuesday or Saturday between August 27, 2014, and September 10, 2014;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Senate District No. 28 on Tuesday, September 9, 2014, for the purpose of electing a state senator to serve out the unexpired term of The Honorable Robert Duncan.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on Friday, August 1, 2014.

Early voting by personal appearance shall begin on Monday, August 25, 2014, in accordance with Section 85.001(a) of the Texas Election Code.

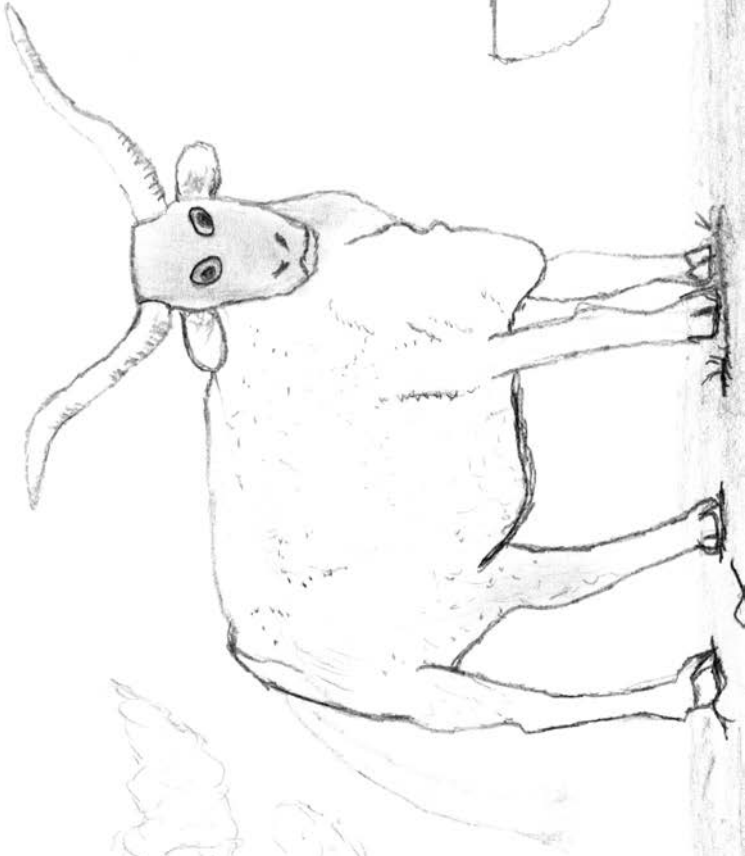
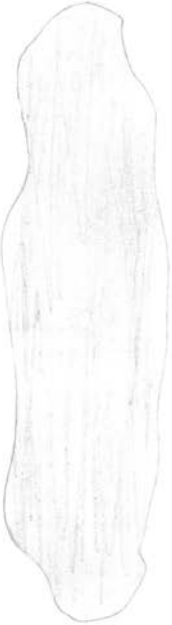
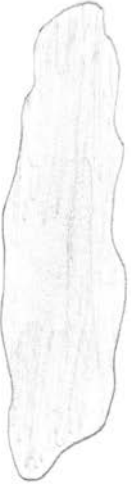
A copy of this order shall be mailed immediately to the county judges of all counties contained within Senate District No. 28, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 28 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 22nd day of July, 2014.

Rick Perry, Governor
TRD-201403568



*Juan Cavazos
6th Grade*



THE ATTORNEY GENERAL

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

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

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

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

Opinions

Opinion No. GA-1072

The Honorable Herb Hancock

Karnes County Attorney

210 West Calvert

Karnes City, Texas 78118

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

S U M M A R Y

A court would likely conclude that section 34.05 of the Tax Code does not authorize a taxing unit to reserve mineral interests on property acquired at a tax foreclosure sale if it holds such interests at the time the property is resold under that section.

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

TRD-201403532

Katherine Cary

General Counsel

Office of the Attorney General

Filed: August 4, 2014

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Opinions

Opinion No. GA-1073

Ms. Ann Marie Lee, CPA

Henderson County Auditor

125 North Prairieville Street, Room 202

Athens, Texas 75751

Re: Whether a home-rule municipal charter provision may require voter approval to impose an ad valorem tax (RQ-1183-GA)

S U M M A R Y

A court would likely conclude that chapter 26 of the Tax Code does not conflict with or preempt a city charter provision that requires voter approval before municipal ad valorem taxes may be imposed.

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

TRD-201403541

Katherine Cary

General Counsel

Office of the Attorney General

Filed: August 5, 2014

◆ ◆ ◆



*Hector Trejo
6th Grade*

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-587. The Texas Ethics Commission has been asked to consider whether a candidate may accept an in-kind political contribution from an out-of-state political committee.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201403533
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: August 5, 2014



Advisory Opinion Request

AOR-588. The Texas Ethics Commission has been asked to consider whether an elected member of a board of a state agency in the executive branch may accept tuition, food, transportation, and lodging provided in connection with a seminar that is relevant to the member's official duties and for which the member does not provide any services.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201403534
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: August 5, 2014



Fernando Rodriguez
5th Grade



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.725

The Texas Health and Human Services Commission (HHSC) proposes amendment to §355.725, concerning Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL).

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend this rule to add a reimbursement methodology for transition assistance services in HCS and TxHmL.

The Department of Aging and Disability Services (DADS) is adding transition assistance services to the HCS waiver program. HHSC must add a reimbursement methodology to describe how the payment will be determined. This is a common service in the home and community-based services (HCBS) waiver programs and the methodology in this rule will refer to §355.502 of this title, concerning Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers. The service is not being added to Texas Home Living waiver program at this time, but this methodology will apply to that program should the service be added at a later date.

HHSC also proposes to update an out-of-date reference to another rule section.

Section-by-Section Summary

HHSC proposes to amend §355.725(c) to replace an out-of-date reference to another rule.

HHSC proposes to amend §355.725 by adding subsection (d), which adds Transition Assistance Services to the list of common services. This subsection also states that this service will be reimbursed in accordance with §355.502 of this title, concerning Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers. That section states that the reimbursement for transition assistance services

will be determined as a one-time rate per client based on modeled costs of compensation and other support costs using data from surveys, cost reports, consultation with other professionals in delivering contracted services, or other sources determined appropriate by HHSC.

Fiscal Note

James Jenkins, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendments are in effect there will be a fiscal impact of \$1,391,971 to state government. The amendments will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with these amendments. The amendments should not affect local employment.

Public Benefit

Pam McDonald, Director of the HHSC Rate Analysis Department has determined that, for each of the first five years the amendments are in effect, the expected public benefit is that there will be a methodology in place to reimburse HCS providers for the provision of transition assistance services.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone

at (512) 707-6085. Written comments on the proposal may be submitted to Ms. Myers by fax to (512) 730-7475; by e-mail to judy.myers@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

§355.725. *Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL).*

(a) Common waiver services. For nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, employment assistance, and supported employment, an allowable cost per unit of service is calculated for each contracted provider in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Programs). This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(b) Requisition fees. Requisition fees are reimbursements paid to the HCS and TxHmL contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for HCS and TxHmL participants. Requisition fee reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(c) Requisition fees unallowable costs. The actual cost of adaptive aids, medical supplies, dental services, and home modifications is not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(20)(47)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(d) Transition assistance services. The reimbursement for transition assistance services will be determined in accordance with §355.502(e) of this title.

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

Filed with the Office of the Secretary of State on July 31, 2014.

TRD-201403475

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 424-6900



CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER G. STANDARDS FOR CHIP MANAGED CARE

1 TAC §370.604

The Texas Health and Human Services Commission (HHSC) proposes new §370.604, concerning Managed Care Organization Requirements concerning Out-of-Network Providers. The new section will specify out-of-network-provider requirements for CHIP managed care organizations (MCOs).

Background and Justification

HHSC is the state agency responsible for overseeing and monitoring CHIP. An MCO participating in CHIP must offer a network of providers sufficient to meet the needs of the CHIP population. Aligning CHIP out-of-network-provider requirements with the Medicaid managed care program out-of-network-provider requirements ensures consistency across managed care programs. It also increases access to CHIP network providers and provides continuity of care for CHIP members.

Although Medicaid managed care rules stipulate out-of-network reimbursement standards, this proposed new rule does not set out parallel standards for CHIP out-of-network provider reimbursement. CHIP out-of-network reimbursement standards are set by the Texas Department of Insurance (TDI), which requires CHIP MCOs to pay a reasonable and customary rate when a rate has not already been negotiated for out-of-network emergency services.

Section-by-Section Summary

Proposed new §370.604(a) requires an MCO participating in CHIP to offer a provider network that is sufficient to meet its members' needs. The subsection also states that HHSC will monitor network adequacy using reports submitted by the MCOs and complaints from providers and members.

Proposed new §370.604(b) outlines requirements for an MCO's treatment of members' access to out-of-network providers. It prohibits a health care or dental MCO from refusing to reimburse an out-of-network provider for emergency services and from requiring an authorization for emergency services. Certain emergency services are not covered by dental MCOs, but are covered by health care MCOs. Subsection (b) also provides HHSC the discretion to require an MCO to allow its members to obtain services from out-of-network providers.

Proposed new §370.604(c) outlines the out-of-network reporting requirements for each MCO contracted with HHSC to provide

health care and dental services. Each report submitted by the MCO must contain information about its CHIP members and the types of services provided by out-of-network providers.

Proposed new §370.604(d) outlines the utilization review process and usage standards set by HHSC for out-of-network access to health care and dental services. It also describes the special considerations HHSC uses to calculate a health care MCO's out-of-network usage of inpatient admissions and emergency room visits.

Proposed new §370.604(e) indicates that HHSC does not set reimbursement rate standards for out-of-network CHIP providers. Health care and dental MCOs providing CHIP out-of-network services must comply with the Texas Department of Insurance reimbursement standards for out-of-network providers.

Proposed new §370.604(f) specifies that HHSC will accept provider complaints and investigate complaints regarding overuse of out-of-network providers. Provider complaints regarding reimbursement rates should be submitted to the Texas Department of Insurance.

Proposed new §370.604(g) states that HHSC will initiate a corrective action plan and may impose other contractual remedies if HHSC determines that an MCO did not comply with the out-of-network utilization standards for health and dental services.

Proposed new §370.604(h) states that the requirements of the proposed section do not apply to providers of outpatient pharmacy benefits.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule is in effect there will be no fiscal impact to state or local governments because MCO reimbursement standards for out-of-network providers are not being changed or added.

There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the proposed new rule because no MCOs in Texas qualify as small businesses or micro-businesses.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposed new rule is in effect the public will benefit from the adoption of the rule. Aligning the out-of-network provider requirements for CHIP MCOs with the current Medicaid managed care program requirements for out-of-network providers will lessen MCO, provider, and member confusion by increasing consistency across managed care programs. The proposal also will benefit the public by increasing client access to medically necessary services and ensuring continuity of care for clients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule specifically intended to protect the environment or reduce

risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Daniela De Luna, STAR/CHIP Program Specialist, Program Management, Health and Human Services Commission, MC H-320 4900 N. Lamar, Austin, Texas 78751; by fax to (512) 730-7452; or by e-mail to daniela.deluna@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The new rule is proposed under the authority granted to HHSC by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed new rule affects Texas Health and Safety Code Chapter 62 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by these proposed new rules.

§370.604. Managed Care Organization Requirements Concerning Out-of-Network Providers.

(a) Network adequacy. Each MCO participating in CHIP must offer a network of providers that is sufficient to meet the needs of CHIP members enrolled in the MCO. HHSC uses reports from the MCOs and complaints received from providers and members to monitor MCO members' access to an adequate provider network. Subsection (c) of this section describes the reporting requirements with which an MCO must comply.

(b) MCO requirements concerning treatment of members by out-of-network providers.

(1) An MCO must allow a provider to submit a referral of its member(s) to an out-of-network provider, must timely issue the proper authorization for such referral consistent with managed care contract requirements for authorization of medically necessary services, and must reimburse the out-of-network provider for authorized services provided in accordance with statutory and contractual timeframes when:

(A) CHIP covered services are medically necessary, as described in §370.4(49) of this chapter (relating to Definitions), and these services are not available through an in-network provider;

(B) a provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) the authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, the requesting provider must submit a new referral request to the MCO prior to the provision of services.

(2) An MCO may not refuse to reimburse an out-of-network provider for emergency services.

(3) Health care MCO requirements concerning emergency services.

(A) A health care MCO must allow its members to be treated by any emergency services provider for emergency services, and for services to determine if an emergency condition exists. The health care MCO must pay for such services.

(B) A health care MCO may not require an authorization for emergency services or for services to determine if an emergency condition exists.

(C) A health care MCO may not refuse to reimburse an out-of-network provider for post-stabilization care services provided as a result of the MCO's failure to arrange for and authorize a timely transfer of a member.

(4) Dental MCO requirements concerning emergency services.

(A) A dental MCO must allow its members to be treated for covered emergency services provided outside of a hospital or ambulatory surgical center setting and for covered services provided outside of such settings to determine if an emergency condition exists. The dental MCO must pay for such services unless subparagraph (C) of this paragraph specifies otherwise.

(B) A dental MCO may not require an authorization for the services described in subparagraph (A) of this paragraph.

(C) A dental MCO is not responsible for payment of non-capitated emergency services and post-stabilization care provided in a hospital or ambulatory surgical center setting or for devices for craniofacial anomalies. A dental MCO is not responsible for hospital and physician services, anesthesia, drugs related to treatment, and post-stabilization care for:

(i) a dislocated jaw, traumatic damage to a tooth, or removal of a cyst;

(ii) an oral abscess of tooth or gum origin; or

(iii) craniofacial anomalies.

(D) The services and benefits described in subparagraph (C) of this paragraph are reimbursed through the health care MCO.

(5) An MCO may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described in paragraphs (1) - (4) of this subsection.

(c) Reporting requirements.

(1) Each MCO that contracts with HHSC to provide health care services or dental services to members in a service area must submit an Out-of-Network quarterly report to HHSC.

(2) Each Out-of-Network quarterly report must contain information about members enrolled in CHIP. The report must include the following information:

(A) For a health care MCO, the total number of hospital admissions, as well as the number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(B) For a health care MCO, the total number of emergency room visits, as well as the total number of emergency room visits

that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(C) Total dollars billed for services other than those described in this subparagraph and subparagraph (D) of this paragraph, as well as total dollars billed by out-of-network providers for other services.

(D) Any additional information that HHSC requires.

(3) HHSC will determine the specific form of the report described in this subsection and will include the report form as part of the CHIP managed care contract between HHSC and the MCOs.

(d) Utilization.

(1) Upon review of the reports described in subsection (c) of this section, HHSC may determine that an MCO exceeded the maximum out-of-network usage standards HHSC set for out-of-network access to health care services and dental services during the reporting period.

(2) Out-of-network usage standards.

(A) Inpatient admissions: No more than 15 percent of a health care MCO's total hospital admissions, by service area, may occur in out-of-network facilities.

(B) Emergency room visits: No more than 20 percent of a health care MCO's total emergency room visits, by service area, may occur in out-of-network facilities.

(C) Other services: For services that are not included in subparagraph (A) or (B) of this paragraph, no more than 20 percent of total dollars billed to an MCO may be billed by out-of-network providers.

(3) Special considerations in calculating a health care MCO's out-of-network usage of inpatient admissions and emergency room visits.

(A) In the event that a health care MCO exceeds the maximum out-of-network usage standard set by HHSC for inpatient admissions or emergency room visits, HHSC may modify the calculation of that health care MCO's out-of-network usage for that standard if:

(i) the admissions or visits to a single out-of-network facility account for 25 percent or more of the health care MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the health care MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether a health care MCO has made all reasonable efforts to contract with the single out-of-network facility described in subparagraph (A) of this paragraph, HHSC will consider at least the following information:

(i) How long the health care MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) The in-network payment rates the health care MCO has offered to the out-of-network facility;

(iii) The other, non-financial contractual terms the health care MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) The health care MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) The health care MCO's solvency status; and

(vi) The out-of-network facility's reasons for not contracting with the health care MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the health care MCO's out-of-network usage for the relevant reporting period and standard by excluding from the calculation the inpatient admissions or emergency room visits to that single out-of-network facility.

(e) Reimbursement rates.

(1) HHSC does not set reimbursement rate standards for out-of-network CHIP providers.

(2) A health care or dental MCO providing CHIP out-of-network services must comply with the reimbursement standards set forth by the Texas Department of Insurance for out-of-network providers.

(f) Provider complaints.

(1) HHSC accepts and investigates provider complaints regarding overuse of out-of-network providers.

(2) Not later than the 60th day after HHSC receives a provider complaint, HHSC notifies the provider who initiated the complaint of the conclusions of HHSC's investigation into the complaint. The notification to the complaining provider will include a description of the corrective action plan, if required, that HHSC has initiated under subsection (g) of this section.

(3) Provider complaints regarding reimbursement rates should be submitted to the Texas Department of Insurance.

(g) Corrective action plan.

(1) HHSC initiates a corrective action plan with an MCO if HHSC determines through investigation that:

(A) the MCO did not comply with the out-of-network utilization standards for health care services and dental services described in subsection (d) of this section; and

(B) HHSC has not granted a special consideration under subsection (d)(3) of this section.

(2) HHSC may impose other contractual remedies as appropriate.

(h) Application to Pharmacy Providers. The requirements of this section do not apply to providers of outpatient pharmacy benefits.

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 30, 2014.

TRD-201403474

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 424-6900



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 20, §§20.1 - 20.15 and new §20.16, concerning Single Family Programs Umbrella Rule. The purpose of the proposed amendments and new rule is to improve efficiency and effectiveness of Single Family Programs. The proposed amendments will make the following changes to the Single Family Programs Umbrella Rule:

§20.1. Purpose. Clarifies language in the section for defined terms.

§20.2. Applicability. Clarifies language in the section for defined terms and provides limitations on applicability of some sections of the Rule to the Amy Young Barrier Removal and Small Repair Programs.

§20.3. Definitions. Clarifies language in the section for defined terms; modifies definitions for: Activity, Administrator, Agreement, Annual Income, Application, Deobligate, Household, Housing Contract System, Program Income, Set-up; adds definitions for: Affirmative Marketing Plan, Affiliate, Affiliated Party, Amy Young Barrier Removal Program, Control, Housing Trust Fund, Limited English Proficiency, Mortgage, Mortgage Loan, Office of Colonia Initiatives, Small Repair, Texas Minimum Construction Standards; and deletes definitions for: Amortized, Deferred Payment Loan, Developer, Executive Director, Loan, Open Application Cycle.

§20.4. Eligible Single Family Activities. Clarifies language in the section for defined terms and allows for the Rehabilitation of a Manufactured Housing Unit with non-federal funds.

§20.5. Funding Notices. Clarifies language in the section for defined terms and adds requirements for Application deficiency correction.

§20.6. Applicant Eligibility. Clarifies language in the section for defined terms and adds a requirement that Applicants be in good standing with HUD and in compliance with all Department requirements in other Rules.

§20.8. Single Family Housing Unit Eligibility Requirements. Clarifies language in the section for defined terms, along with requirements for clear title at loan closing and the status of property taxes.

§20.9. General Administration and Program Requirements. Clarifies language in the section for defined terms, removes requirements for Program Income so they can be tailored to each Program, adds requirements for compliance with Fair Housing regulations and removes requirements for records retention which are imposed by regulation.

§20.10. Inspection and Construction Requirements. Section is re-named and reorganized for clarity regarding the types of inspections that are required, and compliance with Texas Minimum Construction Standards.

§20.11. Survey Requirements. Clarifies language in the section for defined terms, and clarifies requirements for surveys.

§20.12. Insurance Requirements for Acquisition Activities. Clarifies language in the section for defined terms, provides limitation on requirements for Builder's Risk Insurance.

§20.13. Loan, Lien and Mortgage Requirements for Acquisition Activities Only. Clarifies language in the section for defined terms, along with the treatment of debts when underwriting a loan with a non-purchasing spouse.

§20.14. Amendments and Modifications to Written Agreements and Contracts. Clarifies language in the section for defined terms.

§20.15. Sanctions and Deobligation. Clarifies language in the section for defined terms and removes limitation on debarment to align with other Rules.

§20.16. Waivers and Appeals. New section added to align with other Rules, and provide a waiver structure for Texas Minimum Construction Standards.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments and new rule will be in effect, enforcing or administering the proposed amendments and new rule do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed amendments and new rule will be in effect, the public benefit anticipated as a result of the amendments will be increased efficiency of Department Single Family Programs and consistency with federal requirements. There will not be any economic cost to any individuals required to comply with the proposed amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Marni Holloway, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 15, 2014.

STATUTORY AUTHORITY. The amendments and new rule are proposed pursuant to §2306.053 of the Texas Government Code, which authorizes the Department to adopt rules.

The proposed amendments and new rule affect no other code, article, or statute.

§20.1. Purpose.

This Chapter [chapter] sets forth the common elements of the Texas Department of Housing and Community Affairs' (the "Department") single family Programs [programs], which includes the Department's HOME Investment Partnerships [Investments Partnership] Program (HOME), Texas Housing Trust Fund (HTF), Bond/First Time Homebuyer (FTHB), Taxable Mortgage Program (TMP), Texas Neighborhood Stabilization (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family [Single Family] Programs as developed by the Department. Single family Programs [programs] are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with

Texas Government Code, Chapter 2306 and any applicable statutes and federal regulations.

§20.2. Applicability.

Unless otherwise noted, this Chapter [chapter] only applies to single family Programs [programs]. Program Rules may impose additional requirements related to any provision of this Chapter [chapter]. Where Program Rule [Rules] conflict with this Chapter [chapter], the provisions of this Chapter [chapter] will control Program [program] decisions.

(1) The Amy Young Barrier Removal Program is excluded from the Inspection and Construction Requirements identified in §20.10 and Survey Requirements in §20.11.

(2) Small Repair is excluded from having all the deficiencies noted on the inspection report being cured or addressed and the Survey Requirements in §20.11.

§20.3. Definitions.

The following words and terms, when used in this Chapter [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 and Chapter 1 of this Title [title] (relating to Administration), and the applicable federal regulations.

(1) Activity--A form of assistance provided to a Household or Administrator by which single family funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, [mortgage or] tenant-based rental assistance, or other single family Department approved expenditure for single family housing.

(2) Administrator--A unit of local government, Nonprofit Organization [nonprofit corporation] or other entity acting as a Community Housing Development Organization under 24 C.F.R. Part 92 ("CHDO"), Subrecipient, Developer or similar organization that [who] has an executed written Agreement [or Contract] with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data.

(4) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) interlocking management or ownership;

(B) identity of interests among family members;

(C) shared facilities and equipment;

(D) common use of employees; or

(E) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator through an Agreement with the Department.

(6) [(3)] Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System [reservation system] as defined in this Chapter [chapter].

(7) Amy Young Barrier Removal Program--Program designed to remove barriers and address immediate health and safety issues as outlined in the Program Rule or NOFA.

~~[(4) Amortized--A loan in which the principal as well as the interest, if applicable, is payable monthly or in some other periodic installment over the term of the loan.]~~

(8) [(5)] Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for [other types of] housing or other types of assistance as defined under the Program Rule.

(9) [(6)] Applicant--An individual, unit of local government, nonprofit corporation or other entity who has submitted to the Department an Application for Department funds or other assistance.

(10) [(7)] Application--A request for a Contract [contract] award or a request to participate in a Reservation System [reservation system] submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(11) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

(12) [(8)] Chapter 2306--Texas Government Code, Chapter 2306.

(13) [(9)] Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans [mortgage loans], including Forgivable Loans, divided by the appraised value.

(14) [(40)] Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(15) [(41)] Conforming Mortgage Loan [Mortgage Loan]--A first-lien Mortgage Loan [loan] that meets Federal Housing Administration (FHA), U.S. Department of Agriculture (USDA), U.S. Department of Veterans Affairs (VA), and Fannie Mae or Freddie Mac guidelines.

(16) [(42)] Contract--The executed written Agreement between the Department and an Administrator [administrator] performing an Activity related to a single family Program [program] that describes performance requirements and responsibilities [assigned by the document]. May also be referred to as "Agreement [agreement]."

(17) [(43)] Contract Administrator (CA)--Same as "Administrator."

(18) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or entity, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing general partner of a limited partnership or any similar member.

~~[(14) Deferred Payment Loan--Any loan which includes deferral of payments.]~~

(19) [(45)] Deobligate--The cancellation of or release of funds under [as a result of the termination or reduction of] a Contract or Agreement as a result of the termination of or reduction of funds under a Contract or Agreement. [between the Department and the Administrator.]

(20) [(46)] Department--The Texas Department of Housing and Community Affairs as defined in Chapter 2306.

(21) [(47)] Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract [contract] with the Department.

(22) [(48)] Domestic Farm Laborer--Individuals (and the family) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(23) [(49)] Draw--Funds requested by the Administrator, approved by the Department and subsequently disbursed to the Administrator.

~~[(20) Executive Director--Director of the Department, as defined in Chapter 2306.]~~

(24) [(24)] Forgivable Loan--Financial assistance in the form of money that, by Agreement, is not required to be repaid if the terms of the Mortgage Loan [mortgage loan or Grant Agreement] are met.

(25) [(22)] HOME Program--HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(26) [(23)] Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit. May also be referred to as a "family[:]" or "beneficiary."

(27) Housing Trust Fund (HTF)--State-funded Programs authorized under Chapter 2306 of Texas Government Code.

(28) [(24)] Housing Contract System (HCS)--The electronic information system that is part of the "central database [(CDB)]" established by the Department to be used for tracking, funding, and reporting single family Contracts [contracts] and Activities [activities].

(29) [(25)] HUD--The United States Department of Housing and Urban Development or its successor.

(30) [(26)] Life of Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan [loan].

(31) Limited English Proficiency (LEP)--Requirements as issued by HUD and the Department of Justice to ensure meaningful and appropriate access to programs and activities by individuals who have a limited ability to read, write, speak or understand English.

~~[(27) Loan--Same as "mortgage loan as defined in Chapter 2306."]~~

(32) [(28)] Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan [mortgage loan] on the Single Family Housing Unit and Program [program] requirements. A Mortgage Loan [mortgage loan] assumption requires Department approval.

(33) [(29)] Loan to Value (LTV)--The amount of the Mortgage Loan(s) [mortgage loan(s)] divided by the Single Family Housing Unit's appraised value, excluding Forgivable Loans.

(34) [(30)] Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Texas Occupations Code, Chapter 1201 or FHA guidelines as required by the Department.

(35) Mortgage--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(36) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(37) [(34)] Nonconforming Mortgage Loan--Any Mortgage Loan [mortgage loan] that does not meet the definition of a "Conforming Mortgage Loan" defined in [paragraph (4)] of this section.

(38) [(32)] Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and §1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(39) [(33)] NOFA--Notice of Funding Availability.

(40) [(34)] Nonprofit Organization--An organization that is organized as such under state or federal laws and does not have a pending Application for nonprofit status.

(41) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Texas Government Code which acts as a liaison to the colonias and manages some Programs in the colonias

[(35) Open Application Cycle--A defined period of time in which Applications may be submitted according to a published NOFA and which will be reviewed on a first-come, first-served basis until the NOFA is closed.]

(42) [(36)] Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(43) [(37)] Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities and has a record of such impairment; or is regarded as having such impairment.

(44) [(38)] Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(45) [(39)] Program--The specific fund source from which single family funds are applied for and used.

(46) [(40)] Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of Single Family funds.

(47) [(41)] Program Manual--A set of guidelines designed to be an implementation tool for the single family Programs [programs] which allows the Administrator to search for terms, statutes, regulations, forms and attachments. The Program Manual [program manual] is developed by the Department and amended or supplemented from time-to-time.

(48) [(42)] Program Rule--Chapters of this Title [title] which pertain to specific single family Program [program] requirements.

(49) [(43)] Reconstruction--The demolition and rebuilding a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of family members living in the housing unit at the time of Application. [Reconstruction includes replacing existing, sub-standard MHUs with a new MHU or site built house. MHUs must be installed according to the manufacturer's installation instructions and in accordance with state laws and regulations.]

(50) Rehabilitation--The improvement or modification of an existing residential unit through an alteration, addition, or enhancement.

(51) [(44)] Reservation--Funds set-aside for a Household Applicant or single family Activity [activity] registered in the Department's registration system.

(52) [(45)] Reservation System--The Department's computer registration system(s) that allows Administrators to reserve funds for a specific Household.

(53) [(46)] Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(54) [(47)] Self-Help--Housing Programs [programs] that allow low, very low, and extremely low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers

(55) Set-up--The creation of a new Activity in the Department database by an Administrator, which requires review and approval by the Department.

(56) [(48)] Single Family Housing Unit--A home designed and built for one person or one Household for rental or owner-occupied. This includes the acquisition, construction, reconstruction or rehabilitation of an attached or detached unit. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(57) Small Repair--An Activity specific to the Colonia Self Help Center Program designed to address repairs by the homeowner using self help methods.

(58) [(49)] Soft costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs. May also be referred to as "direct delivery" costs.

(59) [(50)] Subgrantee--Same as "Administrator."

(60) [(51)] Subrecipient--Same as "Administrator."

(61) [(52)] TAC--Texas Administrative Code.

(62) TMCS--Texas Minimum Construction Standards as amended and described in the Miscellaneous Section of the *Texas Register*.

(63) [(53)] TREC--Texas Real Estate Commission.

§20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (9) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) acquisition or acquisition with rehabilitation including accessibility modifications to Single Family Housing Units[-];

(2) [The] rehabilitation, or new construction of Single Family Housing Units;

(3) rehabilitation or reconstruction of existing housing on the same site;

(4) ~~[(3)]~~ new construction of site-built housing on the same site to replace an existing owner-occupied Manufactured Housing Unit (MHU);

(5) ~~[(4)]~~ Replacement ~~[replacement]~~ of existing owner-occupied housing with a new ~~[an]~~ MHU; or

(6) new construction of site-built housing on another site;

~~[(6) if housing unit is uninhabitable as a result of disaster or condemnation by local government, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the Single Family Housing Unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification.];~~

(7) ~~[the]~~ refinance of an existing Mortgage ~~[mortgage]~~;

(8) tenant-based rental assistance; and

(9) any other single family ~~[Single Family]~~ Activity as determined by the Department.

(c) Rehabilitation of an MHU with federal funds is an ineligible activity. ~~[is not an eligible Activity.]~~

§20.5. Funding Notices.

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs) or other methods for the release of funding describing the submission and eligibility guidelines. The Program Rule or NOFA shall outline the process for correcting deficiencies.

(b) Funds may be allocated through Contract ~~[contract]~~ awards by the Department or by the Department's providing authority to submit Reservations.

(c) Funds may be subject to regional allocation in accordance with Chapter 2306.

(d) The Department will develop and publish Application ~~[application]~~ materials for participation in the HCS ~~[contract system]~~ and/or Reservation Systems ~~[reservation systems]~~. Eligible Applicants must comply with the provisions of the Application ~~[application]~~ materials and NOFA and are responsible for the accuracy and timely completion and submission of all Applications.

§20.6. Applicant Eligibility.

(a) Eligible Applicants may include entities such as units of local governments, Nonprofit Organizations ~~[nonprofit corporations]~~, or other entities as further provided in the Program Rule ~~[Rules]~~ and/or NOFA.

(b) Applicants shall be in good standing with the Department, Texas Office of the Secretary of State, ~~[and]~~ Texas Comptroller of Public Accounts and HUD, as applicable.

(c) Applicants shall comply with all applicable state and federal rules, statutes, or regulations including those requirements in Chapter 1 of this Title.

(d) Resolutions must be provided in accordance with the applicable Program Rule or NOFA.

(e) The violations described in paragraphs (1) - (5) of this subsection may cause an Applicant and any Applications they have submitted, to be ineligible:

(1) Applicant did not satisfy all eligibility requirements described in the Program Rule ~~[Rules]~~ and NOFA to which they are responding;

(2) Applicant failed to make timely payment on fee commitments or on debts to the Department and for which the Department has initiated formal collection or enforcement actions;

(3) Applicant failed to comply with any other provisions of debt instruments held by the Department including, but not limited to, such provisions as timely payment of property taxes and proper placement and maintenance of insurance;

(4) Applicant is debarred by HUD or the Department; or

(5) current or previous noncompliance. Each Applicant will be reviewed for compliance history by the Department. Applications submitted by Applicants found to be in ~~[material]~~ noncompliance or otherwise violating the ~~[Compliance]~~ Rules of the Department may be terminated and/or not recommended for funding.

(f) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(g) The Department may decline to fund any Application if the proposed Activities ~~[activities]~~ do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

§20.7. Household Eligibility Requirements.

(a) The method used to determine Annual Income will be provided in the Program Rule ~~[Rules]~~ or NOFA.

(b) Households must occupy the Single Family Housing Unit as their Principal Residence for a period of time as established by the Program Rule ~~[Rules]~~ or NOFA.

§20.8. Single Family Housing Unit Eligibility Requirements.

(a) ~~A~~ ~~[Unless otherwise provided in the Program Rule or NOFA, the]~~ Single Family Housing Unit to be acquired or constructed with Department funds must be located in the State ~~[state]~~ of Texas, and must have good and marketable title at the closing of any Mortgage Loan.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Units must be current (including prior years) or the Household must be satisfactorily ~~[successfully]~~ participating in an approved payment plan with the taxing authority, must qualify for an approved tax deferral plan or has received a valid exemption from real property taxes.

(c) An owner-occupied Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable ~~[nature of the]~~ title. The Department will require the owner to be current on any existing Mortgage Loans ~~[mortgage loans]~~ or home equity loans prior to assistance.

§20.9. General Administration and Program Requirements.

(a) Costs incurred by Administrator for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the U.S. General Services Administration (GSA) per diem rates at: <http://www.gsa.gov/portal/category/21287>.

(b) Administrators must comply with all applicable local, state, and federal laws, regulations, and ordinances for procurement with single family Program ~~[program]~~ funds.

(c) In addition to Chapter 1, Subchapter B of this Title, Administrators receiving Federal funds must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply.

(d) Administrators receiving Federal funds must also comply with HUD's Affirmative Fair Housing Marketing and Limited English Proficiency Requirements and the Age Discrimination Act of 1975. Administrators receiving Federal funds must also have an Affirmative Fair Housing Marketing Plan.

~~[(e) Administrators may not retain any Program Income generated through the operation of a single family program or Activity.]~~

§20.10. Inspection and Construction Requirements [for Construction Activities].

(a) Construction Inspections.

(1) Initial Inspections.

(A) An initial inspection identifying all substandard conditions listed in Texas Minimum Construction Standards along with any other health or safety concerns must be conducted for all rehabilitation or reconstruction projects.

(B) The initial inspection report must be provided to both the Department and the homeowner.

(C) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up in adequate detail.

(2) Interim Inspections of construction progress may be required to document construction Draw requests.

(3) Final Inspections.

(A) Final construction inspections are required for all new construction, reconstruction and rehabilitation Activities. The inspection must ensure that the construction of the Single Family Housing Unit is complete and meets all applicable codes and requirements including zoning ordinances as applicable, and have no observed deficiencies related to health and safety standards.

(B) Final inspections must document that all substandard conditions identified in the initial inspection have been corrected, repaired or removed. A copy of the final inspection report must be provided to the Department and the Household.

(C) Any deficiencies noted on the inspector's report must be corrected prior to the final Draw.

(D) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. If no Certificate of Occupancy is available from an incorporated area, a document from the local government entity showing that the Single Family Housing Unit has passed all required building codes must be obtained and provided to the Department.

(E) The Certificate of Occupancy may substitute for a final construction inspection, if available and acceptable to the Program. If no Certificate of Occupancy is available, a final construction inspection must be conducted and the report provided to the Department and homeowner.

(F) Cosmetic issues such as paint, wall texture, etc. identified in a final inspection will not be required to be corrected

if utilizing a Self-Help construction Program, or if acceptable to the Program as outlined in Program Rule or NOFA.

(b) Other inspection requirements.

(1) All inspectors shall inspect properties utilizing applicable construction standards prescribed by the Department.

(2) All inspectors shall utilize Department approved and prescribed inspection forms/checklists for applicable inspections.

(3) Single Family Housing Units receiving only utility connections under the Colonia Self Help Center Program are exempt from inspection requirements.

(4) The Department reserves the right to reject any inspection report which in its sole determination does not accurately represent the property conditions or if the inspector does not meet Program requirements. If an inspection report is rejected, all related construction costs may be disallowed until appropriate corrections are made.

(c) Requirements for Use of professional inspectors or qualified inspection individuals.

(1) Professional home inspectors or qualified inspection individuals shall conduct all initial and final inspections for New Construction, Reconstruction and Rehabilitation activities.

(2) Municipal code officials, as applicable, shall conduct inspections inside of city limits and extraterritorial jurisdictions.

(3) The active TREC licensed professional home inspector may be a staff member of the Administrator.

(4) Inspectors used to verify compliance with this Chapter must meet Program requirements.

(d) Reconstruction and new construction Requirements. Compliance with Accessibility Requirements--Applicant must submit one of the documents described in paragraph (1) or (2) of this subsection to ensure that requirements of Texas Government Code, §2306.514 and other Program Rules are met:

(1) Prior to commencement of construction, a copy of the proposed plans and specifications for reconstruction and new construction of Single Family Housing Units. All plans submitted must be prepared and executed by an architect licensed by the state of Texas;

(2) A certification of compliance from a licensed architect.

(e) Rehabilitation Requirements.

(1) Administrators shall meet the applicable requirements of the Texas Minimum Construction Standards (TMCS) for all Rehabilitation projects.

(2) TMCS requirements may be waived only through the process provided in §20.16 of this Chapter.

~~[(a) Initial Inspections.]~~

~~[(1) An initial inspection report must be provided to both the Department and the homeowner or homebuyer for all construction projects. A rehabilitation project is eligible for Reconstruction if the initial inspection report estimates that the cost to rehabilitate exceeds the rehabilitation threshold, which shall be \$40,000, or the pre-rehabilitation value of the structure to be rehabilitated, whichever is less.]~~

~~[(2) All deficiencies identified in the initial inspection report shall be addressed in the work write-up for rehabilitation projects.]~~

~~[(b) Construction Completion Requirements and Final Inspections.]~~

{(1) Compliance with Accessibility Requirements--Applicant must submit one of the documents described in subparagraph (A) or (B) of this paragraph to ensure that requirements of Texas Government Code, §2306.514 and other Program Rules are met.}

{(A) A copy of the proposed plans and specifications for Reconstruction and New Construction of Single Family Units. All plans submitted must be prepared and executed by an architect licensed by the state of Texas; or}

{(B) A certification of compliance which includes the seal of the architect.}

{(2) Final inspections are required for all rehabilitation, reconstruction or new construction activities and must ensure that the construction on the Single Family Housing Unit is complete and meets all applicable state and local codes, and have no observed deficiencies related to health and safety standards.}

{(3) A copy of the final inspection report must be provided to the Department and the Household for rehabilitation, reconstruction and new construction activities.}

{(4) A Certificate of occupancy shall be issued prior to final payment for construction, as applicable. If no certificate of occupancy is available from an incorporated area, a document from the local government entity showing that the Single Family Housing Unit has passed all required building codes must be obtained and provided to the Department.}

{(5) Any deficiencies noted on the certificate of occupancy or the inspector's report must be corrected prior to the final Draw.}

{(6) Cosmetic issues such as paint, wall texture, etc. will not be required to be corrected if utilizing a self-help construction program.}

{(e) Requirements for Use of professional inspectors or qualified inspection individuals.}

{(1) Professional home inspectors or qualified inspection individuals shall conduct all initial and final inspections for new construction, reconstruction and rehabilitation activities utilizing the Department's single family program funds.}

{(2) Municipal code officials, as applicable, shall conduct inspections inside of city limits and extraterritorial jurisdictions.}

{(3) Professional home inspector requirements.}

{(A) Inspections may be conducted by a professional home inspector as evidenced by the Administrator to ensure inspections are performed by a person who has received current and comprehensive training to enable them to conduct effective inspections. Completion of the training required to be a licensed TREC inspector would be acceptable evidence of such training.}

{(B) The professional home inspector may be a staff member of the Administrator.}

{(4) Qualified inspection individual Requirements.}

{(A) Inspections may be conducted by a qualified inspection individual if certified by the Administrator that the individual has professional certifications, relevant education or minimum five (5) years experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.}

{(B) Inspections may be performed by qualified inspection individuals if allowed by the Program Rules or NOFA.}

{(C) Qualified inspection individuals may be a staff member of the Administrator.}

{(4) Other inspection requirements.}

{(1) All inspectors shall inspect properties utilizing applicable construction standards prescribed by the Department; and}

{(2) All inspectors shall utilize Department approved and prescribed inspection forms/checklists for applicable inspections.}

{(e) Single Family Housing Units receiving only utility connections under the Colonia Self Help Center Program are exempt from inspection requirements.}

§20.11. Survey Requirements.

When assistance is provided in the form of an acquisition Mortgage Loan [mortgage loan]:

(1) a Category 1A (Texas Society of Professional Surveyors) land title survey is required for single family acquisition where:

(A) the Department is a [the first] lien holder and the Program [rehabilitation activity] funds are used for construction or purchase because:

(i) the rehabilitation [Rehabilitation] project is enlarging the footprint; or

(ii) the project is reconstruction or new construction or purchasing an existing home [Reconstruction or New Construction]; and

(B) if allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the Household certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit;

(2) the Department reserves the right to determine the survey requirements on a per project basis if additional survey requirements would, at the sole discretion of the Department, benefit the project.

§20.12. Insurance Requirements for Acquisition Activities.

(a) Title Insurance requirements. A Mortgagee's Title Insurance Policy is required for all non-conforming Department Mortgage Loans [mortgage loans] as required by the Program Rules or NOFA, exclusive of Mortgage Loans [loans] financed with mortgage revenue bonds or through the Taxable Mortgage Program. The title insurance must be written by a title insurer licensed or authorized to do business in the jurisdiction where the Single Family Housing Unit is located. The policy must be in the amount of the Mortgage Loan [loan]. The mortgagee [Mortgagee] named shall be: "Texas Department of Housing and Community Affairs."

(b) Title Reports.

(1) Title reports may be provided in lieu of title commitments [insurance] only for grants when [if] title insurance is not available. Title reports shall be required when the grant funds exceed \$20,000.

(2) The preliminary title report may not be older than allowed by the Program Rule [Rules] or NOFA.

(3) Liens, or any other restriction or encumbrances that impair [the] good and marketable [nature of the] title must be cleared on or before closing of the Department's transaction.

(c) Builder's Risk (non-reporting form only) is required where construction funds in excess of \$20,000.00 for a [of the] Single Family Housing Unit is being financed and/or advanced by the Department [in an amount not less than the cost of construction]. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(d) Hazard Insurance.

(1) The hazard insurance provisions are not applicable to HOME Program activities unless required in the Program Rule or NOFA.

(2) If Department funds are provided in the form of a Mortgage Loan [loan], then:

(A) the Department requires property insurance for fire and extended coverage;

(B) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(C) the amount of hazard insurance coverage at the time the Mortgage Loan [mortgage loan] is funded should be no less than 100 percent of the current insurable value of improvements; and

(D) the Department should be named as a loss payee and mortgagee on the hazard insurance policy.

(e) Flood insurance must be maintained for all structures located in special flood hazard areas where the U.S. Federal Emergency Management Agency (FEMA) has mandated flood insurance coverage.

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced into obtaining flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this Chapter [chapter], must be obtained prior to Mortgage Loan [mortgage loan] funding. A one year insurance policy must be paid [Insurance premiums for at least twelve (12) months] and up to two (2) months of reserves may be collected at the [loan] closing of the Mortgage Loan. The Department must be named as loss payee on the policy.

§20.13. Loan, Lien and Mortgage Requirements for [Acquisition] Activities With Acquisition [Only].

(a) The requirements in this section shall apply to Nonconforming Mortgage Loans for Activities with acquisition of real property [non-conforming mortgage loans], unless otherwise provided in the Program Rule [Rules], NOFA or Program [program] guidelines.

(b) The fee requirements described in paragraphs (1) - (3) of this subsection apply to Nonconforming [non-Conforming] Mortgage Loans:

(1) Allowable expenses are restricted to reasonable third party fees.

(2) Fees charged by third party Mortgage [mortgage] lenders are limited to the greater of 2 percent of the Mortgage Loan [mortgage loan] amount or \$3,500, including but not limited to origination, Application, and/or underwriting fees.

(3) Fees paid to other parties that are supported by an invoice and reflected on the HUD-1 will not be included in the limit.

(c) Maximum Debt Ratio. The total debt-to-income ratio may not exceed 45 percent. A borrower's spouse who does not apply for the Mortgage Loan [mortgage loan] will be required to execute the in-

formation disclosure form and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of both the borrower and the "non-purchasing" spouse[; the non-purchasing spouse's income, debts, and obligations] will be considered in the borrower's total debt-to-income ratio.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rule [Rules] or NOFA.

(e) Lien position requirements.

(1) A Mortgage Loan [mortgage loan] made by the Department shall be secured by a first (1st) lien on the real property if the Department's Mortgage Loan [loan] is the largest Mortgage Loan [mortgage loan] secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan [mortgage loan] is equal to or greater than the Department's Mortgage Loan [loan]; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan [mortgage loan] is at least \$1,000 or greater than the Department's Mortgage Loan [loan]. However liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loan [loans], such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan [loan].

(4) A subordinate Mortgage Loan [mortgage loan] may be re-subordinated, at the discretion of the Department, and as provided in the Program Rules or NOFA.

(f) Escrow Accounts.

(1) An escrow account must be established if:

(A) the Department holds a first lien Mortgage Loan [mortgage loan] which is due and payable on a monthly basis to the Department; or

(B) the Department holds a subordinate Mortgage Loan [mortgage loan] and the first lien lender does not require an escrow account, the Department may require an escrow account to be established.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the provisions described in subparagraphs (A) - (F) of this paragraph are applicable:

(A) The borrower must contribute monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing to establish the required Escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The borrower will be required to deposit monthly funds to an escrow account with the Mortgage Loan [mortgage loan] servicer in order to pay the taxes and insurance. This will ensure that

funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due; and

(F) These funds are included in the borrower's monthly payment to the Department or to the servicer. The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) if applicable.

§20.14. Amendments [and Modifications] to [Written] Agreements and Contracts and Modifications to Mortgage Loan Documents.

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract [~~contract~~] provided that the requirements of this section are met.

(b) Time extensions. The Executive Director or his/her designee may grant up to a cumulative twelve (12) months extension to the end date of any Contract [~~contract~~] unless otherwise indicated in the Program Rules or NOFA. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative twelve (12) months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions [~~modifications~~], or denial of the requested extension.

(c) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(d) Changes in Households [~~beneficiaries~~]. Reductions in Contractual [~~contractual~~] deliverables and Households [~~beneficiaries~~] shall require an amendment to the Contract [~~contract~~] [~~a contract amendment~~]. Increases in Contractual [~~contractual~~] deliverables and Households [~~beneficiaries~~] that do not shift funds, or cumulatively shift less than 10 percent of total award or Contract [~~contract~~] funds, shall be completed through an amendment to the Contract [~~contract~~] [~~a contract modification~~].

(e) Increases in Award and Contract Amounts [~~Increases~~].

(1) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to the greater of 25 percent of the original award amount or \$50,000. [~~Up to a cumulative 25 percent or \$50,000 (whichever is greater) increase in specific single family program's contract may be added to the funding originally awarded by the Department.~~]

(2) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract [~~contract~~] period.

(3) The requirements to approve an increase in funding shall include, at a minimum, Administrator's ability to continue to meet existing deadlines, benchmarks and reporting requirements.

(4) Funding may come from Program [~~program~~] funds, Deobligated [~~deobligated~~] funds or Program [~~program~~] income.

(5) Qualifying requests will be recommended to the Executive Director for approval.

(6) The Board must approve requests for increase in Program funds in excess of the cumulative 25 percent or \$50,000 threshold.

(f) The Executive Director may approve [~~contract~~] budget changes or amendments to the Contract that do not significantly decrease the benefits to be received by the Department.

(g) The single family Program's [~~program's~~] Director may approve Contract [~~contract~~] budget modifications provided the guidelines described in paragraphs (1) - (4) of this subsection are met:

(1) funds must be available in a budget line item;

(2) the budget change(s) are less than 10 percent of the total Contract's [~~Activity~~] budget;

(3) if units or activities are desired to be increased, but funds must be shifted from another budget line item in which units or activities from that budget line item have been completed, a Contract [~~contract~~] amendment will only be necessary if the cumulative budget changes exceed 10 percent of the Contract [~~contract~~] amount; and

(4) the cumulative total of all Contract's [~~contract~~] budget modifications cannot exceed 10 percent of the total Contract's [~~contract's~~] budget amount.

(5) If these guidelines are not met, an amendment to the Contract [~~a contract amendment~~] will be required.

(h) The Department may terminate a Contract [~~contract~~] in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Contract or NOFA or for any other reason in the Department's reasonable discretion.

(i) In all instances noted in this section, where an expected Mortgage Loan [~~loan~~] transaction is involved, Mortgage Loan documents [~~loan instruments~~] will be modified accordingly at the expense of the Administrator/borrower.

§20.15. Compliance [Sanctions] and Deobligation.

The compliance requirements [~~sanctions (except debarment)~~] and Deobligation [~~deobligation~~] remedies identified under other provisions of this Title [~~title~~] apply to all single family Program [~~program~~] activities.

§20.16. Waivers and Appeals.

(a) Appeal of TDHCA staff decisions or actions will follow requirements in Program Rules, NOFA, or Chapter 1 of this Title.

(b) Waiver of Texas Minimum Construction Standards.

(1) Waiver may be requested if a legal or factual reason makes compliance with provisions of TMCS impossible.

(2) Waivers must be approved prior to the commencement of rehabilitation work.

(3) Lack of adequate initial inspection is not a valid basis for waiver.

(4) Waiver requests must be made in writing, specifically identify the grounds for waiver, and include all necessary documentation to support the request.

(5) Each request will be reviewed by TDHCA staff with sufficient knowledge of the construction process to render an opinion on the validity of the request. The staff opinion will be provided to the Executive Director or his/her designee, along with the original request and the supporting documents.

(6) On or before the fourteenth business day after receipt of the request by the Department, the Executive Director or his/her designee will approve or disapprove the request, and provide written notice to the Administrator.

(7) Appeal of the Executive Director's decision will follow the Staff Appeal process provided in other provisions of this Title.

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

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §62.1071(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 15, 2014, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §62.1071, concerning the equalized wealth level. The section establishes provisions relating to wealth equalization requirements. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year*. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each yearly manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to 19 TAC §62.1071, *Manual for Districts Subject to Wealth Equalization*, would adopt in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

The only significant change to the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* from the *Manual for*

Districts Subject to Wealth Equalization 2013-2014 School Year is the following.

Appendix B: Forms

A Chapter 41 district would no longer be required to send the TEA an "intent" letter. Beginning with the 2014-2015 school year, a Chapter 41 district would be able to use the District Intent form in the online FSP System to provide the information previously required to be provided with the intent letter.

The proposed rule action would place the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The proposed rule action would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government, including local school districts and open-enrollment charter schools, as a result of enforcing or administering the amendment.

Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of an annual publication specifying requirements for school districts subject to wealth equalization. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins August 15, 2014, and ends September 15, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 15, 2014.

The amendment is proposed under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

§62.1071. *Manual for Districts Subject to Wealth Equalization.*

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication *Manual for Districts Subject to Wealth Equalization 2014-2015 [2013-2014] School Year*, provided in this subsection.

Figure: 19 TAC §62.1071(a)

[Figure: 19 TAC §62.1071(a)]

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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 De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1030

The Texas Education Agency (TEA) proposes new §74.1030, concerning the fine arts requirement for high school graduation. In accordance with the Texas Education Code (TEC), §28.025(b-9), the proposed new section would allow for each school district and open-enrollment charter school to submit for the commissioner's approval a community-based fine arts program not provided by the school district or charter school.

The 83rd Texas Legislature, Regular Session, 2013, passed House Bill 5, amending the TEC, §28.025(b-9), to allow a school district or charter school, with the commissioner's approval, to permit a student to satisfy the fine arts credit required for graduation on the foundation high school program by participating in a community-based fine arts program not provided by the school district or charter school. Pursuant to the TEC, §28.025(b-9), as amended, the community-based fine arts program must provide instruction in the essential knowledge and skills identified for fine arts by the State Board of Education under the TEC, §28.002(c). The community-based fine arts program may be provided on or off a school campus and outside the regular school day.

Proposed new 19 TAC §74.1030 would require a school district and charter school to apply to the commissioner of education for approval of a community-based fine arts program certified by the district as meeting the Texas Essential Knowledge and Skills for fine arts. The proposed new section would also establish requirements that a community-based fine arts program must meet in order to satisfy the fine arts credit.

The proposed rule action would have procedural and reporting implications, requiring a school district or charter school to sub-

mit an application to the commissioner of education for approval of a program.

The proposed rule action would have no new locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state government, however, there may be fiscal implications for local government required to comply with the proposed rule action. There may be some costs to school districts and charter schools for criminal background checks if they select to offer these programs onsite and participating instructors do not pay these fees. Costs are not anticipated to be significant.

Ms. Martinez has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will include additional options for students to satisfy the fine arts requirement for graduation. There may be economic cost to persons who are required to comply with the proposed new section. For programs offered onsite, there could be costs for criminal background checks for participating instructors if school districts or charters do not pay these fees. Costs are not anticipated to be significant.

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

The public comment period on the proposal begins August 15, 2014, and ends September 15, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 15, 2014.

The new section is proposed under the Texas Education Code (TEC), §28.025(b-9), which authorizes the commissioner to approve requests from school districts to allow students to participate in community-based fine arts programs to satisfy the fine arts credit required under TEC, §28.025(b-1)(7). TEC, §12.104(b)(2)(E), makes open-enrollment charter schools subject to high school graduation requirements under TEC, §28.025.

The new section implements the TEC, §28.025(b-9) and §12.104(b)(2)(E).

§74.1030. Community-Based Fine Arts Programs.

(a) In accordance with the Texas Education Code, §28.025(b-9), each school district or open-enrollment charter school may allow a student to satisfy the fine arts credit required for graduation on the foundation high school program by participating in a community-based fine arts program not provided by the district or charter school in which the student is enrolled.

(b) In accordance with local district policy, credit may be earned through participation in the community-based fine arts program only if the program meets each of the following requirements.

(1) The school district or charter school must apply to the commissioner of education for approval of the community-based fine arts program.

(2) The school district's board of trustees or charter school's governing body must certify that the program provides instruction in the essential knowledge and skills for fine arts as defined by Chapter 117, Subchapter C, of this title (relating to High School).

(3) The school district or charter school must document student completion of the approved activity.

(4) The program must be organized and monitored by appropriately trained instructors.

(5) The fine arts program may be provided on or off a school campus and outside the regular school day.

(6) Students may not be dismissed from any part of the regular school day to participate in the community-based fine arts program.

(c) The school district or charter school shall require that instructors of the community-based fine arts program provide the school entity, at its request, the information necessary to obtain the criminal history record information required for school personnel in accordance with Chapter 153, Subchapter DD, of this title (relating to Criminal History Record Information Review), if the community-based program is offered on campus.

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 De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

The State Board of Education (SBOE) proposes the repeal of §§100.1, 100.101, 100.103, and 100.105 and new §100.1, concerning open-enrollment charter schools. Section 100.1, proposed for repeal, addresses charter school application and selection procedures and criteria. Section 100.101 addresses the annual report on open-enrollment charter governance. Section 100.103 addresses optional open-enrollment charter provisions for contracting and purchasing. Section 100.105 addresses application of provisions to public senior college or university charters and public junior college charters. The proposed repeals and new section would align SBOE rules with the Texas Education Code (TEC), Chapter 12, Subchapters D and E, as amended by Senate Bill (SB) 2, 83rd Texas Legislature, Regular Session, 2013.

From 1995 until September 1, 2013, the SBOE had the authority to adopt the charter guidelines and application documents and to grant open-enrollment charters, public senior college or university charters, and public junior college charters. Additionally, the SBOE had the authority to approve the annual charter school

governance reporting form and optional charter provisions for purchasing and contracting.

SB 2, 83rd Texas Legislature, Regular Session, 2013, granted the commissioner of education the authority to approve the annual charter school governance reporting form and optional charter provisions for purchasing and contracting, as well as to establish and approve the contents of the request for application and the criteria by which charter schools would be awarded. Additionally, SB 2 gave the commissioner the authority to award up to 305 open-enrollment charters on a graduated basis by the year 2019 to eligible entities that are considered capable of carrying out the responsibilities of the charter, are likely to operate a school of high quality, have been nominated by the commissioner, and are not rejected by a majority of members of the SBOE present and voting. SB 2 specifies that a member of the SBOE will work in coordination with the commissioner to investigate and evaluate charter applicant(s). The TEC, §12.101, gives the SBOE the authority to veto or take no action on the charter(s) the commissioner of education has recommended for award.

The proposed revisions to 19 TAC Chapter 100, Subchapter A, would align SBOE rules for open-enrollment charter schools, including the selection process, with the requirements of SB 2.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no locally maintained paperwork requirements.

Heather Mauze, director of charter school administration, has determined that for the first five-year period the proposed repeals and new section are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Mauze has determined that for each year of the first five years the proposed repeals and new section are in effect the public benefit anticipated as a result of enforcing the rule actions would be alignment of SBOE rules relating to open-enrollment charter schools with the TEC. Open-enrollment charter schools provide avenues for local restructuring, flexibility, innovation, and choice for parents and students. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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

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

19 TAC §§100.1, 100.101, 100.103, 100.105

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

The repeals are proposed under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, gives the SBOE the authority to veto or take no action on the charter(s) the commissioner of education has recommended for award, and specifies that a member of the SBOE will work in coordination with the commissioner to investigate and evaluate charter applicant(s); TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or to subject schools to rules of governmental entity; TEC, §12.110, which authorizes the commissioner to adopt an application form and procedures to be used in applying for an open-enrollment charter; TEC, §12.119, which authorizes the commissioner to require the annual filing of the charter's articles of incorporation, bylaws, and governance reporting information with the agency; TEC, §12.152, which authorizes the commissioner to grant charters on application of a public senior college or university or public junior college; and TEC, §12.154, which authorizes the commissioner to establish criteria that must be satisfied for the granting of a charter to a public senior college or university or public junior college.

The repeals implement the TEC, §§12.101, 12.1053, 12.110, 12.111, 12.112, 12.119, 12.152, and 12.154.

§100.1. Application and Selection Procedures and Criteria.

§100.101. Annual Report on Open-Enrollment Charter Governance.

§100.103. Optional Open-Enrollment Charter Provisions for Contracting and Purchasing.

§100.105. Application to Public Senior College or University Charters and Public Junior College Charters.

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 De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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19 TAC §100.1

The new section is proposed under the Texas Education Code (TEC), §12.101, which gives the SBOE the authority to veto or take no action on the charter(s) the commissioner of education has recommended for award and specifies that a member of the SBOE will work in coordination with the commissioner to investigate and evaluate charter applicant(s).

The new section implements the TEC, §§12.101, 12.1053, 12.110, 12.111, 12.112, 12.119, 12.152, and 12.154.

§100.1. Selection Process.

(a) In accordance with the Texas Education Code, §12.101, the commissioner of education, in coordination with a State Board of Education (SBOE) member designated by the SBOE chair, may grant an open-enrollment charter to an applicant that meets the financial, governing, educational, and operational standards adopted by the commissioner in Chapter 100 of this title (relating to Charters).

(b) The commissioner shall notify the SBOE of the charters the commissioner proposes to grant.

(c) A charter proposed by the commissioner takes effect unless, within 90 days of notification of the proposed charter(s) referenced in subsection (b) of this section, the majority of the SBOE members present and voting vote to veto the commissioner's proposed charter(s).

(d) The SBOE may not vote or deliberate on any charter application that has not been proposed by the commissioner. For purposes of this section, deliberation is defined in Texas Government Code, §551.001.

(e) An applicant for an open-enrollment charter, or any person or entity acting on behalf of an applicant for an open-enrollment charter, shall not communicate with the commissioner or the commissioner's designee, a member of the SBOE, or a member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. The SBOE may veto a proposed application for violation of this subsection.

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

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CHAPTER 114. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH SUBCHAPTER C. HIGH SCHOOL

19 TAC §§114.31, 114.47 - 114.52

The State Board of Education (SBOE) proposes amendment to §114.31 and new §§114.47-114.52, concerning Texas essential knowledge and skills (TEKS) for languages other than English (LOTE). Section 114.31 addresses implementation of high school LOTE TEKS adopted in 2014. The proposed rule actions would add new TEKS for classical languages for implementation in the 2016-2017 school year.

Applications for appointment to LOTE TEKS review committees were accepted by the Texas Education Agency (TEA) from December 2012 to January 2013. Nominations for LOTE TEKS review committee members and appointments of expert reviewers were made in May 2013.

The LOTE TEKS review committees convened in Austin in June 2013 to begin work on draft recommendations for revisions to the TEKS. Expert reviewers provided their initial feedback on the current LOTE TEKS to the SBOE in August. The TEKS review committees met again in August 2013 to complete their initial draft recommendations. In September 2013, the first draft recommendations were provided to the board and to the board-appointed expert reviewers and posted to the TEA website for informal public feedback. During the September 2013 SBOE

meeting, two expert reviewers and one representative from each LOTE TEKS review committee provided invited testimony to the Committee of the Full Board. Expert reviewers provided feedback on the committee's draft recommendations in October.

The LOTE TEKS review committees met for a third time in October 2013 in order to finalize their recommendations for revisions to the TEKS. The SBOE-appointed expert reviewers participated in this meeting and their feedback on the draft recommendations was provided to the TEKS review committee members at this meeting. The final recommendations from the review committees were posted on the TEA website in November 2013 and were shared with the expert reviewers. The experts' final feedback on the recommendations was provided to the SBOE at the January 2014 meeting. A public hearing on the proposed revisions to the LOTE TEKS was held on January 28, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for first reading and filing authorization at the January 31, 2014, meeting. Also at the January meeting, the board directed staff to form two committees to make recommendations regarding the need for unique TEKS for classical languages and logographic languages.

A new course, Special Topics in Language and Culture, was developed by the LOTE TEKS review committee to address requirements in House Bill 5, 83rd Texas Legislature, Regular Session, 2013, that allow students who have completed one credit in a language other than English but who are unlikely to successfully complete a second credit in that language to substitute credit in another course. In order for the new course to be available for the implementation of the new foundation high school program graduation requirements in the 2014-2015 school year, the TEKS for the Special Topics in Language and Culture course required an earlier implementation date than the other LOTE TEKS.

A second public hearing was held on April 9, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for second reading and final adoption at the April 11, 2014, meeting. The revised TEKS for LOTE approved for adoption at the April 2014 meeting will be implemented in classrooms in the 2016-2017 school year, with the exception of the Special Topics in Language and Culture course, which will be implemented beginning with the 2014-2015 school year. The board also directed staff to move forward with the recommendation of the LOTE TEKS committees for classical languages to develop new TEKS for classical languages.

The proposed rule actions would amend Subchapter C, High School, to add new TEKS for Classical Languages, Levels I-VII, and Seminar in Classical Languages and would amend §114.31, Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, High School, Adopted 2014, to add the new courses for implementation in the 2016-2017 school year to coincide with the implementation of the revisions to LOTE TEKS that were approved at the April 2014 meeting.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendment and new sections are in effect there will

be fiscal implications for state and local government as a result of enforcing or administering the proposed rule actions.

There are fiscal implications for the TEA in fiscal year 2014 to reimburse committee members for travel to develop the LOTE TEKS for classical languages. There are also implications for the TEA if the state develops professional development to help teachers and administrators understand the revisions to the TEKS. Any professional development that is created would be based on whether the agency receives an appropriation for professional development in the next biennium. For fiscal year 2014, the estimated cost to the TEA for developing the TEKS is \$6,760.

There are anticipated fiscal implications for school districts and charter schools to implement the revised TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Ms. Martinez has determined that for each year of the first five years the proposed amendment and new sections are in effect the public benefit anticipated as a result of enforcing the rule actions would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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

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

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The amendment and new sections implement the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§114.31. *Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, High School, Adopted 2014.*

(a) The provisions of this section and §§114.32-114.52 [§§114.32-114.46] of this title shall be implemented by school districts.

(b) The provisions of §114.33 of this title (relating to Special Topics in Language and Culture (One Credit), Adopted 2014) shall be implemented beginning with the 2014-2015 school year.

(c) No later than August 31, 2015, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §§114.32 and 114.34-114.52 [~~114.34-114.46~~] of this title.

(d) If the commissioner makes the determination that instructional materials funding has been made available under subsection (c) of this section, §§114.32 and 114.34-114.52 [~~114.34-114.46~~] of this title shall be implemented beginning with the 2016-2017 school year and apply to the 2016-2017 and subsequent school years.

(e) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (c) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§114.32 and 114.34-114.52 [~~114.34-114.46~~] of this title shall be implemented for the following school year.

(f) Sections 114.21-114.29 of this title shall be superseded by the implementation of this section and §§114.32-114.52 [~~§§114.32-114.46~~] of this title.

§114.47. Classical Languages, Level I, Novice Low to Intermediate Low Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level I can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. There is no prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency-level appropriate texts. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational. Interpretive communication is the overarching goal of classical language instruction. Students of classical languages should be provided ample opportunities to interpret

culturally appropriate materials in the language of study, supported by opportunities for interpersonal and presentational communication.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others such as conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts such as comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction such as presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, and genre.

(5) At the end of Level I, students of classical languages should reach a Novice High to Intermediate Low proficiency level in reading, a Novice Low to Novice Mid proficiency level in listening, a Novice Low to Novice Mid proficiency level in speaking, and a Novice Mid proficiency level in writing. Proficiency levels are aligned with the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice Low proficiency level express meaning on some very familiar topics, using single words and phrases that have been practiced and memorized. They are best able to understand a few memorized words and phrases when heard. Novice Low students may be difficult to understand by the most sympathetic listeners and are likely to make frequent errors in pronunciation and syntax.

(B) Students at the Novice Mid proficiency level express meaning in highly predictable contexts through the use of memorized and recalled words and phrases. They are best able to understand aural cognates, borrowed words, and high-frequency, highly contextualized words and phrases with repetition. Novice Mid students may be difficult to understand by the most sympathetic listeners and readers accustomed to dealing with language learners. Novice Mid students are inconsistently successful when performing Novice-level tasks.

(C) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. They are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(D) Students at the Intermediate Low proficiency level express meaning in straightforward and personal contexts by combining and recombining what they know, what they read, and what they hear in short statements and sentences. Intermediate Low students are able to understand some information from simple connected statements in oral or written sources. Intermediate Low students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Low students are inconsistently successful when performing Intermediate-level tasks.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in a variety of contexts. The student uses a mixture of words and phrases with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions, such as yes/no questions, either/or questions, or who/what/where/when questions, in spoken or written conversation in classroom contexts; and

(B) articulate memorized requests, greetings, and introductions in spoken or written conversation.

(2) Interpretive communication: reading and listening. The student comprehends sentence-length information from culturally relevant print, digital, audio, and audiovisual materials as appropriate within highly contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally relevant print, digital, audio, or audiovisual materials in classroom contexts;

(B) identify key words and details from fiction or non-fiction texts or audio or audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in highly contextualized texts, audio, or audiovisual materials; and

(D) identify cultural practices from authentic print, digital, audio, or audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally or in writing using a mixture of words and phrases with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) express an opinion or preference orally or in writing; and

(B) describe people, objects, or simple situations orally or in writing using a mixture of words, phrases, or simple sentences.

§114.48. Classical Languages, Level II, Novice Mid to Intermediate Mid Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level II can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level I or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency-level appropriate texts. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational. Interpretive communication is the overarching goal of classical language instruction. Students of classical languages should be provided ample opportunities to interpret culturally appropriate materials in the language of study, supported by opportunities for interpersonal and presentational communication.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others such as conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts such as comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction such as presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, and genre.

(5) At the end of Level II, students of classical languages should reach an Intermediate Low to Intermediate Mid proficiency level in reading, a Novice Mid to Novice High proficiency level in listening, a Novice Mid proficiency level in speaking, and a Novice Mid to Novice High proficiency level in writing. Proficiency levels are aligned with the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice Mid proficiency level express meaning in highly predictable contexts through the use of memorized and recalled words and phrases. They are best able to understand aural cognates, borrowed words, and high-frequency, highly contextualized words and phrases with repetition. Novice Mid students may be difficult to understand by the most sympathetic listeners and readers accustomed to dealing with language learners. Novice Mid students are inconsistently successful when performing Novice-level tasks.

(B) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. Novice High students are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(C) Students at the Intermediate Low proficiency level express meaning in straightforward and personal contexts by combining and recombining what they know, what they read, and what they hear in short statements and sentences. Intermediate Low students are able to understand some information from simple connected statements in oral or written sources. Intermediate Low students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Low students are inconsistently successful when performing Intermediate-level tasks.

(D) Students at the Intermediate Mid proficiency level express meaning in straightforward and personal contexts by easily combining and recombining what they know, what they read, and what they hear in short statements and a mixture of sentences and strings of sentences. Intermediate Mid students are able to understand some information from connected statements in oral or written sources. Intermediate Mid students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Mid students are consistently successful when performing Intermediate-level tasks.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in a variety of contexts. The student uses a mixture of words, phrases, and simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions with simple elaboration in spoken or written conversation;

(B) express and exchange personal opinions or preferences in spoken or written conversation using simple constructions such as impersonal verbs; and

(C) ask and tell others what they need to, should, or must do in spoken or written conversation using appropriate constructions such as the imperative mood, impersonal verbs, or the subjunctive mood.

(2) Interpretive communication: reading and listening. The student comprehends simple connected statements from culturally relevant print, digital, audio, and audiovisual materials as appropriate

within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally relevant print, digital, audio, or audiovisual materials in classroom contexts;

(B) identify the main idea, theme, and supporting details from fiction or nonfiction texts or audio or audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in highly contextualized texts, audio, or audiovisual materials; and

(D) identify cultural practices from relevant print, digital, audio, or audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally or in writing using a mixture of phrases and simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) express and support an opinion or preference orally or in writing; and

(B) describe people, objects, or situations orally or in writing with essential details.

§114.49. Classical Languages, Level III, Novice Mid to Advanced Low Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level III can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level II or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency-level appropriate authentic texts of prose or poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational. Interpretive communication is the overarching goal of classical language instruction. Students of classical languages should be provided ample opportunities to interpret

culturally appropriate materials in the language of study, supported by opportunities for interpersonal and presentational communication.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others such as conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts such as comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction such as presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, and genre.

(5) At the end of Level III, students of classical languages should reach an Intermediate High to Advanced Low proficiency level in reading, a Novice High proficiency level in listening, a Novice Mid to Novice High proficiency level in speaking, and a Novice Mid to Novice High proficiency level in writing. Proficiency levels are aligned with the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice Mid proficiency level express meaning in highly predictable contexts through the use of memorized and recalled words and phrases. They are best able to understand aural cognates, borrowed words, and high-frequency, highly contextualized words and phrases with repetition. Novice Mid students may be difficult to understand by the most sympathetic listeners and readers accustomed to dealing with language learners. Novice Mid students are inconsistently successful when performing Novice-level tasks.

(B) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. Novice High students are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(C) Students at the Intermediate High proficiency level express meaning in a variety of contexts by creating with the language, easily combining and recombining what they know, what they read, and what they hear in a mixture of sentences and connected discourse. Intermediate High students are able to understand information from connected statements in oral or written sources. Intermediate High students are generally understood by listeners and readers unaccustomed to dealing with language learners. Intermediate High students are con-

sistently successful when performing Intermediate-level tasks. Intermediate High students show evidence of Advanced Low proficiency but lack consistency.

(D) Students at the Advanced Low proficiency level are able to understand conventional narrative and descriptive texts with a clear underlying structure though their comprehension may be uneven. These texts predominantly contain high-frequency vocabulary and structures. Readers understand the main ideas and some supporting details. Comprehension may often derive primarily from situational and subject-matter knowledge. Readers at this level will be challenged to comprehend more complex texts.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in a variety of contexts. The student uses a mixture of words, phrases, and simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions with simple elaboration in spoken or written conversation;

(B) express and exchange personal opinions or preferences in spoken or written conversation using simple constructions such as impersonal verbs; and

(C) ask and tell others what they need to, should, or must do in spoken or written conversation using appropriate constructions such as the imperative mood, impersonal verbs, or the subjunctive mood.

(2) Interpretive communication: reading and listening. The student comprehends connected statements from culturally authentic print, digital, audio, and audiovisual materials as appropriate within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally authentic print, digital, audio, or audiovisual materials in a variety of contexts;

(B) paraphrase the main idea, theme, and supporting details from fiction or nonfiction texts or audio or audiovisual materials;

(C) analyze authentic literature with respect to stylistic topics such as elements of genre, literary devices, audience, or metrics;

(D) infer meaning of unfamiliar words or phrases in contextualized texts, audio, or audiovisual materials; and

(E) compare and contrast cultural practices from authentic print, digital, audio, or audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally or in writing using a mixture of phrases and sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) cite the justification for an opinion or preference orally or in writing using textual evidence; and

(B) read prose or poetry aloud with attention to features of declamation such as metrical structure, meaningful phrase grouping, and appropriate voice inflection.

§114.50. Classical Languages, Level IV, Novice Mid to Advanced Mid Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level IV can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level III or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency level-appropriate authentic texts of prose or poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational. Interpretative communication is the overarching goal of classical language instruction. Students of classical languages should be provided ample opportunities to interpret culturally appropriate materials in the language of study, supported by opportunities for interpersonal and presentational communication.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others such as conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts such as comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction such as presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the

language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, and genre.

(5) At the end of Level IV, students of classical languages should reach an Advanced Low to Advanced Mid proficiency level in reading, a Novice High proficiency level in listening, a Novice Mid to Novice High proficiency level in speaking, and a Novice Mid to Novice High proficiency level in writing. Proficiency levels are aligned with the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice Mid proficiency level express meaning in highly predictable contexts through the use of memorized and recalled words and phrases. They are best able to understand aural cognates, borrowed words, and high-frequency, highly contextualized words and phrases with repetition. Novice Mid students may be difficult to understand by the most sympathetic listeners and readers accustomed to dealing with language learners. Novice Mid students are inconsistently successful when performing Novice-level tasks.

(B) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. Novice High students are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(C) Students at the Advanced Low proficiency level are able to understand conventional narrative and descriptive texts with a clear underlying structure though their comprehension may be uneven. These texts predominantly contain high-frequency vocabulary and structures. Readers understand the main ideas and some supporting details. Comprehension may often derive primarily from situational and subject-matter knowledge. Readers at this level will be challenged to comprehend more complex texts.

(D) Students at the Advanced Mid proficiency level are able to understand conventional narrative and descriptive texts such as expanded descriptions of persons, places, and things and narrations about past, present, and future events. These texts reflect the standard linguistic conventions of the written form of the language in such a way that readers can predict what they are going to read. Readers understand the main ideas, facts, and many supporting details. Comprehension derives not only from situational and subject-matter knowledge but also from knowledge of the language itself. Readers at this level may derive some meaning from texts that are structurally and/or conceptually more complex.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in a variety of contexts. The student uses a mixture of words, phrases, and simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions with simple elaboration in spoken or written conversation;

(B) express and exchange personal opinions or preferences, in spoken or written conversation, using constructions such as impersonal verbs; and

(C) ask and tell others what they need to, should, and must do in spoken or written conversation using constructions such as the imperative mood, impersonal verbs, or the subjunctive mood.

(2) Interpretive communication: reading and listening. The student comprehends connected statements from culturally authentic print, digital, audio, or audiovisual materials as appropriate within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) analyze culturally authentic print, digital, audio, or audiovisual materials in a variety of contexts;

(B) paraphrase and analyze the main idea, theme, and supporting details from fiction or nonfiction texts, prepared or unprepared, or from audio or audiovisual materials;

(C) analyze authentic literature in depth with respect to topics such as elements of genre, literary devices, audience, or metrics;

(D) infer meaning of unfamiliar words or phrases in texts, audio, or audiovisual materials; and

(E) compare and contrast cultural practices and perspectives from authentic print, digital, audio, or audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally or in writing using a mixture of phrases and sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) cite the justification for an opinion or an argument orally or in writing utilizing textual evidence; and

(B) read prose or poetry aloud with attention to features such as metrical structure, meaningful phrase grouping, and appropriate voice inflection.

§114.51. Classical Languages, Levels V-VII, Novice High to Superior Low Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Levels V-VII can be offered in high school. Students shall be awarded one credit for successful completion of this course. Successful completion of the preceding level or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages read and comprehend on-level authentic texts of prose and poetry of selected authors. The skills of listening, speaking, and writing are used to reinforce the skill of reading.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativ-

ity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational. Interpretive communication is the overarching goal of classical language instruction. Students of classical languages should be provided ample opportunities to interpret culturally appropriate materials in the language of study, supported by opportunities for interpersonal and presentational communication.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others such as face to face exchanges, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts such as comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction such as presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The three modes of communication (interpersonal, interpretive, and presentational) provide the organizing principle for describing language performance across all ranges of performance: Novice, Intermediate, Advanced, Superior, and Distinguished.

(A) The interpersonal mode is characterized by the active negotiation of meaning among individuals. Participants observe and monitor one another to see how their meanings and intentions are being communicated. Adjustments and clarifications can be made accordingly.

(B) The interpretive mode focuses on the appropriate cultural interpretation of meanings that occur in written and spoken form where there is no recourse to the active negotiation of meaning with the writer or the speaker.

(C) The presentational mode refers to the creation of oral and written messages in a manner that facilitates interpretation by members of the other culture where no direct opportunity for the active negotiation of meaning between members of the two cultures exists.

(5) All student expectations and modes of communication are aligned with and address the ACTFL National Standards for Foreign Language Education: Communication, Cultures, Connections, Comparisons, and Communities.

(6) Students of classical languages should reach an Advanced High to Superior Low proficiency level in reading during Levels V-VII. Students of classical languages will require more time to achieve proficiency in speaking, writing, and listening and should reach a Novice High to Intermediate Low proficiency level in speaking, writing, and listening during Levels V-VII.

(7) Students of classical languages wishing to pursue advanced study targeted to specific topics may consider enrolling in a course under §114.52 of this title (relating to Seminar in Classical Languages, Advanced (One-Half to One Credit), Adopted 2014).

(8) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student communicates in the interpersonal mode using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpersonal mode is the ability to understand and exchange information in the target language. The student is expected to:

(A) engage in simple exchanges with generally consistent use of syntax in any time frame and respond appropriately to questions, statements, commands, or other stimuli such as pictures, gestures, or the surrounding environment; and

(B) produce written exchanges at the appropriate proficiency level that provide information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

(2) Interpretive communication: reading and listening. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpretive mode focuses on comprehending main ideas and identifying some supporting details in the target language. The student is expected to:

(A) analyze information from a variety of prepared or unprepared authentic texts in various literary genres and relevant print, electronic, audio, or audiovisual resources that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(B) compare, contrast, and analyze cultural practices and perspectives from authentic texts or relevant print, electronic, audio, or audiovisual resources; and

(C) analyze authentic literature in depth with respect to stylistic topics such as elements of genre, literary devices, audience, or metrics.

(3) Presentational communication: speaking and writing. The student communicates using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The presentational mode refers to the creation of oral and written messages in the target language. The student is expected to:

(A) cite the justification for an opinion or an argument orally or in writing using textual evidence to explain, express opinions, describe, or narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(B) read prose or poetry aloud with attention to features of declamation such as metrical structure, meaningful phrase grouping, and appropriate voice inflection and gestures.

§114.52. Seminar in Classical Languages, Advanced (One-Half to One Credit), Adopted 2014.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. Products and

presentations need not be produced entirely in the target language. A prerequisite to enroll into this course is a minimum proficiency level of Advanced Mid in reading and a minimum performance level of Novice High in listening, speaking, and writing on the American Council on the Teaching of Foreign Languages (ACTFL) scale. The student may take this course with different course content for a maximum of three credits. The course need not be conducted entirely in the target language. Fluency in the target language should reflect a minimum proficiency level of Novice High in the speaking, listening, and writing skills.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students may be provided ample opportunities to engage in conversations, to present information to an audience, or to interpret culturally authentic materials in or about the language of study. ACTFL identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English. The use of culturally authentic resources in classical language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The student enrolled in a seminar course in a classical language will focus on a specialized area of study such as the work of a particular author, genre, or topic. The student will speak, write, read, or listen, as appropriate, in the target language for a variety of audiences and purposes. The student is expected to plan, draft, and complete written compositions as well as oral presentations on a regular basis and carefully examine his or her papers and presentations for clarity,

engaging language, and the correct use of conventions and mechanics as applicable.

(5) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student inquires through assigned topics and research in or about the target language. The student is expected to:

(A) generate relevant and researchable questions with instructor guidance and approval;

(B) communicate with clarity in order to participate fully and effectively in conversations on a variety of topics from multiple perspectives in formal and informal settings;

(C) comprehend language from within the cultural framework or genre, including the use of nuance and subtlety;

(D) produce in-depth summaries, reports, or research papers on a variety of social, academic, or professional topics; and

(E) pose relevant questions from the research findings or conclusions for further study.

(2) The student applies critical-thinking skills to build a portfolio that organizes and uses information acquired from a variety of sources, including technology. The student is expected to:

(A) collect a variety of visual images such as photographs of mosaics, frescoes, graffiti, coins, statues, architecture, reliefs, and other media;

(B) compile written ideas and representations;

(C) interpret information and draw conclusions from a wide range of sources;

(D) identify bias in written, oral, or visual material;

(E) use writing or speaking skills for reflection and exploration;

(F) cite sources appropriately; and

(G) present a portfolio.

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 31, 2014.

TRD-201403484

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 14, 2014

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §183.4

The Texas Medical Board (Board) proposes amendments to §183.4, concerning Licensure.

The amendments to §183.4 revise subsection (a)(8)(B) by adding an updated Test of English as Foreign language (TOEFL) test score requirement for Internet Based Testing (iBT®), reflecting TOEFL's new test score scale, and deleting the outdated referenced to TOEFL's former test score scale. The amendment is made so that the TOEFL test requirement correctly references TOEFL's current test score scale.

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 reflect the applicable TOEFL test scores for evaluating English speaking proficiency of acupuncture license applicants.

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 Rob Blech, 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 Texas Occupations Code Annotated §205.101.

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

§183.4. *Licensure.*

(a) qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1) - (7) (No change.)

(8) is able to communicate in English as demonstrated by one of the following:

(A) passage of the NCCAOM examination taken in English;

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of at least "intermediate" on the Reading and Listening sections and a score of at least "fair" on the Speaking and Writing sections of the Internet Based Test (iBT®), or a score of 550 or higher on the paper based test (PBT) [or with a score of 213 or higher on the computer based test];

(C) passage of the TSE (Test of Spoken English) with a score of 45 or higher;

(D) passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher;

(E) graduation from an acceptable approved school of acupuncture located in the United States or Canada; or

(F) at the discretion of the acupuncture board, passage of any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture

board or with results otherwise subject to verification by direct contact between the testing service and the acupuncture board.

(9) (No change.)

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 4, 2014.

TRD-201403528

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 305-7016



22 TAC §183.11

The Texas Medical Board (Board) proposes amendments to §183.11, concerning Complaint Procedure Notification.

The amendment to the rule changes an incorrect citation to Chapter 188 to the correct citation, Chapter 178 of this title (relating to Complaints). The amendment is made so that the citation in the rule is accurate and correct and consistent with Texas statutes.

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 consistent with Texas statutes.

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 Rob Blech, 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 Texas Occupations Code Annotated §205.101.

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

§183.11. Complaint Procedure Notification.

Pursuant to §205.152 of the Act, Chapter 178 [488] of this title (relating to Complaints [~~Complaint Procedure Notification~~]) shall govern acupuncturists with regard to methods of notification for filing complaints with the agency. If the provisions of Chapter 178 of this title [488] conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

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 August 4, 2014.

TRD-201403529

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 305-7016



PART 38. TEXAS MIDWIFERY BOARD

CHAPTER 831. MIDWIFERY

SUBCHAPTER B. LICENSURE

22 TAC §831.25

The Texas Midwifery Board (board), with the approval of the Executive Commissioner of the Health and Human Services Commission, proposes an amendment to §831.25 concerning the licensing of military service members, military veterans, and military spouses.

BACKGROUND AND PURPOSE

The amendments implement Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amended Occupations Code, Chapter 55, relating to the occupational licensing of spouses of members of the military and the eligibility requirements for certain occupational licenses issued to applicants with military experience, and apprenticeship requirements for occupational licenses issued to applicants with military experience.

SECTION-BY-SECTION SUMMARY

Amendments to §831.25 add new language to define the persons to whom the new eligibility and apprenticeship requirements apply, establish the standards for licensing under this section, and modify existing language for clarity and organization.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to continue to ensure public health and safety through the licensing and regulation of midwives.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, by fax to (512) 834-6677 or by email to midwifery@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendment is authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.

The amendment affects the Occupations Code, Chapter 203.

§831.25. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section: [the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).]

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The board shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the Midwifery Program may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(i) If the board issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall be-

come ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

{(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(e), the department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.}

{(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.}

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 August 4, 2014.

TRD-201403526

Meredith Rentz-Cook

Chair

Texas Midwifery Board

Earliest possible date of adoption: September 14, 2014

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 22. PRIVACY

SUBCHAPTER A. INSURANCE CONSUMER FINANCIAL INFORMATION PRIVACY

28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, 22.26, 22.27

The Texas Department of Insurance proposes amendments to 28 TAC §§22.2, 22.3, 22.10, 22.11, 22.22, and 22.26, concerning the treatment of nonpublic personal financial information about individuals who obtain products or services primarily for personal, financial, or household purposes from covered entities. The department also proposes new 28 TAC §22.27, concerning general instructions for a covered entity to complete the federal model privacy form. The proposed amendments and new section are necessary to provide that a covered entity may use the federal model privacy form, consistent with its instructions in proposed 28 TAC §22.27, to meet the notice content requirements of 28 TAC §22.10 and §22.11. This proposal replaces the existing sample forms under 28 TAC §22.26(b) with three versions of the optional federal model privacy form and an optional federal mail-in opt out form that conforms with amendments in federal law and regulations concerning notice to consumers about their nonpublic personal financial information.

The proposed amendments and new section are also necessary to remain consistent with federal law and regulations concerning the disclosure of nonpublic personal financial information adopted under the Gramm-Leach-Bliley Act, 15 U.S.C. §6801 et seq., as amended, and are in accord with Insurance Code §601.051. This proposal implements Insurance Code §601.002(a), which requires a covered entity to comply with 15 U.S.C. §6802 and §6803, as amended, in the same manner as a financial institution is required to comply under those sections. Title 15 U.S.C. §6802 concerns a financial institution's obligations with respect to disclosures of personal information. Title 15 U.S.C. §6803 concerns the disclosure of a financial institution's privacy policy. Section 601.002(a) does not apply to a covered entity to the extent the entity is acting solely as an insurance agent, employee, or other authorized representative for another covered entity as provided under Insurance Code §601.003.

Insurance Code §601.051(a)(1) and (2) requires the commissioner to adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act under 15 U.S.C. §6801 et seq., as amended, to make this state eligible to override federal regulations described by 15 U.S.C. §6805(c), as amended. In adopting rules under Chapter 601, Insurance Code §601.051(b) requires the commissioner to keep state privacy requirements consistent with federal regulations adopted under 15 U.S.C. §6801 et seq., as amended. Insurance Code §601.052 further requires the department to implement standards as required by 15 U.S.C. §6805(b), as amended. The department also proposes amendments to update statutory references, amend existing text for clarification and consistency with agency writing style, and update internal references. Additionally, the department proposes amendments due to SB 951, passed during the 83rd Legislative Session (2013), to clarify that Insurance Code Chapter 981 applies to surplus lines for transactions where Texas is the home state of the insured to the extent the insurer accepts business through a person subject to Insurance Code Chapter 981.

Insurance Code §601.001(3) defines a "covered entity" to mean an individual or entity that receives an authorization from the department. Insurance Code §82.001 provides that in Chapter 82, "authorization" means a permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the commissioner's authority of the Insurance Code. The term includes an individual or entity described by Insurance Code §82.002(a), which provides that Chapter 82 applies to each company regulated by the commissioner, including:

- (1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;
- (2) a domestic or foreign, stock or mutual, fire or casualty insurance company;
- (3) a Mexican casualty company;
- (4) a domestic or foreign Lloyd's plan insurer;
- (5) a domestic or foreign reciprocal or interinsurance exchange;
- (6) a domestic or foreign fraternal benefit society;
- (7) a domestic or foreign title insurance company;
- (8) an attorney's title insurance company;
- (9) a stipulated premium insurance company;

- (10) a nonprofit legal service corporation;
- (11) a health maintenance organization;
- (12) a statewide mutual assessment company;
- (13) a local mutual aid association;
- (14) a local mutual burial association;
- (15) an association exempt under Insurance Code §887.102;
- (16) a nonprofit hospital, medical, or dental service corporation, including a company subject to Insurance Code Chapter 842;
- (17) a county mutual insurance company; and
- (18) a farm mutual insurance company.

Insurance Code Chapter 82 applies to an individual or entity that is required to register with the department or that is otherwise regulated under the commissioner's authority of the Insurance Code as provided by Insurance Code §82.001. Specifically, Insurance Code §82.002(b) provides that Chapter 82 also applies to:

- (1) an agent of an entity described by §82.002(a); and
- (2) an individual or a corporation, association, partnership, or other artificial person who:
 - (A) is engaged in the business of insurance;
 - (B) holds an authorization; or
 - (C) is regulated by the commissioner.

Additionally, Insurance Code §82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization.

As required by 15 U.S.C. §6803(e)(1), certain federal agencies were required to jointly develop a model form that a financial institution may use, at its option, to comply with the disclosure requirements under the section. The agencies were required to develop a model form that is comprehensible to consumers with a clear format and design, provide for clear and conspicuous disclosures, enable consumers to easily identify the information sharing practices of a financial institution and to compare privacy practices among financial institutions, be succinct, and use an easily readable type font in accord with 15 U.S.C. §6803(e)(2). The Office of the Comptroller of Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration; Federal Trade Commission; Commodity Future Trading Commission; and the Securities and Exchange Commission (the Agencies) jointly adopted a model privacy form, which appeared in the December 1, 2009, publication of the *Federal Register* at 74 FR 62890, that a financial institution may use, at its option, to meet the requirements for disclosure to the consumer.

The Agencies explained that a financial institution may use the model privacy form to notify consumers about its information-sharing practices and to inform consumers of the right to opt out of certain sharing practices. The Agencies adopted a model form with no opt out; a model form with an opt out by telephone, online, or both; a model form with a mail-in opt out form; and an optional mail-in opt out form. Use of the model privacy form is voluntary. However, the Agencies explained that a financial institution that chooses to provide the model privacy form to its consumers complies with the disclosure requirements for privacy notices in accord with 15 U.S.C. §6803(e)(4).

Prior to the adoption of the model privacy form, a financial institution could choose to use sample clauses in its privacy notices to comply with the disclosure requirements. The Agencies, other than the SEC, eliminated the safe harbor permitted for notices based on the sample clauses contained in the federal privacy rules for notices provided after December 31, 2010. Similarly, the SEC eliminated the guidance associated with the use of notices based on the sample clauses in its privacy rule for notices provided after December 31, 2010. The Agencies explained that while the model privacy form provides the legal safe harbor of compliance with the disclosure requirements, financial institutions may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as the notice complies with the requirements of the privacy rule.

The Agencies eliminated the sample clauses and related safe harbor, or guidance, from the privacy rule, following a one-year transition period. The initial public and media complaints about the incomprehensible privacy notices; the plain-language experts' guidance; and a consumer research project, known as the Notice Project, all examined the problems with the financial institutions' privacy notices, including their extensive use of the sample clauses, and found the need to develop a usable consumer notice. These same factors led the Agencies to eliminate the sample clauses.

For those institutions that had privacy notices based on the sample clauses, the Agencies implemented a transition period that started 30 days after the date of publication of the adoption of the model privacy form and ended on December 31, 2010. The Agencies stated that financial institutions would not be able to rely on the safe harbor by using the sample clauses in notices delivered or posted on or after January 1, 2011. Institutions relying on the sample clauses appended to the SEC's privacy rule would not be able to rely on them for guidance in notices delivered or posted on or after January 1, 2011. The Agencies stated that the sample clauses would be removed from codification on January 1, 2012, one year after the transition period ends. The SEC, whose privacy rule provides only guidance and not a safe harbor for financial institutions that use the sample clauses, stated that the sample clauses would also be removed from codification on January 1, 2012.

To remain consistent with federal law and regulations, this proposal permits a covered entity to use the federal model privacy form, consistent with its instructions in proposed 28 TAC §22.27, to meet the notice content requirements of 28 TAC §22.10 and §22.11. Additionally, the commissioner proposes to delete the sample forms under §22.26(b) and, as a replacement, the commissioner proposes to adopt by reference the three versions of the optional federal model privacy form and the federal mail-in opt out form that appears at 74 *Federal Register* 62890 (December 1, 2009). This proposal will become effective 20 days after the date on which the adoption order is filed in the office of the Secretary of State in accord with Government Code §2001.036(a).

Section-By-Section Overview of the Proposal.

Amendments to §§22.2, 22.3, and 22.22 update statutory references in the Insurance Code. Amendments to §§22.2, 22.3, 22.10, 22.11, 22.22, and 22.26 also update existing text for clarification and consistency with agency writing style. Amendments to §22.3 bring the notice from the former Figure 8 under §22.26(b) into §22.3 because it is not a model privacy form. Thus, it is necessary to retain the language from former

Figure 8 under §22.26(b) and place it as a Figure under 28 TAC §22.3(c)(2).

Amendments to §22.10 and the addition of subsection (o) to §22.11 are necessary to remain consistent with the federal law and regulations adopted by the Agencies in the December 1, 2009, publication of the *Federal Register* at 74 FR 62890. Amendments to add subsection catch lines in §22.11 are necessary to remain consistent with *Texas Register* requirements.

Amendments to §22.26 and the addition of new §22.27 are consistent with the federal law and regulations adopted by the Agencies. The department also proposes to delete the forms under §22.26(b), which are the sample clauses the Agencies eliminated as a legal safe harbor. The Agencies explained in the *Federal Register* that the sample clauses would also be removed from codification on January 1, 2012. Covered entities may continue to use notices that vary from the optional model privacy form so long as the notice complies with the requirements of this subchapter. However, the department will consider a covered entity that uses the federal model privacy form, consistent with the instructions in proposed §22.27, to comply with the disclosure requirements of §22.10 and §22.11. A covered entity may use the applicable federal model privacy form, consistent with the instructions in proposed §22.27, immediately on the effective date of the adopted proposal.

FISCAL NOTE. Stanton Strickland, associate commissioner, Legal Section, has determined that for each year of the first five years the proposed amendments and new section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. The department estimates there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Strickland has also determined that the public benefit anticipated as a result of the proposal for each year of the first five years the proposed amendments and new section are in effect is a model privacy form that will enable consumers to more easily comprehend a covered entity's information-sharing practices and compare those practices with other privacy policies. The model privacy form, if used consistent with its instructions in proposed §22.27, will serve as a safe harbor for satisfying the notice content requirements of 28 TAC §22.10 and §22.11 and federal law and regulations. A covered entity that chooses to use the model privacy form will likely save time and resources that would otherwise be spent developing its own notices.

Mr. Strickland anticipates there will be no probable economic costs to persons required to comply with this proposed rule for each year of the first five years the rule will be in effect because the rule only replicate requirements already imposed under federal law and regulations and provide model forms carriers may voluntarily choose to utilize.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accord with Government Code §2006.002(c), the department has determined that the proposed amendments and new section will not have an adverse economic impact on small or micro businesses. This proposal only replicates requirements already imposed under federal law and regulations and provides model forms covered entities may voluntarily choose to utilize.

The department did not design the optional federal model forms but did make minimal changes to the general instructions for con-

sistency with agency writing style and to reference the comparable Insurance Code and administrative provisions. Specifically, where appropriate, the general instructions replace "financial institution" with "covered entity" to reflect the terminology used under Insurance Code Chapter 601 and 28 TAC Chapter 22, Subchapter A. Additionally, the general instructions replace the citations under the Code of Federal Regulations with the comparable citations under the Insurance Code and department rules. Any costs associated with using the optional federal model forms will not be the result of the department's proposed amendments and new section but from the Texas statute requiring compliance with the federal requirements. Thus, no regulatory flexibility analysis is required because the proposed amendments and new section will not cause adverse economic effect on small or micro businesses.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m., Central time, on September 15, 2014. 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. An additional copy of the comments must be simultaneously submitted to Stanton Strickland, Associate Commissioner, Legal Section, Mail Code 110-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to stan.strickland@tdi.texas.gov. If the department holds a hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes the amendments and new section under Insurance Code §§82.002(c), 82.003, 601.051, 601.052, and 36.001; 15 U.S.C. §6801(b); 15 U.S.C. §6801(b); 15 U.S.C. §6805(b)(2); and 15 U.S.C. §6805(c). Section 82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization. Section 82.003 provides that the commissioner's authority under Chapter 82 is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law. Section 601.051(a)(1) and (2) provides that the commissioner must adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act, 15 U.S.C. §6801 et seq., as amended, to make this state eligible to override federal regulations as described by 15 U.S.C. §6805(c), as amended. Section 601.051(b) provides that in adopting rules under Chapter 601, the commissioner must attempt to keep state privacy requirements consistent with federal regulations adopted under Subtitle A, Title V, Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), as amended. Section 601.052 provides that the department must implement standards as required by 15 U.S.C. §6805(b), as amended. Section 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.

Title 15 U.S.C. §6801(b) provides that, in furtherance of the policy in subsection (a) of Section 6801, each agency or authority described in Section 6805(a) of this title must establish appropri-

ate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards to insure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer. Title 15 U.S.C. §6805(b)(2) provides that the agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) of §6805 must implement the standards prescribed under §6801(b) of Title 15 by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a) of Section 6805. Title 15 U.S.C. §6805(c) provides that if a state insurance agency fails to adopt regulations to carry out this subchapter, such state will not be eligible to override, under 12 USC §1831x(g)(2)(B)(iii), the insurance consumer protection regulations prescribed by a federal banking agency under §1831x(a) of Title 12.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§82.002(c), 82.003, 601.051, 601.052, 36.001, Gramm-Leach-Bliley Act, 15 U.S.C. §6801(b); 15 U.S.C. §6801(b); 15 U.S.C. §6805(b)(2); and 15 U.S.C. §6805(c).

§22.2. Definitions.

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

(1) Affiliate--Any company that controls, is controlled by, or is under common control with another company.

(2) Agent--As set forth in ~~the~~ Insurance Code §§2651.002 - 2651.011, 2651.051 - 2651.059, 4001.002, 4001.051, and 4001.053~~;~~ ~~Articles 9.36, 9.36A, and 21.02~~.

(3) Authorization--As set forth in ~~the~~ Insurance Code~~;~~ ~~Section~~ §82.001.

(4) Clear and conspicuous--A notice ~~that~~ ~~which~~ is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(5) Collect--To obtain information that the covered entity organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(6) Commissioner--The commissioner ~~[Commissioner]~~ of insurance ~~[Insurancee]~~.

(7) Company--A corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or other similar organization.

(8) Consumer--An individual or that individual's representative who seeks to obtain, obtains, or has obtained an insurance product or service from a covered entity that is to be used primarily for personal, family, or household purposes, and about whom the covered entity has nonpublic personal financial information.

(9) Consumer reporting agency--As defined in ~~Section~~ §603(f) of the federal Fair Credit Reporting Act (FCRA) (15 U.S.C. §1681a(f)).

(10) Control--Includes the terms "controls," "controlled by," and "under common control," and has the meaning assigned that term by ~~the~~ Insurance Code §823.005 and §823.151~~;~~ ~~Article 21.49-1, Section 2(d)~~.

(11) Covered entity--An individual or entity ~~that~~ ~~who~~ receives an authorization from the Texas Department of Insurance. The term includes any individual or entity described by ~~the~~ Insurance Code, ~~[Section]~~ §82.002.

(12) Customer--A consumer who has a customer relationship with a covered entity.

(13) Customer relationship--A continuing relationship, as described in §22.5 of this subchapter (relating to Determination of Continuing Relationship), between a consumer and a covered entity under which the covered entity provides one or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(14) Financial institution--Any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in ~~Section~~ §4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. §1843(k)). Financial institution does not include:

(A) any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. §1 et seq.);

(B) the Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. §2001 et seq.); or

(C) institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal financial information to a nonaffiliated third party.

(15) Financial product or service--Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under ~~Section~~ §4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. §1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(16) Health care--

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests, or counseling that:

(i) relates to the physical, mental, or behavioral condition of an individual; or

(ii) affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(B) prescribing, dispensing, or furnishing drugs or biologicals, ~~or~~ medical devices, or health care equipment and supplies to an individual.

(17) Health care provider--A physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law, or a health care facility.

(18) Health information--Any information or data, except age or gender, whether oral or recorded, in any form or medium, that is created by or derived from a health care provider or the consumer that relates to:

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual.

(19) Insurance product or service--Any product or service that is offered by a covered entity under [pursuant to] the Insurance Code and other insurance laws of this state. Insurance service includes a covered entity's evaluation, brokerage, or distribution of information that the covered entity collects in connection with a request or an application from a consumer for an insurance product or service.

(20) Nonaffiliated third party--An entity that is not an affiliate of, [or] related to by common ownership, or affiliated by corporate control with[,] the covered entity. The term does not include a joint employee of the entity.

(21) Nonpublic personal financial information--Information that [which]:

(A) includes:

(i) personally identifiable financial information;

(ii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available; and

(iii) any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers;[:]

(B) does not include:

(i) health information;

(ii) publicly available information unless it is derived from a nonpublic [non-public] source as described in subparagraphs (A)(ii) and (A)(iii) of this paragraph;

(iii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available; and

(iv) any list of individuals' names and addresses that:

(I) contains only publicly available information;[:]

(II) is wholly derived using personally identifiable financial information that is publicly available;[:]

(III) does not disclose that any of the individuals on the list is a consumer of a financial institution.

(22) Opt out--A direction by the consumer that the covered entity not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing), §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions), and §22.19 of this title (relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information).

(23) Personally identifiable financial information--

(A) The term includes:

(i) any information a consumer provides to a covered entity to obtain an insurance product or service from the covered entity;

(ii) any information about a consumer resulting from a transaction involving an insurance product or service between a covered entity and a consumer;

(iii) any information the covered entity otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer;

(iv) account balance information and payment history;

(v) the fact that an individual is or has been one of the covered entity's customers or has obtained an insurance product or service from the covered entity;

(vi) any information about the covered entity's consumer if it is disclosed in a manner that indicates that the individual is or has been the covered entity's consumer;

(vii) any information that a consumer provides to a covered entity or that the covered entity or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(viii) any information the covered entity collects through an information-collecting device from an Internet web server; and

(ix) information from a consumer report.

(B) The term does not include:

(i) health information;

(ii) a list of names and addresses of customers of an entity that is not a financial institution; and

(iii) information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(24) Publicly available information--Any information that a covered entity has a reasonable basis to believe is lawfully made available to the general public from:

(A) federal, state or local government records;

(B) widely distributed media; or

(C) disclosures to the general public that are required to be made by federal, state or local law.

§22.3. Exceptions to Applicability of Subchapter.

(a) A covered entity is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in this subchapter if the covered entity is an employee, agent, or other representative of another covered entity (a principal) [~~"a principal"~~] and:

(1) the principal otherwise complies with, and provides the notices required by, the provisions of this subchapter; and

(2) the covered entity does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this subchapter.

(b) Subject to subsection (c) of this section, covered entity includes [shall also include] an eligible surplus lines insurer for transactions where Texas is the home state of the insured to the extent the

[that] insurer accepts business through a person subject to [the] Insurance Code Chapter 981[-, Article 1-14-2].

(c) A person transacting surplus lines business will [shall] be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in this subchapter provided:

(1) the person does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing), except as permitted by §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions), and §22.19 of this title (relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information); and

(2) the person delivers a notice to the consumer at the time a customer relationship is established on which the following is printed [Form Number FNPRV DSC/SRPLN provided at Figure 8 of §22.26(b) of this title (relating to Forms);] in at least 16-point type;[-] Figure: 28 TAC §22.3(c)(2)

§22.10. Information to be Included in Privacy Notices.

(a) Simplified nondisclosure notice requirements. A covered entity that does not disclose, and does not reserve the right to disclose, nonpublic personal financial information about customers or former customers to nonaffiliated third parties except as authorized under §22.18 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions) and §22.19 of this title (relating to Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information), may comply with this subchapter by providing a simplified notice that [which] expresses:

(1) the nondisclosure policy stated in this subsection, and

(2) the information required by subsections (b)(1), (b)(8), (b)(9), and (c) of this section.

(b) Disclosure notice requirements. The initial, annual, and revised privacy notices that a covered entity provides under §22.8 of this title (relating to Initial Privacy Notice), §22.9 of this title (relating to Annual Privacy Notice), and §22.12 of this title (relating to Revised Privacy Notices) must [shall] include the following items of information, in addition to any other information the covered entity wishes to provide, that applies to the covered entity and to the consumers to whom the covered entity sends its privacy notice.

(1) The categories of nonpublic personal financial information that the covered entity collects. A covered entity satisfies the requirement to categorize the nonpublic personal financial information it collects when the covered entity categorizes it according to the source of the information, as applicable, including:

(A) information from the consumer;

(B) information about the consumer's transactions with the covered entity or its affiliates;

(C) information about the consumer's transactions with nonaffiliated third parties; and

(D) information from a consumer reporting agency.

(2) The categories of nonpublic personal financial information that the covered entity discloses.

(A) A covered entity satisfies the requirement to categorize nonpublic personal financial information it discloses when the covered entity categorizes the information according to source, as described in paragraph (1) of this subsection, as applicable, and provides examples to illustrate the types of information in each category, such as:

(i) information from the consumer, including application information (such as assets and income) and identifying information (such as name, address, and social security number);

(ii) transaction information (such as information about balances, payment history, and parties to the transaction); and

(iii) information from consumer reports (such as a consumer's creditworthiness and credit history).

(B) A covered entity does not adequately categorize the information that it discloses when the covered entity uses only general terms (such as transaction information about the consumer).

(C) A covered entity that reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects may state that fact without describing the categories or examples of nonpublic personal financial information that the covered entity discloses.

(3) The categories of affiliates and nonaffiliated third parties to whom the covered entity discloses nonpublic personal financial information, other than those parties to whom the covered entity discloses information under §22.18 [§§22-18] and §22.19 [22-19] of this title.

(4) The categories of nonpublic personal financial information about the covered entity's former customers that the covered entity discloses and the categories of affiliates and nonaffiliated third parties to whom the covered entity discloses nonpublic personal financial information about the covered entity's former customers, other than those parties to whom the covered entity discloses information under §22.18 [§§22-18] and §22.19 [22-19] of this title.

(5) A separate description of the categories of information the covered entity discloses and the categories of third parties with whom the covered entity has contracted, if the covered entity discloses nonpublic personal financial information to a nonaffiliated third party under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing) and no other exception in §22.18 [§§22-18] and §22.19 [22-19] of this title applies to that disclosure.

(6) An explanation of the consumer's right under §22.14(a) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time.

(7) Any disclosures that the covered entity makes under [Section] §603(d)(2)(A)(iii) of the federal FCRA [Fair Credit Reporting Act] (15 U.S.C. §1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates).

(8) The covered entity's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information. A covered entity provides an adequate description of its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(A) describes in general terms who is authorized to have access to the information; and

(B) states whether the covered entity has security practices and procedures in place to ensure the confidentiality of the information under [~~in accordance with~~] the covered entity's policy. The covered entity is not required to describe technical information about the safeguards it uses.

(9) Any disclosure that the covered entity makes under subsection (c) of this section.

(c) Description of nonaffiliated third parties subject to exceptions. A covered entity that discloses nonpublic personal financial information to third parties as authorized under §22.18 [~~§§22.18~~] and §22.19 [~~22.19~~] of this title is not required to list those exceptions in the initial or annual privacy notices required by §22.8 [~~§§22.8~~] and §22.9 [~~22.9~~] of this title. When describing the categories of parties to whom the covered entity makes disclosures [~~disclosure is made~~], it is sufficient for the covered entity to [~~shall~~] state that it makes disclosures to other [~~affiliated or~~] nonaffiliated companies: [~~third parties, as applicable, as permitted by law.~~]

(1) for the covered entity's everyday business purposes, such as {include all that apply} to process account transactions, maintain accounts, respond to court orders and legal investigations, or report to credit bureaus; or

(2) as permitted by law.

(d) Appropriate methods of categorizing affiliates and nonaffiliated third parties.

(1) A covered entity satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the covered entity discloses nonpublic personal financial information about consumers if the covered entity identifies the types of businesses in which they engage.

(2) Types of businesses may be described by general terms only if the covered entity uses illustrative examples of significant lines of business. For example, a covered entity may use the term "financial products or services" if the notice includes appropriate examples of significant lines of such businesses or services, such as life insurer, automobile insurer, consumer banking, or securities brokerage.

(3) A covered entity also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(e) Disclosures under exception for service providers and joint marketers. A covered entity that discloses nonpublic personal financial information under the exception in §22.17 of this title to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution satisfies the disclosure requirement of subsection (b)(5) of this section if it:

(1) lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the covered entity used to meet the requirements of subsection (a)(2) of this section, as applicable; and

(2) states whether the third party is:

(A) a service provider that performs marketing services on the covered entity's behalf or on behalf of the covered entity and another financial institution; or

(B) a financial institution with whom the covered entity has a joint marketing agreement.

(f) Short-form initial notice with opt out notice for noncustomers [~~non-customers~~].

(1) A covered entity may satisfy the initial notice requirements in §22.8(a)(2) and §22.11(c) of this title (relating to Form of Opt Out Notice to Consumers and Opt Out Methods) for a consumer who is not a customer by providing a short-form initial notice at the same time as the covered entity delivers an opt out notice as required in §22.11 of this title.

(2) A short-form initial notice must [~~shall~~]:

(A) be clear and conspicuous;

(B) state that the covered entity's privacy notice is available on [~~upon~~] request; and

(C) explain a reasonable means by which the consumer may obtain that notice.

(3) The covered entity must [~~shall~~] deliver its short-form initial notice according to §22.13 of this title (relating to Delivery). The covered entity is not required to deliver its privacy notice with its short-form initial notice. The covered entity may instead [~~may simply~~] provide the consumer with a reasonable means to obtain its privacy notice. If a consumer who receives the covered entity's short-form notice requests the covered entity's privacy notice, the covered entity must [~~shall~~] deliver its privacy notice according to §22.13 of this title.

(4) The covered entity provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the covered entity:

(A) provides a toll-free telephone number that the consumer may call to request the notice; or

(B) for a consumer who conducts business in person at the covered entity's office, maintains copies of the notice on hand that the covered entity provides to the consumer immediately on [~~upon~~] request.

(g) Reservation of right to disclose. The covered entity's notice may include:

(1) categories of nonpublic personal financial information that the covered entity reserves the right to disclose in the future, but does not currently disclose; and

(2) categories of affiliates or nonaffiliated third parties to whom the covered entity reserves the right in the future to disclose, but to whom the covered entity does not currently disclose, nonpublic personal financial information.

(h) Model privacy form. A model privacy form that meets the notice content requirements of this section appears in 74 Federal Register 62890 (December 1, 2009). [~~Forms:~~] A covered entity may use the applicable model privacy form, consistent with the instructions [~~forms provided~~] in §22.27 of this title (relating to General Instructions). [~~(relating to Forms); as applicable, to meet the requirements of this section as follows:~~]

{(1) Form Number FNPRV INFO/COL provided at Figure 1 of §22.26(b)(1) of this title is intended to meet the requirement of subsection (b)(1) of this section to describe the categories of nonpublic personal financial information the covered entity collects.}

{(2) Form Number FNPRV INFO/DSC provided at Figure 2 of §22.26(b)(1) of this title is intended to meet the requirement of subsection (b)(2) of this section to describe the categories of nonpublic personal financial information the covered entity discloses. The covered entity may use these clauses if it discloses nonpublic personal finan-

cial information other than as permitted by the exceptions in §§22.17, 22.18, and 22.19 of this title.]

[(3) Form Number FNPRV INFO/NODSC provided at Figure 3 of §22.26(b)(3) of this subchapter is intended to meet the requirements of subsections (b)(2), (3), and (4) of this section to describe the categories of nonpublic personal financial information about customers and former customers that the covered entity discloses and the categories of affiliates and nonaffiliated third parties to whom the covered entity discloses this information. A covered entity may use this clause if the covered entity does not disclose nonpublic personal financial information to any party, other than as permitted by the exceptions in §§22.18 and 22.19 of this title.]

[(4) Form Number FNPRV INFO/TPDSC provided at Figure 4 of §22.26(b)(4) of this title is intended to meet the requirements of subsection (b)(3) of this section to describe the categories of affiliates and nonaffiliated third parties to whom the covered entity discloses nonpublic personal financial information. A covered entity may use this clause if the covered entity discloses nonpublic personal financial information other than as permitted by the exceptions in §§22.17, 22.18, and 22.19 of this title.]

[(5) Form Number FNPRV INFO/SPJMDSC provided at Figure 5 of §22.26(b)(5) of this title is intended to meet the requirements of subsection (b)(5) of this section related to the exception for service providers and joint marketers in §22.17 of this title. If a covered entity discloses nonpublic personal financial information under this exception, the covered entity shall describe the categories of nonpublic personal financial information the covered entity discloses and the categories of third parties with which the covered entity has contracted.]

[(6) Form Number FNPRV INFO/OPT provided at Figure 6 of §22.26(b)(6) of this title is intended to meet the requirements of subsection (b)(6) of this section to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. A covered entity may use this clause if the covered entity discloses nonpublic personal financial information other than as permitted by the exceptions in §§22.17, 22.18, and 22.19 of this title.]

[(7) Form Number FNPRV INFO/SEC provided at Figure 7 of §22.26(b)(7) of this subchapter is intended to meet the requirements of subsection (b)(8) of this section to describe the covered entity's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information.]

§22.11. Form of Opt Out Notice to Consumers and Opt Out Methods.

(a) Clear and conspicuous notice. If a covered entity is required to provide an opt out notice under §22.14(a) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties), it must [shaH] provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must [shaH] state:

- (1) that the covered entity discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;
- (2) that the consumer has the right to opt out of that disclosure; and
- (3) a reasonable means by which the consumer may opt out.

(b) Adequate opt out notice. A covered entity provides adequate notice that the consumer can opt out of the disclosure of nonpub-

lic personal financial information to a nonaffiliated third party if the covered entity:

(1) identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the covered entity discloses the information, as described in §22.10(a)(2) and (3) of this title (relating to Information to be Included in Privacy Notices), and states that the consumer can opt out of the disclosure of that information; and

(2) identifies the insurance products or services that the consumer obtains from the covered entity, either singly or jointly, to which the opt out direction would apply.

(c) Reasonable opt out means. A covered entity provides a reasonable means to exercise an opt out right if it:

(1) designates check-off boxes in a prominent position on the relevant forms with the opt out notice; and

(2) includes the reply form together with the opt out notice; or

(3) provides an electronic means to opt out, such as a form that can be sent by [via] electronic mail or a process on [at] the covered entity's website [Web site], if the consumer agrees to the electronic delivery of information; or

(4) provides a toll-free telephone number that consumers may call to opt out.

(d) Unreasonable opt out means. A covered entity does not provide a reasonable means of opting out if:

(1) the only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(2) the only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the covered entity provided with the initial notice but did not include with the subsequent notice.

(e) Specific opt out means. A covered entity may require each consumer to opt out through a specific means, so long as that means is reasonable for that consumer.

(f) Opt out notice with or on a written or electronic form. A covered entity may provide the opt out notice together with, or on the same written or electronic form as, the initial notice the covered entity provides in accordance with §22.8 of this title (relating to Initial Privacy Notice).

(g) Opt out notice later than initial notice. If a covered entity provides the opt out notice later than required for the initial notice in accord [aeoordanee] with §22.8 of this title, the covered entity must [shaH] also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(h) Joint relationships. A covered entity must use [shaH utilize] the procedures set forth in paragraphs (1) - (4) of this subsection when joint relationships between consumers are involved.

(1) If two or more consumers jointly obtain or seek to obtain an insurance product or service from a covered entity, the covered entity may provide a single opt out notice. The covered entity's opt out notice must [shaH] explain how the covered entity will treat an opt out direction by a joint consumer (as explained in subsection (i) of this section).

(2) Any of the joint consumers may exercise the right to opt out. The covered entity may either:

(A) treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) permit each joint consumer to opt out separately.

(3) If a covered entity permits each joint consumer to opt out separately, the covered entity must [shall] permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A covered entity may not require all joint consumers to opt out before it implements any opt out direction.

(i) Examples. The following are examples of how a covered entity should treat a joint relationship. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a covered entity and the covered entity sends policy statements to John's address, the covered entity may do any of the following, but it must [shall] explain in its opt out notice which opt out policy the covered entity will follow:

(1) Send [send] a single opt out notice to John's address, but the covered entity must [shall] accept an opt out direction from either John or Mary.

(2) Treat [treat] an opt out direction by either John or Mary as applying to the entire policy. If the covered entity does so and John opts out, the covered entity may not require Mary to opt out as well before implementing John's opt out direction.

(3) Permit [permit] John and Mary to make different opt out directions. If the covered entity does so:

(A) it must [shall] permit John and Mary to opt out for each other;

(B) if both opt out, the covered entity must [shall] permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(C) if John opts out and Mary does not, the covered entity may only disclose nonpublic personal financial information about Mary, but not about John, and not about John and Mary jointly.

(j) Opt out direction. A covered entity must [shall] comply with a consumer's opt out direction as soon as reasonably practicable after the covered entity receives it.

(k) Consumer's right to opt out. A consumer may exercise the right to opt out at any time.

(l) A consumer's direction. A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer has agreed to conduct business electronically, electronically.

(m) Customer relationship. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the covered entity collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the covered entity, the opt out direction that applied to the former relationship does not apply to the new relationship.

(n) Opt out delivery. When a covered entity is required to deliver an opt out notice by this section, the covered entity must [shall] deliver it according to §22.13 of this title (relating to Delivery).

(o) Notice content requirements. A model privacy form that meets the notice content requirement of this section appears in 74 Federal Register 62890 (December 1, 2009). A covered entity may use the applicable model privacy form, consistent with the instructions in §22.27 of this title (relating to General Instructions).

§22.22. *Violation.*

A violation of any section of this subchapter will [shall] subject the covered entity to the disciplinary and enforcement sanctions and penalties provided in [the] Insurance Code, Chapters [28A,] 82, 83, [and] 84, and 601.

§22.26. *Model Privacy Notice Form and Examples [Forms].*

~~{(a)}~~ Use of Version 1, 2, or 3 of the model privacy form in 74 Federal Register 62890 (December 1, 2009), or Version 4 for the optional mail-in opt out form, consistent with the instructions in §22.27 of this title (relating to General Instructions), complies with the notice content requirements of §22.10 and §22.11 of this title (relating to Information to be Included in Privacy Notices and Form of Opt Out Notice to Consumers and Opt Out Methods), although use of the model privacy form is not required. The examples are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance. ~~[The forms identified in this subchapter for covered entities referenced in this chapter are included in subsection (b) of this section in their entirety. The forms can be obtained from the Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.]~~ Covered entities, including a group of financial holding company affiliates that use a common privacy notice, may use the model privacy form [following forms], if the information in the model privacy form [clause] is accurate for each institution that uses the notice. Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the federal FCRA [Fair Credit Reporting Act], such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if a covered entity makes disclosures [are made] to nonaffiliated third parties.

~~{(b) The forms referenced in this subchapter are as follows:}~~
~~[Figure: 28 TAC §22.26(b)]~~

§22.27. *General Instructions.*

(a) A covered entity, including a group of covered entities or financial institutions that use a common privacy notice, may use the model form, at its option, to meet the content requirements of the privacy notice and opt out notice set forth in §22.10 and §22.11 of this title (relating to Information to be Included in Privacy Notices and Form of Opt Out Notice to Consumers and Opt Out Methods).

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Covered entities seeking to obtain the safe harbor through use of the model form may modify it only as described in these instructions.

(c) Disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act 15 U.S.C. §§1681 - 1681x (FCRA); for example, a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word "customer" may be replaced by the word "member" whenever it appears in the model form, as appropriate.

(e) The model form consists of two pages, which may appear on both sides of a single sheet of paper, or may appear on two separate pages. Where a covered entity provides a long list of covered entities or financial institutions at the end of the model form in accord with the instructions in subsection (g)(3)(A)(i) of this section, or provides additional information in accord with the instructions in subsection (g)(3)(C) of this section, and the list or additional information exceeds the space available on page two of the model form, the list or additional information may extend to a third page.

(1) Page one contents. The first page consists of the following components:

(A) date last revised in the upper right-hand corner;

(B) title;

(C) key frame (Why?, What?, How?);

(D) disclosure table ("Reasons we can share your personal information");

(E) "To limit our sharing" box, as needed, for the covered entity's opt out information;

(F) "Questions" box, for customer service contact information; and

(G) mail-in opt out form, as needed.

(2) Page two contents. The second page consists of the following components:

(A) heading (page 2);

(B) frequently asked questions("Who we are" and "What we do");

(C) definitions; and

(D) "Other important information" box, as needed.

(f) The format of the model privacy form may be modified only as described in paragraphs (1) - (5) of this subsection.

(1) Easily readable type font. Covered entities that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, covered entities must use a minimum of 10-point font, unless otherwise expressly permitted in these instructions, and sufficient spacing between the lines of type.

(2) Logo. A covered entity may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(3) Page size and orientation. Each page of the model form must appear on paper in portrait orientation, the size of which must meet the layout and minimum font size requirements.

(4) Color. The model form must appear on white or light color paper, for example cream, with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also appear in color.

(5) Languages. The model form may be translated into languages other than English.

(g) The information required in the model form may be modified only as described in this subsection.

(1) Name of the covered entity or group of affiliated covered entities or institutions providing the notice. Insert the name of the covered entity providing the notice or a common identity of affiliated covered entities or institutions jointly providing the notice on the form wherever name of covered entity appears.

(2) Page one instruction.

(A) Last revised date. The covered entity must insert in the upper right-hand corner the date on which it last revised the notice. The information must appear in minimum 8-point font as "rev. month/year" using either the name or number of the month, for example "rev. July 2009" or "rev. 7/09."

(B) General instructions for the "What?" box.

(i) The bulleted list identifies the types of personal information that the covered entity collects and shares. All covered entities must use the term "Social Security number" in the first bullet.

(ii) Covered entities must use at least five of the following terms to complete the bulleted list: income, account balances, payment history, transaction history, transaction or loss history, credit history, credit scores, assets, investment experience, credit-based insurance scores, insurance claim history, medical information, overdraft history, purchase history, account transactions, risk tolerance, medical-related debts, credit card or other debt, mortgage rates and payments, retirement assets, checking account information, employment information, and wire transfer instructions.

(C) General instructions for the disclosure table. The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in the instructions in subparagraph (D) of this paragraph. In the middle column, each covered entity must provide a "Yes" or "No" response that accurately reflects its information-sharing policies and practices with respect to the reason listed on the left. In the right column, each covered entity must provide in each box one of the following three responses, as applicable, that reflects whether a consumer can limit such sharing:

(i) "Yes" if it is required to or voluntarily provides an opt out;

(ii) "No" if it does not provide an opt out; or

(iii) "We don't share" if it answers "No" in the middle column. Only the sixth row, "For our affiliates to market to you," may be omitted at the option of the covered entity as described in the instructions in subparagraph (D)(vi) of this paragraph.

(D) Specific disclosures and corresponding legal provisions.

(i) For our everyday business purposes. This reason incorporates sharing information under §22.18 and §22.19 of this title (relating to Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions and Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information) and with service providers under §22.17 of this title (relating to Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing), other than the purposes specified in the instructions in clause (ii) or (iii) of this subparagraph.

(ii) For our marketing purposes. This reason incorporates sharing information with service providers by a covered entity for its own marketing under §22.17 of this title. A covered entity that shares for this reason may choose to provide an opt out.

(iii) For joint marketing with other financial companies. This reason incorporates sharing information under joint marketing agreements between two or more covered entities or financial institutions and with any service provider used in connection with such agreements under §22.17 of this title. A covered entity that shares for this reason may choose to provide an opt out.

(iv) For our affiliates' everyday business purposes - information about transactions and experiences. This reason incorporates sharing information specified in §603(d)(2)(A)(i) and §603(d)(2)(A)(ii) of the FCRA. A covered entity that shares for this reason may choose to provide an opt out.

(v) For our affiliates' everyday business purposes - information about creditworthiness. This reason incorporates sharing information under §603(d)(2)(A)(iii) of the FCRA. A covered entity that shares for this reason must provide an opt out.

(vi) For our affiliates to market to you. This reason incorporates sharing information specified in §624 of the FCRA. This reason may be omitted from the disclosure table when the covered entity does not have affiliates, or does not disclose personal information to its affiliates; the covered entity's affiliates do not use personal information in a manner that requires an opt out; or the covered entity provides the affiliate marketing notice separately. Covered entities that include this reason must provide an opt out of indefinite duration. A covered entity that must provide an affiliate marketing opt out, but does not include that opt out in the model form under this clause, must comply with §624 of the FCRA and Insurance Code Chapter 601 and 28 TAC Subchapter A, including §§22.8 - 22.12 of this title (relating to Initial Privacy Notice, Annual Privacy Notice, Information to be Included in Privacy Notices, Form of Opt Out Notice to Consumers and Opt Out Methods, and Revised Privacy Notices, respectively), with respect to the initial notice and opt out and any subsequent renewal notice and opt out. A covered entity not required to provide an opt out under this subparagraph may elect to include this reason in the model form.

(vii) For nonaffiliates to market to you. This reason incorporates sharing described in §22.11 and §22.12(a)(1) - (4) of this title. A covered entity that shares personal information for this reason must provide an opt out.

(E) To limit our sharing. A covered entity must include this section of the model form only if it provides an opt out. The word "choice" may be written in either the singular or plural, as appropriate. Covered entities must select one or more of the applicable opt out methods described: telephone, for example, by a toll-free number; a website; or use of a mail-in opt out form. Covered entities may include the words "toll-free" before telephone, as appropriate. A covered entity that allows consumers to opt out online must provide either a specific web address that takes consumers directly to the opt out page or a general web address that provides a clear and conspicuous direct link to the opt out page. The opt out choices made available to the consumer who contacts the covered entity through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note," covered entities may insert a number that is 30 or greater in the space marked "30." Instructions on voluntary or state privacy law opt out information are in the instructions in subparagraph (G)(v) of this paragraph.

(F) Questions box. Customer service contact information must appear, as appropriate, where "phone number" or "website" appear. Covered entities may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Covered entities may include the words "toll-free" before the telephone number, as appropriate.

(G) Mail-in opt out form. Covered entities must include this mail-in form only if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Covered entities that require customers to provide only name and address may omit the section identified as "account #." Covered entities that require additional or different information, for example, a random opt out number or a truncated account number, to implement an opt out election should modify the "account #" reference accordingly. This includes covered entities that require customers with multiple accounts to identify each account to which the opt out should apply. A covered entity must enter its opt out mailing address in the far right of the Version 3: Model Form with Mail-In

Opt Out Form. A covered entity must enter its opt out mailing address below the Version 4: Optional Mail-In Form. The reverse side of the mail-in opt out form must not include any content of the model form.

(i) Joint accountholder. Only covered entities that provide their joint accountholders the choice to opt out for only one accountholder, in accord with the instructions in paragraph (3)(A)(v) of this subsection, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me." The word "choice" may appear in either the singular or plural, as appropriate. Covered entities that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Covered entities that do not provide this option may eliminate this left column from the mail-in form.

(ii) FCRA §603(d)(2)(A)(iii) opt out. If the covered entity shares personal information under §603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt out form the following statement: "Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(iii) FCRA §624 opt out. If the covered entity incorporates §624 of the FCRA in accord with the instructions in subparagraph (D)(vi) of this paragraph, it must include in the mail-in opt out form the following statement: "Do not allow your affiliates to use my personal information to market to me."

(iv) Nonaffiliate opt out. If the covered entity shares personal information under §22.14(a)(1) - (4) of this title (relating to Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties), it must include in the mail-in opt out form the following statement: "Do not share my personal information with nonaffiliates to market their products and services to me."

(v) Additional opt outs. Covered entities that use the disclosure table to provide opt out options beyond those required by federal law must provide those opt outs in this section of the model form. A covered entity that chooses to offer an opt out for its own marketing in the mail-in opt out form must include one of the two following statements: "Do not share my personal information to market to me." or "Do not use my personal information to market to me." A covered entity that chooses to offer an opt out for joint marketing must include the following statement: "Do not share my personal information with other financial institutions to jointly market to me."

(H) Barcodes. A covered entity may elect to include a barcode, a tagline, or both as an internal identifier in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

(3) Page two instructions.

(A) General instructions for the questions. Certain of the questions may be customized as follows:

(i) "Who is providing this notice?" A covered entity may omit this question where only one covered entity provides the model form and that covered entity's name clearly appears in the title on page one. Two or more covered entities or financial institutions that jointly provide the model form must use this question to identify themselves as required by §22.13(g) of this title (relating to Delivery). Where the list of covered entities or financial institutions exceeds four lines, the covered entity must describe in the response to this question the general types of covered entities or financial institutions jointly providing the notice and must separately identify those covered entities or financial institutions, in minimum 8-point font, directly following the "Other important information" box, or, if that box is not included in

the covered entity's form, directly following the "Definitions." The list may appear in a multi-column format.

(ii) "How does name of covered entity protect my personal information?" The covered entity may only provide additional information about its safeguarding practices following the designated response to this question. This may include information about the covered entity's use of "cookies" or other measures it uses to safeguard personal information. Covered entities are limited to a maximum of 30 additional words.

(iii) "How does name of covered entity collect my personal information?" Covered entities must use at least five of the following terms to complete the bulleted list for this question: open an account, deposit money, pay your bills, apply for a loan, use your credit or debit card, seek financial or tax advice, apply for insurance, pay insurance premiums, file an insurance claim, seek advice about your investments, buy securities from us, sell securities to us, direct us to buy securities, direct us to sell your securities, make deposits or withdrawals from your account, enter into an investment advisory contract, give us your income information, provide employment information, give us your employment history, tell us about your investment or retirement portfolio, tell us about your investment or retirement earnings, apply for financing, apply for a lease, provide account information, give us your contact information, pay us by check, give us your wage statements, provide your mortgage information, make a wire transfer, tell us who receives the money, tell us where to send the money, show your government-issued ID, show us your driver's license, or order a commodity futures or option trade. Covered entities that collect personal information from their affiliates, credit bureaus, or both, must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Covered entities that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only covered entities that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(iv) "Why can't I limit all sharing?" Covered entities that describe state privacy law provisions in the "Other important information" box must use the bracketed sentence: "See below for more on your rights under state law." Other covered entities must omit this sentence.

(v) "What happens when I limit sharing for an account I hold jointly with someone else?" Only covered entities that provide opt out options must use this question. Other covered entities must omit this question. Covered entities must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account," or "Your choices will apply to everyone on your account-unless you tell us otherwise." Covered entities that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(B) General instructions for the definitions. The covered entity must customize the space below the responses to the three definitions in this area of the form. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(i) Affiliates. As required by §22.10(b)(3) of this title, where affiliate information appears, the covered entity must:

(I) if it has no affiliates, state: "name of covered entity has no affiliates";

(II) if it has affiliates but does not share personal information, state: "name of covered entity does not share with our affiliates"; or

(III) if it shares with its affiliates, state, as applicable: "Our affiliates include companies with a common corporate identity of covered entity name; financial companies such as insert illustrative list of companies; nonfinancial companies, such as insert illustrative list of companies; and others, such as insert illustrative list."

(ii) Nonaffiliates. As required by §22.10(d) of this title, where nonaffiliate information appears, the covered entity must:

(I) if it does not share with nonaffiliated third parties, state: "name of covered entity" does not share with nonaffiliates so they can market to you"; or

(II) if it shares with nonaffiliated third parties, state, as applicable: "Nonaffiliates we share with can include list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations."

(iii) Joint marketing. As required by §22.17 of this title, where joint marketing appears, the covered entity must:

(I) if it does not engage in joint marketing, state: "name of covered entity doesn't jointly market"; or

(II) if it shares personal information for joint marketing, state, as applicable: "Our joint marketing partners include list categories of companies, such as credit card companies."

(C) General instructions for the "Other important information" box. This box is optional. The space provided for information in this box is not limited. Only the following types of information may appear in this box:

(i) State, international privacy law information, or both; or

(ii) Acknowledgment of receipt form; or

(iii) Both (i) and (ii).

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

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Sara Waitt

General Counsel

Texas Department of Insurance

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.827

The Comptroller of Public Accounts proposes new §3.827, concerning captive insurance companies, to implement Senate

Bill 734, 83rd Legislature, 2013, which enacted new Insurance Code, Chapter 223A (relating to Captive Insurance Premium Tax) and new Insurance Code, Chapter 964 (relating to Captive Insurance Companies).

Subsection (a) defines the following terms: Paragraphs (1), (2), (3), (4), and (7) define "affiliate", "captive insurance company", "control", "controlled unaffiliated business", and "operational risks", and these definitions are taken from Insurance Code, §964.001(a). Paragraph (5) defines "gross premiums" for maintenance tax purposes and refers the reader to paragraph (9) of this section. Paragraph (6) defines "home office", which is based on *Hertz Corp. v. Friend et al*, 559 U.S. 77 130 S.Ct. 1181 (2010). Paragraph (8) defines "person", which has the meaning assigned by Government Code, §311.005. Paragraph (9) defines "taxable premium receipts", which is taken from Insurance Code, §223A.003.

Subsection (b) explains the premium tax rate, the minimum and maximum premium tax due, and the correct premium tax base, as well as the maintenance tax imposed, based on the lines of business written, and the correct maintenance tax base. Insurance Code, §964.008 defines the maintenance tax base using "gross premiums," while the premium tax base is defined in Insurance Code, §223A.003 using "taxable premium receipts." For administrative ease and consistency with the manner in which premium tax and maintenance taxes and fees are assessed on other licensed companies, gross premium is defined as taxable premium receipts in this section. The subsection also addresses exclusions from any other taxes. Additionally, the subsection explains that a postponement or waiver of taxes or fees may be granted by the Commissioner of Insurance for captive insurance companies redomesticating to Texas.

Subsection (c) explains the premium tax credit for allowable examination expenses paid to, and as determined by, the Texas Department of Insurance. Although the term "evaluation fees" appears in Insurance Code, §223A.007 (relating to Credit for Fees Paid), it is not addressed in this subsection. According to the Texas Department of Insurance, this term is from a bygone era and was largely intended to be synonymous with examination fees, or perhaps valuation fees, but was not a separate category of fees. Valuation fees were reported and paid by domestic life insurers through tax year 2006; however, captive insurers do not write life insurance, and so this term is not relevant to this section. Examination fees are addressed in this subsection.

Subsection (d) addresses due dates and prepayments of tax by referring taxpayers to §3.809 of this title (relating to Due Dates, Penalty and Interest, and Overpayments).

Subsection (e) explains the enforcement actions to which a captive insurance company that fails to pay all taxes imposed under the Insurance Code, Chapters 223A and 964 is subject.

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 specifying and explaining statutory provisions and agency policy regarding the imposition and collection of premium and maintenance taxes for captive insurance companies. 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. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Tax Code, §111.002 and §111.0022, and Insurance Code, §201.051(b), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The new section implements the provisions of Insurance Code, Chapters 223A (Captive Insurance Premium Tax) and 964 (Captive Insurance Companies).

§3.827. Captive Insurance Companies.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--A subsidiary or holding company that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a captive insurance company. The term includes a parent entity that controls a captive insurance company.

(2) Captive insurance company--A company that holds a certificate of authority issued by the Texas Department of Insurance under Insurance Code, Chapter 964, and that insures only the operational risks of its affiliates or the risks of a controlled unaffiliated business.

(3) Control--To direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with, or corporate office held in, the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or non-management services.

(4) Controlled unaffiliated business--A person that:

(A) is not an affiliate;

(B) has an existing contractual relationship with an affiliate under which the affiliate bears operational risk; and

(C) whose risk is managed by a captive insurance company under criteria established by the Commissioner of Insurance pursuant to Insurance Code, §964.066, relating to Standards for Risk Management of Controlled Unaffiliated Business.

(5) Gross premiums--For purposes of the maintenance tax implemented by this section, this term has the meaning assigned by paragraph (9) of this subsection, defining the term taxable premium receipts.

(6) Home office--The location from which the officers or directors of a business entity provide direction, control, and coordination, and where the executive officers hold meetings and make high-level decisions.

(7) Operational risks--Any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

(8) Person--This term has the meaning assigned by Government Code, §311.005.

(9) Taxable premium receipts--The total amount of gross premiums, membership fees, assessments, dues, revenues, and other considerations for insurance written by the captive insurance company in a calendar year, with no deduction for premiums paid for reinsurance to another authorized insurer. Taxable premium receipts do not include returned premiums, dividends paid to policyholders, or premiums excluded by another law of this state.

(b) Taxes imposed on a captive insurance company.

(1) Premium tax.

(A) The premium tax rate is one-half of one percent.

(B) Each year, the minimum aggregate amount of premium tax to be paid by a captive insurance company is \$7,500, and the maximum aggregate amount of premium tax to be paid is \$200,000.

(C) The premium tax due is based on the correctly reported taxable premium receipts on any kind of insurance written by the captive on operational risks for an affiliate or risks for a controlled unaffiliated business, on each kind of property or risk, without regard to the location of the property or risk that is being insured.

(D) For information about allowable premium tax credits, refer to subsection (c) of this section.

(2) Maintenance tax. The maintenance tax due is based on the correctly reported gross premium from writing insurance on risks located in this state, as applicable to the individual lines of business written, on operational risks for an affiliate or a controlled unaffiliated business. The rates for each line of business are determined by the Texas Department of Insurance and may vary each year. In the case of an indemnity policy that reimburses the insured for losses paid, the location of the risk or exposure insured is the location of the insured's home office.

(3) Other taxes. A captive insurance company's premium receipts subject to taxation under Insurance Code, Chapters 223A and 964 are not subject to any other taxes, surcharges, or other regulatory assessments or fees under the Insurance Code.

(4) Postponement or waiver of taxes or fees. The Commissioner of Insurance may postpone or waive, in whole or in part, any fees or taxes under the Insurance Code for a period not to exceed two years for any foreign or alien captive insurance company that transfers its state of domicile to this state. The amount of any premium tax waiver is computed on the net premium tax due after application of any available premium tax credits for examination expenses.

(c) Premium tax credit for examination expenses. A captive insurance company is entitled to a premium tax credit against the preliminary tax calculation in an amount equal to the allowable examination expenses paid to, and as determined by, the Texas Department of Insurance during the calendar year for which the tax is due. Credit is not allowed for fees paid to another state or paid in a different tax year. Any portion of the credit that exceeds the amount of taxes calculated for the year in which the examination expense is incurred may not be carried forward to a subsequent tax year.

(d) Due date and prepayments of tax. Captive insurance companies are subject to the provisions of §3.809 of this title (relating to Due Dates, Penalty and Interest, and Overpayments). Section 3.809 of this title also addresses prepayments of premium tax.

(e) Failure to pay taxes. A captive insurance company that fails to pay all taxes imposed under Insurance Code, Chapters 223A and 964 is subject to Insurance Code, §203.002(b) and Tax Code, Title 2, Subtitles A and B. The comptroller shall institute such collection

actions against a delinquent captive insurance company as the comptroller considers appropriate.

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

Filed with the Office of the Secretary of State on August 4, 2014.

TRD-201403508

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §748.61; and new §§748.4501, 748.4503, 748.4505, 748.4507, 748.4551, 748.4553, 748.4555, 748.4601, 748.4603, 748.4651, 748.4653, 748.4655, 748.4657, 748.4659, 748.4701, 748.4703, 748.4751, 748.4753, 748.4755, 748.4757, 748.4759, 748.4761, 748.4763, 748.4765, and 748.4767; in Chapter 748, concerning Minimum Standards for General Residential Operations. The new sections are proposed in new Subchapter V, Additional Requirements for Operations that Provide Trafficking Victim Services. House Bill 2725 of the 83rd Regular Legislative Session amended Human Resources Code §42.042 to require the adoption of minimum standards for "general residential operations (GROs) that provide comprehensive residential" services to victims of trafficking. In developing these standards, the Licensing Division (CCL) was to consider: (1) the special circumstances and needs of victims of trafficking; and (2) the role of the GRO in assisting and supporting victims of trafficking.

In the latter part of 2013, CCL convened a workgroup to provide input into the development of the minimum standards related to victims of trafficking. The members consisted of providers that were currently providing victim services, providers that had a potential interest in this area, advocacy groups, and other state agencies, including the Office of the Attorney General and the Department of Public Safety, Victim's Program. The workgroup met four times in the latter part of 2013 and the early part of 2014 to discuss the possible content of the standards and to subsequently review draft standards that were developed.

The rule changes create a new treatment service type for trafficking victim services. This new subchapter will apply when GROs provide trafficking victim services to a certain base number of children in their care. The additional requirements recommended include: (1) increased staffing for GROs, because of the intensive nature of long-term treatment for trafficking victims, including a tendency to try and run from the placement; (2) additional pre-service training and focused annual training for care-

givers and employees regarding trafficking issues; (3) more enhanced policies, including security and confidentiality policies to protect trafficking victims and the employees; and (4) additional medical and mental health requirements to help the trafficking victims deal with the trauma they have experienced, including: (a) a medical screening within 72 hours; (b) a screening for infectious diseases within 72 hours; (c) an alcohol and substance abuse screening within 72 hours, and if appropriate, an assessment; (d) a behavioral health assessment within 30 days; and (e) individual therapy.

A summary of the changes follows:

The amendment to §748.61 adds a new treatment service for children determined to be a trafficking victim, and clarifies when that determination should be made. An additional amendment to §748.61 deletes "non-temporary" from the description of children with primary medical needs, which is needed for a separate DFPS rule initiative relating to children with primary medical needs, and which is being simultaneously proposed in this issue of the *Texas Register*.

New §748.4501 defines "trafficking victim services".

New §748.4503 clarifies that an operation must comply with the additional rules in this subchapter when the operation provides trafficking victim services to: (1) 25 or more children; or (2) more than 30% of the children in the operation's care.

New §748.4505 clarifies that an operation required to comply with the additional rules in this subchapter must continue to meet the other rules in this chapter that apply to all operations, as well as the rules that apply to an operation that provides treatment services to children with an emotional disorder, unless the rule has been replaced by a rule in §748.4507 of this title.

New §748.4507 provides an itemized list of rules in this subchapter that replace another rule in this chapter.

New §748.4551 requires an operation to develop additional child-care policies regarding: (1) activities to help a trafficking victim develop their skills, independence, and personal identity; and (2) preventing and discouraging a trafficking victim from running away.

New §748.4553 requires an operation to develop safety and security policies regarding: (1) interior and exterior security; (2) employee protocols; and (3) communication safeguards for a trafficking victim.

New §748.4555 requires an operation to develop confidentiality policies regarding: (1) the disclosure of victim information; (2) disclosing the location of the operation; and (3) allowing or not allowing visitors on the premises.

New §748.4601 describes the qualifications for a treatment director that provides or oversees treatment services for a trafficking victim.

New §748.4603 requires one hour of training for volunteers that work with trafficking victims. The components of the training must include confidentiality policies and the effects of trauma.

New §748.4651 establishes pre-service experience requirements for a caregiver.

New §748.4653 describes the pre-service hourly training requirements for caregivers and employees. Compared to the rule in this chapter that this rule replaces, this rule requires an additional five hours of pre-service training for caregivers

and employees regarding "complex trauma experienced by trafficking victims."

New §748.4655 establishes an exception to providing the five hours of pre-service training for caregivers and employees regarding "complex trauma experienced by trafficking victims," which is required in §748.4653. The exception applies when a caregiver or employee has previously had the pre-service training at another operation.

New §748.4657 requires that of the current required hours of annual training for caregivers and employees, four hours of the training must now be specific to trafficking victims.

New §748.4659 states that the four hours of annual training specific to trafficking victims, which is required in §748.4657, must include: (1) one hour in preventing compassion fatigue and secondary traumatic stress; and (2) three hours in areas appropriate to the needs of children in care, such as setting boundaries and avoiding a victim's triggers.

New §748.4701 lowers the child/caregiver ratio during waking hours from 5:1 to 4:1 for operations that offer trafficking victim services.

New §748.4703 lowers the child/caregiver ratio during sleeping hours for operations that offer trafficking victim services from 15:1 (if the caregiver is awake) or 10:1 (if the caregiver is asleep) to 8:1 (and the caregiver must remain awake at all times).

New §748.4751 describes additional medical requirements when admitting a child for trafficking victim services, including requiring a trafficking victim to be screened within 72 hours to determine if there is an immediate need for the following: (1) a medical examination; and (2) medical tests for pregnancy and infectious diseases (such as STDs and TB).

New §748.4753 requires a trafficking victim to be screened within 72 hours for alcohol and substance abuse, and provides an exception when the screening would not be required.

New §748.4755 requires a trafficking victim to have an alcohol and substance abuse assessment when an alcohol and substance abuse screening determines a trafficking victim may need treatment.

New §748.4757 describes requirements for behavioral health assessments for trafficking victims, including requiring a trafficking victim to have a behavioral health assessment within 30 days for the following: post-traumatic stress disorder, depression, and anxiety.

New §748.4759 requires individual therapy for trafficking victims, and describes who can provide therapy and what must be documented.

New §748.4761 establishes additional requirements for a preliminary service plan for a trafficking victim, including a description of the child's immediate: (1) safety needs; and (2) behavioral health and treatment care needs.

New §748.4763 establishes additional requirements for a trafficking victim's initial service plan, including: (1) plans to obtain alcohol and/or substance abuse treatment for a child that requires treatment; and (2) a description of the legal services required for the child and how the operation will assist the child in meeting those needs.

New §748.4765 establishes the requirements for admitting a young adult into care, including the requirement that the young adult must be a trafficking victim.

New §748.4767 clarifies that if a child or young adult has run away or been discharged from care and then returns to care, the young adult may only share a bedroom with a minor trafficking victim if the child or young adult has been re-assessed by a professional level service provider.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the quality of care for victims of trafficking will be improved by strengthening minimum standards related to general residential operations when trafficking victim services are provided to a base number of children.

There is an anticipated adverse impact on businesses, including small and micro businesses, when they are required to comply with these rule changes. GROs will be impacted if they choose to provide trafficking victim services to a base number of children. Currently, there are two GROs providing these services. At this time it is estimated that these operations currently meet the recommended rule changes. If other GROs choose to provide trafficking victim services to a base number of children, then there will be a fiscal impact to their program. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than potential "unit costs" as explained below to a person who owns or has an economic stake in a GRO that chooses to provide trafficking victim services to a base number of children.

The DFPS 2013 Annual Report and Data Book states that there are 157 GROs. Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using a combination of survey data, cost research conducted by staff, and assumptions regarding child-care practices. The survey process, as well as key assumptions and methodologies, are described in detail below, as these underlie the individual impact calculations for each rule, or set of rules, that are projected to have a fiscal impact on at least some GROs.

In April of 2013 a Feedback Survey was conducted for GROs. The purpose of the survey was to assess how many providers would be interested in providing victim trafficking services and to estimate certain costs if the rules were adopted. Licensing staff developed the survey questions related to the rules that had an anticipated fiscal impact. The survey was sent out to GRO e-mail addresses. The GROs were asked to respond in two weeks, but any responses received within 30 days were included. The GRO's name and a contact person were requested to validate that the GRO was a licensed provider eligible to complete the survey and that no duplicate surveys were received. The response rate for completed GRO surveys was 8.3%. There were 13 completed surveys from the 157 GROs. There were an additional 19 surveys that were partially completed. Regarding a GRO's interest in providing trafficking victim services: (1) of the 13 completed surveys: (a) two GROs are currently providing trafficking victim services; (b) two GROs expressed interest in providing trafficking victim services; (c) six GROs appeared to have some interest in providing trafficking victim services, because even though they did not answer "yes" to the relevant question, they did continue to complete the survey; and (d) three GROs were not interested in providing trafficking victim services; and

(2) of the 19 surveys that were partially completed, it did appear that at least half of the GROs may have had some interest providing trafficking victim services, because they did not respond "no" to the relevant question and continued to fill out some portions of the survey.

For GROs, the staff time required to comply with the standards will impact caregivers, professional level service providers, and the child-care administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of GRO staff, as follows (actual salaries paid to staff by a GRO may be greater or less than the averages used for these projections):

(1) GRO Caregivers - To estimate the current wages for a caregiver for a GRO, Licensing gathered data from the 2012 Texas Workforce Commission's America's Career Information Network for Texas employers. The average hourly wage of a mental health and substance abuse social worker working in a Child, Family and School Social Work field in Texas is \$34,600 per year or \$16.62 per hour.

(2) Professional Level Service Providers - The 2013 average salary for Child Protective Services (CPS) Foster and Adoptive Home Development (FAD) Supervisors was used to determine the salary costs for the professional level service providers, because it is assumed they perform functions similar to those performed by professional level service providers. The FY 2013 average salary for a FAD Supervisor is \$48,238 per year or \$23.19 per hour.

(3) Child-Care Administrator - The 2013 average salary for CPS Regional Directors was used to determine the salary costs for the child-care administrator, because it is assumed that this position functions in a similar capacity to that of a Child-Care Administrator. The FY 2013 average salary for a CPS Regional Director is \$70,393 per year or \$33.84 per hour.

Of the 157 GROs, the number of children that each operation cares for varies significantly. The capacity for some operations may be in the hundreds. Other operations have 50 to 100 children, while still others may have 25 or fewer children in their care. Given this variation, it is not possible to project the fiscal impact to each operation; however, it is possible to project an average "unit cost" for certain types of activities newly required by the amended rules.

As previously noted, at this time it is estimated that the two GROs currently providing trafficking victim services are already meeting the recommended rule changes, so there will be no adverse economic impact upon those two operations. However, if other GROs choose to begin providing trafficking victim services to a base number of children, then there will be a fiscal impact to elevate their program to meet these trafficking victim minimum standards.

Fiscal Impact for Proposed §§748.4551, 748.4553, and 748.4555: These three sections require additional GRO policies relating to: (1) child-care policies that help trafficking victims develop their skills, independence, and personal identity; and prevent and discourage trafficking victims from running away; (2) safety and security policies; and (3) confidentiality policies. It will be a one-time cost to develop these three policies. It is anticipated that the Child-Care Administrator and two professional level service providers will work together to revamp these policies. It is anticipated that a Child-Care Administrator and the two professional level service providers will spend an average of 30 to 40 hours each in the development of these three policies. Therefore, the total one-time cost for the development of these

three policies will be between approximately \$2,406.60 and \$3,208.80. This cost was calculated at the low end of the range as follows: {30 hours X \$33.84 (Child-Care Administrator hourly costs) + 30 hours X \$23.19 (professional level service provider hourly costs) X 2 (professional level service providers)}; and at the high end of the range as follows: {40 hours X \$33.84 (Child-Care Administrator hourly costs) + 40 hours X \$23.19 (professional level service provider hourly costs) X 2 (professional level service providers)}.

Fiscal Impact for Proposed §748.4603: For volunteers who have contact with trafficking victims, this section requires one hour of training regarding confidentiality policies and how the effects of trauma impact trafficking victims. There are two costs associated with the one hour of training required for volunteers: (1) developing the curriculum to provide the training; and (2) hourly wages paid to an instructor to deliver the training. While there may be some minimal additional overhead costs to training volunteers, this was not considered for this fiscal impact analysis.

(1) The development of the curriculum for volunteers will be a one-time cost. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a professional level service provider, or a curriculum developer similarly paid, will spend an average of 40 hours to develop the one hour curriculum. Therefore, the total one-time cost for the development of the one hour curriculum will be approximately \$927.60. This cost was calculated as follows: {40 hours X \$23.19 (professional level service provider hourly costs)}.

(2) Licensing is assuming that the one hour training will be delivered by a professional level service provider. The cost will be \$23.19 for each time the training is delivered. This cost was calculated as follows: {1 hour X \$23.19 (professional level service provider hourly costs)}.

Fiscal Impact for Proposed §748.4653: This section requires an additional five hours of pre-service training regarding complex trauma experienced by trafficking victims. The training must be provided to caregivers and employees, including case managers, treatment directors, professional level service providers, and Child-Care Administrators. There are three costs associated with the increase of pre-service training hours for GRO caregivers and employees: (1) developing the curriculum to provide the training; (2) hourly wages paid to an instructor to deliver the training; and (3) hourly wages paid to employees to attend the training.

(1) The development of the curriculum for complex trauma experienced by trafficking victims will be a one-time cost. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a professional level service provider, or a curriculum developer similarly paid, will spend an average of 200 hours to develop the one hour curriculum. Therefore, the total one-time cost for the development of the five hour curriculum will be approximately \$4,638. This cost was calculated as follows: {200 hours X \$23.19 (professional level service provider hourly costs)}.

(2) Licensing is assuming that the five hour training will be delivered by a professional level service provider. The cost will be \$115.95 for each time the training is delivered. This cost was calculated as follows: {5 hours X \$23.19 (professional level service provider hourly costs)}.

(3) The employees in the training will vary, but Licensing is assuming that the training will most often be attended by GRO caregivers. The cost will be \$83.10 for each employee that attends the training. This cost was calculated as follows: {5 hours X \$16.62 (GRO caregiver hourly costs)}. When higher paid employees attend the training, then this cost will be somewhat higher.

Fiscal Impact for Proposed §748.4657 and §748.4659: Section 748.4657 requires that the currently mandated annual training for caregivers and employees of a GRO must now include four hours of annual training relating to trafficking victims. Section 748.4659 mandates that the four hours of annual training related to trafficking victims must include one hour in preventing compassion fatigue and secondary traumatic stress; and three hours in areas appropriate to the needs of the trafficking victims, including a list of what those needs may be. There is no increase in annual training hours; there is only the requirement that four hours of annual training address the newly specified topics described above. Since there is only a change in the content of the annual training, there is no fiscal impact regarding §748.4657. In addition, the GRO currently either pays for or delivers the annual training. If the GRO currently pays for outside annual training, then there are no additional costs for the GRO related to §748.4659 either. The only fiscal impact for §748.4659 is when a GRO must develop a new curriculum for these topics, because the GRO actually provides the annual training. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a professional level service provider, or a curriculum developer similarly paid, will spend an average of 160 hours to develop the curriculum. Therefore, the total one-time cost for the development of the four hour curriculum will be approximately \$3,710.40. This cost was calculated as follows: {160 hours X \$23.19 (professional level service provider hourly costs)}.

Fiscal Impact for Proposed §748.4701: This section lowers the child/caregiver ratio during waking hours from 1:5 to 1:4. This will result in a 25% increase in your needed staffing levels. For example, if your staffing costs for one week is currently \$10,000, then your new costs for the week would be \$12,500 (\$10,000 X 1.25%) - an increase of \$2,500 for the week. However, the economic impact to the operation could vary depending on the number of children in care. For example, if an operation had 20 children in care, then that operation would need 4 staff to meet the current ratio requirement and would need 5 staff to meet the new requirement. In a different example where an operation had 18 children in care, the operation would also need 4 staff to meet the current ratio requirement and would also need 5 staff to meet the new requirement. The increased costs for staffing levels for both operations will be the same, but the economic impact for the operation that provides care for 20 children is somewhat less than the operation that provides care for 18 children because it is assumed the 20-child operation is producing more income.

Fiscal Impact for Proposed §748.4703: This section lowers the child/caregiver ratio during sleeping hours from 15:1 (if the caregiver is awake) or 10:1 (if the caregiver is asleep) to 8:1 (and the caregiver must remain awake at all times). This change requires staff during sleeping hours to remain awake at all times, so the economic impact on an operation depends on whether: (1) the operation requires caregivers to remain awake during the children's nighttime sleeping hours, or (2) the operation allows caregivers to be asleep during the children's nighttime sleeping hours.

(1) For operations that require caregivers to remain awake during the children's nighttime sleeping hours, the child/caregiver ratio is lowered from 15:1 to 8:1. This will result in an 87.5% increase in nighttime staffing levels. For example, if staffing costs for one week are currently \$5,000, then new costs for the week would be \$9,375 ($\$5,000 \times 1.875\%$) - an increase of \$4,375 for the week. However, the economic impact to the operation could vary depending on the number of children in care. For example, if an operation had 20 children in care, then that operation would need 2 staff to meet the current ratio requirement and would need 3 staff to meet the new requirement. In a different example where an operation had 18 children in care, the operation would also need 2 staff to meet the current ratio requirement and would also need 3 staff to meet the new requirement. The increase costs for staffing levels for both operations will be the same, but the economic impact for the operation that provides care for 20 children is somewhat less than the operation that provides care for 18 children because it is assumed the 20-child operation is producing more income.

(2) For operations that allow caregivers to be asleep during the children's nighttime sleeping hours, the child/caregiver ratio is lowered from 10:1 to 8:1. This will result in a 25% increase in needed staffing levels. For example, if an operation's staffing costs for one week are currently \$5,000, then new costs for the week would be \$6,250 ($\$5,000 \times 1.25\%$) - an increase of \$1,250 for the week. However, the economic impact to the operation could vary depending on the number of children in care. For example, if an operation had 20 children in care, then that operation would need 2 staff to meet the current ratio requirement and would need 3 staff to meet the new requirement. In a different example where an operation had 18 children in care, the operation would also need 2 staff to meet the current ratio requirement and would also need 3 staff to meet the new requirement. The increased costs for staffing levels for both operations will be the same, but the economic impact for the operation that provides care for 20 children is somewhat less than the operation that provides care for 18 children because it is assumed the 20-child operation is producing more income.

Fiscal Impact for Proposed §748.4751: This section requires a trafficking victim to be screened within 72 hours of admission to determine the immediate need for: (1) a medical examination by a health-care professional, and (2) medical tests for pregnancy and infectious diseases (e.g. Hepatitis, HIV, STDs, and TB). This section doesn't require the screening when one has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be screened for all medical services.

(1) Licensing is assuming that there are minimal or no costs associated with a screening to determine if an immediate medical exam is needed. Minimum standard §748.1223(c) of this title (relating to What are the medical requirements when I admit a child into care?) already requires a child to be examined immediately by a health-care professional if a child admitted shows symptoms of abuse or illness. While medical screenings will have more of a focus for trafficking victims, it is assumed that minimal training will be required for staff to make this determination that is already made in many instances.

(2) Regarding a screening to determine the immediate need for medical tests for pregnancy and infectious diseases, there were ten GROs that completed the April 2013 Feedback Survey and answered the questions regarding these two issues.

(A) The results of the survey regarding a screening for pregnancy indicated a low cost for each child of \$0, a high cost of \$1,000

(a second highest cost of \$175), an average cost of \$40.20 (the high cost of \$1,000 was not used in this average, because this amount appeared to be an anomaly), and a median cost of \$12. Licensing estimates the costs for a pregnancy screening should be minimal. The costs for over-the-counter pregnancy tests are \$5 to \$15.

(B) The results of the survey regarding a screening for infectious diseases indicated a low cost for each child of \$0, a high cost of \$1,000 (a second high cost of \$250), an average cost of \$89.29 (the high cost of \$1,000 was not used in this average, because this amount appeared to be an anomaly), and a median cost of \$70.

Fiscal Impact for Proposed §748.4753: This section requires a trafficking victim to be screened within 72 hours of admission for alcohol and substance abuse. This section doesn't require the screening when it has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be screened for alcohol and substance abuse. There were ten GROs that completed the April, 2013 Feedback Survey and answered this question regarding an alcohol and substance abuse screening. The results of the survey regarding a screening for alcohol and substance abuse indicated a low cost for each child of \$0, a high cost of \$100, an average cost of \$40.50, and a median cost of \$40. Licensing assumes these costs are related to buying a screening tool, training staff on the screening tool, and staff time to administer and evaluate the screening tool.

Fiscal Impact for Proposed §748.4755: This section requires a trafficking victim to be scheduled for a professional alcohol and substance abuse assessment if the alcohol and substance abuse screening indicated the trafficking victim may need alcohol or substance abuse treatment. There were ten GROs that completed the April 2013 Feedback Survey and answered this question regarding an alcohol and substance abuse assessment. The results of the survey regarding an alcohol and substance abuse assessment indicated a low cost for each child of \$0, a high cost of \$500, an average cost of \$167, and a median cost of \$150. The ten GROs also stated in the survey that the children in their care typically have Medicaid, three of the ten GROs also indicated that some percent of their children have private insurance, and three of the ten GROs also indicated that some percent of their children have no insurance (six GROs stated 0% of the children had no insurance, one GRO stated 1% of the children had no insurance, one GRO stated 50% of the children had no insurance, and one GRO stated 75% of the children had no insurance). We assume that the cost information provided relates to those costs that are not covered by either private insurance or Medicaid.

Fiscal Impact for Proposed §748.4757: This section requires a trafficking victim to have behavioral health assessments within 30 days for post-traumatic stress disorder (PTSD), depression, and anxiety. This section doesn't require the assessments when one has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be assessed for PTSD, depression, and anxiety. There were ten GROs that completed the April, 2013 Feedback Survey and answered the questions regarding the behavioral health assessments regarding (1) PTSD; (2) depression; and (3) anxiety. The results of the survey regarding a:

(1) PTSD assessment indicated a low cost for each child of \$0, a high cost of \$200, an average cost of \$80, and a median cost of \$77.50.

(2) Depression assessment indicated a low cost for each child of \$0, a high cost of \$200, an average cost of \$80, and a median cost of \$77.50.

(3) Anxiety assessment indicated a low cost for each child of \$0, a high cost of \$200, an average cost of \$80, and a median cost of \$77.50.

Licensing assumes these costs are related to buying a screening tool, training staff on the screening tool, and staff time to administer and evaluate the screening tool.

Fiscal Impact for Proposed §748.4759: This section requires a trafficking victim to be provided individual therapy. There were ten GROs that completed the April 2013 Feedback Survey and answered this question regarding individual therapy. The results of the survey regarding individual therapy indicated a low cost for each child of \$0, a high cost of \$200, an average cost of \$67, and a median cost of \$57.50. The ten GROs also stated in the survey that some of the children in their care typically have Medicaid, three of the ten GROs also indicated that some percent of their children have private insurance, and three of the ten GROs also indicated that some percent of their children have no insurance (six GROs stated 0% of the children had no insurance, one GRO stated 1% of the children had no insurance, one GRO stated 50% of the children had no insurance, and one GRO stated 75% of the children had no insurance). While trafficking victims may be a different population from some of the children currently being cared for by GROs, many (if not all) of these victims will also have Medicaid. Licensing is assuming that Medicaid will pay for 100% of the cost for individual therapy. The only costs should relate to a child or to treatment costs that are not Medicaid covered.

Regulatory Flexibility Analysis: As previously noted, these rule amendments and new rules apply to the approximately 157 GROs. Of the 157 GROs, it is estimated that only 25% (or 39 GROs) are small businesses, and 16% (or 25 GROs) are micro business. These numbers are consistent with the responses obtained from the April 2013 Feedback Survey. These 39 small businesses and 23 micro-businesses fall within the statutory definition, because only these businesses are for-profit businesses.

The projected economic impact on small businesses was addressed for GROs in the foregoing section of the preamble. However, as stated earlier, the impact only relates to those GROs that choose to provide trafficking victim services to a base number of children. If a GRO chooses to provide these services, then the impact that applied to GROs that provide foster care services is the same for those GROs identified as a small or micro-business. As noted above, with the widely varying number of children cared for by GROs, the fiscal impact of these rules to particular GROs will vary, with the total dollar impact likely to be greater for GROs that serve a larger number of children and less for GROs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed to ameliorate the impact on GROs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes was to ensure the health and safety of trafficking victims and to improve their quality of care - regardless of the size of the GRO.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-506, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 2. SERVICES

40 TAC §748.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.61. What types of services does Licensing regulate?

We regulate the following types of services:

(1) (No change.)

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children [with]:

(A) With Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) - (v) (No change.)

(B) With Intellectual Disabilities [Mental Retardation], who have an intellectual functioning of 70 or below and are characterized by prominent, significant deficits and pervasive impairment in one or more of the following areas:

(i) - (v) (No change.)

(C) With Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder) characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

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

(iv) Responding appropriately to an emergency; or [and]

(v) Multiple physical disabilities including sensory impairments; [or]

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of [non-temporary,] life-threatening conditions, including [the]:

(i) The inability [Inability] to maintain an open airway without assistance. This does not include the use of inhalers for asthma;

(ii) The inability [Inability] to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use [Use] of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) (No change.)

(E) Determined to be a trafficking victim, including a child:

(i) Determined to be a trafficking victim as the result of a criminal prosecution or who is currently alleged to be a trafficking victim in a pending criminal investigation or prosecution;

(ii) Identified by the parent or agency that placed the child in the operation as a trafficking victim or at a significant risk of becoming a trafficking victim; or

(iii) Determined by the operation to be a trafficking victim or at a significant risk of becoming a trafficking victim based on reasonably reliable criteria, including one or more of the following:

(I) The child's own disclosure as a trafficking victim, or factors that place the child at a significant risk of becoming a trafficking victim;

(II) The assessment of a counselor or other professional; or

(III) Evidence that the child was recruited, harbored, transported, provided to another person, or obtained for the purpose of forced labor or commercial sexual activity; and

(3) (No change.)

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

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General Counsel

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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 1. DEFINITIONS AND SCOPE

40 TAC §§748.4501, 748.4503, 748.4505, 748.4507

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4501. What does "trafficking victim services" mean when used in this subchapter?

In this subchapter, trafficking victim services means a specialized type of child-care services designed to treat and support trafficking victims, in addition to basic child care services.

§748.4503. When am I required to meet the additional rules of this subchapter?

You must meet the additional rules of this subchapter if you provide trafficking victim services to:

(1) 25 or more children; or

(2) More than 30% of the children in your care.

§748.4505. In addition to the rules in this subchapter, what other rules in this chapter apply to an operation?

An operation that is required to comply with this subchapter must comply with all other rules in this chapter that apply to all operations, as well as the rules that apply to an operation that provides treatment services to children with an emotional disorder, unless any such rule is replaced by a rule in this subchapter, as noted in §748.4507 of this title (relating to What rules in this subchapter replace other rules in this chapter?).

§748.4507. What rules in this subchapter replace other rules in this chapter?

An operation that is required to comply with the rules in this subchapter is not required to comply with other rules in this chapter if the rule has been replaced, as specified in the following chart:

Figure: 40 TAC §748.4507

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

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DIVISION 2. POLICIES AND PROCEDURES

40 TAC §§748.4551, 748.4553, 748.4555

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4551. What additional child-care policies must I develop?

You must develop written policies that address how your operation will:

(1) Provide a variety of engaging activities to help trafficking victims develop their skills and independence and gain a sense of personal identity; and

(2) Prevent and discourage trafficking victims from running away from your operation.

§748.4553. What safety and security policies must I develop?

You must develop written policies that address:

(1) The measures you will implement to ensure the safety and security of trafficking victims and employees, including measures that address both interior and exterior security while promoting a comfortable and nurturing environment;

(2) Employee protocols and procedures for ensuring a safe environment, including:

(A) An internal and external communication system that addresses emergency situations; and

(B) How to handle visitors not allowed on the premises of the operation; and

(3) Appropriate safeguards with respect to a trafficking victim's access to forms of communication, including telephones, cell phones, computer, internet, mail, and visitors, which may pose a risk of further victimization of the child.

§748.4555. What confidentiality policies must I develop?

You must develop written policies that address confidentiality, including policies that:

(1) Restrict the disclosure of information, both written and oral, that would identify a child as a trafficking victim, or describe the nature of the victim's trafficking history, other than as needed to serve the victim or comply with other laws;

(2) Specify to whom and under what circumstances an employee or volunteer may disclose the location of the operation; and

(3) Specify the circumstances under which a visitor may or may not be allowed on the premises of the operation.

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DIVISION 3. PERSONNEL

40 TAC §748.4601, §748.4603

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4601. What qualifications must a treatment director have?

A treatment director that provides or oversees treatment services for trafficking victims must:

(1) Be a psychiatrist or psychologist;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for trafficking victims or children with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for trafficking victims or children with an emotional disorder, including one year in a residential setting.

§748.4603. Are there additional training requirements for volunteers who have contact with children receiving trafficking victim services?

Each volunteer whose responsibilities include working with trafficking victims must have one hour of training prior to working with the children. The training must include the following components that explain:

(1) The operation's confidentiality policies; and

(2) How the effects of trauma impact working with trafficking victims.

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

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DIVISION 4. TRAINING

40 TAC §§748.4651, 748.4653, 748.4655, 748.4657, 748.4659

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4651. What are the pre-service experience requirements for a caregiver?

(a) Before you may assign a caregiver to be the only caregiver responsible for a child in care, the caregiver must have a minimum of 40 hours of supervised child-care experience in:

(1) Your operation;

(2) Another general residential operation, in which treatment services for children with an emotional disorder or trafficking victim services are provided to 25 or more children or 30% or more of the operation's children; or

(3) A child-placing agency, in which treatment services for children with an emotional disorder or trafficking victim services are provided to 30 or more children or 50% or more of the agency's children;

(b) Until a caregiver has the minimum amount of supervised child-care experience as specified in subsection (a) of this section, the caregiver must be supervised at all times by another caregiver who has already satisfied the minimum caregiver qualifications described in subsection (a) of this section.

(c) The supervised child-care experience must be documented in the appropriate personnel record.

§748.4653. What are the pre-service hourly training requirements for caregivers and employees?

(a) Caregivers and certain employees must complete the following training hours before the noted time frame:

Figure: 40 TAC §748.4653(a)

(b) You must document the completion of each training requirement in the appropriate personnel record.

§748.4655. Must I provide pre-service training to a caregiver or employee who has previously worked in another operation?

(a) An operation does not have to provide additional general pre-service training or pre-service training regarding emergency behavior intervention to any caregiver or employee who is exempt from this training by §748.867 of this title (relating to Must I provide pre-service training to a caregiver or an employee who has previously worked in an operation?). In addition, a caregiver or employee (child-care administrator, treatment director, professional level service provider, or case manager) does not have to complete the five hours of pre-service training regarding complex trauma experienced by trafficking victims if the caregiver or employee:

(1) During the last 12 months:

(A) Worked in a general residential operation that provides trafficking victim services to 25 or more children, or 30% or more of the operation's children in care; or

(B) Was a caregiver or employee for a child-placing agency that provides trafficking victim services to 30 or more children, or 50% or more of the child-placing agency's children in care; and

(2) Has documentation that the caregiver or employee has previously received the five hours of pre-service training.

(b) You must document the exemption factors in the appropriate personnel record.

§748.4657. What are the annual training requirements for caregivers and employees?

Caregivers and certain employees must complete the following training hours:

Figure: 40 TAC §748.4657

§748.4659. What areas or topics must the four hours of training regarding trafficking victims include?

The four hours of annual training must include:

(1) One hour of training in preventing compassion fatigue and secondary traumatic stress; and

(2) Three hours of training in areas appropriate to the needs of children for whom the operation or caregiver will be providing care, which may include:

(A) Typology of trafficking victims;

(B) Manifestations of trauma and practice in trauma informed care;

(C) How trafficking victims are manipulated and controlled;

(D) Making informed decisions and setting boundaries for trafficking victims;

(E) Understanding and avoiding the triggers of trafficking victims;

(F) Creating and maintaining nurturing environments for trafficking victims; and

(G) Identifying and responding to internal safety and security risks (e.g. high flight risk, potential self-harm, harm to others, and internal recruitment).

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

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DIVISION 5. CHILD/CAREGIVER RATIOS

40 TAC §748.4701, §748.4703

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4701. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?

(a) A single caregiver may care for a maximum of four children during waking hours.

(b) A child does not count in the child/caregiver ratio while the child is away from the operation participating in an approved unsupervised activity, as outlined in §748.685(d) of this title (relating to

What responsibilities does a caregiver have when supervising a child or children?).

§748.4703. For purposes of the child/caregiver ratio, how many children can a single caregiver care for when children are asleep at night?

(a) A single caregiver may care for a maximum of eight children during night-time sleeping hours.

(b) Caregivers must remain awake during night-time sleeping hours.

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

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DIVISION 6. ADMISSION AND SERVICE PLANNING

40 TAC §§748.4751, 748.4753, 748.4755, 748.4757, 748.4759, 748.4761, 748.4763, 748.4765, 748.4767

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.4751. Are there additional medical requirements when I admit a child for trafficking victim services?

In addition to meeting the requirements under §748.1223 of this title (relating to What are the medical requirements when I admit a child into care?):

(1) You must ensure that a child receiving trafficking victim services is screened within 72 hours of admission to determine whether there is an immediate need for any of the following types of medical services:

(A) A medical examination by a health-care professional; and

(B) Medical tests for pregnancy and the following infectious diseases:

(i) Hepatitis B;

(ii) Hepatitis C;

(iii) HIV;

(iv) Sexually transmitted diseases (STDs); and

(v) Tuberculosis.

(2) Each individual screening is not required if:

(A) The child was previously placed in a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department;

(B) There was a previous screening completed within the last 12 months;

(C) You have documentation of the outcome of the screening;

(D) The child did not run away from the operation or get discharged from the program since the previous screening; and

(E) There is no clear indication that the child has been injured, victimized, or re-victimized since the previous screening.

(3) If the results of the required screening indicate that there is a need for further testing or medical treatment, you must promptly obtain the medical testing or medical treatment.

§748.4753. Must a child I admit for trafficking victim services have an alcohol and substance abuse screening?

Yes, you must ensure that a child receiving trafficking victim services is screened for alcohol and substance abuse within 72 hours of admission. The screening is not required if:

(1) You have documentation of:

(A) A child's alcohol and substance abuse screening that was conducted within the previous 12 months during the child's placement at a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department; or

(B) A professional assessment that was conducted within the previous 12 months that determined whether alcohol and substance abuse services were needed for the child; and

(2) There is no clear indication that the child has developed an alcohol or substance abuse dependency since the date of the previous screening or assessment.

§748.4755. What must I do if an alcohol and substance abuse screening determines that a child receiving trafficking victim services may need alcohol or substance abuse treatment?

If an alcohol and substance abuse screening determines a child receiving trafficking victim services may need alcohol or substance abuse treatment, you must:

(1) Coordinate and schedule the child for an alcohol and substance abuse professional assessment;

(2) Ensure the professional recommendations are carried out; and

(3) File documentation of the professional assessment, recommendations, and follow-up in the child's record.

§748.4757. What behavioral health assessments are required when I admit a child for trafficking victim services?

(a) Within 30 days of admission, you must ensure that a child receiving trafficking victim services is assessed for the following:

(1) Post-Traumatic Stress Disorder (PTSD);

(2) Depression; and

(3) Anxiety.

(b) The results of all assessments must be documented in the child's record.

(c) Each individual behavioral health assessment is not required if:

(1) The child was previously placed at a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department;

(2) There was a previous assessment completed within the last 12 months;

(3) You have documentation of the outcome of the child's assessment; and

(4) There is no clear indication that the child has developed one of these disorders since the previous assessment.

§748.4759. What mental health services are required for a child receiving trafficking victim services?

(a) A professional service provider must:

(1) Provide individual therapy to each child receiving trafficking victim services; and

(2) Assess the frequency and duration of the therapy.

(b) You must document the assessment in the child's record.

(c) If a child refuses therapy, you must document this refusal in the child's record.

(d) For purposes of this rule, a professional service provider means:

(1) A psychiatrist licensed by the Texas State Board of Medical Examiners;

(2) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(3) A master's level social worker or higher licensed by the Texas State Board of Examiners of Professional Counselors; or

(4) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

§748.4761. Are there additional requirements for a preliminary service plan when I admit a child for trafficking victim services?

In addition to the requirements listed in §748.1331 of this title (relating to What are the requirements for a preliminary service plan?), the preliminary service plan for a child receiving trafficking victim services must include a description of the child's immediate:

(1) Safety needs; and

(2) Behavioral health and treatment care needs.

§748.4763. What additional items must be included in a child's initial service plan?

(a) In addition to the requirements and items noted in §748.1337 of this title (relating to What must a child's initial service plan include?), the initial service plan for a child receiving trafficking victim services must include:

(1) The plans to obtain alcohol treatment, substance abuse treatment, or both, for children who require it; and

(2) A description of any legal services required for the child and how you will assist the child in meeting those needs.

(b) You must document all professional consultations, examinations, recommendations, and treatment in the child's record.

§748.4765. May I admit a young adult into care?

(a) You may admit a young adult into your transitional living program.

(b) For other programs and services for trafficking victims, you may admit a young adult into your care if the young adult is deter-

mined to be a trafficking victim as stated in §748.61(2)(E) of this title (relating to What types of services does Licensing regulate?) and:

(1) Is placed at your operation directly after being discharged from another residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department;
or

(2) Is placed at your operation within 12 months after being discharged from another residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department.

(c) A young adult may remain in your care until the young adult's 23rd birthday.

§748.4767. May a young adult in care share a bedroom with a child in care receiving trafficking victim services?

(a) In addition to the requirements listed in §748.1937 of this title (relating to May an adult in care share a bedroom with a child in care?), a professional level service provider for operations must complete a re-assessment anytime a child or young adult:

(1) Runs away from the operation and returns to care; or

(2) Is discharged from your program and returns to care.

(b) The re-assessment and approval by the professional level service provider must be documented and dated in the child's record.

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For further information, please call: (512) 438-3437



CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.43, 749.343, 749.347, 749.349, 749.353, 749.741, 749.881, 749.931, 749.941, 749.1003, 749.1135, 749.1187, 749.1291, 749.1309, 749.1311, 749.1313, 749.1927, 749.2001, 749.2473, 749.2475, 749.2593, 749.2625, 749.2635, and 749.2801; the repeal of §§749.743, 749.2551, and 749.2561; and new §§749.2472, 749.2497, 749.2550, 749.2551, 749.2566, 749.2594, and 749.2908, in Chapter 749, Minimum Standards for Child-Placing Agencies. The purpose of the changes is to improve the safety of children in foster care, including children receiving treatment services for primary medical needs.

Last year, at the direction of the DFPS Commissioner, DFPS conducted six statewide forums where provider groups could share ideas about best practices around the provision of safe, nurturing care to children who have suffered abuse and neglect. The forums discussed several different areas, including changes to Child Protective Services (CPS) policies and procedures, training, contract changes, and minimum standard changes. Regarding the minimum standard changes, some of

the discussion in the forums related specifically to the need for more focus on "trauma informed care", concerns relating to the transfer of foster homes from one child-placing agency (CPA) to another, and the quality of care for children with primary medical needs (PMN), including increasing face-to-face visits for children with PMN, limiting the number of children with PMN in a foster home, and enhancing options for respite care for foster homes providing treatment services to children with PMN.

In April and May of 2014, the Licensing Division convened a committee to further look into these issues. The committee was made up of approximately seven child-placing agency representatives from diverse geographic regions of the state, a CPS representative, three Licensing Division representatives, a foster parent, and a foster parent advocacy association representative. The committee representatives all had a particular interest in the issue of children receiving treatment services for PMN. Partially in response to the information obtained during the six statewide forums noted above, the Committee met twice to discuss possible changes to the minimum standards. The Committee also made recommendations for additional changes to the standards. The current recommendations strengthen the minimum standards in three areas: (1) services to children with primary medical needs; (2) normalcy; and (3) child safety, including integrating trauma informed care into the minimum standards.

A summary of the changes follows:

The amendment to §749.43 adds definitions for babysitting; normalcy; overnight care; trauma informed care; and unsupervised activity. The definitions of caregiver and health-care professional are clarified, other definitions have minor changes, and many of the definitions are renumbered. HHSC, on behalf of DFPS, previously proposed an amendment to this same rule section in the May 9, 2014, issue of the *Texas Register*, to add a definition for trauma informed care; however, because the Texas Register rules do not permit an agency to propose additional amendments to a rule before other proposed amendments to that same rule are adopted, the proposed changes to §749.43 published in the May 9, 2014, issue of the *Texas Register* are withdrawn and have been incorporated into this rule proposal. Finally, an additional amendment to §749.43 adds a definition for trafficking victim, which is needed for a separate DFPS rule initiative relating to services for victims of human trafficking that is being simultaneously proposed in this volume of the *Texas Register*.

The amendment to §749.343 requires CPAs to incorporate trauma informed care into their discipline policies and procedures.

The amendment to §749.347 clarifies that a CPA's policies regarding: (1) what decisions a CPA and foster parents must make and those they must agree upon must address unsupervised activities and normalcy; and (2) the kind and amount of support provided to foster parents must address what support and services will be provided for babysitting, overnight care, and respite child-care services.

The amendment to §749.349 requires CPAs to annually offer at least 72 hours of overnight care or respite care to foster parents who provide treatment services to children with primary medical needs (PMN).

The amendment to §749.353 clarifies that the policies developed for respite care providers must also address babysitters and overnight care providers, and the policies must apply to both in-home care and out-of-home care.

The amendment to §749.741 conforms the rule to current practice. Nurses do not currently delegate tasks in this setting, so the delegation language in the rule is deleted. The other changes more accurately describe the treatment services that a nurse in a CPA currently provides.

Section 749.743 is deleted because nurses in CPAs do not currently delegate tasks.

The amendment to §749.881 requires pre-service training on normalcy and trauma informed care.

The amendment to §749.931 requires annual training on trauma informed care.

The amendment to §749.941 adds normalcy and trauma informed care and "reasonable and prudent parenting decisions" as appropriate areas for annual training.

The amendment to §749.1003 incorporates the concept of "normalcy" into the description of a foster child's rights.

The amendment to §749.1135 clarifies that in addition to a physician, a physician's assistant or a nurse practitioner may evaluate whether a child can be appropriately cared for in a foster home setting, and whether the foster parents have been trained and demonstrated competency to meet the needs of a child. Physician's assistants and nurse practitioners more commonly conduct this evaluation.

The amendment to §749.1187 clarifies the wording of the rule to be consistent with the change to §749.1135.

The amendment to §749.1291 changes the requirement for face-to-face visits for children with PMN from monthly to every 15 days. Two visits a year can be missed, but a child cannot go longer than 30 days without a visit.

The amendment to §749.1309 incorporates normalcy and trauma informed care specifically into the service planning process.

The amendment to §749.1311 emphasizes and clarifies that there must be a service planning meeting to which the child, parents, and foster parents are invited to attend and participate and provide input into the development of the service plan.

The amendment to §749.1313 emphasizes that notice for a service planning meeting should also be sent to the foster parents two weeks in advance.

The amendment to §749.1927 clarifies in detail what normal life experiences for children with PMN or intellectual disabilities should look like.

The amendment to §749.2001 updates cross-references.

New §749.2472 requires a CPA to review a CPS kinship assessment before verifying a kinship home as a foster home.

The amendment to §749.2473 clarifies that a new home screening, instead of an update, are required when foster homes transfer to another CPA.

The amendment to §749.2475: (1) expands and clarifies the specific background information that must be released to a CPA requesting the information; (2) clarifies the wording regarding the timing of the release of the background information; and (3) clarifies when there are pending investigations and/or unresolved deficiencies, what information should be released and the timing of the release of the information.

New §749.2497 requires either a transfer summary or a closing summary for all foster homes, and includes a list of items that must be included in the summary.

New §749.2550 defines "children with primary medical needs requiring total care", because it is used in new §749.2551.

Section 749.2551 is repealed and proposed as new. For clarification purposes, the current rule regarding the maximum number of children that can be cared for in a foster family home is rewritten. The changes in the rewrite include: (1) two additional charts; (2) the addition of the infant requirements from §749.2561, which is being repealed; (3) lowering the maximum and/or placing limitations on the number of children that may be cared for in a foster family home providing treatment services to children with PMN requiring total care, which strengthens the services provided to children with PMN; and (4) adding a "grandfather clause" that allows foster family homes that are or were verified to provide PMN services prior to January 1, 2015, to continue to operate under the ratios for children in care as those ratios existed prior to the effective date of this rule.

Section 749.2561 is repealed. The substance of this rule is incorporated into new §749.2551.

New §749.2566: (1) substantially limits the placement of children with PMN into foster group homes, except when it is necessary to maintain a sibling group and a less restrictive alternative is not available; and (2) adds a grandfather clause, which allows foster group homes that are or were verified to provide PMN services prior to January 1, 2015, to continue to operate under the ratios for children in care as those ratios existed prior to the effective date of this rule. The current rule allows the placement of children with PMN in foster group homes as long as there is a 4:1 child/caregiver ratio.

The amendment to §749.2593: (1) integrates normalcy into the service planning discussion regarding "unsupervised activities"; and (2) establishes the information that must be assessed by a foster parent when making decisions regarding childhood activities based upon a "reasonable and prudent parent" standard.

New §749.2594 states that a foster parent is the person that should make decisions regarding a child's participation in childhood activities based upon a "reasonable and prudent parent" standard, unless the managing conservator provides notice that a particular activity is prohibited.

The amendment to §749.2625: (1) clarifies that in addition to respite care providers, certain information must also be shared with babysitters and overnight care providers; and (2) adds additional information that must be shared with the baby-sitters, overnight care providers, and respite care providers.

Section 749.2635 is revised to clarify and provide consistency with respect to who may be used to provide temporary care as a babysitter, overnight care provider, or respite care provider.

The amendment to §749.2801 establishes a rule that conforms to current practice. Human Resources Code (HRC) §42.0448 requires DFPS to inform a CPA when DFPS receives a family violence report regarding a foster home. HRC §42.0449 requires a rule specifying what action a CPA must take after receiving a family violence report. Currently, Licensing conducts an investigation when a family violence report is received. In addition, the CPA may voluntarily choose to evaluate the foster home when a family violence report is received. This amendment implements HRC §42.0449 and mandates the evaluation of the foster home by the CPA when the CPA receives a family violence report.

New §749.2908 requires foster homes to discuss fire and weather emergency plans with the children, and to conduct annual fire and severe weather drills.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. Aspects of the DFPS Child Protective Services (CPS) program operate as a certified child-placing agency, and the CPS foster and adoption development (FAD) staff perform the foster home screening and supervision functions that are the subject of some of these rule changes. In order to comply with these rule changes, FAD staff will be required to spend some additional time updating relevant policies, updating/developing curriculum relating to pre-service and annual training, conducting additional face-to-face visits for children with primary medical needs, and completing either a transfer or closing summary for all foster homes. It is anticipated that this additional staff time can be absorbed within existing resources.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the safety of children in foster care and the quality of their care will be improved by strengthening minimum standards related to children with primary medical needs, normalcy, and child safety, including integrating trauma informed care into the minimum standards. There is an anticipated adverse impact on businesses, including small and micro businesses, which must comply with these rule changes. Child-placing agencies and independent foster group homes will be impacted. There is no anticipated economic cost to persons who are required to comply with the proposed sections - other than those persons who have a financial stake in a CPA or independent foster group home.

The DFPS 2012 Annual Report and Data Book states that there are 209 child-placing agencies (CPAs) operating in Texas. Of those, there are also 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small, or micro business. However, the impact to CPS was discussed under fiscal impact to state government. As previously noted, the proposed rule changes will improve the safety of children in foster care by strengthening minimum standards. Licensing has identified the following proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs:

- (1) §749.343 of this title (relating to What policies must I develop on the discipline of children in foster care and pre-adoptive care?);
- (2) §749.347 of this title (relating to What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?);
- (3) §749.349 of this title (relating to What additional policies must I develop for foster parents that provide treatment services?);
- (4) §749.353 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?);
- (5) §749.881 of this title (relating to What curriculum components must be included in the general pre-service training?);
- (6) §749.931 of this title (relating to What are the annual training requirements for caregivers and employees?);

(7) §749.941 of this title (relating to What areas or topics are appropriate for annual training?);

(8) §749.1291 of this title (relating to What are the requirements for contact between child placement staff and children in foster care?);

(9) §749.2472 of this title (relating to Are there any additional requirements to verify a foster home that is currently acting as a kinship home with the Child Protective Services division of the Department?);

(10) §749.2473 of this title (relating to What must I do to verify a foster home that another child-placing agency has previously verified?);

(11) §749.2497 of this title (relating to Are transfer/closing summaries required for foster homes?);

(12) §749.2551 of this title (relating to What is the maximum number of children a foster family home may care for?); and

(13) §749.2566 of this title (relating to Are there restrictions on placing a child receiving treatment services for primary medical needs in a foster group home?);

Of the 198 private CPAs, the size of the CPA and the number of foster and adoptive homes that each agency verifies/approves and supervises from year to year varies significantly. A few CPAs have hundreds of foster/adoptive homes, other CPAs have 20 to 50 homes, while still others may only have a handful of homes. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities newly required by the proposed rules.

An independent foster group home (IFGH) is an operation (not related to a child-placing agency) that provides care to seven to 12 children up to the age of 18 years. As of the date of publication of these rules, there are only two IFGHs operating in Texas. Neither one contracts with DFPS or provides services to children in the managing conservatorship of DFPS. Although the rules impacting IFGHs are located in Chapter 750 of this title, there are numerous standards in Chapter 749 that are adopted by reference in Chapter 750 of this title. While many of these rule changes will impact the two IFGHs, Licensing has identified only three rules that may potentially have a fiscal impact upon them: §§749.881, 749.931, and 749.941. These rules impact an IFGH because of §750.401(1) of this title (relating to What are the requirements for training and professional development?), which provides that the staff of an IFGH must be trained in accordance with the minimum standards for training in Subchapter F of Chapter 749 of this title, which includes §§749.881, 749.931, and 749.941.

The fiscal impact to CPAs primarily results from additional staff time needed to (1) update and develop policies and curriculum; (2) review a CPS kinship assessment; (3) complete a new screening for foster homes that transfer from one CPA to another; (4) create either a transfer or closing summary for all foster homes; and (5) conduct additional face-to-face visits for children with PMN. For use in the impact analysis, DFPS estimated the additional staff time required to comply with the standards through discussions with the committee that met in April and May of 2014, through individual discussions with members of the committee, and through individual discussions with CPS staff.

The staff time required to comply with the standards will affect child placement staff, child placement management staff, and the child-placing agency administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

Child Placement Staff - The 2013 average salary for FAD Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The fiscal year (FY) 2013 average salary for a FAD Worker is \$41,415 per year or \$19.91 per hour.

Child Placement Management Staff - The 2013 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. The FY 2013 average salary for a FAD Supervisor is \$48,238 per year or \$23.19 per hour.

CPA Administrator - The 2013 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2013 average salary for a CPS Regional Director is \$70,393 per year or \$33.84 per hour.

Fiscal Impact for §§749.343, 749.347, and 749.353: These three sections require changes to a CPA's policies relating to trauma informed care and discipline; normalcy; and temporary care provided by a babysitter, an overnight care provider, or a respite care provider. CPAs routinely change their policies, and the changes to policy needed to comply with these three rules should be fairly straightforward. In addition, it will be a one-time cost. It is anticipated that the CPA Administrator and the two child placement management staff will work together to revamp these policies. It is anticipated that a CPA Administrator and the two child placement management staff will spend an average of two to four hours each in the development of these three policies. Therefore, the total one-time cost for the development of these three policies will be between approximately \$160.44 and \$320.88. This cost was calculated at the low end of the range as follows: {2 hours X \$33.84 (CPA Administrator hourly costs) + 2 hours X \$23.19 (child placement management staff hourly costs) X 2 (child placement management staff)} and at the high end of the range as follows: {4 hours X \$33.84 (CPA Administrator hourly costs) + 4 hours X \$23.19 (child placement management staff hourly costs) X 2 (child placement management staff)}.

Fiscal Impact for §749.349: This section requires CPAs to annually offer 72 hours of respite care to foster parents that provide treatment services to children with PMN. This rule does not mandate how that is done. Currently, foster homes that contract with DFPS to provide foster care (a majority of CPAs) are generally paid a "pass through" foster care rate by their CPA that is based on the "level" of a child's needs. The level can be basic, moderate, specialized, or intense. Licensing estimated that most children with PMN that are placed in an agency foster home are levelled at the "specialized" foster care rate, while a few are levelled at the higher "intense" rate and some are levelled at the lower "moderate" rate. There are a multitude of ways to offer respite care to foster parents. A CPA could use respite care providers who are: (1) volunteers or relatives of the foster family at no cost; (2) non-verified caregivers or verified foster parents who are paid with some or all of the pass through foster care

rate that the current foster family would have otherwise received for the portion of time the child is placed in respite care; or (3) verified foster parents who are paid the same pass through rate as the current foster parents, in addition to the amount passed through to the current foster parents. Because obtaining respite care for children with PMN can be difficult, the last option is the one that is more commonly used, but more expensive. Using this most common option and using the minimum daily amount to be reimbursed to a foster family for a child levelled at "specialized" (\$51.99 per day), it is anticipated that the costs for a respite care provider to care for a child with PMN for 72 hours will be \$155.97, per child with PMN, per year.

Fiscal Impact for §749.881: This section requires two new curriculum components, "normalcy" and "trauma informed care", to be included in a CPA's general pre-service training that is mandated for caregivers and employees. There is no increase in training hours, so the only fiscal impact relates to the update of the curriculum. Considering the numerous materials and trainings that are in the public domain regarding these two topics, the time required to update the curriculum should be minimal. In addition, it will be a one-time cost. It is anticipated that child placement management staff or an employee similarly situated will spend an average of two to six hours to update the curriculum. Therefore, the one-time cost to update the curriculum regarding these two topics will be between approximately \$46.38 and \$139.14 per CPA. This section has the same impact upon an Independent Foster Group Home. Licensing estimates that the costs to update the IFGH's curriculum regarding these topics will be comparable to a CPA's costs as noted above. (Note: CPAs that currently contract with DFPS have been required by contract since 2012 to train their foster parents on trauma informed care.)

Fiscal Impact for §749.931 and §749.941: Section 749.931 requires that the currently mandated annual training for caregivers and employees of CPAs must now include training regarding "trauma informed care". Section 749.941 adds three specific topics that are appropriate for annual training: "trauma informed care", "normalcy", and the "reasonable and prudent parent" standard. There is no increase in training hours; there is only the requirement that training address the newly specified topics described above, and that at least two hours of the minimum number of annual training hours required under current minimum standards address the topic of "trauma informed care." Since there is only a change in the content of the training, there is no fiscal impact regarding §749.931. The CPA must already pay for or deliver the annual training. If the CPA is currently paying for outside annual training, then there are no additional costs for the CPA related to §749.941 either. The only fiscal impact for §749.941 is when a CPA must develop a new curriculum for these three topics, because the CPA is actually providing the annual training. Considering the numerous materials that are in the public domain regarding "trauma informed care" and "normalcy", the time required to develop the curriculum should be minimal. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of six to 10 hours to develop the curriculum for these two topics. Therefore, the cost to update the curriculum regarding "trauma informed care" and "normalcy" will be between approximately \$139.14 and \$231.90. Developing curriculum for a "reasonable and prudent parent" standard may be more complicated. While such a standard has been in the legal community for a long time, it is a relatively new concept as applied to foster parents. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of 10 to 15 hours

to develop the curriculum for this topic. Therefore, the cost to update the curriculum regarding a "reasonable and prudent parent" standard will be between approximately \$231.90 and \$347.85. These costs will be one-time costs. The total staff costs for the additional time needed to develop the curriculum for these three topics will be between \$371.04 and \$602.94, per CPA.

While §749.931 and §749.941 are applicable to IFGHs, it is unlikely that any additional costs will be required of the IFGH. Licensing estimates that the IFGHs are not developing the curriculum for annual training or delivering the actual training, so no costs are anticipated. If an IFGH does develop and deliver annual training, the additional costs will be comparable to a CPA's costs as noted above.

Fiscal Impact for §749.1291: This section requires a CPA to conduct an additional 12 face-to-face visits a year with children receiving treatment services for PMN. Previously the visits were required monthly; the visits will now be required every 15 days. Licensing is estimating that there are approximately 175 to 250 children statewide currently receiving treatment services for PMN. It is anticipated that it will take an average of one to two additional hours of child placement staff time to conduct each visit, plus travel expenses. Therefore, the child placement staff cost for the additional time to conduct 12 visits will be between approximately \$238.92 and \$477.84 per year, per child receiving treatment services for PMN, plus travel expenses.

Fiscal Impact for §749.2472: This section requires a CPA to review a CPS kinship assessment during the prospective foster home screening process before the CPA can verify a kinship home as a foster home. It is anticipated that it will take an average of one to two additional hours of child placement staff time to locate, obtain, and review the CPS kinship assessment. Therefore, the child placement staff cost for the additional time to review the kinship assessment will be between approximately \$19.91 and \$39.82 per kinship home screened.

Fiscal Impact for §749.2473: This section clarifies that when foster homes transfer to a different CPA, the new CPA must conduct a new home screening. An update of the home screening that was prepared by the previous CPA will no longer be allowable. Many requirements for a foster home screening were already mandated when updating a transfer foster home, such as new interviews and new background checks. However, this new screening will require a new screening document (as opposed to an addendum) with findings and an assessment. It is anticipated that it will take an average of five to eight additional hours of child placement staff time to complete a new home screening. Therefore, the child placement staff cost for the additional time to complete the screening will be between approximately \$99.55 and \$159.28 per transfer foster home screened.

Fiscal Impact for §749.2497: This section creates a new requirement for CPAs to create either a transfer summary or a closing summary for all foster homes. The information required for a summary is currently available to the CPAs, but the information will have to be gathered and a summary document created. It is anticipated that it will take an average of one to two hours of child placement staff time to create the summary and 30 minutes to one hour of child placement management staff time to review and approve the summary. Therefore, the child placement staff cost for the additional time needed to create a summary, will be between approximately \$19.91 and \$39.82. The child placement management staff cost for the additional time needed to review and approve a summary will be between approximately \$11.60 and \$23.19. The total staff costs for the additional time needed

to create a summary will be between approximately \$31.51 and \$63.01 for each foster home that transfers or closes.

Fiscal Impact for §749.2551: This section lowers the maximum or places limits on the number of children that may be cared for in a foster family home providing treatment services to children with PMN. However, the section includes a "grandfather clause" that allows foster family homes verified to provide treatment services to children with PMN before January 1, 2015, to continue to care for children with PMN without a reduction or limit in the number of children that the foster family home may care for. It is anticipated that this section will not result in a fiscal impact because of the "grandfather clause".

Fiscal Impact for §749.2566: This section substantially limits the placement of children with PMN into foster group homes. However, the section includes a "grandfather clause" that allows foster group homes verified to provide treatment services to children with PMN before January 1, 2015, to continue to care for children with PMN without a reduction in the number of children that the foster group home may care for. It is anticipated that this section will not result in a fiscal impact because of the "grandfather clause".

Regulatory Flexibility Analysis: As previously noted in this preamble, these rule changes only apply to the approximately 198 child-placing agencies (CPAs) that currently provide foster care services and adoption services. Of those 198 CPAs, it is estimated that only 33 meet the definition of a small or micro business, because only 33 of the CPAs are for-profit businesses. Of the two independent foster group homes operating at this time, neither meet the definition of a small- or micro-business because neither are for-profit businesses.

Of the 198 CPAs, 33 are estimated to be small businesses, and roughly half of the small businesses are also estimated to be micro-businesses (note: foster parents and adoptive parents are not counted as employees). The projected economic impact on small businesses was addressed in the foregoing section of the preamble. As noted above, with the widely varying number of foster homes and adoptive homes verified/approved by each CPA, the fiscal impact of these rules on any given CPA will vary widely, with the total impact likely to be greater for larger CPAs and less for smaller CPAs.

DFPS did not consider any alternatives to a majority of the rule amendments being proposed to ameliorate the impact on CPAs who are small- or micro-businesses, because the very purpose of all of these rule changes is to ensure the health and safety of children in foster homes - regardless of the size of the CPA. However, the grandfathering provisions in §749.2551 and §749.2566 will ameliorate the impact of these rules on all CPAs, including those that are small- and micro-businesses.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-505, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.43. *What do certain words and terms mean in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (6) (No change.)

(7) Babysitting--Temporarily caring for a child in foster care for no more than 12 consecutive hours.

(8) [(7)] Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver.

(B) Does not include babysitters, overnight care providers, or respite child-care providers unless they are [who are not]:

(i) Verified foster parents;

(ii) Licensed foster parents; or

(iii) Agency employees.

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; or

(ii) Works with one particular child.

(9) [(8)] Certified fire inspector--Person certified by the Texas Commission on Fire Protection to conduct fire inspections.

(10) [(9)] Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) [(10)] Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home, as in the case of a child at school or at work or receiving respite child-care services. Unless a child has been discharged from the child-placing agency, the child [he] is considered a child in care.

(12) [(41)] Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(13) [(42)] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(14) [(43)] Days--Calendar days, unless otherwise stated.

(15) [(44)] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(16) [(45)] Department--The Department of Family and Protective Services (DFPS).

(17) [(46)] Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(18) [(47)] Disinfecting solution--A disinfecting solution may be:

(A) A self-made solution, prepared as follows:

(i) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or

(ii) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or

(B) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.

(19) [(48)] Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(20) [(49)] Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.

(21) [(20)] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(22) [(24)] Food service--The preparation or serving of meals or snacks.

(23) [(22)] Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency.

(24) [(23)] Foster group home--An operation verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.

(25) [(24)] Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(26) [(25)] Foster home screening--A written evaluation, prior to the placement of a child in a foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); and

(C) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(27) [(26)] Foster parent--A person who provides foster care services in the foster home.

(28) [(27)] Full-time--At least 30 hours per week.

(29) [(28)] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(30) [(29)] Health-care professional--A licensed physician, nurse practitioner, physician's assistant, [~~licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a~~] licensed vocational nurse (LVN), [~~a licensed~~] registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's [~~his~~] license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(31) [(30)] High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, aggression causing bodily injury, chronic running away, drug addiction, fire setting, and sexual perpetration.

(32) [(31)] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(33) [(32)] Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away if less than [~~under~~] 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(34) [(33)] Infant--A child from birth through 17 months.

(35) [(34)] Livestock--An animal raised for human consumption or an equine animal.

(36) [(35)] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(37) [(36)] Long-term placement--A placement intended to last for more than 90 days.

(38) [(37)] Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(39) [(38)] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(40) [(39)] Non-mobile--A child that is not able to move from place to place, even with assistance.

(41) Normalcy--The ability of a child in care to live as normal a life as possible, including:

(A) Having normal interaction and experiences within a foster family and participating in foster family activities; and

(B) Engaging in age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities.

(42) Overnight care--Temporary care provided for a child in foster care by someone other than the foster parents with whom the child is placed for more than 12 consecutive hours, but no more than 72 consecutive hours.

(43) [(40)] Parent--A person who [that] has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(44) [(41)] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(45) [(42)] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(46) [(43)] Post-adoptive services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(47) [(44)] Post-placement report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

- (A) Child;
- (B) Prospective adoptive parent(s);
- (C) Family of the prospective adoptive parent(s);
- (D) Environment of the prospective adoptive parent(s) and their family; and
- (E) Adjustment of all individuals to the placement.

(48) [(45)] Pre-adoptive home screening--See adoptive home screening.

(49) [(46)] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(50) [(47)] Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(G) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(51) [(48)] Re-evaluation--Includes an assessment of all factors required for the initial evaluation only for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(52) [(49)] Regularly--On a recurring, scheduled basis.

(53) [(50)] Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(54) [(51)] School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(55) [(52)] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(56) [(53)] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(57) [(54)] State or local fire inspector--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government.

(58) [(55)] State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.

(59) [(56)] Substantial bodily harm--Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(60) [(57)] Toddler--A child from 18 months through 35 months old.

(61) Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(62) Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(63) [(58)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(64) [(59)] Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(65) Unsupervised activity--When a child in care participates in an activity away from the foster home and caregivers.

(66) [(60)] Volunteer--A person who provides [services]:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family," or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

(67) [(64)] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(68) [(62)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 8. POLICIES AND PROCEDURES

40 TAC §§749.343, 749.347, 749.349, 749.353

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.343. What policies must I develop on the discipline of children in foster care and pre-adoptive care?

You must develop policies that guide caregivers in methods used for discipline of children in foster care or adoptive placement prior to consummation. Your discipline policies must integrate trauma informed care into the care, treatment, and management of each child, and include:

(1) - (3) (No change.)

§749.347. What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?

(a) You must develop a policy clearly stating the rights and responsibilities of the child-placing agency and foster parents. The policy must specify:

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon. This policy must address unsupervised activities and support normalcy, consistent with §749.2593 of this title (relating to What responsibilities does a caregiver have when supervising a child?) and §749.2594 of this title (relating to Who should make the decision regarding a foster child's participation in childhood activities?);

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

(7) The kind and amount of support provided to all foster families and any services available to foster parents, including what support and services will be provided for babysitting, overnight care, and respite child-care services;

(8) - (12) (No change.)

(b) (No change.)

§749.349. What additional policies must I develop for foster parents that provide treatment services?

(a) You must develop additional policies for foster parents that provide treatment services. These policies must include:

(1) Ongoing assessments of the caregiver's abilities to meet the needs of the children in care;

(2) Safeguards for protecting the children and caregivers;

(3) Emergency back-up and support systems for the caregivers; and

(4) A procedure for your review and approval of paragraphs (1) - (3) of this subsection ~~[section]~~.

(b) Your policy regarding support to foster families and services available, which is required in §749.347(a)(7) of this title (relating to What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?), must include making annual arrangements for 72 hours of overnight care or a longer period of time of respite child-care services for foster parents that provide treatment services to a child with primary medical needs.

§749.353. What policies must I develop for babysitters, overnight care providers, and respite care [child-care] providers [in foster homes]?

For both in-home and out-of-home care, you [You] must develop policies specifically for babysitters, overnight care providers, and respite care [child-care] providers [in foster homes] that include:

- (1) Minimum age for each type of provider [care providers];
- (2) Minimum amount and type of prior child-care experience that each type of [a] provider must have;
- (3) Amount and type of training each type of [a] provider must have;
- (4) Reference and background information that foster parents or you must obtain before using each type of [the] provider;
- ~~(5) Amount of time a provider can care for children;~~
- (5) [(6)] Number of children that each type of [a] provider can care for;
- (6) [(7)] Information that the foster parents must share with a provider, including information about the children in care and emergency contact information for the foster parent and the agency;
- (7) [(8)] Specific care instructions that the foster parents must share with a provider for children with treatment needs;
- (8) [(9)] A method for contact between the foster parent (and/or the child-placing agency) and provider during the time of the provider's care;
- (9) [(10)] Procedures for agency review and approval of arrangements; and
- (10) [(11)] Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 5. TREATMENT SERVICES PROVIDED BY NURSING PROFESSIONALS

40 TAC §749.741

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.741. What treatment services must a registered nurse provide if I support a child with primary medical needs?

[(a)] A registered nurse must be on staff or on contract and[, individually or through an agency, to respond to emergencies, questions, or other medical issues.]

[(b)] [A registered nurse] must:

- (1) Perform a nursing assessment of the child to include documentation of the child's diagnosed medical needs and selection of placement;
- (2) Lead or participate in the service planning process for the child's care [including registered nurse delegation of tasks or exemption from RN delegation in compliance with 22 Texas Administrative Code, Chapters 224 and 225 of the Texas Board of Nurse Examiners rules];
- (3) Review medical records, including compliance with written physician orders;
- (4) Contact other professionals, as needed, for the child's care;
- (5) Monitor the implementation of the child's service plan; and
- (6) Document outcomes for interventions used in the child's care.

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40 TAC §749.743

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

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.743. *In what circumstances may a physician or registered nurse (including an advanced practice registered nurse) delegate nursing tasks to unlicensed caregivers?*

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. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §749.881

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.881. *What curriculum components must be included in the general pre-service training?*

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, strategies and techniques for monitoring and working with these children, and normalcy [~~age-appropriate activities for the children~~];

(2) Trauma informed care;

(3) [(2)] The different roles of caregivers;

(4) [(3)] Measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(5) [(4)] Procedures to follow in emergencies, such as weather related emergencies, volatile persons, and severe injury or illness of a child or adult; and

(6) [(5)] Preventing the spread of communicable diseases.

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DIVISION 6. ANNUAL TRAINING

40 TAC §749.931, §749.941

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.931. *What are the annual training requirements for caregivers and employees?*

(a) Caregivers and employees must complete the following training hours:

Figure: 40 TAC §749.931(a)

(b) (No change.)

§749.941. *What areas or topics are appropriate for annual training?*

Annual training must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:

(1) Trauma informed care;

(2) [(4)] Developmental stages of children;

(3) [(2)] Constructive guidance and discipline of children;

(4) [(3)] Fostering children's self-esteem;

(5) [(4)] Positive interaction with children;

(6) [(5)] Strategies and techniques for working with the population of children served;

(7) Normalcy;

(8) [(6)] Supervision and safety practices in the care of children, including making reasonable and prudent parenting decisions regarding a foster child's participation in childhood activities; or

(9) [(7)] Preventing the spread of communicable diseases.

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SUBCHAPTER G. CHILDREN'S RIGHTS

40 TAC §749.1003

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1003. *What rights does a child in care have?*

- (a) (No change.)
- (b) You must adhere to the child's rights, including:
 - (1) - (10) (No change.)

(11) The right to live as normal a life as possible, including: [reasonable opportunities to participate in community functions, including recreational and social activities such as Little League teams, Girl Scouts and Boy Scouts, and extracurricular school activities outside of the agency to the extent that is appropriate for the child;]

(A) Having normal interaction and experiences within the foster family and participating in foster family activities; and

(B) Engaging in age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities;

- (12) - (30) (No change.)

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SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT

DIVISION 2. ADMISSION ASSESSMENT

40 TAC §749.1135

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1135. *What are the additional admission requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §749.1135

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DIVISION 4. EMERGENCY ADMISSION

40 TAC §749.1187

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1187. *For an emergency admission, when must I complete all of the requirements for an admission assessment?*

- (a) (No change.)

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission unless the child has received the required psychological, psychiatric, psychometric, or medical [physician's] evaluation that is required by §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?), and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

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DIVISION 7. POST-PLACEMENT CONTACT

40 TAC §749.1291

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1291. What are the requirements for contact between child placement staff and children in foster care?

(a) Except for children receiving treatment services for primary medical needs, child [Child] placement staff must have monthly face-to-face contact with a child in care. However, staff can miss two visits per year, provided a child does not go longer than 60 days without a visit.

(b) For children receiving treatment services for primary medical needs, child placement staff or a nurse on staff must have face-to-face contact with a child in care every 15 days. However, staff can miss two visits per year, provided a child does not go longer than 30 days without a visit.

(c) These contacts are to ensure the:

- (1) Child is safe;
- (2) [(+)] Needs of a child are being met; and
- (3) [(2)] Placement continues to be appropriate.

(d) [(b)] If the child is able to communicate in a meaningful way, the contact with the child must:

- (1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;
- (2) Provide an opportunity to meet in private; and
- (3) Provide an opportunity for the child to express his feelings about how the placement is working out.

(e) [(e)] If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child and the child's placement, including an assessment of any changes in behavior or developmental progress or delays as well as a verification that the placement is meeting the child's needs as specified in the service plan.

(f) [(d)] The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections (d) and (e) [(b) and (e)] of this section.

(g) [(e)] Child placement management staff must review and approve documentation of contacts.

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SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE

DIVISION 1. SERVICE PLANS

40 TAC §§749.1309, 749.1311, 749.1313

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1309. What must a child's initial service plan include?

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment and integrate trauma informed care in the care, treatment, and management of each child. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 40 TAC §749.1309(b)

§749.1311. Who must be involved in developing an initial service plan?

(a) A service planning team must meet to discuss and develop the service plan. The team must consist of:

(1) - (2) (No change.)

(3) If you are providing treatment services to the child, at least two of the following professionals:

(A) - (D) (No change.)

(E) A licensed master's [~~masters~~] level social worker;

(F) - (G) (No change.)

(b) The child, as appropriate, [~~and~~] the parents, and the foster parents must be invited to the service planning meeting, and should participate and provide input into the development of [tø develop] the service plan.

§749.1313. When must I inform the child's parents and foster parents [parent(s)] of an initial service plan meeting?

(a) You must give the child's parents and foster parents [parent(s)] at least two weeks advance notice of the review.

(b) The child's record must include documentation of the notice and any responses from the parents and foster parents.

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SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 5. RECREATIONAL SERVICES

40 TAC §749.1927

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1927. To what extent must a child receiving treatment services for primary medical needs or intellectual disabilities [~~mental retardation~~] have normal life [community living] experiences?

A child receiving treatment services for primary medical needs or intellectual disabilities should experience normalcy as much [The child's surroundings and experiences must reflect normal patterns of community living as closely] as possible and as appropriate for the child's special needs. This means that the child's foster parents must be routinely and personally involved with the child. This involvement must include:

(1) Daily one-on-one interaction between the child and the foster parent primarily responsible for the child's care;

(2) Participation in everyday family activities to the extent the child is able, such as having meals together, participating in family time, and participating in family outings;

(3) Sensory stimulation for the child, such as the child being held, being read to, being played with, and being talked to, and the foster family watching television and listening to music together;

(4) Actively participating in the child's medical care, including appointments and hospitalizations; and

(5) Actively participating in the child's educational needs.

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SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION DIVISION 1. DEFINITIONS

40 TAC §749.2001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2001. What do certain words mean in this subchapter?

These words have the following meaning in this subchapter:

(1) (No change.)

(2) De-escalation--See §749.43(15) [§749.43(14)] of this title (relating to What do certain words and terms mean in this chapter?).

(3) Emergency behavior intervention--See §749.43(19) [§749.43(18)] of this title.

(4) - (7) (No change.)

(8) PRN--See §749.43(49) [§749.43(46)] of this title.

(9) - (14) (No change.)

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

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SUBCHAPTER M. FOSTER HOMES:
SCREENINGS AND VERIFICATIONS
DIVISION 3. VERIFICATION OF FOSTER
HOMES

40 TAC §§749.2472, 749.2473, 749.2475, 749.2497

The new sections and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments implement HRC §§42.042, 42.0535, and 42.0536.

§749.2472. Are there any additional requirements to verify a foster home that is currently acting as a kinship home with the Child Protective Services (CPS) Division of the Department?

Yes, before you may verify a kinship home, you must obtain and review the kinship home assessment that was completed.

§749.2473. What must I do to verify a foster home that another child-placing agency has previously verified?

(a) When a home has previously been verified by another agency, you must conduct and complete ~~may~~:

~~[(+)] [Complete] an entirely new home screening and [home study to] comply with all of the requirements in §749.2471 of this title (relating to What must I do to verify a foster home?);~~ ~~or~~

~~[(2) Use the foster home screening and home study the previous child-placing agency conducted as a basis for meeting the requirement. You must update the information for every required section. You must describe any changes from the previous information. This verification will require you to:]~~

~~[(A) Conduct new interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);]~~

~~[(B) Conduct criminal history and central registry background checks for foster home members in accordance with Chapter 745, Subchapter F of this title (relating to Background Checks), with results documented in the foster home record. Homes transferring from one agency to another, with children in care, may be verified by the receiving agency prior to completion of background checks;]~~

~~[(C) Document current fire and health inspections;]~~

~~[(D) Ensure that all appropriate household members have had a tuberculosis screening as required in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);]~~

~~[(E) Ensure that any unresolved deficiencies have been addressed;]~~

~~[(F) Conduct a new evaluation of all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided; and]~~

~~[(G) Obtain review and approval of the screening, home study, and the recommended verification of the home by child placement management staff.]~~

(b) (No change.)

(c) If the foster home is transferring from another child-placing agency, with a child in care, you may verify the foster home prior to completion of the background check.

§749.2475. To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, post placement adoptive report, or home study?

(a) If background information is requested by a child-placing agency conducting a foster home screening, pre-adoptive home screening, or post placement adoptive report, [or home study,] then you must release [any] background information regarding the current or previous foster home. [you have acquired through a previous foster home screening, pre-adoptive home screening, post placement adoptive report, or home study.]

(b) (No change.)

(c) For the purposes of this section, background information includes:

(1) A foster home screening, pre-adoptive home screening, and post placement adoptive report and related documentation;

(2) Documentation of supervisory visits and evaluations for the past year;

(3) Any record of deficiencies and their resolutions for the past year, including information regarding pending investigations and unresolved deficiencies;

(4) The most current fire and health inspections;

(5) The transfer/closing summary for the foster home, as required by §749.2497 of this title (relating to Are transfer/closing summaries required for foster homes?);

(6) Copies of any current or previous annual development plans for the past two years, if applicable; and

(7) Copies of any current or previous corrective action plans for the past two years, if applicable.

(d) You must release the background information to the requesting agency by the 10th day after receiving the written request, including informing the requesting agency of any pending investigations and/or unresolved deficiencies. By the 10th day after the completion of any pending investigations and/or the resolution of any deficiencies, you must release to the requesting agency the:

(1) Outcome of any investigations and any resulting deficiencies cited; and

(2) Resolution of any deficiencies.

(e) You must release the background information to the requesting agency within 10 days after receiving the written request, including generally informing the requesting agency of any unresolved investigations and/or deficiencies. After the resolution of the investigations and/or deficiencies, you must release the remaining background

information to the requesting agency within 10 days after the resolution of the investigations and/or deficiencies.]

[(d) Background information is any information that must be obtained by §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?): In addition to the items noted in §749.2447(23), the background information for a transferring foster home must also include, if applicable:]

- [(1) An annual development plan;]
- [(2) Any corrective action plan(s); and]
- [(3) A description of any imposed or potential service limitation.]

§749.2497. Are transfer/closing summaries required for foster homes?

Yes, you must have either a transfer summary or closing summary for each foster home that transfers to another CPA or closes.

(1) A transfer summary must be completed by the 10th day after you receive a written request to transfer.

(2) A closing summary must be completed by the 20th day after the foster home is closed.

(3) A transfer and closing summary must include:

(A) A copy of the verification certificate;

(B) The foster home addresses and/or location for the past two years;

(C) The length of time the foster parents have been fostering with the CPA;

(D) For the children that were in care for the last two years, the:

(i) Number of children fostered;

(ii) Type of treatment services provided to each child; and

(iii) Reason for each child's discharge from care;

(E) A description of any limitations on verification that were in place for the foster home in caring for and working with children (such as gender, age, number of children, treatment services, special needs, or type of abuse or neglect experienced by the child), regardless of whether the limitation was requested by the foster parent or imposed by the CPA;

(F) For a closing summary, the reason the foster home is closing, including whether you required the foster home to close;

(G) For a transfer summary, whether there are any pending investigations and/or unresolved deficiencies;

(H) For a closing summary, whether there were any unresolved deficiencies that had not been corrected and what those deficiencies were;

(I) Whether there are any indicators of risk to children at the time of transfer/closing and what those indicators are;

(J) Whether there was an annual development plan in place at the time of transfer/closing; and

(K) Whether there was a corrective action plan in place at the time of transfer/closing.

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DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

40 TAC §§749.2550, 749.2551, 749.2566

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.2550. What does "children with primary medical needs requiring total care" mean when used in this Division?

"Children with primary medical needs requiring total care" means children receiving treatment services for primary medical needs who are completely or primarily dependent upon the foster parents for their activities of daily living, such as eating/feeding, bathing, grooming, dressing and ambulation.

§749.2551. What is the maximum number of children a foster family home may care for?

(a) A two-parent foster family home or one-parent foster family home with one additional full-time, live-in caregiver may care for up to six children, except as noted in the chart below:

Figure: 40 TAC §749.2551(a)

(b) A one-parent foster family home or two-parent foster family home with one foster parent absent for extended periods of time (such as military service or out-of-town job assignments) may care for up to six children, except as noted in the chart below:

Figure: 40 TAC §749.2551(b)

(c) The maximum number of children that a foster family home may care for includes any biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and any children for whom the family provides day care. All adults in care must also be counted in the capacity of the home as required by §749.2651(b) of this title (relating to May a foster home accept adults into the home for care?).

§749.2566. Are there restrictions on placing a child receiving treatment services for primary medical needs in a foster group home?

(a) You may only place a child receiving treatment services for primary medical needs in a foster group home if you determine that:

(1) The placement is necessary to maintain a sibling group of children, and a less restrictive setting cannot meet the needs of the sibling group; or

(2) The foster group home was verified by you to provide treatment services to children with primary medical needs before January 1, 2015.

(b) You must document the exception for placement into a foster group home in the child's 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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40 TAC §749.2551, §749.2561

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§749.2551. *What is the maximum number of children a foster family home may care for?*

§749.2561. *How many infants may a foster family home care for?*

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

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DIVISION 6. SUPERVISION

40 TAC §749.2593, §749.2594

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services

agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042.

§749.2593. *What responsibilities does a caregiver have when supervising a child?*

(a) - (c) (No change.)

(d) Children in care must participate in normal childhood activities, including unsupervised activities, as much as possible. Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions and consideration of normalcy for the child. Moreover, the child's service plan must specify the general parameters within which the foster parent is empowered to make decisions regarding childhood activities. The child may participate in unsupervised activities approved by the foster parent in accordance with subsection (e) of this section, and §749.2594 of this title (relating to Who should make the decision regarding a foster child's participation in childhood activities?). [A child may be away from the foster home and caregivers in order to participate in an unsupervised activity, as appropriate based on the caregiver's assessment of the child and the supervision instructions in the child's service plan. The caregiver's assessment of the child must include the factors outlined in subsection (b) of this section. The child's service plan must specify if unsupervised activities are allowed, and under what circumstances. If a child is participating in an unsupervised activity, the caregiver must:]

[(1) Know where the child will be;]

[(2) Give the child a specific time to return to the foster home or the caregiver's location;]

[(3) Give the child a way to contact the caregiver in an emergency; and]

[(4) Be available to respond if the child contacts the caregiver and needs immediate assistance.]

(e) Foster parents should use a "reasonable and prudent parent" standard to decide whether a child may participate in an unsupervised activity: [Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.]

(1) In making this decision a "reasonable and prudent parent" standard includes the assessment of the:

(A) Child's age;

(B) Child's abilities;

(C) Child's physical, mental, emotional, and social needs;

(D) Whether the activity is a normal childhood activity;

(E) Desires of the child;

(F) Surrounding circumstances, hazards, and risks of the activity;

(G) Other adults or children involved in the activity;

(H) Outside supervision of the activity, if available and appropriate; and

- (I) Supervision instructions in the child's service plan.
- (2) When a child participates in an unsupervised activity, the caregiver must:
 - (A) Know where the child is scheduled to be;
 - (B) Give the child a specific time to return to the foster home or the caregiver's location;
 - (C) Give the child a way to contact the caregiver in an emergency; and
 - (D) Be available to respond if the child contacts the caregiver and needs immediate assistance.

(f) Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

§749.2594. Who should make the decision regarding a foster child's participation in childhood activities?

(a) Except as otherwise provided in this section, the foster parents should make decisions regarding a foster child's participation in childhood activities, whether supervised or unsupervised. The decision should be made as any other reasonable and prudent parent would make the same decision for a child of similar chronological and developmental age with similar needs and abilities. Childhood activities include family activities, extracurricular activities, social activities in and out of school, and employment opportunities.

(b) For a child in DFPS conservatorship, if the child's managing conservator provides notice in advance that the child is prohibited from participating in a specific activity, the foster parents must follow the conservator's decision.

(c) For private placements, the foster parents must follow the parent's decision regarding childhood activities.

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DIVISION 7. RESPITE CHILD-CARE SERVICES

40 TAC §749.2625, §749.2635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2625. What information regarding the child must I share with the babysitter, overnight care provider, and respite care [child-care services] provider?

Before a babysitter, overnight care provider or respite care provider may provide care to a child, you must share the following information with the provider to [Tø] ensure continuity of care[; you must share the following information with the respite child-care services provider before placing the child in the home]:

- (1) Specific needs of a child, including:
 - (A) All psychological, psychiatric or medical treatment currently being provided;
 - (B) (No change.)
 - (C) Authorization for medical treatment; [and]
 - (D) Safety plans;
 - (E) Sleeping information;
 - (F) Discipline instructions;
 - (G) Any expectations that the foster parent or agency may have of the provider; and
 - (H) [~~(D)~~] Any other needs of a child that should be addressed by the [respite child-care services] provider;

(2) Non-routine events taking place in the life of the child, including any scheduled appointments such as family and sibling visits;

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

§749.2635. May I place a child for babysitting, overnight care, or respite care [child-care] services in a home that Licensing does not regulate?

Yes, you may place a child in a home that Licensing does not regulate for babysitting, overnight care, or respite care, if the provider:

(1) Is not subject to regulation by Licensing; and

(2) Meets the policy requirements your agency developed according to §749.353 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?). [You may place a child for respite child-care services in a home that meets the requirements of the short-term program exemption set forth in §745.117(2) of this title (relating to Which programs of limited duration are exempt from Licensing regulation?).]

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §749.2801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.042, 42.0448, and 42.0449.

§749.2801. When must I evaluate a foster home for compliance with Licensing rules?

(a) You must evaluate a foster home for compliance with the relevant Licensing rules affecting the need for the evaluation, whenever:

- (1) (No change.)
- (2) There is a major life change in the foster family; [ø]
- (3) A change occurs that affects the conditions of the verification; or [-]
- (4) You receive a family violence report from DFPS.

(b) (No change.)

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**SUBCHAPTER O. FOSTER HOMES:
HEALTH AND SAFETY REQUIREMENTS,
ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 1. HEALTH AND SAFETY**

40 TAC §749.2908

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.2908. How must a foster home practice disaster and emergency plans?

(a) A foster home must practice disaster and emergency plans each year by:

(1) Discussing the plans and procedures for handling a fire and weather emergency with the children in care;

(2) Conducting a fire drill, so children are able to safely exit the foster home within three minutes; and

(3) Conducting a severe weather drill.

(b) The foster home must document the discussions and the drills, including the date and time of each.

(c) For foster homes treating children with primary medical needs, a substitute (such as a large body pillow) should be used for each child with primary medical needs if the drill would endanger or overstimulate the child.

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**CHAPTER 749. MINIMUM STANDARDS FOR
CHILD-PLACING AGENCIES**

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §749.61; and new §§749.4001, 749.4003, 749.4005, 749.4007, 749.4051, 749.4053, 749.4055, 749.4101, 749.4103, 749.4151, 749.4153, 749.4155, 749.4157, 749.4251, 749.4253, 749.4255, 749.4257, 749.4259, 749.4261, 749.4263, 749.4265, and 749.4267 in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The new sections are proposed in new Subchapter V, Additional Requirements for Child-Placing Agencies that Provide Trafficking Victim Services. House Bill 2725 of the 83rd Regular Legislative Session amended Human Resources Code 42.042 to require the adoption of minimum standards for "general residential operations (GROs) that provide comprehensive residential" services to victims of trafficking. In developing these standards the Licensing Division (CCL) was to consider: (1) the special circumstances and needs of victims of trafficking; and (2) the role of the GRO in assisting and supporting victims of trafficking.

In the latter part of 2013, CCL convened a workgroup to provide input into the development of the minimum standards related to victims of trafficking. The members consisted of providers that were currently providing victim services, providers that had a potential interest in this area, advocacy groups, and other state agencies, including the Office of the Attorney General and the Department of Public Safety, victims program. The workgroup met four times in the latter part of 2013 and the early part of 2014 to discuss the possible content of the standards and to subsequently review draft standards that were developed. The work-

group and CCL also came to the conclusion that there should be minimum standards for victims of trafficking that applied to child-placing agencies (CPAs), as well as GROs.

The rule changes create a new treatment service type for trafficking victim services. This new subchapter will apply when CPAs provide trafficking victim services to a certain base number of children in their care. The additional requirements recommended include: (1) additional pre-service training and focused annual training for caregivers and employees regarding trafficking issues; (2) more enhanced policies, including security and confidentiality policies to protect trafficking victims and the foster parents; and (3) additional medical and mental health requirements to help the trafficking victims deal with the trauma they have experienced, including: (a) a medical screening within 72 hours; (b) a screening for infectious diseases within 72 hours; (c) an alcohol and substance abuse screening within 72 hours, and if appropriate, an assessment; (d) a behavioral health assessment within 30 days; and (e) individual therapy.

A summary of the changes follows:

The amendment to §749.61 adds a new treatment service for children determined to be a trafficking victim, and clarifies when that determination should be made. An additional amendment to §749.61 deletes "non-temporary" from the description of children with primary medical needs, which is needed for a separate DFPS rule initiative relating to children with primary medical needs, and which is being simultaneously proposed in this issue of the *Texas Register*.

New §749.4001 defines "trafficking victim services".

New §749.4003 clarifies that a CPA must comply with the additional rules in this subchapter when the CPA provides trafficking victim services to: (1) 30 or more children; or (2) more than 50% of the children in the CPA's care.

New §749.4005 clarifies that a CPA required to comply with the additional rules in this subchapter, must continue to meet the other rules in this chapter that apply to all CPAs, as well as the rules that apply to a CPA that provides treatment services to children with an emotional disorder, unless the rule has been replaced by a rule in 749.4007.

New §749.4007 provides an itemized list of rules in this subchapter replace another rule in this chapter.

New §749.4051 requires a CPA to develop additional child-care policies regarding: (1) activities to help a trafficking victim develop their skills, independence, and personal identity; and (2) preventing and discouraging a trafficking victim from running away.

New §749.4053 requires a CPA to develop safety and security policies regarding: (1) interior and exterior security; (2) foster parent protocols; and (3) communication safeguards for a trafficking victim.

New §749.4055 requires a CPA to develop confidentiality policies regarding: (1) the disclosure of victim information; (2) disclosing the location of the foster home; and (3) allowing or not allowing visitors at the foster home.

New §749.4101 describes the qualifications for a treatment director that provides or oversees treatment services for a trafficking victim.

New §749.4103 requires one hour of training for volunteers that work with trafficking victims. The components of the training must include confidentiality policies and the effects of trauma.

New §749.4151 describes the pre-service hourly training requirements for caregivers and employees. Compared to the rule in this chapter that this rule replaces, this rule requires an additional five hours of pre-service training for caregivers and employees regarding "complex trauma experienced by trafficking victims."

New §749.4153 establishes an exception to providing the five hours of pre-service training for caregivers and employees regarding "complex trauma experienced by trafficking victims," which is required in §749.4151. The exception applies when a caregiver or employee has previously had the pre-service training at another operation.

New §749.4155 describes annual training requirements for caregivers and employees, and mandates that of the current required hours of annual training for caregivers and employees, four hours of the training must be specific to trafficking victims.

New §749.4157 states that the four hours of annual training specific to trafficking victims, which is required in §749.4155, must include: (1) one hour in preventing compassion fatigue and secondary traumatic stress; and (2) three hours in areas appropriate to the needs of children in care, such as setting boundaries and avoiding a victim's triggers.

New §749.4251 describes additional medical requirements when admitting a child for trafficking victim services, including requiring a trafficking victim to be screened within 72 hours to determine if there is an immediate need for the following: (1) a medical examination; and (2) medical tests for pregnancy and infectious diseases (such as STDs and TB).

New §749.4253 requires a trafficking victim to be screened within 72 hours for alcohol and substance abuse, and provides an exception when the screening would not be required.

New §749.4255 requires a trafficking victim to have an alcohol and substance abuse assessment when an alcohol and substance abuse screening determines a trafficking victim may need treatment.

New §749.4257 requires a trafficking victim to have a behavioral health assessment within 30 days for the following: post-traumatic stress disorder, depression, and anxiety.

New §749.4259 requires individual therapy for trafficking victims, and describes who can provide therapy and what must be documented.

New §749.4261 establishes additional requirements for a preliminary service plan for a trafficking victim, including a description of the child's immediate: (1) safety needs; and (2) behavioral health and treatment care needs.

New §749.4263 establishes additional requirements for a trafficking victim's initial service plan, including: (1) plans to obtain alcohol and/or substance abuse treatment for a child that requires treatment; and (2) a description of the legal services required for the child and how the CPA will assist the child in meeting those needs.

New §749.4265 establishes the requirements for admitting a young adult into care, including the requirement that the young adult must be a trafficking victim.

New §749.4267 if a child or young adult has run away or been discharged from care and then returns to care, the young adult may only share a bedroom with a minor trafficking victim if the child or young adult has been re-assessed by the CPA.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the quality of care for victims of trafficking will be improved by strengthening minimum standards related to child-placing agencies (CPA) when trafficking victim services are provided to a base number of children.

There is an anticipated adverse impact on businesses, including small and micro businesses, when they are required to comply with these rule changes. CPAs will be impacted if they choose to provide trafficking victim services to a base number of children. Currently, there is one CPA providing these services. At this time it is estimated that this CPA currently meets the recommended rule changes. If other CPAs choose to provide trafficking victim services to a base number of children, then there will be a fiscal impact to their program. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than potential "unit costs" as explained below to a person who owns or has an economic stake in a GRO that chooses to provide trafficking victim services to a base number of children.

The DFPS 2013 Annual Report and Data Book states that there are 209 CPAs. Of the 209 CPAs, it is estimated that 163 provide foster care services (which can be foster care services only, or foster care and adoption services). The other estimated 46 CPAs that only provide adoption services will not be discussed in this fiscal impact analysis. The rule changes do not affect the adoption only CPAs, because they do not provide residential services.

Of the 163 CPAs that provide foster care services, 152 are private CPAs. There are also 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small, or micro business. However, the impact to CPS was discussed under the paragraph on impact to state government above.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using a combination of survey data, cost research conducted by staff, and assumptions regarding child-care practices. The survey process, as well as key assumptions and methodologies, are described in detail below, as these underlie the individual impact calculations for each rule, or set of rules, that are projected to have a fiscal impact on at least some CPAs.

In April of 2013 a Feedback Survey was conducted for CPAs. The purpose of the survey was to assess how many providers would be interested in providing victim trafficking services and to estimate certain costs if the rules were adopted. Licensing staff developed the survey questions related to the rules that had an anticipated fiscal impact. The survey was sent out to CPA e-mail addresses. The CPAs were asked to respond in two weeks, but any responses received within 30 days were included. The agency's name and a contact person were requested to validate

that the CPA was a licensed provider eligible to complete the survey and that no duplicate surveys were received.

The response rate for completed CPA surveys was 9.9%. There were 15 completed surveys from the 152 private CPAs that provide foster care services. There were an additional five surveys that were partially completed. Regarding a CPA's interest in providing trafficking victim services: (1) of the 15 completed surveys: (a) there were no CPAs that are currently providing trafficking victim services; (b) seven CPAs expressed interest in providing trafficking victim services; and (c) eight CPAs were not interested in providing trafficking victim services; and (2) of the five surveys that were partially completed, it did appear that these CPAs may have had some interest providing trafficking victim services, because they did not respond "no" to the relevant question and continued to fill out some of the survey.

For CPAs, the staff time required to comply with the standards will impact child placement staff, child placement management staff, and the child-placing agency administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

(1) Child Placement Staff - The 2013 average salary for FAD Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The FY 2013 average salary for a FAD Worker is \$41,415 per year or \$19.91 per hour.

(2) Child Placement Management Staff - The 2013 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. The FY 2013 average salary for a FAD Supervisor is \$48,238 per year or \$23.19 per hour.

(3) CPA Administrator - The 2013 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2013 average salary for a CPS Regional Director is \$70,393 per year or \$33.84 per hour.

Of the 152 private CPAs, the number of children that each operation cares for varies significantly. The capacity for some operations may be in the hundreds. Other operations have 50 to 100 children, while still others may have 25 or fewer children in their care. Given this variation, it is not possible to project the fiscal impact to each operation; however, it is possible to project an average "unit cost" for certain types of activities newly required by the amended rules.

As previously noted, at this time it is estimated that the one CPA currently providing trafficking victim services is already meeting the recommended rule changes, so there will be no adverse economic impact upon that operation. However, if other CPAs choose to begin providing trafficking victim services to a base number of children, then there will be a fiscal impact to elevate their program to meet these trafficking victim minimum standards.

Fiscal Impact for Proposed §§749.4051, 749.4053, and 749.4055:

These three sections require additional CPA policies relating to (1) child-care policies that help trafficking victims develop their skills, independence, and personal identity; and prevent and discourage trafficking victims from running away; (2) safety and security policies; and (3) confidentiality policies. It will be a one-time cost to develop these three policies. It is anticipated that the CPA Administrator and two child placement management staff will work together to revamp these policies. It is anticipated that a CPA Administrator and the two child placement management staff will spend an average of 30 to 40 hours each in the development of these three policies. Therefore, the total one-time cost for the development of these three policies will be between approximately \$2,406.60 and \$3,208.80. This cost was calculated at the low end of the range as follows: {30 hours X \$33.84 (CPA Administrator hourly costs) + 30 hours X \$23.19 (child placement management staff hourly costs) X 2 (child placement management staff)}; and at the high end of the range as follows: {40 hours X \$33.84 (CPA Administrator hourly costs) + 40 hours X \$23.19 (child placement management staff hourly costs) X 2 (child placement management staff)}.

Fiscal Impact for Proposed §749.4103: For volunteers who have contact with trafficking victims, this section requires one hour of training regarding confidentiality policies and how the effects of trauma impact trafficking victims. There are two costs associated with the one hour of training required for volunteers: (1) developing the curriculum to provide the training; and (2) hourly wages paid to an instructor to deliver the training. While there may be some minimal additional overhead costs to training volunteers, this was not considered for this fiscal impact analysis.

(1) The development of the curriculum for volunteers will be a one-time cost. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a child placement management staff, or a curriculum developer similarly paid, will spend an average of 40 hours to develop the one hour curriculum. Therefore, the total one-time cost for the development of the one hour curriculum will be approximately \$927.60. This cost was calculated as follows: {40 hours X \$23.19 (child placement management staff hourly costs)}.

(2) Licensing is assuming that the one hour training will be delivered by a child placement management staff. The cost will be \$23.19 for each time the training is delivered. This cost was calculated as follows: {1 hour X \$23.19 (child placement management staff hourly costs)}.

Fiscal Impact for Proposed §749.4151: This section requires an additional five hours of pre-service training regarding complex trauma experienced by trafficking victims. The training must be provided to caregivers and employees, including full-time professional service providers, child placement staff, child placement management staff, treatment directors, and CPA Administrators. There are three costs associated with the increase of pre-service training hours for CPA caregivers and employees: (1) developing the curriculum to provide the training; (2) hourly wages paid to an instructor to deliver the training, and (3) hourly wages paid to employees to attend the training. While there may be some additional overhead costs to training foster parents, this was not considered for this fiscal impact analysis.

(1) The development of the curriculum for complex trauma experienced by trafficking victims will be a one-time cost. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a child placement management staff, or a cur-

riculum developer similarly paid, will spend an average of 200 hours to develop the one hour curriculum. Therefore, the total one-time cost for the development of the five hour curriculum will be approximately \$4,638. This cost was calculated as follows: {200 hours X \$23.19 (child placement management staff hourly costs)}.

(2) Licensing is assuming that the five hour training will be delivered by a child placement management staff. The cost will be \$115.95 for each time the training is delivered. This cost was calculated as follows: {5 hours X \$23.19 (child placement management staff hourly costs)}.

(3) The employees in the training will vary, but Licensing is assuming that the training will most often be attended by child placement staff. The cost will be \$99.55 for each employee that attends the training. This cost was calculated as follows: {5 hours X \$19.91 (child placement staff hourly costs)}. When higher paid employees attend the training, then this cost will be somewhat higher.

Fiscal Impact for Proposed §749.4155 and §749.4157: Section 749.4155 requires that the currently mandated annual training for caregivers and employees of a CPA must now include four hours of annual training relating to trafficking victims. Section 749.4157 mandates that the four hours of annual training related to trafficking victims must include one hour in preventing compassion fatigue and secondary traumatic stress; and three hours in areas appropriate to the needs of the trafficking victims, including a list of what those needs may be. There is no increase in annual training hours; there is only the requirement that four hours of annual training address the newly specified topics described above. Since there is only a change in the content of the training, there is no fiscal impact regarding §749.4155. In addition, the CPA currently pays for or delivers the annual training. If the CPA currently pays for the outside annual training, then there are no additional costs for the CPA related to §749.4157 either. The only fiscal impact for §749.4157 is when a CPA must develop a new curriculum for these topics, because the CPA actually provides the annual training. The general industry standard is that it takes approximately 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a child placement management staff, or a curriculum developer similarly paid, will spend an average of 160 hours to develop the curriculum. Therefore, the total one-time cost for the development of the four hour curriculum will be approximately \$3,710.40. This cost was calculated as follows: {160 hours X \$23.19 (child placement management staff hourly costs)}.

Fiscal Impact for Proposed §749.4251: This section requires a trafficking victim to be screened within 72 hours of admission to determine the immediate need for (1) a medical examination by a health-care professional, and (2) medical tests for pregnancy and infectious diseases (e.g. Hepatitis, HIV, STDs, and TB). This section doesn't require the screening when one has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be screened for all medical services.

(1) Licensing is assuming that there are minimal or no costs associated with a screening to determine if an immediate medical exam is needed. Minimum standard §749.1151(c) of this title (relating to What are the medical requirements when I admit a child into care?) already requires a child to be examined immediately by a health-care professional if a child admitted shows symptoms of abuse or illness. While medical screenings will have more of a focus for trafficking victims, it is assumed that minimal training

will be required for staff to make this determination that is already made in many instances.

(2) Regarding a screening to determine the immediate need for medical tests for pregnancy and infectious diseases, there were seven CPAs that completed the April, 2013 Feedback Survey and answered the questions regarding these two issues.

(A) The results of the survey regarding a screening for pregnancy indicated a low cost for each child of \$7, a high cost of \$250, an average cost of \$61, and a median cost of \$20. Licensing estimates the costs for a pregnancy screening should be minimal. The costs for over-the-counter pregnancy tests are \$5 to \$15.

(B) The results of the survey regarding a screening for infectious diseases indicated a low cost for each child of \$0, a high cost of \$250, an average cost of \$89.29, and a median cost of \$70.

Fiscal Impact for Proposed §749.4253: This section requires a trafficking victim to be screened within 72 hours of admission for alcohol and substance abuse. This section doesn't require the screening when it has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be screened for alcohol and substance abuse. There were seven CPAs that completed the April, 2013 Feedback Survey and answered this question regarding an alcohol and substance abuse screening. The results of the survey regarding a screening for alcohol and substance abuse indicated a low cost for each child of \$10, a high cost of \$150, an average cost of \$75.91, and a median cost of \$75. Licensing assumes these costs are related to buying a screening tool, training staff on the screening tool, and staff time to administer and evaluate the screening tool.

Fiscal Impact for Proposed §749.4255: This section requires a trafficking victim to be scheduled for a professional alcohol and substance abuse assessment if the alcohol and substance abuse screening indicated the trafficking victim may need alcohol or substance abuse treatment. There were seven CPAs that completed the April, 2013 Feedback Survey and answered this question regarding an alcohol and substance abuse assessment. The results of the survey regarding an alcohol and substance abuse assessment indicated a low cost for each child of \$0, a high cost of \$350, an average cost of \$107.86, and a median cost of \$75. The seven CPAs also stated in the survey that virtually all of the children in their care typically have Medicaid. We assume that the cost information provided relates to those costs that are not covered by either private insurance or Medicaid.

Fiscal Impact for Proposed §749.4257: This section requires a trafficking victim to have behavioral health assessments within 30 days for post-traumatic stress disorder (PTSD), depression, and anxiety. This section doesn't require the assessments when one has been done recently, but Licensing is assuming the large majority of trafficking victims will need to be assessed for PTSD, depression, and anxiety. There were seven CPAs that completed the April, 2013 Feedback Survey and answered the questions regarding the behavioral health assessments regarding (1) PTSD; (2) depression; and (3) anxiety. The results of the survey regarding a:

(1) PTSD assessment indicated a low cost for each child of \$20, a high cost of \$350, an average cost of \$156.43, and a median cost of \$75.

(2) Depression assessment indicated a low cost for each child of \$20, a high cost of \$350, an average cost of \$129.29, and a median cost of \$75.

(3) Anxiety assessment indicated a low cost for each child of \$20, a high cost of \$350, an average cost of \$127.14, and a median cost of \$75.

Licensing assumes these costs are related to buying a screening tool, training staff on the screening tool, and staff time to administer and evaluate the screening tool.

Fiscal Impact for Proposed §749.4259: This section requires a trafficking victim to be provided individual therapy. There were seven CPAs that completed the April, 2013 Feedback Survey and answered this question regarding individual therapy. The results of the survey regarding individual therapy indicated a low cost for each child of \$0, a high cost of \$1,850 (a second high cost of \$120), an average cost of \$74.17 (the high cost of \$1,850 was not used in this average, because this amount appeared to be an anomaly), and a median cost of \$80. The seven CPAs also stated in the survey that virtually all of the children in their care typically have Medicaid. While trafficking victims may be a different population from some of the children currently being cared for by CPAs, many (if not all) of these victims will also have Medicaid. Licensing is assuming that Medicaid will pay for 100% of the cost for individual therapy. The only costs should relate to a child that is not Medicaid covered.

Regulatory Flexibility Analysis: As previously noted, these rule amendments and new rules apply to the approximately 152 private CPAs that provide foster care services. Of those, only 18 potentially fall within the statutory definition of a small or micro-business, because only 18 of the CPAs are for-profit business. Of these 18 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small businesses was addressed for CPAs in the foregoing section of the preamble. However, as stated earlier, the impact only relates to those CPAs that choose to provide trafficking victim services to a base number of children. If a CPA chooses to provide these services, then the impact that applied to the CPAs that provide foster care services is the same for those CPAs identified as a small or micro-business. As noted above, with the widely varying number of children cared for by CPAs, the fiscal impact of these rules to particular CPAs will vary, with the total dollar impact likely to be greater for CPAs that serve a larger number of children and less for CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes was to ensure the health and safety of trafficking victims and to improve their quality of care - regardless of the size of the CPA.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-506, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 2. SERVICES

40 TAC §749.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.61. What types of services does Licensing regulate?

We regulate the following types of services:

- (1) (No change.)
(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children [with]:
(A) With Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) - (v) (No change.)

(B) With Intellectual Disabilities [Mental Retardation], who have an intellectual functioning of 70 or below and are characterized by prominent, significant deficits and pervasive impairment in one or more of the following areas:

(i) - (v) (No change.)

(C) With Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder) characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

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

(iv) Responding appropriately to an emergency; or [and]

(v) Multiple physical disabilities including sensory impairments; [or]

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of [non-temporary,] life-threatening conditions, including [the]:

(i) The inability [Inability] to maintain an open air-way without assistance. This does not include the use of inhalers for asthma;

(ii) The inability [Inability] to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use [Use] of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) (No change.)

(E) Determined to be a trafficking victim, including a child:

(i) Determined to be a trafficking victim as the result of a criminal prosecution or who is currently alleged to be a trafficking victim in a pending criminal investigation or prosecution;

(ii) Identified by the parent or agency that placed the child with the child-placing agency as a trafficking victim or at a significant risk of becoming a trafficking victim; or

(iii) Determined by the child-placing agency to be a trafficking victim or at a significant risk of becoming a trafficking victim based on reasonably reliable criteria, including one or more of the following:

(I) The child's own disclosure as a trafficking victim, or factors that place the child at a significant risk of becoming a trafficking victim;

(II) The assessment of a counselor or other professional; or

(III) Evidence that the child was recruited, harbored, transported, provided to another person, or obtained for the purpose of forced labor or commercial sexual activity; and

(3) (No change.)

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

Filed with the Office of the Secretary of State on July 30, 2014.

TRD-201403451

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: December 1, 2014

For further information, please call: (512) 438-3437



SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 1. DEFINITION AND SCOPE

40 TAC §§749.4001, 749.4003, 749.4005, 749.4007

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.4001. What does "trafficking victim services" mean when used in this subchapter?

In this subchapter, trafficking victim services means a specialized type of child-care services designed to treat and support trafficking victims, in addition to basic child care services.

§749.4003. When am I required to meet the additional rules of this subchapter?

You must meet the additional rules of this subchapter if you provide trafficking victim services to:

- (1) 30 or more children; or
- (2) More than 50% of the children in your care.

§749.4005. In addition to the rules in this subchapter, what other rules in this chapter apply to a child-placing agency?

A child-placing agency that is required to comply with this subchapter must comply with all other rules in this chapter that apply to all child-placing agencies, as well as the rules that apply to a child-placing agency that provides treatment services to children with an emotional disorder, unless any such rule is replaced by a rule in this subchapter, as noted in §749.4007 of this title (relating to What rules in this subchapter replace other rules in this chapter?).

§749.4007. What rules in this subchapter replace other rules in this chapter?

A child-placing agency that is required to comply with the rules in this subchapter is not required to comply with other rules in this chapter if the rule has been replaced, as specified in the following chart:

Figure: 40 TAC §749.4007

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

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Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: December 1, 2014

For further information, please call: (512) 438-3437



DIVISION 2. POLICIES AND PROCEDURES

40 TAC §§749.4051, 749.4053, 749.4055

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.4051. What additional child-care policies must I develop?

You must develop written policies that address how a foster home will:

- (1) Provide a variety of engaging activities to help trafficking victims develop their skills and independence and gain a sense of personal identity; and

(2) Prevent and discourage trafficking victims from running away from the foster home.

§749.4053. What safety and security policies must I develop?

You must develop written policies that address:

(1) The measures you will implement to ensure the safety and security of trafficking victims, caregivers, and employees, including measures that address both interior and exterior security while promoting a comfortable and nurturing environment;

(2) Foster parent protocols and procedures for ensuring a safe environment, including how to handle visitors not allowed at the foster home; and

(3) Appropriate safeguards with respect to a trafficking victim's access to forms of communication, including telephones, cell phones, computer, internet, mail, and visitors, which may pose a risk of further victimization of the child.

§749.4055. What confidentiality policies must I develop?

You must develop written policies that address confidentiality, including policies that:

(1) Restrict the disclosure of information, both written and oral, that would identify a child as a trafficking victim, or describe the nature of the victim's trafficking history, other than as needed to serve the victim or comply with other laws;

(2) Specify to whom and under what circumstances a caregiver, employee, or volunteer may disclose the location of a foster home; and

(3) Specify the circumstances under which a visitor may or may not be allowed at the foster home.

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

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Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Proposed date of adoption: December 1, 2014

For further information, please call: (512) 438-3437



DIVISION 3. PERSONNEL

40 TAC §749.4101, §749.4103

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.4101. What qualifications must a treatment director have?

A treatment director that provides or oversees treatment services for trafficking victims must:

- (1) Be a psychiatrist or psychologist;
- (2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for trafficking victims or children with an emotional disorder, including one year in a residential setting; or
- (3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for trafficking victims or children with an emotional disorder, including one year in a residential setting.

§749.4103. Are there additional training requirements for volunteers who have contact with children receiving trafficking victim services?

Each volunteer whose responsibilities include working with trafficking victims must have one hour of training prior to working with the children. The training must include the following components that explain:

- (1) The child-placing agency's confidentiality policies; and
- (2) How the effects of trauma impact working with trafficking victims.

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

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Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



DIVISION 4. TRAINING

40 TAC §§749.4151, 749.4153, 749.4155, 749.4157

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.4151. What are the pre-service hourly training requirements for caregivers and employees?

(a) Caregivers and certain employees must complete the following training hours before the noted time frame:
Figure: 40 TAC §749.4151(a)

(b) You must document the completion of each training requirement in the appropriate personnel record.

§749.4153. Must I provide pre-service training to a caregiver or an employee who was previously a caregiver or employee for another operation?

(a) A child-placing agency does not have to provide additional general pre-service training or pre-service training regarding emergency behavior intervention to any caregiver or employee who is exempt from this training by §749.867 of this title (Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a child-placing agency?). In addition, a caregiver or employee (child-placing agency administrator, treatment director, child placement management staff, child placement staff, or full-time professional service provider) does not have to complete the five hours of pre-service training regarding complex trauma experienced by trafficking victims if the caregiver or employee:

(1) During the last 12 months:

(A) Worked in a general residential operation that provides trafficking victim services to 25 or more children, or to 30% or more of the operation's children in care; or

(B) Was a caregiver or employee for or a child-placing agency that provides trafficking victim services to 30 or more children, or 50% or more of the CPA's children in care; and

(2) Has documentation that the caregiver or employee has previously received the five hours of pre-service training.

(b) You must document the exemption factors in the appropriate personnel record.

§749.4155. What are the annual training requirements for caregivers and employees?

Caregivers and certain employees must complete the following training hours:

Figure: 40 TAC §749.4155

§749.4157. What areas or topics must the four hours of training regarding trafficking victims include?

The four hours of annual training must include:

(1) One hour of training in preventing compassion fatigue and secondary traumatic stress; and

(2) Three hours of training in areas appropriate to the needs of children for whom the caregiver will be providing care, which may include:

(A) Typology of trafficking victims;

(B) Manifestations of trauma and practice in trauma informed care;

(C) How trafficking victims are manipulated and controlled;

(D) Making informed decisions and setting boundaries for trafficking victims;

(E) Understanding and avoiding the triggers of trafficking victims;

(F) Creating and maintaining nurturing environments for trafficking victims; and

(G) Identifying and responding to internal safety and security risks (e.g. high flight risk, potential self-harm, harm to others, and internal recruitment).

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

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DIVISION 5. ADMISSION AND SERVICE PLANNING

40 TAC §§749.4251, 749.4253, 749.4255, 749.4257, 749.4259, 749.4261, 749.4263, 749.4265, 749.4267

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.4251. Are there additional medical requirements when I admit a child for trafficking victim services?

In addition to meeting the requirements under §749.1151 of this title (relating to What are the medical requirements when I admit a child into care?):

(1) You must ensure that a child receiving trafficking victim services is screened within 72 hours of admission to determine whether there is an immediate need for any of the following types of medical services:

(A) A medical examination by a health-care professional; and

(B) Medical tests for pregnancy and the following infectious diseases:

(i) Hepatitis B;

(ii) Hepatitis C;

(iii) HIV;

(iv) Sexually transmitted diseases (STDs); and

(v) Tuberculosis.

(2) Each individual screening is not required if:

(A) The child was previously placed in a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department;

(B) There was a previous screening completed within the last 12 months;

(C) You have documentation of the outcome of the screening that was completed;

(D) The child did not run away from the operation or get discharged from the program since the previous screening; and

(E) There is no clear indication that the child has been injured, victimized, or re-victimized since the previous screening.

(3) If the results of the required screening indicate that there is a need for further testing or medical treatment, you must promptly obtain the medical testing or medical treatment.

§749.4253. Must a child I admit for trafficking victim services have an alcohol and substance abuse screening?

Yes, you must ensure that a child receiving trafficking victim services is screened for alcohol and substance abuse within 72 hours of admission.

The screening is not required if:

(1) You have documentation of:

(A) A child's alcohol and substance abuse screening that was conducted within the previous 12 months during the child's placement at a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department; or

(B) A professional assessment that was conducted within the previous 12 months that determined whether alcohol and substance abuse services were needed for the child; and

(2) There is no clear indication that the child has developed an alcohol or substance abuse dependency since the date of the previous screening or assessment.

§749.4255. What must I do if an alcohol and substance abuse screening determines that a child receiving trafficking victim services may need alcohol or substance abuse treatment?

If an alcohol and substance abuse screening determines a child receiving trafficking victim services may need alcohol or substance abuse treatment, you must:

(1) Coordinate and schedule the child for an alcohol and substance abuse professional assessment;

(2) Ensure the professional recommendations are carried out; and

(3) File documentation of the professional assessment, recommendations, and follow-up in the child's record.

§749.4257. What behavioral health assessments are required when I admit a child for trafficking victim services?

(a) Within 30 days of admission, you must ensure that a child receiving trafficking victim services is assessed for the following:

(1) Post-Traumatic Stress Disorder (PTSD);

(2) Depression; and

(3) Anxiety.

(b) The results of all assessments must be documented in the child's record.

(c) Each individual behavioral health assessment is not required if:

(1) The child was previously placed at a residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department;

(2) There was a previous assessment completed within the last 12 months;

(3) You have documentation of the outcome of the child's assessment; and

(4) There is no clear indication that the child has developed one of these disorders since the previous assessment.

§749.4259. What mental health services are required for a child receiving trafficking victim services?

(a) A specialized professional service provider must:

(1) Provide individual therapy to each child receiving trafficking victim services; and

(2) Assess the frequency and duration of the therapy.

(b) You must document the assessment in the child's record.

(c) If a child refuses therapy, you must document this refusal in the child's record.

(d) For purposes of this rule, a specialized professional service provider means:

(1) A psychiatrist licensed by the Texas State Board of Medical Examiners;

(2) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(3) A master's level social worker or higher licensed by the Texas State Board of Examiners of Professional Counselors; or

(4) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

§749.4261. Are there additional requirements for a preliminary service plan when I admit a child for trafficking victim services?

In addition to the requirements listed in §749.1301 of this title (relating to What are the requirements for a preliminary service plan?), the preliminary service plan for a child receiving trafficking victim services must include a description of the child's immediate:

(1) Safety needs; and

(2) Behavioral health and treatment care needs.

§749.4263. What additional items must be included in a child's initial service plan?

(a) In addition to the requirements and items noted in §749.1309 of this title (relating to What must a child's initial service plan include?), the initial service plan for a child receiving trafficking victim services must include:

(1) The plans to obtain alcohol treatment, substance abuse treatment, or both, for children who require it; and

(2) A description of any legal services required for the child and how you will assist the child in meeting those needs.

(b) You must document all professional consultations, examinations, recommendations, and treatment in the child's record.

§749.4265. May I admit a young adult into care?

(a) You may admit a young adult into your transitional living program;

(b) For other programs and services for trafficking victims, you may admit a young adult into your care if the young adult is determined to be a trafficking victim as stated in §749.61(2)(E) of this title (relating to What types of services does Licensing regulate?) and:

(1) Is placed at your child-placing agency directly after being discharged from another residential child-care operation regulated by DFPS or a facility operated by the Texas Juvenile Justice Department; or

(2) Is placed at your child-placing agency within 12 months after being discharged from another residential child-care operation

regulated by DFPS or a facility operated by the Texas Juvenile Justice Department.

(c) A young adult may remain in your care until the young adult's 23rd birthday.

§749.4267. May a young adult in care share a bedroom with a child in care receiving trafficking victim services?

(a) In addition to the requirements listed in §749.3025 of this title (relating to May an adult in care share a bedroom with a minor?), you must re-assess the behaviors, maturity level, and relationships of each resident to determine whether there are risks to either the minor or adult in care anytime a child or young adult:

(1) Runs away from the foster home and returns to care; or

(2) Is discharged from your program and returns to care.

(b) The re-assessment must be documented and dated in the child's 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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Cynthia O'Keeffe

General Counsel

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For further information, please call: (512) 438-3437



CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 4. FOSTER HOME POLICIES

40 TAC §750.161, §750.169

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §750.161 and §750.169 in Chapter 750, Minimum Standards for Independent Foster Homes. The purpose of the amendments is to improve the safety of children in foster care, including children receiving treatment services for primary medical needs.

Last year, at the direction of the DFPS Commissioner, DFPS conducted six statewide forums where provider groups could share ideas about best practices around the provision of safe, nurturing care to children who have suffered abuse and neglect. The forums discussed several different areas, including changes to Child Protective Services (CPS) policies and procedures, training, contract changes, and minimum standard changes. Regarding the minimum standard changes, some of the discussion in the forums related specifically to the need for more focus on "trauma informed care", and the quality of care for children with primary medical needs (PMN), including increasing face-to-face visits for children with PMN, limiting the number of children with PMN in a foster home, and enhancing options for respite care for foster homes providing treatment services to children with PMN.

In April and May of 2014, the Licensing Division convened a committee to further look into these issues. The committee was made up of approximately seven child-placing agency representatives from diverse geographic regions of the state, a CPS representative, three Licensing Division representatives, a foster parent, and a foster parent advocacy association representative. The committee representatives all had a particular interest in the issue of children receiving treatment services for PMN. Partially in response to the information obtained during the six statewide forums noted above, the Committee met twice to discuss possible changes to the minimum standards. The Committee also made recommendations for additional changes to the standards. The current recommendations to this chapter strengthen child safety by integrating trauma informed care into the independent foster group home discipline policies and procedures, and clarifying that respite policy must also address babysitters and overnight care providers.

The amendment to §750.161 integrates trauma informed care by requiring independent foster homes to incorporate it into their discipline policies and procedures.

The amendment to §750.169 strengthens child safety by clarifying that the policies developed by independent foster homes for respite care providers must also address babysitters and overnight care providers, and the policies must apply to both in-home care and out-of-home care.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the safety of children in foster care and the quality of their care will be improved by strengthening minimum standards related to children with primary medical needs, normalcy, and child safety, including integrating trauma informed care into the minimum standards. There is an anticipated adverse impact on businesses which must comply with these rule changes. Independent foster group homes will be impacted. There are no independent foster family homes currently operating, so those homes will not be discussed in the fiscal impact analysis. There is no anticipated economic cost to persons who are required to comply with the proposed sections - other than those persons who have a financial interest in an independent foster group home.

Section 750.161 and §750.169 require changes to an independent foster group home's (IFGH) policies relating to trauma informed care and discipline; and temporary care provided by a babysitter, overnight care provider, and respite care provider. Policy changes are routine, and these policies should be fairly straightforward. In addition, it will be a one-time cost, consisting of the staff time needed to develop the policy changes. It is anticipated that the Executive Director will work with two staff members to revamp these policies. It is anticipated that the Executive Director and the two staff members will spend an average of one to three hours each in the development of these two policies. For purposes of this fiscal impact analysis, it is assumed that an average Executive Director of an IFGH earns the same as a Child Protective Services (CPS) Regional Director, a position that functions in a similar capacity to that of an IFGH Executive Director. The fiscal year (FY) 2013 average salary for

a CPS Regional Director is \$70,393 per year or \$33.84 per hour. To estimate the costs of the two additional IFGH staff members, this analysis uses the 2013 average salary for a Child Protective Services Foster and Adoptive Home Development (FAD) Supervisor, which performs functions similar to those assumed to be performed by high-level staff of an IFGH. The FY 2013 average salary for a FAD Supervisor is \$48,238 per year or \$23.19 per hour. Therefore, the one-time cost for the development of these two policies will be between approximately \$80.22 and \$240.66.

The cost estimate in the forgoing paragraph was calculated at the low end of the range as follows: {1 hour X \$33.84 (the average hourly wage for the IFGH Executive Director) + 1 hour X \$23.19 (the average hourly wage for an IFGH staff member) X 2 (IFGH staff members)}. The cost estimate in the forgoing paragraph was calculated at the high end of the range as follows: {3 hours X \$33.84 (the average hourly wage for the IFGH Executive Director) + 3 hours X \$ 23.19 (the average hourly wage for an IFGH staff member) X 2 (IFGH staff members)}.

Of the two independent foster group homes operating at this time, neither meet the definition of a small or micro business because neither are for-profit businesses.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-505, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§750.161. What policies must I develop on the discipline of children in foster care?

You must develop policies that guide caregivers in methods used for discipline of children in foster care. Your discipline policies must integrate trauma informed care into the care, treatment, and management of each child, and include:

(1) - (3) (No change.)

§750.169. What policies must I develop for babysitters, overnight care providers, and respite care providers [child-care in my foster home]?

For both in-home and out-of-home care, you [You] must develop policies specifically for babysitters, overnight care providers, and respite care providers that [child-care which] include:

- (1) Minimum age for each type of provider [care providers];
- (2) Minimum amount and type of prior child-care experience that each type of [a] provider must have;
- (3) Amount and type of training each type of [a] provider must have;
- (4) Reference and background information that you must obtain before using each type of [the] provider;
 - {(5) Amount of time a provider can care for children;}
 - (5) [(6)] Number of children that each type of [a] provider can care for;
 - (6) [(7)] Information that you must share with a provider, including information about the children in care and emergency contact information;
 - (7) [(8)] Specific care instructions that you must share with a provider for children with treatment needs;
 - (8) [(9)] A method for contact between you and the provider during the time of the provider's care; and
 - (9) [(10)] A requirement that documentation of the provider restrictions and arrangements will be in your records.

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 29, 2014.

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Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 26. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Department of Transportation (department) proposes amendments to §26.2 and new §26.36, concerning Regional Mobility Authorities.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Senate Bill 1489, 83rd Legislature, Regular Session, 2013, expanded the definition of a transportation project that a regional mobility authority (RMA) is authorized to acquire, plan, design, construct, maintain, repair, or operate, and authorized an RMA to enter into an agreement under which the RMA may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity in this state.

Under Transportation Code, §370.033(f), except as for a transportation project described in Transportation Code, §370.033(f)(1) and (2), the department must approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity. The amendments and new section implement the changes in the definition of transportation project, and prescribe the procedures by which the commission will consider approval of a transportation project.

The amendments to §26.2 revise the definition of a transportation project an RMA is authorized to acquire, plan, design, construct, maintain, repair, or operate.

In order to ensure the commission has the information necessary to make an informed decision on whether to approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity, new §26.36 requires an RMA to submit a request to the department's executive director.

The request must include an overview of the transportation project for which the request is made, including total costs and a description of the work to be performed by the RMA, a description of the need for the project and the benefits anticipated to result from completion of the project, a proposed project funding plan, anticipated department participation in the project, written approval of the project by the board of the RMA and the governing body of the governmental entity, a description of local public support for the project and any local public opposition, a preliminary project development and implementation schedule, a description of the RMA's experience in developing comparable transportation projects, information concerning how the project will be consistent with applicable transportation plans, a preliminary identification of known environmental issues, and a binding commitment to fully consider the environmental consequences of the proposed project and comply with applicable environmental laws and requirements.

New §26.36 provides that the commission may approve a request if the RMA commits to comply with all applicable federal, state, and, if applicable, department requirements. In determining whether to approve a request, the commission will consider the ability of the RMA to complete the work to be performed by the RMA, the need for the project and whether the project is ready for development, the anticipated benefit of the project, and evidence of local support.

New §26.36 provides that the commission may approve a request if it finds that the project will be consistent with applicable statewide and metropolitan transportation plans, the RMA's participation in the project will facilitate the ability of the governmental entity to complete the project and achieve the benefits anticipated to be derived from the project, the project will neither duplicate nor conflict with the operations of the department, the project is supported by the RMA, the governmental entity, the metropolitan planning organization (MPO) with jurisdiction over the project, and each other entity affected by the project, and the project is in the best interest of the region.

The information submitted with a request, and the criteria considered by the commission in determining whether to approve a request, and the findings that must be made by the commission in approving a request, are intended to enable the commission to conclude that the transportation project is a needed project, and will be completed, and the benefits anticipated from project completion will be achieved, in a timely manner.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

James Koch, P.E., Director of Transportation Planning and Programming, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Koch has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to facilitate the ability of governmental entities to complete needed transportation projects and achieve the benefits anticipated to be derived from the projects. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on August 26, 2014, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Office of General Counsel, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630, at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §26.2 and new §26.36 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "RMA Projects." The

deadline for receipt of comments is 5:00 p.m. on September 15, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §26.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which requires the Texas Transportation Commission to adopt rules that govern commission approvals required by Transportation Code, Chapter 370.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370.

§26.2. *Definitions.*

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

- (1) AASHTO--The American Association of State Highway and Transportation Officials.
- (2) Board--The board of directors of a regional mobility authority.
- (3) Commission--The Texas Transportation Commission.
- (4) County--Includes the cities of El Paso, Laredo, Brownsville, McAllen, and Port Aransas.
- (5) Director--A director of a board.
- (6) Department--The Texas Department of Transportation.
- (7) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a transportation project, including, but not limited to, sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.
- (8) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.
- (9) Fiscal year--An accounting period of 12 months that is consistent, to the extent feasible, with the fiscal year of an RMA's member counties.
- (10) Governmental entity--A municipality, county, the department, or other public entity authorized to construct, maintain, and operate a transportation project within the region of a regional mobility authority.
- (11) Metropolitan planning organization--An organization designated to carry out the transportation planning process in prescribed urbanized areas as required by 23 U.S.C. §134.
- (12) Nonattainment area--An area designated by the U.S. Environmental Protection Agency as not meeting the air quality standards outlined in the Clean Air Act.
- (13) Petitioner--The county or counties petitioning for the creation of a regional mobility authority.

(14) Public utility facility--Means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(15) RMA--A regional mobility authority.

(16) Revenue--Fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.

(17) State Implementation Plan--The plan prepared by the Texas Commission on Environmental Quality as required by 42 USC §7410 to attain and maintain air quality standards.

(18) Surplus revenue--Revenue that exceeds:

(A) the regional mobility authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the regional mobility authority.

(19) Transportation project--Means:

(A) a turnpike project;

(B) a system designated under Transportation Code, §370.034;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(E) a bridge;

(F) [~~(F)~~] a ferry;

(G) [~~(F)~~] an airport, other than an airport that on September 1, 2005 was served by one or more air carriers engaged in

scheduled interstate transportation, as those terms were defined by 14 C.F.R. §1.1 on that date;

(H) [~~(G)~~] a pedestrian or bicycle facility;

(I) [~~(H)~~] an intermodal hub;

(J) [~~(I)~~] an automated conveyor belt for the movement of freight;

(K) [~~(J)~~] a border crossing inspection station, including an inspection station located at or near an international border crossing or a border crossing from another state of the United States that is not more than 50 miles from an international border;

(L) [~~(K)~~] an air quality improvement initiative;

(M) [~~(L)~~] a public utility facility;

(N) [~~(M)~~] a transit system; ~~and~~

(O) a parking area, structure, or facility, or a collection device for parking fees;

(P) [~~(N)~~] if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the RMA, including an early action compact;[-]

(Q) improvements in a transportation reinvestment zone designated under Transportation Code, Chapter 222, Subchapter E; and

(R) port security, transportation, or facility projects eligible for funding under Transportation Code, §55.002.

(20) Turnpike project--A highway of any number of lanes, with or without grade separations, owned or operated by an RMA under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, or ramp;

(C) an administration, storage, or other building the RMA considers necessary for the operation of a turnpike project;

(D) a property right, easement, or interest the RMA acquires to construct or operate the turnpike project; and

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the RMA considers necessary, useful, or beneficial for the operation of a turnpike project.

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

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Joanne Wright

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



SUBCHAPTER D. APPROVAL OF A TRANSPORTATION PROJECT

43 TAC §26.36

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which requires the Texas Transportation Commission to adopt rules that govern commission approvals required by Transportation Code, Chapter 370.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370.

§26.36. Projects of Another Governmental Entity.

(a) Purpose. Except as for a transportation project described in Transportation Code, §370.033(f)(1) or (2), the department must approve an RMA's acquisition, planning, design, construction, maintenance, repair, or operation of a transportation project on behalf of another governmental entity. Feasibility analysis, including preliminary design, is not subject to the approval requirements of this section. This section prescribes the procedures by which the commission will consider approval.

(b) Request. An RMA seeking commission approval under this section must submit a request to the executive director. The request must include:

(1) an overview of the transportation project for which the request is being made, including a description of the project, the total estimated cost of the project, and a description of the work to be performed by the RMA and by the governmental entity;

(2) a description of the need for the project and the benefits anticipated to result from completion of the project, including any anticipated:

(A) impacts on the economic development potential in the area;

(B) reductions in congestion;

(C) improvements in efficiency on the region's transportation system;

(D) enhancements to safety; and

(E) improvements to air quality in the region;

(3) a proposed project funding plan that includes amounts proposed for each of the project cost categories, including design, development, financing, construction, maintenance, and operation;

(4) department contributions and participation anticipated to be requested for the project;

(5) official written approval of the project by the board of the RMA and the governing body of the governmental entity with jurisdiction over the project;

(6) a description of and any documentation evidencing local public support for the project and any local public opposition;

(7) a preliminary project development and implementation schedule, including an estimated date when the project will be completed;

(8) a description of the RMA's experience in developing transportation projects comparable to the project for which the request is being made;

(9) if applicable, given the nature of the project, information explaining how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization with jurisdiction over the project;

(10) a preliminary identification of any known environmental, social, economic, or cultural resource issues, such as hazardous material sites, impacts on wetlands and other water resources, endangered species, parks, neighborhoods, businesses, historic buildings or bridges, and archeological sites;

(11) a binding commitment that the environmental consequences of the proposed project will be fully considered in accordance with, and that the proposed project will comply with, all applicable local, state, and federal environmental laws, regulations, and requirements; and

(12) a binding commitment to implement all EPIC.

(c) Commission approval.

(1) Compliance with applicable requirements. The commission may approve a request submitted under this section if the RMA commits to the department and in the agreement with the governmental entity that the RMA will comply with all applicable federal, state, and, if applicable, department requirements.

(2) Considerations. In determining whether to approve a request submitted under this section, the commission will consider:

(A) the ability of the RMA to award, manage, and complete the work to be performed by the RMA for the project;

(B) the need for the project and whether the project is ready for development;

(C) the anticipated benefit of the project to the governmental entity and the region; and

(D) evidence of local support in the area in which the project is located.

(3) Findings. The commission may approve a request submitted under this section if it finds that:

(A) if applicable, given the nature of the project, the project is consistent with the appropriate policies, strategies, and actions of the statewide transportation plan and, if appropriate, with the regional transportation plan developed by the metropolitan planning organization with jurisdiction over the project;

(B) the RMA's participation in the project will facilitate the ability of the governmental entity to construct the project and achieve the benefits anticipated to be derived from the project;

(C) the project will neither duplicate nor conflict with the operations of the department;

(D) the project is supported by the RMA, the governmental entity and metropolitan planning organization with jurisdiction over the project, and each other governmental entity affected by the project; and

(E) the project is in the best interest of the region.

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

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Joanne Wright
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For further information, please call: (512) 463-8630



PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 207. PUBLIC INFORMATION SUBCHAPTER A. ACCESS TO OFFICIAL RECORDS

43 TAC §§207.1 - 207.5

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

The Texas Department of Motor Vehicles (department) proposes the repeal of Chapter 207, §§207.1 - 207.5, relating to public information.

EXPLANATION OF PROPOSED REPEALS

The department published Notice of Intent to conduct a rule review of Chapter 207 in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261), in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the rules continues to exist. As a result of this review, Chapter 207, in its entirety, which includes: §207.1, Purpose and Scope; §207.2, Definitions; §207.3, Public Access; §207.4, Cost of Copies of Official Records; and §207.5, Electronic Access to Department Records, is proposed for repeal because the department has determined that the reasons for adopting the rules no longer exist. An assessment under the review of the rules in Chapter 207 found that the rules are not necessary, as procedures to access public information held by a governmental body are specifically detailed by statute (Government Code, Chapter 552), and the applicable cost rules have been promulgated by the Office of the Attorney General (1 TAC Chapter 70). Having rules on public information would be redundant, and would require amendment when either the statute or the Office of the Attorney General cost rules changed.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed repeals.

David D. Duncan, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeals.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeals would be the elimination of unused rules contained in Chapter 207. There are no anticipated economic costs for persons required to comply with the proposed repeals. There will be

no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, the repeals are proposed under Government Code, §2001.039(c), which authorizes the department to repeal rules as part of the department review of existing rules.

CROSS REFERENCE TO STATUTE

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

§207.1. *Purpose and Scope.*

§207.2. *Definitions.*

§207.3. *Public Access.*

§207.4. *Cost of Copies of Official Records.*

§207.5. *Electronic Access to Department Records.*

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 August 1, 2014.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



CHAPTER 208. EMPLOYMENT PRACTICES

The Texas Department of Motor Vehicles (department) proposes the repeal of Subchapter A, Job Application Procedures, §§208.1 - 208.6; Subchapter B, Sick Leave Pool Program, §§208.21 - 208.27; Subchapter C, Employee Training and Education, §208.41 and §208.43; and Subchapter D, Substance Abuse Program, §§208.51 - 208.66; and proposes new Subchapter A, Sick Leave Pool, §208.1, Sick Leave Pool; and new Subchapter B, Employee Training and Education, §208.11, Purpose, and §208.12, General Standards.

EXPLANATION OF PROPOSED REPEALS AND NEW SUBCHAPTERS

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that the reasons for initially adopting the rules under Subchapter A and Subchapter D no longer exist. Policies concerning job application procedures and substance abuse are detailed in the department's Human Resources Manual, available to all department employees on the department's intranet. The policies do not need to be maintained as rules because they concern only internal management and not external policy or procedures. The Administrative Procedure Act, Chapter 2001, Government Code, defines a rule as "a state agency statement of general applicability that: i) implements, interprets, or prescribes law or policy; or ii) describes the procedure or practice requirements of a state agency . . . and (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures." These subchapters should therefore be repealed.

The department has further determined that the reasons for initially adopting rules under Subchapter B and Subchapter C continue to exist, but that amendments are necessary.

New Subchapter A, Sick Leave Pool, §208.1, Sick Leave Pool, is proposed to replace the rules under existing Subchapter B and prescribes procedures relating to the administration of the department's sick leave pool, in accordance with Government Code, §661.002(c). The new section gives the department the authority to maintain the sick leave pool by detailed policy in the department's Human Resources Manual.

New Subchapter B, Employee Training and Education, §208.11 and §208.12 are proposed as replacements of the repealed rules under existing Subchapter C and establish the department's policies relating to employee training and education, in accordance with Government Code, §656.048(a).

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the repeals and new subchapters as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals and subchapters.

Sharon Brewer, Director of Human Resources, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new subchapters.

PUBLIC BENEFIT AND COST

Ms. Brewer has also determined that for each year of the first five years the repeals and new subchapters are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new subchapters will be to streamline and simplify Chapter 208, by eliminating unneeded regulations. There are no anticipated economic costs for persons required to comply with the repeals and new subchapters as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise

exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals and new subchapters may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

SUBCHAPTER A. JOB APPLICATION PROCEDURES

43 TAC §§208.1 - 208.6

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.1. *Purpose.*

§208.2. *Definitions.*

§208.3. *Job Vacancy Notices.*

§208.4. *Notification.*

§208.5. *Application.*

§208.6. *Veteran's Employment Preference.*

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. SICK LEAVE POOL PROGRAM

43 TAC §§208.21 - 208.27

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.21. *Purpose.*

§208.22. *Definitions.*

§208.23. *Administration of the Pool.*

§208.24. *Eligibility.*

§208.25. *Contributions.*

§208.26. *Contribution Returns.*

§208.27. *Withdrawals.*

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER C. EMPLOYEE TRAINING AND EDUCATION

43 TAC §208.41, §208.43

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating

to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.41. *Purpose.*

§208.43. *General Standards.*

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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David D. Duncan

General Counsel

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SUBCHAPTER D. SUBSTANCE ABUSE PROGRAM

43 TAC §§208.51 - 208.66

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.51. *Purpose.*

§208.52. *Definitions.*

§208.53. *Department Actions Relating to Substance Abuse.*

§208.54. *Prohibited Conduct.*

§208.55. *Illegal Drugs.*

§208.56. *Administrative Actions.*

§208.57. *Testing.*

§208.58. *Test Results.*

§208.59. *Test Procedures.*

§208.60. *Refusal to Test.*

§208.61. *Mandatory Referral and Treatment.*

§208.62. *Voluntary Admissions.*

§208.63. *Reoccurrence of Substance Abuse.*

§208.64. *Employees Who Drive for the Department.*

§208.65. *Confidentiality.*

§208.66. *Education.*

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER A. SICK LEAVE POOL

43 TAC §208.1

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.1. *Sick Leave Pool.*

A sick leave pool is established to alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all sick leave earned by the employee and to lose compensation from the state.

(1) The executive director or another individual designated by the board of the Texas Department of Motor Vehicles shall administer the pool.

(2) The pool administrator shall develop and administer procedures for the administration of this section.

(3) Operation of the pool shall be consistent with Government Code, Chapter 661.

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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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. EMPLOYEE TRAINING AND EDUCATION

43 TAC §208.11, §208.12

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Government Code, §2001.039, which requires the department to review its rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; and more specifically, Government Code, §656.048 and §661.002, which require the department to adopt rules and prescribe procedures relating to the operation of the department's sick leave pool and to employee training and education.

CROSS REFERENCE TO STATUTE

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

§208.11. *Purpose.*

It is the policy of the Texas Department of Motor Vehicles (department) to encourage the professional development of employees through education and training under the State Employees Training Act, Government Code, Chapter 656, Subchapter C. These programs are designed to increase the job potential of employees, provide financial assistance for continuing education, and introduce new technology and educational methods into the workplace. This subchapter governs the eligibility and obligations of employees under training and education programs.

§208.12. *General Standards.*

(a) Applicability. This section establishes standards applicable to all program participants.

(b) Eligibility and reimbursement. An employee must meet the following requirements to be eligible for an assistance program. The employee must:

(1) be a full-time, regular status employee who has been continuously employed for one year at the time of application;

(2) maintain satisfactory job performance;

(3) not have any disciplinary action for six months prior to applying or during the program; and

(4) sign a commitment to employment for six months to begin the month following reimbursement.

(c) Scope of assistance.

(1) Eligible expenses.

(A) The department may pay the cost of fees on a per-hour basis, in an amount equal to the latest average semester hour cost for Texas public colleges and universities, as reported by the Texas Higher Education Coordinating Board. The participant will be responsible for paying the difference in cost.

(B) The department may provide reimbursement for mandatory fees.

(2) Use of state property. A program participant may not use duty hours for attending classes, studying, or other activities associated with the program. A program participant may use state equipment for activities related to coursework with supervisor approval.

(3) Retaken courses. The department will not reimburse a program participant for a course taken more than once.

(d) Conditions of reimbursement.

(1) Within four weeks of receipt of grades, a program participant shall provide the department with:

(A) a passing grade report or transcript verifying the passing course credit; and

(B) an itemized statement of tuition and mandatory fees.

(2) The department may require an employee to reimburse the department for tuition if the employee does not complete the employment commitment.

(3) The executive director shall adopt policies related to education and training for employees.

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



CHAPTER 209. FINANCE

The Texas Department of Motor Vehicles (department) proposes amendments to §209.1, Collection of Debts, and §209.2, Charges for Dishonored Checks; and the repeal of §209.21, Purpose, §209.22, Definitions, §209.31, Purpose, and §209.32, Definitions.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEALS

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

The amendments to §209.1 are proposed to make this rule conform to 1 TAC §59.2, as required by Government Code, §2107.002. The amendments to §209.1 also clarify when the obligation becomes delinquent because not all of the obligations to the department become delinquent within 30 days of the department's written notice to the debtor. For example, an obligation to pay a penalty or cost under Transportation Code, §643.2525 becomes delinquent if the motor carrier does not pay the obligation within 60 days after the date the final order becomes effective. An amendment to §209.1 modifies the definition of the word "security" because a person could pledge something of value to secure an obligation that the person owes to the department.

Proposed amendments to §209.2 also increase the processing fee for a dishonored check from \$25 to \$30, as authorized by Business and Commerce Code, §3.506. Further, proposed amendments to §209.2 expand the definition of a dishonored check to clarify that the department has the authority to impose

a processing fee on any type of payment we receive, including a payment by Automated Clearing House (ACH). In addition, proposed amendments to §209.2 clarify that any payment from the drawer or endorser of the dishonored check to the department will be applied first to the processing fee.

Also, nonsubstantive amendments are proposed to §209.1 and §209.2 to correct grammatical errors and the format for cross references.

The repeal of §§209.21, 209.22, 209.31, and 209.32 is proposed because these sections are not necessary to state the purpose of Subchapters B or C of Chapter 209 or to define the terms used in these subchapters.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and repeals as proposed are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the amendments and repeals.

Ms. Flores has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and repeals.

PUBLIC BENEFIT AND COST

Ms. Flores has also determined that for each year of the first five years the amendments and repeals are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and repeals will be a clear and consistent process by which the department will collect debts and charge a processing fee for a dishonored check. There are no anticipated economic costs for persons required to comply with the repeals as proposed. However, the proposed amendments to increase the processing fee from \$25 to \$30 will impose an economic cost of \$5 to the extent a person pays the department with a payment device that is dishonored. There will be no adverse economic effect on small businesses or micro-businesses due to the repeals as proposed. However, the proposed amendments will cause an adverse economic effect in the amount of \$5 to the extent a small business or a micro-business pays the department with a payment device that is dishonored. Individuals, small businesses and micro-businesses can avoid the processing fee by paying the department with a payment device that will not be dishonored.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731, or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.1, §209.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules. The amendments are also proposed under Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge a processing fee of \$30; and more specifically, Government Code, §2107.002, which requires state agencies that collect delinquent obligations owed to the agency to establish procedures by rule for collecting a delinquent obligation.

CROSS REFERENCE TO STATUTE

Business and Commerce Code, §3.506 and Government Code, Chapter 2107.

§209.1. *Collection of Debts.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Attorney general--The Office of the Attorney General of Texas.

(2) Debtor--Any person liable or potentially liable for an obligation owed to the department or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Department--The Texas Department of Motor Vehicles.

~~[(5) Division--An organizational unit in the department's Austin headquarters.]~~

(5) ~~[(6)]~~ Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(6) ~~[(7)]~~ Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(7) ~~[(8)]~~ Security--Any right to have property owned by a person or an entity with an obligation to the department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of action in favor of the department against a person, another entity, or a person's or entity's ~~[another entity or that entity's]~~ property, such as a bond, letter of credit, or other collateral that has been pledged to the department to secure an obligation.

(b) Collection from contractors. If an obligation of a contractor of the department is delinquent and the department owes payment to that contractor, the department will subtract the amount of the obligation from the payment if practical.

(c) Notification of obligation and demand letters.

(1) The department will send to the debtor written notice of the obligation, such as an administrative enforcement order that imposes a penalty or fine. ~~[The division responsible for determining that an obligation is owed to the department will send to the debtor written notice of the obligation that contains the amount owed and the date payment is due.]~~

(2) If no satisfactory response is received within 30 days after the date that the notice is sent under paragraph (1) of this subsection,

the obligation becomes delinquent on the 31st day after the date that notice is sent, unless the department's notice, the law, or a department rule imposes a different deadline for payment. ~~The department [division] will send the [a] first demand letter not later than the 30th day after the date on which the obligation becomes delinquent.~~

(3) If no satisfactory response is received within 30 days after the day on which the first demand letter was sent, the department [division] will send the [a] final demand letter no later than 60 days after the date on which the first demand letter was sent. The final demand letter will include a deadline by which the debtor must respond and, if the department determines in accordance with subsection (e) of this section that the obligation should be referred to the attorney general, a statement that the obligation, if not paid, will be referred to the attorney general.

(4) Each demand letter will set forth the nature and amount of the obligation owed to the department and will be mailed by first class United States mail, in an envelope bearing the notation "address correction requested." If an address correction is provided by the United States Postal Service, the department [division] will resend the demand letter to that address prior to referral to the attorney general.

(d) Records. When practicable, the department shall [The department will] retain a record of a delinquent obligation. A record shall contain documentation of the following information:

(1) the identity of each person liable on all or any part of the obligation;

(2) the physical address of the debtor's place of business;

(3) the physical address of the debtor's residence, where applicable;

(4) a post office box address when [where] it is impractical to obtain a physical address, or when the post office box address is in addition to a correct physical address;

(5) attempted contacts with the debtor;

(6) the substance of communications with the debtor;

(7) efforts to locate the debtor and the assets of the debtor;

(8) state warrants that may be issued to the debtor;

(9) current contracts with the department;

(10) security interests that the department has against any assets of the debtor;

(11) notices of bankruptcy, proofs of claim, dismissals and discharge orders received from the United States bankruptcy courts; and

(12) other information relevant to collection of the delinquent account.

(e) Referrals of a delinquent obligation to the attorney general.

(1) Prior to referral of a delinquent obligation to the attorney general, the department shall [will]:

(A) verify the debtor's address and telephone number;

(B) send a first and final demand letter to the debtor in accordance with subsection (c) of this section;

(C) verify that the obligation is not considered uncollectible under paragraph (2) of this subsection;

(D) prepare and file a proof of claim in the case of a bankruptcy unless the department is represented by the attorney general; and

(E) file a claim in the probate proceeding if the debtor is deceased, unless the department is represented by the attorney general.

(2) The department will consider a delinquent obligation uncollectible and will make no further effort to collect if the obligation:

(A) has been dismissed or discharged in bankruptcy;

(B) is subject to an applicable limitations provision that would prevent collection as a matter of law;

(C) is owed by a corporation which has been dissolved, is in liquidation under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked unless circumstances indicate that the account is nonetheless collectible or that fraud was involved;

(D) is owed by an individual who is located out-of-state, or outside the United States, unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of department funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified;

(E) is owed by a debtor who is deceased, where probate proceedings have concluded, and where there are no remaining assets available for distribution; or

(F) is owed by a debtor whose circumstances demonstrate a permanent inability to pay or make payments toward the obligation.

(3) In making a determination of whether to refer a delinquent obligation to the attorney general, the department will consider:

(A) the expense of further collection procedures;

(B) the size of the debt;

(C) the existence of any security;

(D) the likelihood of collection through passive means such as the filing of a lien;

(E) the availability of resources to collect the obligation; and

(F) policy reasons or other good cause.

(4) The department will refer a delinquent obligation to the attorney general for further collection efforts if the department determines, in accordance with this subsection, that the delinquent obligation should be referred.

(f) Supplemental and alternative collection procedures.

(1) Liens. The department, unless represented by the attorney general, will record a lien securing the delinquent obligation in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law as soon as is practicable. Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be released without the approval of the attorney representing the department after the matter has been referred to the attorney general.

(2) Warrants. The department will utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid.

§209.2. *Charges for Dishonored Checks.*

(a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored check, seeking collection of the face value of the check, to charge the drawer or endorser of the check a reasonable processing fee, not to exceed \$30 [§25]. This section prescribes policies and procedures for the processing of dishonored checks made payable to the department and the collection of fees because of the dishonor of a check made payable to the department.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Motor Vehicles.

(2) Dishonored check--A check, draft, order, electronic payment, or other payment device [instrument] that is drawn or made upon a bank or other financial institution, and that is not honored upon presentment because the account upon which the instrument has been drawn or made does not exist or is closed, or does not have sufficient funds or credit for payment of the instrument in full.

(c) Processing of dishonored checks. Upon receipt of notice from a bank or other financial institution of refusal to honor a check made payable to the department, the department will process the returned check using the following procedures.

(1) The department will send a written notice by certified mail, return receipt requested, to the drawer or endorser at the drawer or endorser's address as shown on:

(A) the dishonored check;

(B) the records of the bank or other financial institution;

or

(C) the records of the department.

(2) The written notice will notify the drawer or endorser of the dishonored check and will request payment of the face amount of the check and a \$30 [§25] processing fee no later than 10 days after the date of receipt of the notice. The written notice will also contain the statement required by Penal Code, §32.41(c)(3).

(3) The face amount of the check and the processing fee must be paid to the department:

(A) with a cashier's check or money order, made payable to the Texas Department of Motor Vehicles; or

(B) with a valid credit card, approved by the department, and issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization.

(4) Payments made by credit card must include the fee required by §209.23 of this chapter (relating to Methods of Payment).

(5) If payment is not received within 10 days after the date of receipt of the notice, the obligation will be considered delinquent and will be processed in accordance with §209.1 of this title (relating to Collection of Debts) [subchapter].

(d) Supplemental collection procedures. In addition to the procedures described in §209.1 [~~of this subchapter~~], the department may notify appropriate credit bureaus or agencies if the drawer or endorser fails to pay the face amount of a dishonored check and the processing fee, or may refer the matter for criminal prosecution.

(e) Any payment to the department from the drawer or endorser of a dishonored check will be applied first to the processing fee.

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

Filed with the Office of the Secretary of State on August 1, 2014.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665



SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §209.21, §209.22

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules. The amendments are also proposed under Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge a processing fee of \$30; and more specifically, Government Code, §2107.002, which requires state agencies that collect delinquent obligations owed to the agency to establish procedures by rule for collecting a delinquent obligation.

CROSS REFERENCE TO STATUTE

Business and Commerce Code, §3.506 and Government Code, Chapter 2107.

§209.21. *Purpose.*

§209.22. *Definitions.*

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 August 1, 2014.

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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER C. DONATIONS AND CONTRIBUTIONS

43 TAC §209.31, §209.32

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules. The amendments are also proposed under Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge a processing fee of \$30; and more specifically, Government Code, §2107.002, which requires state agencies that collect delinquent obligations owed to the agency to establish procedures by rule for collecting a delinquent obligation.

CROSS REFERENCE TO STATUTE

Business and Commerce Code, §3.506 and Government Code, Chapter 2107.

§209.31. *Purpose.*

§209.32. *Definitions.*

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



CHAPTER 210. CONTRACT MANAGEMENT

The Texas Department of Motor Vehicles (department) proposes amendments to Subchapter A, Purchase Contracts, §210.1 and §210.2; proposes new Subchapter B, Historically Underutilized Business Program, §210.21 and §210.22; and proposes the repeal of Subchapter B, Civil Rights, §210.21; Subchapter C, Historically Underutilized Business Program, §210.41 and §210.42; and Subchapter D, Disadvantaged Business Enterprise Program, §§210.61 - 210.65.

EXPLANATION OF PROPOSED REPEALS, AMENDMENTS, AND NEW SUBCHAPTER

In accordance with Government Code, §2001.039, the department conducted a review of its rules under Chapter 210. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that Subchapters B and D are no longer necessary and should be repealed. Subchapter B only references department compliance with a federal law, and does not add anything to that federal requirement and is thus redundant. Subchapter D relates to requirements for contracting using federal monies and is not applicable to department operations.

The department has further determined that the reasons for initially adopting rules under Subchapters A and C continue to exist, but that amendments and renumbering are necessary.

Nonsubstantive amendments are proposed to §210.1 and §210.2 to correct punctuation, grammar, and capitalization, and to clarify or update the language to conform to statutory requirements.

New Subchapter B, Historically Underutilized Business Program, §210.21, Purpose, and §210.22, Program, are proposed as replacements for the existing Subchapter C. New §210.22 is proposed to make nonsubstantive amendments to existing §210.42 to correct the referenced citation to include 34 TAC Part 1, Chapter 20, Subchapter B, and to revise terminology for consistency with other department rules. New §210.21 is proposed without changes to the text of existing §210.41.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the repeals, amendments, and new subchapter as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals, amendments, and new subchapter.

David Chambers, Manager of Purchasing, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals, amendments, and new subchapter.

PUBLIC BENEFIT AND COST

Mr. Chambers has also determined that for each year of the first five years the repeals, amendments, and new subchapter are in effect, the public benefit anticipated as a result of enforcing or administering the repeals, amendments, and new subchapter will be simplification, clarification and streamlining of the agency's rules. There are no anticipated economic costs for persons required to comply with the repeals, amendments, and new subchapter as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals, amendments, and new subchapter may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

SUBCHAPTER A. PURCHASE CONTRACTS

43 TAC §210.1, §210.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; Occupations Code, §2301.153(a)(9) and

Government Code, §1001.010, which provide specific rulemaking authority to the department for contracting; Government Code, §2155.076, which requires state agencies to adopt rules regarding procurement protests; Government Code, §2161.003, which requires state agencies to adopt rules promulgated by the Texas Comptroller of Public Accounts regarding Historically Underutilized Businesses (HUBs); and Government Code, §2260.051 and §2260.052, which set forth procedures for contract claim negotiations and require state agencies to adopt rules governing contract claims negotiations and mediations under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001, 2155, 2161, and 2260; and Occupations Code, Chapter 2301.

§210.1. *Claims for Purchase Contracts.*

(a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract claims against the state. Chapter 2260 applies to purchase contracts of the Texas Department of Motor Vehicles entered into under the State Purchasing and General Services Act. This section governs the filing, negotiation, and mediation of a claim.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Claim--A claim for breach of a purchase contract between a vendor and the department.

(2) Department--[The] Texas Department of Motor Vehicles.

(3) Executive director--The executive director of the department or the director's designee not below the level of division director.

(4) Purchase--A procurement action under Government Code, Title 10, Subtitle D, for commodities or non-professional services.

(5) Vendor--An individual, partnership, corporation, or other business entity that is a party to a written contract for a purchase with the department.

(c) Filing of claim. A vendor may file a notice of claim with the executive director within 180 days after the date of the event giving rise to the claim. The claim must contain the:

- (1) nature of the alleged breach;
- (2) amount the vendor seeks as damages; and
- (3) legal theory of recovery.

(d) Negotiation.

(1) The executive director will begin negotiations with the vendor to resolve the claim. The negotiations will begin no later than the 120th day after the date the claim is received.

(2) The negotiation may be written or oral. The executive director may afford the vendor an opportunity for a meeting to informally discuss the disputed matters and provide the vendor an opportunity to present relevant information.

(e) Mediation.

(1) The department and the vendor may agree to nonbinding mediation. The department will agree to mediation if the execu-

tive director determines that the mediation may speed resolution of the claim or otherwise benefit the department.

(2) The executive director will appoint a department employee as mediator. The employee must not have had any previous involvement or participation in the administration of the contract or the resolution of the claim.

(3) If the vendor objects to the appointment of a department employee as mediator, the department will select and hire a private mediator from outside the department. The costs for the services of a private mediator will be apportioned equally between the department and the vendor.

(4) The role of a mediator is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(f) Final offer.

(1) The executive director will make a final offer to the vendor within 90 days of beginning negotiations.

(2) If the disposition is acceptable to the vendor, the vendor shall advise the executive director in writing within 20 days of the date of the final offer. The department will forward an agreed disposition involving payment to the vendor for a final and binding order on the claim.

(g) Contested case hearing. If the vendor is dissatisfied with the final offer, or if the claim is not resolved before the 270th [90th] day after the claim is filed with the department, [negotiations begin,] the vendor may petition the executive director for an administrative hearing before the State Office of Administrative Hearings to litigate the unresolved issues in the claim under the provisions of Government Code, Chapter 2260, Subchapter C. [~~§206.61 et seq. of this title (relating to Proceedings in Contested Cases).~~]

§210.2. Protest of Department Purchases under the State Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a procedure for vendors to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Comptroller of Public Accounts office on behalf of the department are addressed in 34 TAC Chapter 20.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Government Code, Chapters 2151 - 2177, the State Purchasing and General Services Act.

(2) Board--Board of the Texas Department of Motor Vehicles. [~~The Texas Motor Vehicles Board.~~]

(3) Department--[~~The~~] Texas Department of Motor Vehicles.

(4) Division--An organizational unit in the department. [~~department's Austin headquarters.~~]

(5) Executive director--The executive director of the department.

(6) Interested party--A vendor that has submitted a bid, proposal, or other expression of interest for the purchase involved.

(7) Purchase--A procurement action for commodities or non-professional services under the Act.

(c) Filing of protest.

(1) An actual, prospective bidder, or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase, may file a written protest. The protest must be addressed to the attention of the executive director. The protest must be received in the office of the executive director within 10 working days after such aggrieved person knows, or should have known, of the action.

(2) The protest must be sworn and contain:

(A) the provision of or rule adopted under the Act that the action is alleged to have violated;

(B) a specific description of the alleged violation;

(C) a precise statement of the relevant facts;

(D) the issue to be resolved;

(E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) Suspension of award or performance. If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase unless [until] the executive director's designee, not below the level of division director, makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department. If the purchase has already been awarded, then the department will not allow the vendor to continue performance under the contract unless the executive director makes a written determination that continued vendor performance is necessary to protect substantial interests of the department.

(e) Informal resolution. The executive director's designee may informally resolve the dispute, including:

(1) soliciting written responses to the protest from other interested parties; and

(2) resolving the dispute by mutual agreement.

(f) Written determination. If the protest is not resolved by agreement, the executive director's designee will issue a written determination to the protesting party and interested parties which sets forth the reason of the determination. The designee may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action as appropriate to the circumstances, which may include:

(A) declaring the purchase void;

(B) reversing the award; or [~~and~~]

(C) re-advertising the purchase using revised specifications.

(g) Appeal.

(1) An interested party may appeal the determination to the executive director. The written appeal must be received in the executive director's office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

(2) The appealing party must mail or deliver copies of the appeal to the executive director's designee and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel of the department shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director.

(4) The executive director may:

(A) issue a final written determination; or

(B) refer the matter to the board [Board] for its consideration at a regularly scheduled open meeting.

(5) The board [Board] may consider oral presentations and written documents presented by the department and interested parties. The board chairman [chair] shall set the order and the amount of time allowed for presentation. The board's [Board's] determination of the appeal shall be adopted by order and reflected in the minutes of the meeting.

(6) The decision of the board [Board] or executive director shall be final.

(h) Filing deadline. Unless the board [Board] determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(i) Document retention. The department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the department.

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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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. CIVIL RIGHTS

43 TAC §210.21

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; Occupations Code, §2301.153(a)(9) and Government Code, §1001.010, which provide specific rulemaking authority to the department for contracting; Government Code, §2155.076, which requires state agencies to adopt rules regarding procurement protests; Government Code, §2161.003, which requires state agencies to adopt rules promulgated by the Texas Comptroller of Public Accounts regarding Historically Underutilized Businesses (HUBs); and Government Code, §2260.051 and §2260.052, which set forth procedures for

contract claim negotiations and require state agencies to adopt rules governing contract claims negotiations and mediations under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001, 2155, 2161, and 2260; and Occupations Code, Chapter 2301.

§210.21. *Civil Rights - Title VI Compliance.*

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

43 TAC §210.21, §210.22

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; Occupations Code, §2301.153(a)(9) and Government Code, §1001.010, which provide specific rulemaking authority to the department for contracting; Government Code, §2155.076, which requires state agencies to adopt rules regarding procurement protests; Government Code, §2161.003, which requires state agencies to adopt rules promulgated by the Texas Comptroller of Public Accounts regarding Historically Underutilized Businesses (HUBs); and Government Code, §2260.051 and §2260.052, which set forth procedures for contract claim negotiations and require state agencies to adopt rules governing contract claims negotiations and mediations under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001, 2155, 2161, and 2260; and Occupations Code, Chapter 2301.

§210.21. *Purpose.*

This subchapter establishes policies and procedures consistent with Government Code, Chapter 2161.

§210.22. *Program.*

The board of the Texas Department of Motor Vehicles adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program at 34 TAC, Part 1, Chapter 20, Subchapter B.

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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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

43 TAC §210.41, §210.42

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; Occupations Code, §2301.153(a)(9) and Government Code, §1001.010, which provide specific rulemaking authority to the department for contracting; Government Code, §2155.076, which requires state agencies to adopt rules regarding procurement protests; Government Code, §2161.003, which requires state agencies to adopt rules promulgated by the Texas Comptroller of Public Accounts regarding Historically Underutilized Businesses (HUBs); and Government Code, §2260.051 and §2260.052, which set forth procedures for contract claim negotiations and require state agencies to adopt rules governing contract claims negotiations and mediations under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001, 2155, 2161, and 2260; and Occupations Code, Chapter 2301.

§210.41. *Purpose.*

§210.42. *Program.*

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

Filed with the Office of the Secretary of State on August 4, 2014.

TRD-201403521

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665

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SUBCHAPTER D. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

43 TAC §§210.61 - 210.65

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal as a result of reviewing the rules; Occupations Code, §2301.153(a)(9) and Government Code, §1001.010, which provide specific rulemaking authority to the department for contracting; Government Code, §2155.076, which requires state agencies to adopt rules regarding procurement protests; Government Code, §2161.003, which requires state agencies to adopt rules promulgated by the Texas Comptroller of Public Accounts regarding Historically Underutilized Businesses (HUBs); and Government Code, §2260.051 and §2260.052, which set forth procedures for contract claim negotiations and require state agencies to adopt rules governing contract claims negotiations and mediations under Government Code, Chapter 2260.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 1001, 2155, 2161, and 2260; and Occupations Code, Chapter 2301.

§210.61. *Purpose.*

§210.62. *Definitions.*

§210.63. *Policy.*

§210.64. *Disadvantaged Business Enterprise (DBE) Program.*

§210.65. *DBE Program Complaints.*

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 August 4, 2014.

TRD-201403522

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §217.93

The Texas Department of Motor Vehicles (department) proposes an amendment to §217.93, Cost of Motor Vehicle Records.

EXPLANATION OF PROPOSED AMENDMENT

Simultaneously with this proposed amendment, the department is proposing the repeal of Chapter 207, in accordance with Government Code, §2001.039. The proposed amendment to §217.93 is necessary to delete the reference to §207.4. Chapter 207 is being proposed for repeal as procedures for accessing public information held by a governmental body are specifically detailed by statute (Government Code, Chapter 552), and the applicable cost rules have been promulgated by the Office of the Attorney General (1 TAC Chapter 70). The amendment to §217.93 clarifies that the department will charge fees in accordance with the applicable statutes and cost rules.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

David D. Duncan, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing or administering the proposed amendment is to eliminate the reference to §207.4 because Chapter 207 is simultaneously proposed for repeal and to amend the language to reference the applicable statute and cost rules. There are no anticipated economic costs for persons required to comply with the proposed amendment. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and Government Code, §2001.039.

CROSS REFERENCE TO STATUTE

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

§217.93. Cost of Motor Vehicle Records.

(a) Standard costs. The department will charge fees in accordance with Government Code, Chapter 552 and the cost rules promulgated by the Office of the Attorney General in 1 TAC, Chapter 70 (relating to Cost of Copies of Public Information). [~~§207.4 of this title (relating to Cost of Copies of Official Records).~~]

(b) Motor vehicle record costs. The cost for motor vehicle information will be:

- (1) Title and registration verification (record search) - \$2.30;
- (2) Title history - \$5.75;
- (3) Online access to motor vehicle records database - \$23 per month plus \$.12 per record entry;
- (4) Motor vehicle registration and title database - \$5,000 plus \$.38 per 1,000 records copied to media;
- (5) Weekly updates to motor vehicle registration and title database, with media provided by the department - \$135; and
- (6) Batch inquiry to motor vehicle records database - \$23 per computer run plus \$.12 per record searched.

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 August 1, 2014.

TRD-201403494

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665



CHAPTER 218. MOTOR CARRIERS SUBCHAPTER F. ENFORCEMENT

The Texas Department of Motor Vehicles (department) proposes amendments to §218.72, Administrative Sanctions, the repeal of §218.75, Implications for Nonpayment of Penalties, and new §218.78, Appeal of Denial.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTION

The proposed amendments to §218.72, repeal of §218.75, and new §218.78 are necessary to implement House Bill 2741, 83rd Legislature, Regular Session, 2013, which added Transportation Code, §643.2526 to authorize the department to deny an application for registration, renewal of registration, or reinstatement of registration under Transportation Code, Chapter 643, without prior notice and an opportunity for a hearing. Transportation Code, §643.2526 also authorizes an applicant to appeal the department's denial of an application for registration, renewal of registration, or reinstatement of registration under Transportation Code, Chapter 643.

The proposed amendments to §218.72 delete the reference to a denial of a certificate of registration, so §218.72 only governs a suspension, revocation, and probation of a suspension of a certificate of registration. The denial of a certificate of registration

will be governed by the new §218.78 regarding the appeal of a denial. Because §218.73, Administrative Proceedings, provides an opportunity for a hearing before the department imposes an administrative sanction under §218.72, the denial of a certificate of registration needs to be deleted from §218.72.

The proposed repeal of §218.75 is necessary because the denial of an application for reinstatement or renewal of a certificate of registration under Transportation Code, Chapter 643, will be governed by Transportation Code, §643.2526 and the new §218.78.

The proposed new §218.78 establishes the requirements, restrictions, and procedures for an appeal of the department's denial of an application for registration, renewal of registration, or reinstatement of registration under Transportation Code, Chapter 643.

The proposed amendments to §218.72 and the repeal of §218.75 also delete language that is already in statute.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed amendments, repeal, and new section are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments, repeal, and new section.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments, repeal, and new section.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments, repeal, and new section are in effect, the public benefits anticipated as a result of enforcing or administering the amendments, repeal, and new section will be a clear process for the appeal of the department's denial of an application for registration, renewal of registration, or reinstatement of registration under Transportation Code, Chapter 643.

There are no anticipated economic costs for persons required to comply with the amendments, repeal, and new section as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments, repeal, and new section may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

43 TAC §218.72

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643.

CROSS REFERENCE TO STATUTE

Transportation Code, §§643.252 - 643.2526 and §1003.001.

§218.72. *Administrative Sanctions.*

(a) Grounds for suspension and revocation. Transportation Code, §643.252 provides the grounds for which the department can suspend or revoke a certificate of registration issued under Transportation Code, Chapter 643. ~~[action: The department may suspend, revoke, or deny a certificate of registration of a motor carrier or leasing business if the motor carrier or leasing business:]~~

~~{(1) fails to maintain insurance or proof of financial responsibility as required by §218.16 of this chapter (relating to Insurance Requirements);}~~

~~{(2) fails to keep proof of insurance in the cab of each vehicle as required by §218.16 of this chapter;}~~

~~{(3) fails to register a vehicle requiring registration under Subchapter B of this chapter (relating to Motor Carrier Registration);}~~

~~{(4) is a for-hire motor carrier of passengers required to register with the Federal Motor Carrier Safety Administration and the federal registration is denied, revoked, suspended, or terminated;}~~

~~{(5) violates any provision of Transportation Code, Chapter 643;}~~

~~{(6) knowingly provides false information on any form filed with the department under this chapter or Transportation Code, Chapter 643; or}~~

~~{(7) violates an order adopted under this chapter or Transportation Code, Chapter 643.}~~

(b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) Probation.

(1) The department may probate any suspension ordered under this section.

(2) In determining whether to probate a suspension, the department will review:

(A) the seriousness of the violation;

(B) prior violations by the motor carrier;

(C) whether the department has previously probated a suspension for the motor carrier;

(D) cooperation by the motor carrier in the investigation and enforcement proceeding; and

(E) the ability of the motor carrier to correct the violations.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(5) The department may revoke the probation and order the initial suspension and administrative penalty if the motor carrier fails to abide by any terms of the probation.

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 August 1, 2014.

TRD-201403490

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665



43 TAC §218.75

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643.

CROSS REFERENCE TO STATUTE

Transportation Code, §§643.252 - 643.2526 and §1003.001.

§218.75. *Implications for Nonpayment of Penalties.*

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 August 1, 2014.

TRD-201403491

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665



43 TAC §218.78

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643.

CROSS REFERENCE TO STATUTE

Transportation Code, §§643.252 - 643.2526 and §1003.001.

§218.78. *Appeal of Denial.*

(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an application for registration, renewal of registration, or reinstatement of registration.

(b) The appeal will be governed by Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases), which includes §206.64 of this title (relating to Content of Petition).

(c) The applicant's appeal will be considered untimely if it is not filed with the department by the 26th day after the date of the department's denial of the application. The department will not consider an untimely appeal.

(d) An application that is considered to be withdrawn under Transportation Code, §643.055 is not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.

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 August 1, 2014.

TRD-201403492

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 14, 2014

For further information, please call: (512) 465-5665





Janet
8th Grade

WITHDRAWN RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.43

The Department of Family and Protective Services withdraws the proposed amendment of §749.43 which appeared in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3691).

Filed with the Office of the Secretary of State on July 29, 2014.

TRD-201403429

Cynthia O'Keeffe

General Counsel

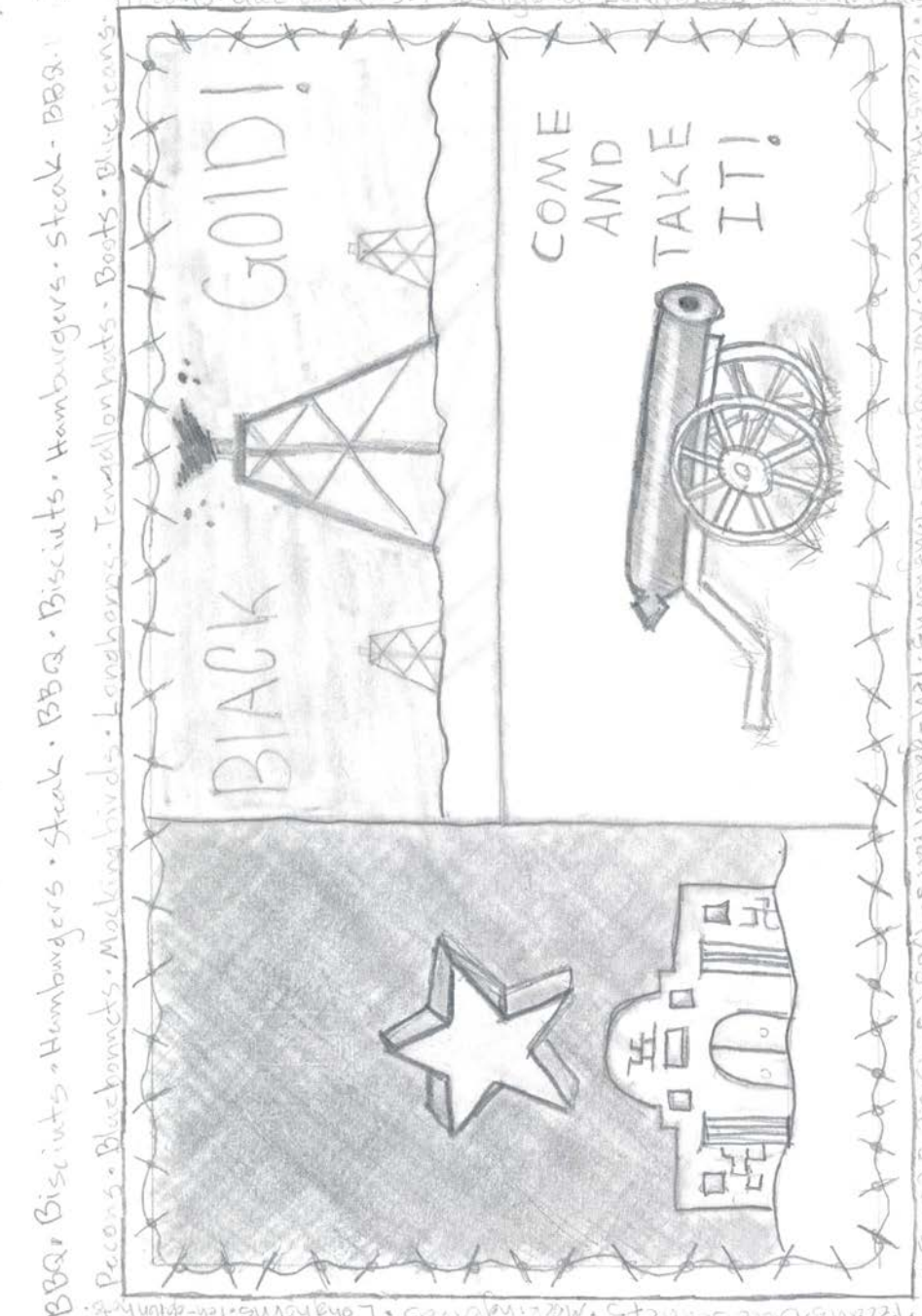
Department of Family and Protective Services

Effective date: July 29, 2014

For further information, please call: (512) 438-3437



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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.20

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, §1.20, concerning Asset Review Committee, without changes to the proposal as published in the June 20, 2014, issue of the *Texas Register* (39 TexReg 4724).

REASONED JUSTIFICATION: Since 2005 the Asset Review Committee and its predecessor committees have developed and negotiated resolutions for delinquent loans. In early 2012, the formation of the Asset Management Division provided for a permanent staff capable of making the same asset resolution decisions being made by the Committee. By eliminating the Asset Review Committee and allowing the Asset Management Division to assume the Committee's remaining responsibilities, significant staff time and effort will be conserved.

The Board approved the final order adopting the repeal on July 31, 2014.

No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code, §2306.141, which specifically authorizes the Department to adopt rules governing the administration of its housing programs.

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 August 1, 2014.

TRD-201403501
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 21, 2014
Proposal publication date: June 20, 2014
For further information, please call: (512) 475-3959



SUBCHAPTER B. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE FAIR HOUSING ACT

10 TAC §1.206

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §1.206, concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973, without changes to the proposed text as published in the June 20, 2014, issue of the *Texas Register* (39 TexReg 4724). The rule will not be republished.

REASONED JUSTIFICATION: The Department has received new guidance from HUD regarding accessibility standards. The purpose of this amendment is to align the rule with federal and state requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from June 20, 2014 through July 21, 2014. No comments were received concerning the amendments.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

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 August 1, 2014.

TRD-201403502
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 21, 2014
Proposal publication date: June 20, 2014
For further information, please call: (512) 475-3959



CHAPTER 10. UNIFORM MULTIFAMILY RULES SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1004

The Texas Department of Housing and Community Affairs (the "Department") adopts new §10.1004, concerning Housing Tax Credit Properties, TCAP, Exchange and HTF, with changes to the proposed text as published in the June 20, 2014, issue of the *Texas Register* (39 TexReg 4725).

REASONED JUSTIFICATION: The Board approved a new §10.1004, concerning Housing Tax Credit Properties, TCAP, Exchange, and HTF, at the December 12, 2013, Board meeting to be published in the *Texas Register* for public comment. The rulemaking was published in the January 10, 2014, issue of the *Texas Register* (39 TexReg 159) and made available for public comment from January 10, 2014, through February 10, 2014. Although no comment was received during the public comment period, Congress passed H.R. 2642 that impacted the identification of a rural eligible place under Section 520 of the Housing Act of 1949. As a result, the rule published in January was withdrawn and the revised proposed rule was republished in June.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from June 20, 2014 through July 21, 2014, with comments received from Jamie Rickenbacker.

COMMENT SUMMARY: Commenter suggested that where the rule references "bedroom size" it would be a more accurate statement to replace with "number of bedrooms" because size is a representation of floor space and the context of reference is specific to the number of bedrooms and not the size of the unit.

STAFF RESPONSE: Staff agrees with the comment and has replaced "bedroom size" with "number of bedrooms".

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new rule affects no other code, article, or statute.

§10.1004. *Housing Tax Credit Properties, TCAP, Exchange and HTF.*

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and HTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50 percent and 60 percent Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50 percent and HERA Special 60 percent income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 30 percent, 40 percent, 60 percent or 80 percent income limit in the MTSP charts, the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(c) Treatment of Rural Properties. Section 42(i)(8) of the Code permits certain Housing Tax Credit, Exchange, and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income. The Department will identify rural eligible places in accordance with:

(1) Section 520 of the Housing Act of 1949 as amended from time to time; and

(2) Chapter 2306 of the Texas Government Code, as amended from time to time.

(3) The Department allows the use of rural income limits for HTF multifamily rental Developments that are considered rural using the process described in this subsection.

(d) Rent limits are a calculation of income limits and cannot exceed 30 percent of the applicable Imputed Income Limit. Rent limits are published by number of bedrooms and will be rounded down to the nearest dollar. Example 1004(1): To calculate the 30 percent 1 bedroom rent limit:

(1) Determine the imputed income limited by multiplying the number of bedrooms by 1.5: 1 bedroom x 1.5 persons = 1.5.

(2) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30 percent income limit is \$12,000 and the 2 person 30 percent income limit is \$19,000, the imputed income limit would be \$15,500 ($\$12,000 + \$19,000 = \$31,000/2 = \$15,500$).

(3) To calculate the 30 percent 1 bedroom rent limit, multiply the imputed income limit of \$15,500 by 30 percent, then divide by 12 months and round down. In this example, the 30 percent 1 bedroom limit is \$387 ($\$15,500 \text{ times } 30 \text{ percent divided by } 12 = \$387.50 \text{ per month. Rounded down the limit is } \387). Example 1004(2): to calculate the 50 percent 2 bedroom rent limit:

(A) Determine the imputed income limited to be calculated by multiplying the number of bedrooms by 1.5: 2 bedrooms x 1.5 persons = 3.

(B) The 3 person income limit is already published; for this example the applicable 3 person 50 percent income limit is \$27,000.

(C) To calculate the 50 percent 2 bedroom rent limit, multiply the \$27,000 by 30 percent, then divide by 12. In this example, the 50 percent 2 bedroom limit is \$675 ($\$27,000 \text{ times } 30 \text{ percent divided by } 12 = \675). No rounding is needed since the calculation yields a whole number).

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9 percent Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4 percent Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the

time the Project (as defined on line 8b on Form 8609) places in service. However, this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (e) of this section will be used.

(1) In the event an owner elects to set the gross rent floor based on the income limits that are in effect at the time the Project places in service and wishes to revoke such election, prior approval from the Department is required. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

(2) An owner may request to change the election only once during the Compliance Period.

(g) For the HTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation for the purposes of determining the applicable income and rent limit. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. For owners that execute a carryover for a Project located in a rural place that loses such designation prior to the placed in service date, unless other guidance is received from the U.S. Treasury Department, the Department will monitor using the rent limits calculated from the rural limits that were in effect at the time of the carryover. However, for the purposes of determining household eligibility, such Project must use the applicable MTSP income limits published by HUD.

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.81, §4.85

The Texas Higher Education Coordinating Board adopts amendments to §4.81 and §4.85, regarding Dual Credit Partnerships between Secondary Schools and Texas Public Colleges concerning dual credit eligibility requirements, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3016). The intent of the amendments is to update existing rules to align with current statute and rule references regarding assessment requirements for dual credit eligibility. Language has been added in §4.85 that revises state assessment and course requirements that must be met to satisfy academic and workforce dual credit eligibility requirements. The amended rules will affect students enrolling in dual credit courses and early college high schools during the 2014 fall semester.

The following comments were received concerning the amendments:

A comment was received from Gerald Stanglin at Kilgore College. Kilgore College supports the spirit of this rule but has some serious reservations about the practical implementation of it, specifically that apparently the community college must accept any student that the high schools send to College Certificate One courses without any assessment to determine their ability to be successful in such courses.

They feel this change (from current practice) will have the following negative impact on their industry-driven workforce education programs:

Community Colleges will lose the ability to have some control over which students enroll in their courses--on campus or in the high schools.

Human nature being what it is--these courses will become the proverbial "dumping ground" for counselors to place those students that they don't know where else to place them. Protests--experience tells us that this will be the result of such a policy.

They are concerned about losing credibility with the industries they are educating/training students for. If they are no longer able to produce qualified workers for their businesses, they will no longer hire our graduates--certificates or degrees.

There is a misconception that many of the first courses in a level one certificate do not require basic skills. In fact, many of the first semester courses in level one certificates require an intermediate level of competency in Math, Reading, and/or English (e.g., Welding 1313-Intro. to Blueprint Reading for Welders--eligibility to enroll in MATH 0306 and READ 0306, their mid-level developmental courses.

With the number of SCHs reduced to 60 in all of our programs, there is not enough time for instructors to teach students reading and math while they are attempting to teach the core workforce education courses.

They would like to see some level of assessment that would admit to the dual credit courses only students who are serious about taking the course and who have a reasonably good prospect of being successful. This new rule, in their opinion, will have just the opposite effect.

They encourage the Coordinating Board to consider these issues and amend the proposed rules accordingly.

Staff Response: In 2003, the 78th Texas Legislature passed Senate Bill 286, codified as Texas Education Code §51.3062(r)(3) which included a provision that exempted a student who is enrolled in a certificate program of one year or less at a public junior college, a public technical institute, or a public state college from the college readiness testing requirements of the Texas Success Initiative. The proposed change in workforce education dual credit rules is supported by current Texas Education Code and Texas Administrative Code rules relating to dual credit and Texas Success Initiative exemptions. No alteration to the proposed rule change is recommended.

The amendments are adopted under Texas Education Code, Chapter 28, §28.009(b) and Chapter 130, §130.001(b)(3) - (4), which provide the Coordinating Board with the authority to adopt rules to administer the sections.

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 30, 2014.

TRD-201403443

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES RELATIONSHIP

19 TAC §61.1

The State Board of Education (SBOE) adopts amendment to §61.1, concerning school district boards of trustees. The amendment is adopted without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3947) and will not be republished. The section specifies requirements for continuing education for school board trustees. The adopted amendment requires coverage of specific topics during local school district orientation and continuing education and clarifies the requirements of certain trainings.

The Texas Education Code (TEC), §11.159, Member Training and Orientation, requires the SBOE to provide a training course for school board trustees. Section 61.1 addresses this statutory requirement. School board trustee training under current SBOE rule includes a local school district orientation session, a basic orientation to the TEC, an annual team-building session with the local school board and the superintendent, and specified hours

of continuing education based on identified needs. A member of the SBOE requested that the rule be updated after receiving feedback from local school board members and administrators.

The adopted amendment to 19 TAC §61.1 adds language requiring the local school district orientation session to include training on specific topics, establishing that the training must be at least three hours in length for each new board member, and clarifying that any sitting board member may attend or participate in the local district orientation. The adopted amendment also adds language addressing the minimum length of hours for the basic orientation to the TEC, including the timeframe during which the TEC orientation must be received by newly elected or appointed board members, and clarifies that the TEC orientation is open to any sitting board member who chooses to attend. In addition, the adopted amendment specifies that the annual team-building session include a review of the roles, rights, and responsibilities of a local board as outlined in the framework for governance leadership. The adopted amendment also adds the requirement that the announcement regarding completion of the annual required continuing education include a statement that the continuing education is a basic obligation and expectation of any sitting board member.

The adopted amendment has no new procedural and reporting implications. As specified in current rule, the framework for governance leadership used in structuring continuing education for board members is posted to the Texas Education Agency (TEA) website and each local school board president is required to share the information with other local school board members and the superintendent. Board training updates must be disseminated, noted in the minutes, and announced at the last regular meeting of the board of trustees held during the calendar year.

The adopted amendment has no new locally maintained paper-work requirements. In accordance with current rule, verification of completion of board member continuing education must be maintained by the participant and participant's school district. Minutes of the board meeting in which continuing education hours obtained by each board member for the past calendar year are announced must also be maintained locally and made available to local media.

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

The SBOE took action to approve the proposed amendment to 19 TAC §61.1 for second reading and final adoption during its July 18, 2014, meeting with an effective date of August 25, 2014. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year in order to implement the latest policy in a timely manner.

No public comments were received on the proposal.

The amendment is adopted under the Texas Education Code, §11.159, which authorizes the SBOE to provide a training course for school board trustees.

The amendment implements the Texas Education Code, §11.159.

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 31, 2014.

TRD-201403478

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 23, 2014

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



CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER B. ADULT BASIC AND SECONDARY EDUCATION

19 TAC §§89.21 - 89.28, 89.30 - 89.35

The State Board of Education (SBOE) adopts the repeal of §§89.21-89.28 and 89.30-89.35, concerning adult education programs. The repeal is adopted without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3949) and will not be republished. The sections address provisions relating to adult basic and secondary education. The adopted repeal eliminates rules that are no longer necessary as a result of statutory changes passed by the 83rd Texas Legislature, Regular Session, 2013. Authority to administer this program has been transferred to another state agency.

In September 1996, the SBOE adopted 19 TAC Chapter 89, Subchapter B, to establish rules for adult basic and secondary education. In July 2010, additional rules were adopted in 19 TAC Chapter 89, Subchapter B, to reflect state statute at that time. In September 1999, December 2006, July 2010, and February 2013, the SBOE adopted amendments to 19 TAC Chapter 89, Subchapter B, to incorporate minor edits necessary to bring the rules into alignment with state statute at that time.

In June 2013, the 83rd Texas Legislature enacted Senate Bill 307, which transferred adult education and literacy programs from the SBOE and the Texas Education Agency (TEA) to the Texas Workforce Commission. This change in statute requires the repeal of administrative rules in 19 TAC Chapter 89, Subchapter B.

The adopted repeal has no procedural and reporting implications. The adopted repeal has no locally maintained paperwork requirements.

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

The SBOE took action to approve the proposed repeal of 19 TAC Chapter 89, Subchapter B, for second reading and final adoption during its July 18, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year. The earlier effective date will immediately repeal rules to reflect the transfer of authority. The effective date for the repeal is 20 days after filing as adopted.

No public comments were received on the proposal.

The repeal is adopted under Senate Bill (SB) 307, 83rd Texas Legislature, Regular Session, 2013, which amended the Texas Education Code by transferring adult education and literacy programs from the SBOE and the TEA to the Texas Workforce Commission. Section 2.06 of SB 307 removed provisions for SBOE and TEA rulemaking authority. The adopted repeal implements the statutory changes enacted by SB 307.

The repeal implements Senate Bill 307, Section 2.06, 83rd Texas Legislature, Regular Session, 2013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER C. TEXAS CERTIFICATE OF HIGH SCHOOL EQUIVALENCY

The State Board of Education (SBOE) adopts amendment to §89.45, the repeal of §89.46, and new §89.46, concerning the Texas certificate of high school equivalency. The amendment, repeal, and new section are adopted without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3950) and will not be republished. Section 89.45 addresses provisions relating to retesting for the high school equivalency examination. Section 89.46 addresses provisions for examinees with disabilities. The adopted actions update rules for alignment with the current practice for retesting and accommodations.

The current rules in 19 TAC Chapter 89, Subchapter C, provide for administration of high school equivalency testing and certification. The rules address testing center eligibility, test taker identification and eligibility, retesting, examinees with disabilities, and standard fees for the issuance of high school equivalency certificates and scores.

Revisions to 19 TAC Chapter 89, Subchapter C, adopted by the SBOE in 2011 clarified and updated the rules by changing references to the General Education Development (GED) examinations and the American Council on Education (ACE) to use the more general term "high school equivalency certification." The 2011 revisions also added a section for provision of an online test in accordance with the TEC, §7.111, as amended by Senate Bill 1094, 82nd Texas Legislature, 2011.

The SBOE adopted revisions to 19 TAC Chapter 89, Subchapter C, in 2013 that expanded entities eligible to serve as testing centers, changed the fee structure, and repealed the section for online testing. The 2013 revisions also incorporated changes to transition from a paper-based test (PBT) format to a computer-based test (CBT) format as of January 1, 2014.

During the recent statutorily required review of SBOE rules in 19 TAC Chapter 89, staff identified rules in Subchapter C that require updates for alignment with changes that were made with

the 2011 and 2013 revisions. The adopted revisions to 19 TAC Chapter 89, Subchapter C, update rules as follows.

Section 89.45, Retesting, is amended to reflect current retesting practices. References to the GED test series and the ACE are removed.

Section 89.46, Examinees with Disabilities, is repealed. Language in 19 TAC §89.46 reflected practices used in the PBT environment that are no longer applicable. Adopted new 19 TAC §89.46, Accommodations, addresses accommodation provisions for applicants with documented disabilities.

Adopted new 19 TAC §89.46, Accommodations, reflects current practice regarding individuals requesting accommodations during testing for the Texas Certificate of High School Equivalency. The adopted new rule includes provisions for reasonable and appropriate accommodations, the method of requesting accommodations, and types of information required when requesting an accommodation.

The adopted rule actions have no new procedural and reporting implications. The adopted rule actions have no locally maintained paperwork requirements.

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

The SBOE took action to approve the proposed revisions to 19 TAC Chapter 89, Subchapter C, for second reading and final adoption during its July 18, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the revisions for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year. The earlier effective date is necessary in order to bring alignment to the rules in a timely manner. The effective date for the repeal is 20 days after filing as adopted.

No public comments were received on the proposal.

19 TAC §89.45, §89.46

The amendment and new section are adopted under the Texas Education Code, §7.111, which authorizes the State Board of Education to provide for the administration of high school equivalency examinations.

The amendment and new section implement the Texas Education Code, §7.111.

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 31, 2014.

TRD-201403480

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



19 TAC §89.46

The repeal is adopted under the Texas Education Code, §7.111, which authorizes the State Board of Education to provide for the administration of high school equivalency examinations.

The repeal implements the Texas Education Code, §7.111.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §700.203, §700.204

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.203 and §700.204, without changes to the proposed text published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3578). The justification for the amendments is to: (1) clarify the persons and entities with whom DFPS may share child abuse and neglect reporter information; (2) clarify that DFPS may share otherwise confidential CPS case records to the extent authorized under state or federal law, as well as for the express purposes set out in §700.203; (3) update terminology and legal citations that have changed since the rules were first adopted; and (4) make other changes to clarify the meaning of the rules.

The amendment to §700.203: (1) corrects the names of "Children's Advocacy Centers" and "Disability Rights Texas"; (2) adds "failure to report" child abuse or neglect to the approved purposes for which confidential CPS records may be shared with law enforcement; (3) adds the person authorized to make educational decisions for the child to the list of persons with whom confidential CPS information may be shared; (4) removes language that arbitrarily limits the ability of DFPS to share otherwise confidential information as necessary to meet the needs of a child with a person or entity responsible for the protection, diagnosis, care, treatment, supervision or education of the child; (5) ensures that DFPS can share confidential records with any person or entity not expressly listed in this rule to the extent such sharing is authorized by other state or federal law; and (6) updates citations to several subsections of §261.201, Family Code,

that have changed since the CPS confidentiality rules were originally adopted in 1997.

The amendment to §700.204: (1) specifies that the following are entitled to access to reporter information in CPS child abuse and neglect records: (a) courts considering issues of custody, possession, or access to a child; (b) law enforcement or other entities with a legal duty to investigate child abuse or neglect; failure to report abuse or neglect, or false reporting of abuse or neglect; (c) a person or entity providing legal representation to DFPS; and (d) a social study evaluator, guardian ad litem or CASA appointed to make recommendations to the Court regarding a child's best interest; (2) updates legal citations to replace outdated references to the formerly non-codified Texas "Medical Practices Act," with current references to Chapter 181, Health and Safety Code, the Texas law concerning medical records privacy; (3) updates legal references relating to the confidentiality of polygraph exam results, which are now contained in the Occupations Code; (4) clarifies the procedures for withholding records when their release would interfere with an ongoing law enforcement investigation; and (5) clarifies other words and terms, including correcting the name of DFPS.

The amendments will function by clarifying the persons and entities with whom confidential CPS records may be shared, as required by §261.201, Family Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement §261.201, Family Code, which authorizes DFPS to adopt rules specifying who may have access to confidential child abuse and neglect records.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201403461

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

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Proposal publication date: May 2, 2014

For further information, please call: (512) 438-3437



40 TAC §700.211

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §700.211, without changes to the proposed text published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3690).

House Bill (HB) 1227, as codified in Texas Family Code (TFC) §264.614, required DFPS to develop an Internet application that allows a court-appointed volunteer advocate (also known as a Court Appointed Special Advocate or CASA) to: (1) access the case file of the child for whom the volunteer advocate was appointed through DFPS' automated case tracking and information management system; and (2) add the volunteer advocate's findings and reports to the child's case file.

The requirement to develop the application was contingent on the receipt of funding by the legislature. DFPS received funding and is currently working to develop, in a staged fashion, the required Internet application, with the initial access being granted to volunteer advocates in approximately September 2014. A staged rollout is necessary so that DFPS can provide on-line access to certain core data as soon as possible, while working to modernize the department's Information Management Protecting Adults and Children of Texas (IMPACT) database system to make it possible to provide additional information to volunteer advocates in the future. Current technology limits expanded data sharing because the system commingles data to which volunteer advocates are entitled with data that the volunteer advocates would not be entitled to, such as privileged attorney-client communications. Similarly, the technology needed to allow CASA to upload reports to the child's case file will take longer to develop than the technology needed to provide access to certain core information by September 2014.

New §700.211: (1) Requires DFPS to develop an Internet application that: (a) provides access to a child's case file as further specified in the rule and memorandum of understanding (MOU) adopted thereto; and (b) will allow a volunteer advocate to add the advocate's findings and reports to the case file. (2) Requires DFPS to enter into an MOU with the statewide organization representing court-appointed volunteer advocates. (3) Specifies that the MOU must grant access at a minimum to the following information as it relates to the current conservatorship case of a child for whom the volunteer has been appointed: (a) demographic, locating, and contact information for principal and collateral participants; (b) information regarding the child's current placement and any prior placements during the same conservatorship episode; (c) information regarding the child's authorized service level, including supporting documentation in the current Common Application for Placement of Children in Residential Care; (d) the case plan as that term is defined in §700.1319 of this title (relating to What is a case plan?), including the child service plan and any family service plan then in effect; (e) information related to the child's permanency plan, including documentation related to permanency planning meetings held on the child's behalf; (f) the temporary visitation schedule or visitation plan in effect for the case; (g) list of all legal actions and statuses in the case; (h) educational status information; (i) information regarding the child's medical care, including the identity of the child's medical consentor, a listing of the child's medical and mental health assessments, and the child's medical and developmental history page; and (j) a listing of the external documents associated with the case. (4) Requires the MOU to provide that the types of information to which a volunteer advocate may gain access will be expanded upon mutual agreement of the parties as technological enhancements are made. (5) Sets forth other required aspects of the MOU: minimum security protocols; consequences for security breach and improper disclosure; and responsibilities of each party to the MOU. (6) Clarifies that information transmitted through the application remains confidential, and transmission does not operate as a waiver of confidentiality.

(7) Clarifies that for the purposes of the rule, the term "volunteer advocate" includes staff with authority to access the records of a child in DFPS conservatorship.

The new section will function by allowing more efficient access by court-appointed volunteer advocates to key information in the case file of the child for whom the volunteer advocate has been appointed by the court.

No comments were received regarding adoption of the new section.

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HB 1227 from the 83rd Regular Session, as enacted in Texas Family Code §264.614.

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 30, 2014.

TRD-201403462

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



CHAPTER 745. LICENSING

SUBCHAPTER F. BACKGROUND CHECKS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.623, 745.651, 745.657, 745.681, and 745.735 without changes to the proposed text published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3580). A child-placing agency (CPA) must conduct criminal history and central registry checks on all CPA employees and volunteers. Because Child Protective Services (CPS) is a CPA, certain DFPS employees and volunteers are subject to the background check requirements in the Child-Care Licensing Division's rules. On the other hand, CPS staff must also have background checks in order to be a DFPS employee or volunteer. Hence, these employees are subject to duplicative background check processes. Although there are some differences in the processes used by Licensing, as the regulatory authority for CPAs, and DFPS as an employer, both of the processes serve the same goal of ensuring that an employee or volunteer does not pose an undue risk to clients as a result of the employee's or applicant's prior criminal history or central registry background. The requirements of each of the background check processes are similar enough that it is unnecessarily burdensome to

require a CPS employee to undergo both checks. DFPS is therefore adopting amendments to Licensing rules that would allow the background-check process that a person must fulfill in order to become a DFPS employee or volunteer to satisfy Licensing background check requirements. A summary of the changes follows:

The amendment to §745.623 states that an operation does not have to request a background check for a person who has to have a background check because of the person's responsibilities as a DFPS employee or volunteer.

The amendment to §745.651 clarifies that the criminal convictions otherwise relevant to a background check under Licensing requirements do not apply to a person who has a background check because of his responsibilities as a DFPS employee or volunteer. The check that the person has in order to be a DFPS employee or volunteer has its own criminal history requirements.

The amendment to §745.657 clarifies that the Central Registry findings otherwise relevant to a background check under Licensing requirements do not apply to a person who has a background check because of his responsibilities as a DFPS employee or volunteer. The check that the person has in order to be a DFPS employee or volunteer has its own requirements concerning Central Registry findings.

The amendment to §745.681 states that an operation may not request a risk evaluation for a criminal conviction or central registry finding if the person had the background check because of the person's responsibilities as a DFPS employee or volunteer.

The amendment to §745.735 states that Licensing will not notify a person with a Central Registry match of a finding if the person had a background check because of the person's responsibilities as a DFPS employee or volunteer.

The amendments will function by eliminating duplicative background checks.

No comments were received regarding adoption of the amendments.

DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.623

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §42.042, Human Resources Code, which authorizes DFPS to adopt rules necessary to carry out Chapter 42, Human Resources Code, including §42.056 related to background checks.

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 30, 2014.

TRD-201403457
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §745.651, §745.657

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement §42.042, Human Resources Code, which authorizes DFPS to adopt rules necessary to carry out Chapter 42, Human Resources Code, including §42.056 related to background checks.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §745.681

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §42.042, Human Resources Code, which authorizes DFPS to adopt rules necessary to carry out Chapter 42, Human Resources Code, including §42.056 related to background checks.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



DIVISION 5. DESIGNATED AND SUSTAINED PERPETRATORS OF CHILD ABUSE OR NEGLECT

40 TAC §745.735

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §42.042, Human Resources Code, which authorizes DFPS to adopt rules necessary to carry out Chapter 42, Human Resources Code, including §42.056 related to background checks.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.101, 749.103, 749.667, 749.2447, 749.2449, 749.2453, 749.2471, and 749.2815, in its Minimum Standards for Child-Placing Agencies chapter. The amendments to §749.2453 and §749.2815 are adopted with changes to the proposed text published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3691). The amendments to §§749.101, 749.103, 749.667, 749.2447, 749.2449, and 749.2471 are adopted without changes to the proposed text and will not be republished. Also in this issue of the *Texas Register*, DFPS is withdrawing the amendment to §749.43. The definition for Trauma Informed Care is added to a new proposal of rule amendments in this chapter relating to child safety, including treatment services for children with primary medical needs.

The justification for the amendments is to improve the safety of children in foster care. Protecting children is a core mission of DFPS.

Late last year the Commissioner of DFPS directed the agency to conduct a Child Safety Project to minimize the risk to children. As part of that project DFPS held six statewide forums where provider groups could share ideas about best practices around the provision of safe, nurturing care to children who have suffered abuse and neglect. The forums discussed several different areas, including changes to Child Protective Services (CPS) policy and procedure, training, contract changes, and minimum standard changes. Regarding the minimum standard changes, some of the discussion in the forums related specifically to foster home screenings and verifications: "taking the necessary time to screen and select foster parents", "contacting as many references as possible", "relatives are a critical source of information", and "carefully assess for gaps or 'red flags'". There was also some discussion relating to the supervision of foster homes.

In January of 2014, the Licensing Division convened the Committee for Advancing Residential Practices (CARP), which was created in the Spring of 2013. The Committee is made up of approximately eight child-placing agency representatives from diverse geographic regions of the state, a CPS representative, a Licensing Division representative, and several advocates. Partially in response to the information obtained during the six statewide forums noted above, the Committee met twice to discuss possible changes to the minimum standards relating to the screening and verification of foster homes and the supervision of foster homes. The Committee also made recommendations for additional changes to the standards.

These amendments are the first of two sets of rule changes to adjust minimum standards to improve safety for children in foster care. The second recommended rule changes will be later in the year. The amendments establish additional requirements for screenings and verifications of new foster homes, as well as for supervisory visits in new and existing foster homes.

A summary of the changes follows:

The amendment to §749.101(6)(F): (1) Moves and rewords the requirement that was previously found at §749.103(7) of this title (relating to What are my operational responsibilities as the permit holder?) to conduct ongoing evaluations of foster homes. This was done by clarifying that a CPA's required plan to evaluate the effectiveness of their system for meeting the rules of this Chapter must include the evaluation of the accuracy of foster home screenings; (2) Adds a requirement that the plan must also evaluate the comprehensiveness of supervisory visits; and (3)

Moves and rewords the requirement that was previously found at §749.103(7) to document the unmet rules of this chapter and correct all deficiencies. This was done by clarifying that a CPA's required plan must identify problems, correct the problems, and document the problems identified and when and how the problems were corrected.

The amendment to §749.103 concerns paragraph (7). Paragraph (7): (1) Clarifies that the plans required to be developed pursuant to §749.101(6) of this title (relating to What are my responsibilities as the permit holder before I begin operating?) must be implemented, which was always the intent of the rules; (2) The previous requirement to conduct ongoing evaluations of foster homes, including documenting unmet rules of this chapter and correcting all deficiencies, was moved to §749.101(6)(F); (3) Adds a requirement that a CPA's plan to evaluate the effectiveness of their system for meeting the rules of this chapter must also evaluate the comprehensiveness of supervisory visits; and (4) Adds a requirement for current CPAs to update their plans as necessary to achieve compliance with these changes. The current CPAs must submit the updated plan and implement the plan by March 1, 2015. Paragraphs (6) and (14) are also clarified with minor non-substantive changes to the language of the rule.

The amendment to §749.667 adds subparagraph (1)(B), which adds that child placement management staff must review and approve "documentation of supervisory visits."

The table of required information in §749.2447 lists the information that a child-placing agency must obtain, document, and assess when screening a prospective foster parent. The changes to the chart are as follows:

Paragraphs (4) and (10) are amended to require the gathering of information (in addition to any current marital information) on current and previous relationships, including common-law marriages and other relationships between people who share or have shared a domestic life without being married, and assessing the impact that any significant prior or current interpersonal relationships might have on the current environment and the prospective foster parents' ability to care for foster children.

Paragraph (6) is amended to require specific proof of a prospective foster family's income for the past 60 days, by requiring two bank statements, a tax return, or other documented verification, and a monthly itemized household expense report.

Paragraph (7) adds a requirement that a CPA must request service call information from law enforcement for the foster parents' addresses for the past two years, in addition to the current requirement to obtain law enforcement information only on domestic violence calls identified by the foster parent in the previous one year period. The requirement to obtain law enforcement information directly from foster parents has been changed to include any type of law enforcement service call information (not just domestic violence calls) and lengthen the time frame from one year to two years. Any information obtained from law enforcement must be discussed with the foster parents, assessed, and documented.

Paragraph (8) clarifies that when a prospective foster parents' motivation to foster is being assessed, this also includes their "willingness" to foster.

Paragraph (9) clarifies that if there are any health related issues noted, there must be a discussion with the prospective foster

parents regarding how the health issue may affect their ability to care for a child.

Paragraph (13) clarifies that any disciplinary methods approved by a CPA must comply with the current disciplinary rules in Chapter 749.

Paragraph (19) clarifies that when discussing support systems for the prospective foster parents, the discussion must include any information on any person that might provide support as a caregiver during an unexpected event or crisis like the death of a family member. The identity and availability of each person that will provide support as a caregiver must be verified and documented.

Paragraph (22) clarifies the discussion that must be had with the prospective foster parents regarding the foster home's willingness and ability to work with children with respect to challenging behaviors, age range, gender, number of children, and services to be provided (e.g. respite child care). This paragraph also adds the requirement to discuss with the prospective foster parents their understanding of the concepts of trauma informed care and how they would use those concepts in relation to the children placed in their home.

Paragraph (23) clarifies that the assessment by the CPA must address with the prospective foster parents a previous closure of their home by another CPA, including any potential risk indicators that were not adequately addressed by the prior CPA, before approval and verification of the home.

Paragraphs (2), (12), (14), (16), and (17) have minor non-substantive changes for purposes of consistency, clarity, accuracy, and gender neutrality.

The amendment to §749.2449: (1) requires all adult children to be interviewed before verification by deleting a prior exception for a CPA that documented reasonable but unsuccessful efforts to contact the adult child; (2) requires three additional interviews for a foster home screening: one with a family member not living in the home; and two with neighbors, school personnel, clergy, or other community members; and (3) clarifies other portions of this rule for consistency.

The amendment to §749.2453 mandates that foster home screenings must be updated when there is a major life change in a foster family. The update may be done by using an addendum. When the update is needed because of the major life change, the CPA must immediately assess the appropriateness of any current placement of the children in the home and complete the update within 30 days of the notification of the major life change.

The amendment to §749.2471 clarifies that indicators of potential risk to children must be addressed with the prospective foster parents prior to verification of the home, and all of this must be documented in the foster home screening.

The amendment to §749.2815 increases from one to two the number of supervisory visits of foster homes that must be unannounced; and adds minimum requirements that must be evaluated and documented at least once every quarter, including: (1) any change to household members, frequent visitors, or persons that will provide support as caregivers during an unexpected event or crisis situation; (2) any major life changes in the foster family; (3) any change to disaster and emergency plans; and (4) discussions with the foster family about challenging behaviors of children, the level of stress of the foster family, and methods for responding to a child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

The amendments will function by ensuring that the safety of children in foster care and the quality of their care will be improved due to updating standards that will require child-placing agencies to take additional time to assess, evaluate, and supervise foster homes.

During the public comment period, DFPS received five comments regarding the rule changes. Four comments were from one child-placing agency (CPA), and one comment from the general public. There was also one general comment from another CPA during the last DFPS Council Meeting on April 4, 2014, supporting the proposed rule changes. The CPA indicated that it is currently meeting some of these requirements, because the CPA is accredited nationally which requires them to comply with standards that exceed the current Texas minimum standards. However, the commenter suggested that some CPAs across the state might not be able to meet the new standards without increased reimbursement rates. A summary of the comments and responses follows:

Comment concerning §749.2447(4) and (10): The commenter interpreted these two rule changes as considering common-law marriage as being different than a state-licensed marriage, and that the changes would place common law marriage at the same commitment level as a live-in boyfriend or girlfriend.

Response: The intent of the rule change was to be more inclusive. When conducting home screenings for prospective foster families, it is important to find out as much information as possible about the foster parents. This includes any information on current and previous marriages and other significant interpersonal relationships. DFPS is adopting this rule without change.

Comment concerning §749.2447(7): One commenter had a concern regarding this rule relating to obtaining service call information from law enforcement: Has law enforcement across the state been notified of this new requirement? Is there a specific form and process for this request? What happens if law enforcement does not comply with requests? Is there a variance/waiver requirement? What other service call types is Licensing concerned with (substance abuse, break-ins, burglary, theft, trespassing, etc.)?

Response: Service call information from law enforcement is open to the public and is available to any requester. An ad hoc review of rural and urban law enforcement agencies indicated that the information will be provided, even though the method of requesting and obtaining the information from individual law enforcement agencies vary. If law enforcement does not comply, then a variance could be requested. Any service call information that is the result of an applicant's behavior or a person's behavior that will reside in the foster home will be important to the assessment of the prospective foster parents. DFPS is adopting this rule without change.

Comment concerning §749.2447(19): One commenter requested clarification regarding the documentation that will be required to verify and document the identity and availability of each person that will provide support as a caregiver.

Response: The documentation required is a notation in the home screening that you have talked to the person identified as a support caregiver and the person has agreed to be a support caregiver. DFPS is adopting this rule without change.

Comment concerning §749.2453: One commenter asked for a time frame for completing an updated foster home screening in response to a major life change in the foster family.

Response: DFPS agrees. DFPS clarified that an update in response to a major life change requires a CPA to immediately assess the appropriateness of any current placement of the children in the home, and the update must be completed within 30 days. The rule has been amended accordingly.

Comment concerning §749.2815: One commenter stated that in some instances supervisory visits occur more often than quarterly, even weekly sometimes. Requiring evaluation and documentation of each of these issues at "each supervisory visit" will distract from other critical issues involving the care of children, i.e. medical, educational, permanency, family connections, etc. Fiscal impact of "quarterly visits" is not an accurate estimate of fiscal impact.

Response: DFPS agrees. The evaluation and documentation of the items listed in this rule should only be required for quarterly supervisory visits. Additional supervisory visits may focus on other issues. DFPS has amended the rule accordingly.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §749.101, §749.103

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cynthia O'Keeffe

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Department of Family and Protective Services

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 3. CHILD PLACEMENT STAFF

40 TAC §749.667

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 2. FOSTER HOME SCREENINGS

40 TAC §§749.2447, 749.2449, 749.2453

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §§42.042, 42.0535, and 42.0561.

§749.2453. *When must I update the foster home screening?*

(a) You must update a foster home screening, as follows:

(1) Under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes supervised by a branch office when the branch office closes?); and

(2) When there is a major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?).

(b) A foster home screening update may be made by using an addendum.

(c) A CPA must complete a foster home screening update that is needed under the circumstances described in §749.307(a) of this title before issuing a new verification certificate.

(d) A CPA must do the following when updating a foster home screening because of a major life change in the foster family:

(1) Assess the appropriateness of any current placement of children in the foster home, immediately upon notification; and

(2) Complete the update within 30 days of the notification of the major life change.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §749.2471

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.042, 42.0535, and 42.0561.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §749.2815

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2815. How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?

(a) You must have supervisory visits:

(1) In the foster home at least quarterly;

(2) With both foster parents, if applicable, at least once every six months; and

(3) With all household members at least once every year.

(b) At least two supervisory visits per year must be unannounced.

(c) At least once every quarter, your supervisory visit must evaluate and document the following:

(1) Any change to household members, frequent visitors, or persons who will provide support as a caregiver during an unexpected event or crisis situation;

(2) Any major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?);

(3) Any change to the foster home disaster and emergency plans as described in §749.2907 of this title (relating to What disaster and emergency plans must each foster home have?); and

(4) Any challenging behaviors of the current children in the home, the level of stress the foster family is currently experiencing, and any methods for responding to each child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

(d) You must document each visit in the home's record. The documentation must include specific issues identified and any rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(e) For each supervisory visit, documentation of the visit must be signed by each foster parent present for the visit and the child-placement staff conducting the visit.

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 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.23

The Texas Department of Motor Vehicles (department) adopts amendments to §217.23, Special Registration Permits, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2253). The amended rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to implement the legislative requirements of HB 3256, 83rd Legislature, Regular Session, 2013.

The amendments to §217.23(b) add the requirement that an application for an additional weight permit must be accompanied by proof of the applicant's Texas Agriculture or Timber Exemption Registration number as issued by the Texas Comptroller of Public Accounts. The amendments also authorize verification of registration numbers through the Texas Comptroller of Public Accounts online system.

The amendment to §217.23(c) replaces "director" with "department" to conform to other statutory references and for administrative convenience.

Nonsubstantive amendments were made to correct punctuation.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the Texas Department of Motor Vehicles under the Transportation Code; and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Chapter 502, Registration of Vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.434.

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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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

43 TAC §217.28

The Texas Department of Motor Vehicles (department) adopts amendments to §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4216). The amended rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to implement the legislative requirements of Senate Bill 1914, 83rd Legislature, Regular Session, 2013, concerning issuance of State Official specialty license plates, and House Bills 719 and 2741, 83rd Legislature, Regular Session, 2013, relating to golf cart license plates.

The amendments to §217.28(h)(1) authorize issuance to members of the state legislature of up to three sets of specialty plates that display the distinguishing prefix "SO," or up to three sets of specialty plates that depict the state capitol and do not display the distinguishing prefix "SO." The amendments also require that an application for a specialty license plate by a member of the state legislature specify the same specialty license plate design for each applicable vehicle.

The amendments add §217.28(j), golf carts, to the rule. The amendments establish the procedure and requirements to issue a golf cart license plate and include a department fee of \$10 for each plate issued.

The amendments remove §217.28(c)(3)(B)(xi) because apportioned license plates are not specialty license plates under Transportation Code, Chapter 504. Nonsubstantive amendments are made to §217.28(i)(5)(B)(iv), to correct the cross-reference from §217.22(c)(3)(B) to §217.22(c)(4)(B). Further, nonsubstantive amendments are made to make the terminology consistent with other department rules.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the Texas Department of Motor Vehicles under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504; and Transportation Code, §551.402, which requires the department to adopt rules to establish a procedure to issue golf cart license plates to be used for operation in accordance with Transportation Code, §551.403 and §551.404.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 547 and §§502.091, 504.400, 504.401, 504.603, 504.943, and 551.401 - 551.404.

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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43 TAC §217.30

The Texas Department of Motor Vehicles (department) adopts amendments to §217.30, Commercial Vehicle Registration, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4222). The amended rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to implement the legislative changes from House Bill 511, 83rd Legislature, Regular Session, 2013, in addition to other changes.

The amendments delete §217.30(b)(8)(C) because the registration receipt for the token trailer license plate is no longer required to be carried in a vehicle that displays a token trailer license plate under Transportation Code, §502.0023(d-1) or §502.255(i), which were added by House Bill 511. The amendments renumber the remainder of the subparagraphs accordingly.

The amendments also add the term "Motor Bus" to §217.30(b)(1) because apportioned license plates are also issued in lieu of Motor Bus license plates at the option of the applicant. Further, nonsubstantive amendments make the terminology in this rule consistent with the terminology in statutes and other department rules.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the Texas Department of Motor Vehicles under the Transportation Code; and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.0023(g), which authorizes the department to adopt rules to implement §502.0023; and Transportation Code, §502.255(h), which authorizes the department to adopt rules to administer §502.255.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.0023, 502.255, and 502.091.

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 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) adopts amendments to §219.3, Surety Bonds for Ready-mix Concrete Trucks, Concrete Pump Trucks, Vehicles Transporting Recyclable Materials, and Solid Waste Vehicles, without changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2256). The amended rule will not be republished. The department adopts new §219.32, Ready-Mixed Concrete Truck Permits, with changes to the proposed text as published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2256). The adopted new rule will be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

House Bill 2741, 83rd Legislature, Regular Session, 2013, amended existing Transportation Code, §622.012 and added new Transportation Code, §623.0171, authorizing the department to issue a permit for a ready-mixed concrete truck operating on three axles. The permit authorizes a ready-mixed concrete truck to be operated on a public highway in this state at a weight that exceeds the statutory single axle weight limitation and tandem axle weight limitation by not more than 10 percent if the gross weight of the truck is not heavier than 69,000 pounds.

House Bill 2741 also repealed Transportation Code, §622.013, which required the owner of a ready-mixed concrete truck with a tandem axle weight heavier than 34,000 pounds to file a surety bond with the department prior to operating the truck on a public highway in Texas.

Amendments to §219.3, Surety Bonds for Ready-mix Concrete Trucks, Concrete Pump Trucks, Vehicles Transporting Recyclable Materials, and Solid Waste Vehicles, as adopted, delete references to a bond requirement for a ready-mixed concrete truck and a concrete pump truck because Transportation Code, §622.013 was repealed.

New §219.32, Ready-Mixed Concrete Truck Permits, implements this new permit by establishing the procedures for the application for the permit, the procedures for the issuance of the permit, the restrictions that apply to the permit, and the method for dividing 50 percent of the collected fees between the counties designated in the permit application.

COMMENTS AND RESPONSES

The department received written comments from the Texas Aggregates and Concrete Association (TACA).

COMMENT:

TACA supports the amendments to §219.3 regarding the removal of the surety bond requirement for ready-mixed concrete trucks.

COMMENT:

TACA generally supports the new §219.32, which defines the requirements, restrictions, and procedures regarding the ready-mixed concrete truck permit, clarifies certain provisions in Transportation Code, §623.0171, and describes how 50 percent of the collected fees shall be divided among the counties.

COMMENT:

TACA requests that the requirement in §219.32 to provide the license plate number on the permit application be limited to situations when the license plate number is known to the applicant at the time of the application. TACA states that the applicant could supplement the application with the license plate information when the information becomes available.

Many of TACA's member companies purchase the permits for an entire fleet of trucks, often before the trucks are issued a license plate number. The member companies do this because they would like to pay many of their known expenses in advance, and they want to have the permits in place so the trucks can be operated as soon as the license plates are issued.

RESPONSE:

The department did not amend new §219.32 regarding the license plate number because the department uses the license plate number to enforce the prohibition against the transfer of this permit between vehicles, pursuant to Transportation Code, §623.0171(d)(2) and §623.0171(f)(2)(B), (C). Vehicle identification numbers are 17 characters long, compared to a license plate number which is typically seven characters long. The chances for error are much greater if the department relies on the vehicle identification number because the applicant has more numbers to enter on the application. Also, the department's online permitting system, which is called the Texas Permitting & Routing Optimization System (TxPROS), is already programmed to require the license plate number as part of the application.

Further, if an applicant wants to pay its known expenses in advance, the department allows applicants to deposit money into an escrow account.

COMMENT:

TACA requests the department to modify the language in §219.32(c)(3) to authorize the issuance of a permit for a period of less than one year and to prorate the fee accordingly.

RESPONSE:

The department did not amend new §219.32 regarding the annual permit because the requested change would increase the department's costs. If the department made the requested change, the department would need to program changes in TxPROS. Also, if the department issued prorated permits, the department's overhead would likely increase because applicants would likely purchase multiple permits during the year, rather than one permit. The department personnel manually mail out the sticker and permit for these permits.

In §219.2(1) of this title (relating to Definitions), the department defines an annual permit as a permit that authorizes the movement of an overdimension load for one year commencing with the "movement to begin" date. The ready-mixed concrete truck permit is an annual permit, so the applicant has the opportunity to use the permit for an entire year, regardless of the date the applicant purchases the permit.

COMMENT:

TACA requests that an exception be added to §219.32(j) regarding any size and weight limits in construction and maintenance areas when the truck is delivering concrete to the job site within the construction or maintenance area.

RESPONSE:

The department added an exception regarding the delivery of concrete to the job site within the state highway construction or maintenance area, as long as the permittee obtains a written exception from a person authorized under §219.32(j) to issue an exception.

When the permittee contacts the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways, the permittee can request an exception from the local jurisdiction's construction or maintenance restrictions.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §219.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.0171(k), which requires the department by rule to require an applicant to designate in the permit application the counties in which the applicant intends to operate, and Transportation Code, §623.0171(l), which requires the department by rule to establish how 50 percent of the collected fees for the ready-mixed concrete truck permits will be divided among the counties designated in the permit applications.

CROSS REFERENCE TO STATUTE

Transportation Code, §622.012 and §623.0171; and Chapters 621, 622, and 623.

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 30, 2014.

TRD-201403470

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: August 19, 2014

Proposal publication date: March 28, 2014

For further information, please call: (512) 465-5665



SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §219.32

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department

of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.0171(k), which requires the department by rule to require an applicant to designate in the permit application the counties in which the applicant intends to operate, and Transportation Code, §623.0171(l), which requires the department by rule to establish how 50 percent of the collected fees for the ready-mixed concrete truck permits will be divided among the counties designated in the permit applications.

CROSS REFERENCE TO STATUTE

Transportation Code, §622.012 and §623.0171; and Chapters 621, 622, and 623.

§219.32. Ready-Mixed Concrete Truck Permits.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for a ready-mixed concrete truck, operating on three axles, under the provisions of Transportation Code, §623.0171 and Chapter 622, Subchapter B.

(b) Axles. To qualify for movement with a ready-mixed concrete truck permit, the truck may only operate on three axles, regardless of whether the truck actually has more than three axles.

(c) Application for permit.

(1) To qualify for a ready-mixed concrete truck permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of counties in which the vehicle will be operated.

(3) The application shall be accompanied by the total annual permit fee of \$1,000.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(d) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department. The request shall

include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(h) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(i) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(j) Construction or maintenance areas.

(1) Permits issued under this section authorize the operator of the permitted vehicle to travel through any state highway construction or maintenance area, provided the size and weight of the vehicle do not exceed the construction restrictions that are available on the department's website. If a permitted vehicle is delivering concrete to a state highway construction or maintenance jobsite within a construction or maintenance area, the following may provide the permittee a written exception to operate the permitted vehicle in the construction or maintenance area at a size or weight that exceeds the size and weight listed on the department's website: the Texas Department of Transportation or a Texas Department of Transportation contractor that is authorized by the Texas Department of Transportation to issue permit exceptions. The written exception must be carried in the permitted vehicle when the vehicle is on a state highway and must be provided to the department or law enforcement upon request.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(k) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(l) Distribution of fees. The fees collected for permits under Transportation Code, §623.0171 shall be distributed as follows:

(1) 50 percent shall be deposited to the credit of the state highway fund; and

(2) 50 percent shall be divided equally among all counties designated in the permit application under Transportation Code, §623.0171.

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 30, 2014.

TRD-201403471

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: August 19, 2014

Proposal publication date: March 28, 2014

For further information, please call: (512) 465-5665



43 TAC §219.33

The Texas Department of Motor Vehicles (department) adopts new §219.33, Federal Disaster Relief Permit, which was proposed as §219.33, MAP-21 Emergency Permits, with changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4229). The adopted rule will be republished.

EXPLANATION OF ADOPTED NEW SECTION

New §219.33 is adopted to implement House Bill 2741, 83rd Legislature, Regular Session, 2013, which added new Transportation Code, Chapter 623, Subchapter R, to authorize the department to issue permits for the delivery of relief supplies during a national emergency or major disaster as declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.). The permit authorizes additional weight allowances for the transportation of certain divisible loads on state highways in Texas during an emergency or major disaster.

New §219.33, Federal Disaster Relief Permit, implements this new permit by establishing the requirements, restrictions, and procedures regarding this permit.

COMMENTS

No comments on the proposed new section were received. However, the department decided to change the name of the permit and the title of new §219.33 from MAP-21 Emergency Permits to Federal Disaster Relief Permit because the old name and title were not self-explanatory.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.342, which authorizes the board to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter R.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623; 23 U.S.C. §127; and 42 U.S.C §5121 et seq.

§219.33. Federal Disaster Relief Permit.

(a) Purpose. In accordance with Transportation Code, Chapter 623, Subchapter R, and 23 U.S.C. §127(i), the department may issue a special permit that authorizes additional weight allowances for the transportation of certain divisible loads on state highways in Texas during an emergency or major disaster declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.). This section prescribes the requirements, restrictions, and procedures regarding this permit.

(b) Application for permit.

(1) To obtain a Federal Disaster Relief Permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) the applicable attestation(s).

(c) Conditions and restrictions. This permit is subject to the following conditions and restrictions:

(1) The vehicle and load must not exceed the following weight limits:

(A) single axle--21,500 pounds;

(B) two-axle group--43,000 pounds;

(C) three-axle group--53,000 pounds. For the purposes of this section, a three-axle group is three consecutive axles more than 8 feet apart but less than 13 feet apart, measured from the center of the first axle to the center of the last axle in the group; and

(D) gross weight--160,000 pounds.

(2) The permitted vehicle must not cross a load-restricted bridge or travel on a load-restricted state highway when exceeding the posted capacity of the bridge or state highway.

(3) Nighttime movement is allowed under this permit, unless prohibited by the curfew movement restrictions of a city in which the vehicle is operated.

(4) Movement of a permitted vehicle is prohibited when road conditions are hazardous, based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(A) visibility of less than 2/10 of one mile; or

(B) weather conditions such as wind, rain, ice, sleet, or snow.

(5) The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(6) The permit does not authorize the vehicle to exceed the manufacturer's tire load rating.

(7) The permit is not transferable from the applicant to another person or entity. Also, the permit is not transferable between vehicles.

(8) The permit will expire on the expiration date listed in the permit.

(9) The permit may not be used in conjunction with any other oversize or overweight permits.

(10) If the vehicle is being used to deliver relief supplies, the entire load must consist of relief supplies, which may include, but are not limited to:

- (A) medicine and medical equipment;
- (B) food supplies (including feed for livestock);
- (C) water;
- (D) materials used to provide or construct temporary housing;

(E) other supplies directly supporting the type of relief needed following a presidential declaration of emergency or major disaster; and

(F) other materials as authorized by federal law or regulation; the United States Department of Transportation, Federal Highway Administration; or the president of the United States.

(11) If the vehicle is being used to deliver relief supplies, the permit only authorizes delivery to a destination that is part of the geographical area covered by the president's emergency or major disaster declaration.

(12) If the vehicle is being used to transport materials from a geographical area covered by the president's emergency or major disaster declaration, the permit only authorizes loads which are necessary to facilitate the delivery of relief supplies to the geographical area covered by the president's emergency or major disaster declaration. An example of an authorized load is debris, as long as the removal of the debris expedites the clearing of roadways, staging areas, or locations for temporary structures in order to facilitate the delivery of relief supplies. However, the permit will only authorize such divisible overweight load if the permit expressly authorizes it.

(d) Copy of permit and current emergency or disaster declaration. A copy of the permit and the president's current emergency or major disaster declaration, including any amendments, must be kept in the permitted vehicle until the day after the date the permit expires.

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 30, 2014.

TRD-201403472

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

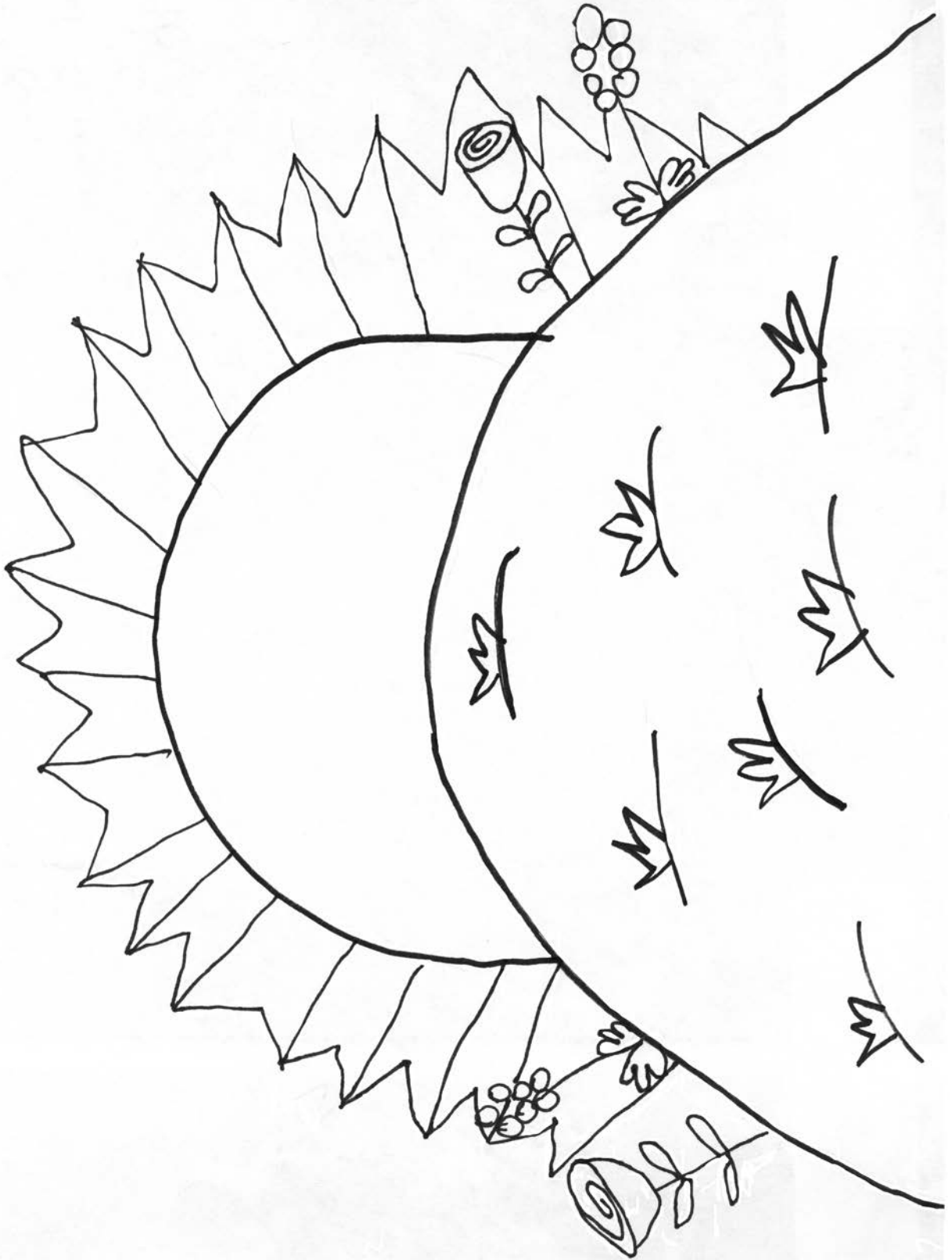
Effective date: August 19, 2014

Proposal publication date: May 30, 2014

For further information, please call: (512) 465-5665



Kyra Pacheco



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

TEXAS DEPARTMENT OF INSURANCE EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

ADOPTION OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE WITH TEXAS EXCEPTIONS

The commissioner of insurance adopts the *National Council on Compensation Insurance (NCCI) Statistical Plan for Workers Compensation and Employers Liability Insurance* with Texas exceptions, as proposed by the May 30, 2014, TDI staff petition (Reference No. W-0514-03-I), with no amendments, to continue the process of Texas becoming an NCCI state for workers' compensation purposes; help align workers' compensation statistical data reporting requirements between Texas and other NCCI states; and replace the outdated *Texas Workers' Compensation Statistical Plan (Texas Stat Plan)* with a plan that provides more detailed information, particularly with regard to workers' compensation losses.

Hearing and Comments

TDI published notice of the proposal and hearing in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4685). One commenter made a written comment, as well as a public comment at the June 25, 2014, hearing, held under Docket No. 2766. One item included in his written comment, which pertained to available deductible options, was beyond the scope of this rule. Another commenter filed a written comment during the comment period.

The two comments on this rule supported the adoption of the *NCCI Stat Plan* with Texas exceptions as a logical, essential step in TDI's initiative toward making workers' compensation insurance regulation in Texas more efficient by making Texas an NCCI state. As an NCCI state, NCCI will administer certain workers' compensation functions in Texas that TDI is not statutorily required to perform. A commenter stated that the proposal was consistent with Commissioner's Order No. 3142, dated March 21, 2014, which adopted the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. TDI appreciates the commenters' support, and continues to work hard to ensure the best and most efficient administration of the Texas workers' compensation classification and premium calculation system.

Justification

The commissioner has determined that adopting the *NCCI Stat Plan* with Texas exceptions is necessary to further Texas's transition toward becoming an NCCI state. NCCI is a licensed advisory organization in Texas, the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation, and the statistical agent and administrator for certain workers' compensation functions in Texas. As of February 2014, there are 36 states plus the District of Columbia that are NCCI states, 10 independent states, including Texas, and four monopolistic states.

All NCCI manuals are currently available on the NCCI website to subscribers and affiliates of NCCI. The Texas exceptions to the *NCCI Stat Plan* will also be available through the same system. NCCI has the staffing and technical resources to create, maintain, and support links between the information in the NCCI manuals and the Texas exceptions, which makes NCCI's electronic manuals very easy to use.

Texas carriers will benefit from having more uniform statistical data reporting requirements among states. TDI will benefit by having more detailed information to use in regulating the workers' compensation market. Carriers and policyholders will also benefit from NCCI's technical expertise, infrastructure, and support.

This rule adopts the *NCCI Stat Plan* and the Texas exceptions that amend the *NCCI Stat Plan* to comply with unique Texas statutory and rule requirements. NCCI will format the final Texas exceptions to match the style of its other manuals.

The *Texas Stat Plan* requirements are outdated and result in less detailed data reported in Texas than in most other NCCI states. The *Texas Stat Plan* contains minimum statistical reporting requirements for exposure, premium, and loss data for each workers' compensation policy a carrier issues. The *NCCI Stat Plan* requires carriers to report more detailed information than the current *Texas Stat Plan*. In spite of the minimal statistical reporting requirements in the *Texas Stat Plan*, most carriers are voluntarily reporting their Texas statistical data in an expanded format, which satisfies the *NCCI Stat Plan* statistical reporting requirements in other states.

Adopting the *NCCI Stat Plan* with the Texas exceptions will help align workers' compensation statistical data reporting requirements between Texas and other NCCI states, and will provide more detailed information, particularly about workers' compensation losses. Conforming the statistical reporting requirements in Texas to those used in the majority of other states enhances efficiency. Because the reporting requirements in the *NCCI Stat Plan* would provide more data, adopting the *NCCI Stat Plan* will enhance TDI's ability to regulate the Texas workers' compensation system.

In addition to requiring more detailed information, particularly with regard to losses, there are several new requirements in the *NCCI Stat Plan* with Texas exceptions that are not part of the current *Texas Stat Plan*. The main differences between the *NCCI Stat Plan* and the *Texas Stat Plan* reporting requirements pertain to:

- * electronic filing of statistical data;
- * fraudulent claims;
- * noncompensable claims;
- * accidents with one claimant and reportable losses under both workers' compensation and employers' liability;
- * deductible options and deductible credits;
- * the number of subsequent reports required for updating losses;
- * Nonextraordinary Loss Events;
- * Extraordinary Loss Events;
- * updated pension tables to use in setting case reserves of incurred indemnity amounts for certain workers' compensation claims;
- * an expanded list of fees and expenses included as part of the Allocated Loss Adjustment Expense and the Unallocated Loss Adjustment Expense; and
- * identification of whether a claim was administered by a workers' compensation certified health care network.

Many carriers are already complying with the expanded reporting requirements, rather than submitting only the minimum information that the *Texas Stat Plan* requires. The carriers reporting in the expanded format in the *NCCI Stat Plan* would continue to report in that format after the commissioner adopts the *NCCI Stat Plan* with the Texas exceptions. The main differences listed above may require carriers to report additional data or to report data in a different way.

The 10 Texas carriers that are not currently using the expanded reporting format filed 28,245 unit reports in 2013, which is only about 12 percent of the total 241,441 Texas units filed in 2013. NCCI has already contacted those carriers to inform them of the proposed change. One of the 10 Texas carriers not currently using the expanded reporting format filed about 22,000 unit reports in 2013. That carrier already has the capability to report in the expanded format. Another of the 10 Texas carriers not currently using the expanded reporting format filed about 4,900 units in 2013. NCCI reports that the carrier is scheduled to begin using the expanded reporting format this fall. The remaining eight carriers not currently reporting in the expanded format reported a combined total of about 1,600 units. Carriers have the option of entering the unit reports using NCCI's online system, which is available at no cost to the carrier. Carriers choosing this method avoid system changes and the associated costs.

Statutory Authority

Insurance Code Article 5.96 and §§2053.101, 1805.054, 1805.055, and 36.001 authorize the commissioner to take the requested action. Article 5.96(a) authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Article 5.96(b) allows any interested person to initiate proceedings with respect to any matter specified in subsection (a) by filing a written petition with the chief clerk.

Section 2053.101 requires the commissioner to develop, and allows the commissioner periodically to modify, reasonable statistical plans for workers' compensation insurance. The total loss and experience

of all insurance companies must be made available at least annually in the form and detail necessary to assist in determining whether an insurance company's rates meet the standards imposed under Insurance Code §2053.002.

Section 1805.054 allows a Texas workers' compensation insurer to subscribe to an advisory organization.

Section 1805.055(a) allows an insurer to submit to or receive from a licensed advisory organization statistical plans, historical data, prospective loss costs, supplementary rating information, policy forms and endorsements, research, rates of individual insurers that are effective at the time the information is submitted or received or that were previously in effect, and performance of inspections.

Section 36.001(a) allows the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other Texas laws.

With the adoption of the *NCCI Stat Plan* with Texas exceptions, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as: 1) prescribing standard policy forms and a uniform policy; 2) approving nonstandard forms and endorsements; 3) determining hazards by classification; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

Official Action Taken

The commissioner adopts the *NCCI Stat Plan* with Texas exceptions, as proposed, with no changes.

The commissioner orders that:

- (1) The *NCCI Stat Plan* with Texas exceptions is effective for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m., January 1, 2015.
- (2) The *Texas Stat Plan* will remain in effect for reporting statistical data only for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015.
- (3) Any proposed future revisions to NCCI's manuals, including the *NCCI Stat Plan*, will be considered under either the procedure established in Insurance Code Article 5.96, or the procedure established in Commissioner's Order No. 3142, dated March 21, 2014: 1) NCCI makes a filing; 2) TDI publishes notice of the filing on the TDI website and distributes notice of the filing to subscribers to TDI's electronic news, with at least a 30-day period for interested persons to submit comments or request a hearing; and 3) the commissioner issues an order approving the filing, approving the filing with changes, or rejecting the filing.

A copy of the full text of the staff petition and related exhibits has been on file with the TDI chief clerk since May 30, 2014. The petition and exhibits are incorporated by reference into this order.

The commissioner adopts the *NCCI Stat Plan* with Texas exceptions under Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001), and authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation.

TDI certifies that the adoption of the *NCCI Stat Plan* with Texas exceptions, has been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

The commissioner adopts the *National Council on Compensation Insurance (NCCI) Statistical Plan for Workers Compensation and Employers Liability Insurance* with Texas exceptions, as proposed by the May 30, 2014, TDI staff petition (Reference No. W-0514-03-I) for reporting statistical data for Texas workers' compensation policies with an effective date on or after 12:01 a.m., January 1, 2015. The *Texas Workers' Compensation Statistical Plan* will remain in effect for reporting statistical data only for Texas workers' compensation policies with an effective date before 12:01 a.m. on January 1, 2015. Any proposed future revisions to NCCI's manuals, including the *NCCI Stat Plan*, will be considered under either the procedure established in Insurance Code

Article 5.96, or the procedure established in Commissioner's Order No. 3142, dated March 21, 2014.

TRD-201403465

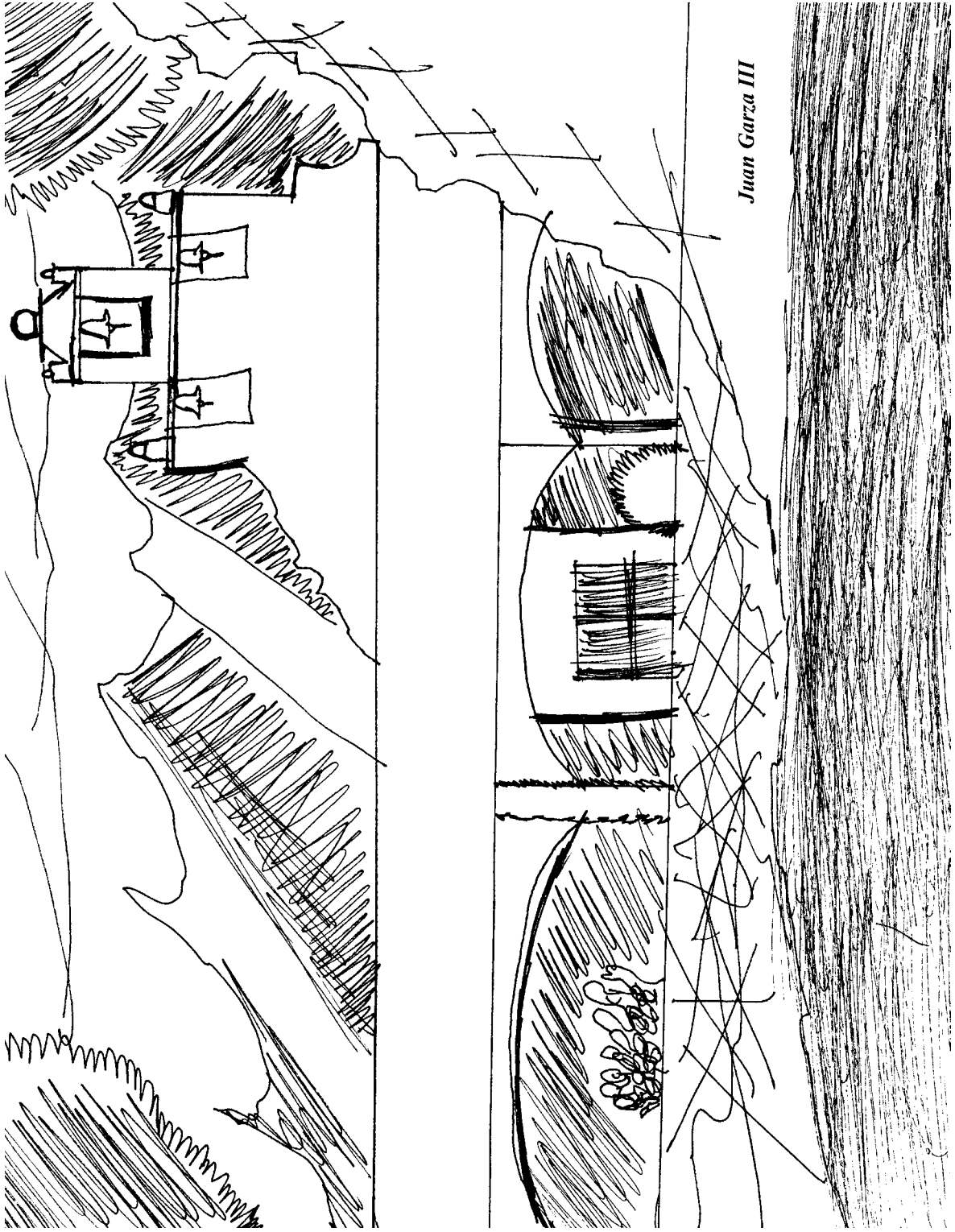
Sara Waitt

General Counsel

Texas Department of Insurance

Filed: July 31, 2014





Juan Garza III

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

Office of the Governor

Title 1, Part 1

In accordance with §2001.039, Texas Government Code, the Office of the Governor, Criminal Justice Division, submits notice of the agency's intention to review the rules found in Chapter 3 (Criminal Justice Division). Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist.

Comments on this rule review may be submitted to the Criminal Justice Division at egrants@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of this rule review in the *Texas Register*.

TRD-201403525
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 4, 2014



Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 207, Public Information, which contains §§207.1 - 207.5. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules.

The assessment made by the department indicates that the reasons for initially adopting the chapter no longer exist. The department is also publishing in this issue of the *Texas Register* the proposed repeal of Chapter 207 in its entirety.

Comments or questions regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

TRD-201403563
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: August 6, 2014



The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 208, Employment Practices, which contains Subchapter A, §§208.1 - 208.6; Subchapter B, §§208.21 - 208.27; Subchapter C, §208.41 and §208.43; and Subchapter D, §§208.51 - 208.66. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules.

The assessment made by the department indicates that the reasons for initially adopting Subchapter A and Subchapter D no longer exist. The department further determined that the reasons for initially adopting rules under Subchapter B and Subchapter C continue to exist, but that amendments are necessary. Proposed new Subchapter A replaces existing Subchapter B and proposed new Subchapter B replaces existing Subchapter C. The department is also publishing in this issue of the *Texas Register* the proposed repeal of Subchapter A, §§208.1 - 208.6; Subchapter B, §§208.21 - 208.27; Subchapter C, §208.41 and §208.43; and Subchapter D, §§208.51 - 208.66; and proposed new Subchapter A, §208.1; and new Subchapter B, §208.11 and §208.12.

Comments or questions regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

TRD-201403564
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: August 6, 2014



The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 209, Finance, which contains Subchapter A, §209.1 and §209.2; Subchapter B, §§209.21 - 209.23; and Subchapter C, §§209.31 - 209.34. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules.

The assessment made by the department indicates that the reasons for initially adopting Subchapter A, §209.1 and §209.2; Subchapter B, §209.23; and Subchapter C, §209.33 and §209.34 continue to exist; however, the department determined that §209.1 and §209.2 require amendments. The department proposes to readopt §§209.23, 209.33, and 209.34, without amendment. The department further determined

that reasons for initially adopting §§209.21, 209.22, 209.31, and 209.32 no longer exist. The department is also publishing in this issue of the *Texas Register* the proposed repeal of §§209.21, 209.22, 209.31, and 209.32; and proposed amendments to §209.1 and §209.2.

Comments or questions regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by e-mail to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

TRD-201403565
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: August 6, 2014



The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 210, Contract Management, which contains Subchapter A, §210.1 and §210.2; Subchapter B, §210.21; Subchapter C, §210.41 and §210.42; and Subchapter D, §§210.61 - 210.65. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules.

The assessment made by the department indicates that the reasons for initially adopting Subchapter B and Subchapter D no longer exist. The department proposes to readopt with amendments Subchapter A, §210.1 and §210.2; and proposes new Subchapter B, §210.21 and §210.22, which replaces the existing Subchapter C. The department is also publishing in this issue of the *Texas Register* the proposed repeal of Subchapters B, C and D; proposed amendments to Subchapter A, §210.1 and §210.2; and proposed new Subchapter B, Historically Underutilized Business Program, §210.21, Purpose, and §210.22, Program.

The assessment made by the department indicates that the reasons for initially adopting Subchapter B and Subchapter D no longer exist. The department proposes to readopt with amendments Subchapter A, §210.1 and §210.2; and proposes new Subchapter B, §210.21 and §210.22, which replaces the existing Subchapter C. The department is also publishing in this issue of the *Texas Register* the proposed repeal of Subchapters B, C and D; proposed amendments to Subchapter A, §210.1 and §210.2; and proposed new Subchapter B, Historically Underutilized Business Program, §210.21, Purpose, and §210.22, Program.

Comments or questions regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by e-mail to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 15, 2014.

TRD-201403566
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: August 6, 2014



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter A, Board of Trustees Relationship, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 61, Subchapter A, in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3735).

The SBOE finds that the reasons for adopting 19 TAC Chapter 61, Subchapter A, continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter A.

The SBOE adopted an amendment to §61.1 that requires coverage of specific topics during local school district orientation and continuing education and clarifies the requirements of certain trainings. The adopted amendment may be found in the Adopted Rules section of this issue of the *Texas Register*.

TRD-201403562
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 6, 2014



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 61, Combative Sports. The notice of intent to review was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3453). The public comment period closed May 27, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Combative Sports program under Texas Occupations Code, Chapter 2052, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 2052, Combative Sports. The rules provide details that are not found in the statute, but are necessary for implementation and operation of this program. For example, the rules detail all licensing requirements and fees that are specific to this program. In addition, Texas Occupations Code §2052.052 specifically requires that rules be adopted to implement this chapter. The Department received public comments in response to the notice of intent to review from one interested party.

The commenter made several suggestions for certain sections to be sport specific and inquired if certain terminology was still relevant. This comment will be taken under consideration as part of any possible rule changes in the future.

At its meeting on July 9, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, re-adopted the rules at 16 TAC Chapter 61, Combative Sports, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 61, Combative Sports.

TRD-201403487

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 1, 2014



The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 64, Temporary Common Worker Employers. The notice of intent to review was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3453). The public comment period closed on May 27, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Temporary Common Worker Employers program under Texas Labor Code, Chapter 92, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Labor Code, Chapter 92, Temporary Common Worker Employers. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. Specifically, the rules define terms, detail the licensing requirements, specify duties of the licensed holders, state the responsibilities of labor hall licensees, and establish fees that are specific to this program. The Department did not receive any public comments in response to the notice of intent to review.

At its meeting on July 9, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, re-adopted the rules at 16 TAC Chapter 64, Temporary Common Worker Employers, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 64, Temporary Common Worker Employers.

TRD-201403486

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 1, 2014



The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 67, relating to the Auctioneers program. The notice of intent to review was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3454). The public comment period closed on May 27, 2014.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Auctioneers program under Texas Occupations Code, Chapter 1802, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1802. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, applications and the fees that are specific to this program. The Department received public comments in response to the notice of intent to review from five interested parties.

One comment stated that the entire rule chapter is obsolete. One comment disagreed with the examination process. One comment disagreed with the continuing education requirement. One comment recommends the classroom education requirement be revised. One comment requested clarity on the rules regarding licensed auctioneers performing charitable auctions. All comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on July 9, 2014, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, re-adopted the rules at 16 TAC Chapter 67, Auctioneers, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 67, Auctioneers.

TRD-201403485

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: August 1, 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 §22.3(c)(2)

PRIVACY NOTICE

NEITHER THE U.S. AGENTS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE AGENTS OR INSURERS EXCEPT AS PERMITTED BY LAW.

Figure: 40 TAC §748.4507

Topic	An operation must comply with this rule:	Instead of this rule:
Treatment Director Qualifications	§748.4601 of this title (relating to What qualifications must a treatment director have?)	§748.605 of this title (relating to What qualifications must a treatment director have?)
Pre-service Experience Requirements for a Caregiver	§748.4651 of this title (relating to What are the pre-service experience requirements for a caregiver?)	§748.861 of this title (relating to What are the pre-service experience requirements for a caregiver?)
Pre-service Hourly Training Requirements for Caregivers and Employees	§748.4653 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?)	§748.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?)
Annual Training Requirements for Caregivers and Employees	§748.4657 of this title (relating to What are the annual training requirements for caregivers and employees?)	§748.931 of this title (relating to What are the annual training requirements for caregivers and employees?)
Child/Caregiver Ratio During Children's Waking Hours	§748.4701 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?)	§748.1003 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?)
Child/Caregiver Ratio During Children's Sleeping Hours	§748.4703 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for when children are asleep at night?)	§748.1007 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for when children are asleep at night?)
Admission of Young Adults	§748.4765 of this title (relating to May I admit a young adult into care?)	§748.1933 of this title (relating to May I admit a young adult into care?)

Figure: 40 TAC §748.4653(a)

Who is required to receive the training?	What type of pre-service training is required?	How many hours of training are required?	When the training must be completed by?
(1) All caregivers	General pre-service training	8 hours	Before the person can be the only caregiver responsible for a child in care.
(2) All caregivers	Pre-service training regarding emergency behavior intervention	16 hours; however, if your operation prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care.
(3) All caregivers	Pre-service training regarding complex trauma experienced by trafficking victims	5 hours	At least two of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care.
(4) Child-care administrators, treatment directors, professional level service providers, and case managers	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties.
(5) Child-care administrators, treatment directors, professional level service providers, and case managers	Pre-service training regarding complex trauma experienced by trafficking victims	5 hours	All 5 hours of training within 90 days of beginning job duties.

Figure: 40 TAC §748.4657

Who is required to receive the annual training?	How many hours of annual training and what types of annual training are needed?
(1) All caregivers	<p>50 hours. Of the 50 hours:</p> <p>(A) Four hours must be completed every six months on training specific to the emergency behavior intervention techniques that you allow, and this training must be completed within 180 days from the date that the caregiver last received such training;</p> <p>(B) Four hours must be on training specific to trafficking victims, as further described in §748.4659 of this title (relating to What areas or topics must the four hours of annual training regarding trafficking victims include?); and</p> <p>(C) Two hours must be on training specific to transportation safety if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.</p>
(2) Child-care administrators, professional level service providers, treatment directors, and case managers who hold a relevant professional license	<p>(A) 15 hours.</p> <p>(B) Of the 15 hours, two hours must be on training specific to transportation safety if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(C) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.</p> <p>(D) Annual training hours competed to maintain a person's relevant professional license may be used to satisfy all or part of the 15 hours of annual training required by this section.</p>
(3) Child-care administrators, professional level service providers, treatment directors, and case managers who do not hold a relevant professional license	<p>(A) 20 hours.</p> <p>(B) Of the 20 hours, two hours must be on training specific to transportation safety if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(C) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.</p>

Figure: 40 TAC §749.931(a)

Who is required to receive the annual training?	How many hours of annual training are needed?
<p>(1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs</p>	<p>(A) For homes with two foster parents, the foster parents must receive a total of 20 hours of annual training, of which four hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency, and one hour for each foster parent must be on training specific to trauma informed care. The remaining 10 hours must be distributed appropriately, and each foster parent must receive some amount of the remaining training.</p> <p>(B) For all other caregivers, each caregiver must receive 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency, and two hours must be on training specific to trauma informed care.</p> <p>(C) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(D) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from emergency behavior intervention training requirements.</p>
<p>(2) Caregivers caring for children receiving treatment services for emotional disorders, intellectual disabilities, or pervasive developmental disorders</p>	<p>(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training, of which eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency, and two hours for each foster parent must be on training specific to trauma informed care. The remaining 30 hours must be distributed appropriately, and each foster parent must receive some amount of the remaining training.</p> <p>(B) For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency, and two hours must be on training specific to trauma informed care.</p> <p>(C) All other caregivers, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency, and two hours must be on training specific to trauma informed care.</p> <p>(D) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose</p>

	chronological or developmental age is younger than nine years old.
(3) Child placement staff with less than one year of child-placing experience	(A) 30 hours for the initial year, of which two hours must be on training specific to trauma informed care; (B) 20 hours after the initial year, of which two hours must be on training specific to trauma informed care; and (C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. (D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.
(4) Child placement staff with at least one year of child-placing experience	20 hours, of which two hours must be on training specific to trauma informed care, and two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(5) Child placement management staff	20 hours, of which two hours must be on training specific to trauma informed care, and two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(6) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	(A) 15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. (C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental

	age is younger than nine years old.
(7) Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	20 hours, of which two hours must be on training specific to trauma informed care, and two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(8) Child-placing agency administrators, child placement staff, child placement management staff, treatment directors, and full-time professional service providers	At least one hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including: (A) Factors indicating a child is at risk for abuse or neglect; (B) Warning signs indicating a child may be a victim of abuse or neglect; (C) Internal procedures for reporting child abuse or neglect; and (D) Community organizations that have training programs available to child-placing agency staff members, children, and parents.

Figure: 40 TAC §749.1135

If:	Then:
<p>(1) You intend to provide treatment services for a child with an emotional disorder or pervasive development disorder</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment, including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(2) You intend to provide treatment services for a child with intellectual disabilities</p>	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months of the date of admission.</p> <p>(i) A licensed psychologist who has experience with intellectual disabilities or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of intellectual disabilities as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(3) You intend to provide treatment services for a</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the</p>

If:	Then:
<p>child with primary medical needs</p>	<p>basis for the child's admission. There must also be an evaluation from the physician, a nurse practitioner, or a physician's assistant that confirms that the child can be cared for appropriately in a foster home setting and that the foster parents have been trained to meet the needs of the child and demonstrated competency.</p> <p>(B) The written orders must include orders for:</p> <ul style="list-style-type: none"> (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to himself or others</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment including:</p> <ul style="list-style-type: none"> (i) The child's diagnosis, if applicable; (ii) An assessment of the child's needs and potential danger to himself or others; and (iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's service plan and must be implemented. <p>(B) If the child is:</p> <ul style="list-style-type: none"> (i) Coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission. (ii) Not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission. <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

Figure: 40 TAC §749.1309(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations; (vi) Plans for normalcy, including: <ul style="list-style-type: none"> (I) Social, extracurricular, recreation, and leisure activities; and (II) Integrating the child into the community and community activities, as appropriate; (vii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and (viii) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) The child's personal trauma history; (ii) Level of supervision required; (iii) The child's trauma triggers; (iv) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the

Type of Service	Items that must be included:
	<p>child's environment;</p> <ul style="list-style-type: none"> (v) Discipline techniques; (vi) Behavior intervention techniques; (vii) Plans for trips and visits away from the foster home; and (viii) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, psychiatric care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction; <p>(F) If the child is 14 years old or older, plans for the caregivers to assist the child in obtaining experiential life-skills training to improve his transition to independent living. Plans must:</p> <ul style="list-style-type: none"> (i) Be tailored to the child's skills and abilities; and (ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and balancing a checkbook; <p>(G) For children 16 years old and older, preparation for independent living, including employment opportunities, if appropriate;</p> <p>(H) For children who exhibit high-risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</p> <ul style="list-style-type: none"> (i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and (ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained; <p>(I) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(J) Plans for discharge;</p> <p>(K) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(L) The date the service plan was developed and</p>

Type of Service	Items that must be included:
	<p>completed;</p> <p>(M) The effective date of the service plan; and</p> <p>(N) The signatures of the service planning team members that were involved in the development of the service plan.</p>
(2) Treatment services	<p>For children receiving treatment services, the plan must address all of the child's waking hours and include:</p> <p>(A) The child-care services planning requirements noted above;</p> <p>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</p> <p>(C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and</p> <p>(D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.</p>
(3) Treatment services for children with intellectual disabilities	<p>(A) The child-care and treatment services planning requirements noted above;</p> <p>(B) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development;</p> <p>(C) An educational or training plan encouraging normalization appropriate to the child's functioning; and</p> <p>(D) Career planning for older adolescents who are not receiving treatment services for severe or profound intellectual disabilities.</p>
(4) Transitional living program	<p>(A) Child-care service planning requirements;</p> <p>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</p> <p>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</p> <p>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</p>

Type of Service	Items that must be included:
	<p>(E) Money management and assisting the child in establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>

Figure: 40 TAC §749.2551(a)

If the home cares for:	Then the maximum number of children the home may care for is:
Infants	Six, with a maximum of two infants and two more children less than six years old, unless the placement is necessary to maintain a sibling group of children.
One child or more receiving treatment services for primary medical needs	<ul style="list-style-type: none"> • Six, with a maximum of three children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children; or • Four, if all placements are children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children. • Foster family homes verified to provide treatment services to children with primary medical needs before January 1, 2015, may continue to care for up to six children with no limitation.

Figure: 40 TAC §749.2551(b)

If the home cares for:	Then the maximum number of children the home may care for is:
Any child less than five years old	Five
Infants	Five, with a maximum of two infants and two more children less than six years old, unless the placement is necessary to maintain a sibling group of children.
Three or more children receiving treatment services	Four
One child or more receiving treatment services for primary medical needs	<ul style="list-style-type: none"> • Four, with a maximum of one child with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children; or • Two, if all placements are children with primary medical needs requiring total care, unless the placement is necessary to maintain a sibling group of children. • Foster family homes verified to provide treatment services to children with primary medical needs before January 1, 2015, may continue to care for up to four children with no limitation.

Figure: 40 TAC §749.4007

Topic	A child-placing agency must comply with this rule:	Instead of this rule:
Treatment Director Qualifications	§749.4101 of this title (relating to What qualifications must a treatment director have?)	§749.725 of this title (relating to What qualifications must a treatment director have?)
Pre-service Hourly Training Requirements for Caregivers and Employees	§749.4151 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?)	§749.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?)
Annual Training Requirements for Caregivers and Employees	§749.4155 of this title (relating to What are the annual training requirements for caregivers and employees?)	§749.931 of this title (relating to What are the annual training requirements for caregivers and employees?)
Admission of Young Adults	§749.4265 of this title (relating to May I admit a young adult into care?)	§749.1105 of this title (relating to May I admit a young adult into care?)

Figure: 40 TAC §749.4151(a)

Who is required to receive the training?	What type of pre-service training is required?	How many hours of training are required?	When the training must be completed by?
(1) All caregivers	General pre-service training	8 hours	Before the person can be the only caregiver responsible for a child in care.
(2) All caregivers	Pre-service training regarding emergency behavior intervention	16 hours; however, if your child-placing agency prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care.
(3) All caregivers	Pre-service training regarding complex trauma experienced by trafficking victims	5 hours	At least two of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care.
(4) Child-placing agency administrators, treatment directors, child placement management staff, child placement staff, and full-time professional service providers	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties.
(5) Child-placing	Pre-service training	5 hours	All 5 hours of

agency administrators, treatment directors, child placement management staff, child placement staff, and full-time professional service providers	regarding complex trauma experienced by trafficking victims		training within 90 days of beginning job duties.
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Figure: 40 TAC §749.4155

Who is required to receive the annual training?	How many hours of annual training and what types of annual training are needed?
(1) All Caregivers	<p>(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training. Of these 50 hours:</p> <ul style="list-style-type: none"> (i) Eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours for each foster parent must be on training specific to trauma informed care; (iii) Four hours for each foster parent must be on training specific to trafficking victims, as further described in §749.4157 of this title (relating to What areas or topic must the four hours of annual training regarding trafficking victims include?); and (iv) The remaining 22 hours must be distributed appropriately, and each foster parent must receive some amount of the remaining training. <p>(B) For all other caregivers, including homes with one foster parent, 30 hours. Of these 30 hours:</p> <ul style="list-style-type: none"> (i) Eight hours must be on training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours must be on training specific to trauma informed care; and (iii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this title. <p>(C) Annual training must include two hours of transportation safety training if the caregiver transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>
(2) Child placement staff with less than one year of child-placing experience	<p>(A) 30 hours for the initial year. Of these 30 hours:</p> <ul style="list-style-type: none"> (i) Two hours must be on training specific to trauma informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this title. <p>(B) 20 hours after the initial year. Of these 20 hours:</p> <ul style="list-style-type: none"> (i) One hour must be on training specific to trauma informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this title. <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding</p>

	<p>emergency behavior intervention, then the staff must be re-trained.</p> <p>(D) Annual training must include two hours of transportation safety training if the staff transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>
(3) Child placement staff with at least one year of child-placing experience, and child placement management staff	<p>(A) 20 hours. Of these 20 hours:</p> <p>(i) One hour must be on training specific to trauma informed care; and</p> <p>(ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this title.</p> <p>(B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p> <p>(C) Annual training must include two hours of transportation safety training if the staff transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>
(4) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	<p>(A) 15 hours.</p> <p>(B) Annual training hours used to maintain a person's relevant professional license may be used to complete these hours.</p> <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p> <p>(D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>
(5) Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	<p>(A) 20 hours. Of these 20 hours:</p> <p>(i) One hour must be on training specific to trauma informed care; and</p> <p>(ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this title.</p> <p>(B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p> <p>(C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is</p>

	younger than nine years old.
(6) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers	At least one hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including: (A) Factors indicating a child is at risk for abuse or neglect; (B) Warning signs indicating a child may be a victim of abuse or neglect; (C) Internal procedures for reporting child abuse or neglect; and (D) Community organizations that have training programs available to child-placing agency staff members, children, and parents.

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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Texans Feeding Texans:
Home-Delivered Meal Grant Program

Statement of Purpose. In accordance with Texas Agriculture Code, the Texas Department of Agriculture (TDA) is requesting applications for the Texans Feeding Texans: Home-Delivered Meal Grant Program (HDMGP). Applicants may include governmental agencies or qualifying non-profit organizations that deliver meals to homebound persons that are elderly and/or have a disability.

Eligibility. To be eligible for HDMGP funds, an applying organization must meet the following criteria:

1. Must be a governmental agency or a non-profit private organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that is a direct provider of home-delivered meals to the elderly or persons with disabilities in this state;
2. If a non-profit private organization, must have a volunteer board of directors;
3. Must implement and enforce nondiscrimination practices;
4. Must have an accounting system or fiscal agent approved by the county in which it provides meals;
5. Must have a system to prevent the duplication of services to the organization's clients;
6. Must agree to use funds received under this section only to supplement and extend existing services related directly to home-delivered meal services;
7. Must have received a grant from the county in which the organization provides meals;
8. Must submit the grant application using the form provided by TDA;
9. Must submit a completed county resolution form, as provided by TDA;
10. Must strictly comply with HDMGP rules adopted by TDA (4 TAC §§1.950-1.962); program guidelines and policies; and the HDMGP grant application and agreement; and
11. Must provide current health inspection before grants funds are awarded.

For purposes of this Grant Program, "Homebound" means a person who is unable to leave his or her residence without aid or assistance or whose ability to travel from the residence is substantially impaired; "Elderly" means an individual who is 60 years of age or older; and "Disability" means a physical, mental or developmental impairment, temporarily or permanently limiting an individual's capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating and housekeeping.

Funding Parameters. Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants

will be informed accordingly. Total program funding for this application period is approximately \$8.5 million to provide assistance to home-delivered meal providers by supplementing and/or extending their current program. Individual awards shall be calculated pursuant to the formula set out in §12.042 of the Texas Agriculture Code and as more particularly described in 4 TAC §1.952.

Application Requirements. Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

Payment Schedule. All approved projects will have a start date of February 1, 2015 and must be completed by January 31, 2016. TDA will distribute funds after applications are processed. Funds must be allocated by February 1, 2015. In the event that the amount of qualifying grants exceeds the amount of funds available, funds may be distributed on a pro rata basis. Fifty percent (50%) of any grant awarded shall be distributed on or before February 1, 2014. The remaining fifty percent (50%) of the grant award shall be distributed to each Grantee on or before August 1, 2014.

Submission Information. One complete application packet, including the signed application, completed county resolution form and all other required backup documents must be **postmarked to TDA by Saturday, November 1, 2014**. It is the applicant's responsibility to ensure the timely delivery of all required materials. **LATE APPLICATIONS WILL NOT BE ACCEPTED.**

TDA shall also accept hand-delivered, fax or e-mail submission of the application. Electronic submissions must be received at TDA by **5:00 p.m. CST on Saturday, November 1, 2014**.

Hard Copy Mailed Submissions: The application packet may be sent to TDA at either of the following addresses:

By U.S. Mail: Texas Department of Agriculture, Trade & Business Development-Grants, P.O. Box 12847, Austin, Texas 78711.

By Overnight or Hand Delivery: Texas Department of Agriculture, Trade & Business Development - Grants, 1700 North Congress, 11th Floor, Austin, Texas 78701.

Electronic Submissions: May be sent to Grants@TexasAgriculture.gov
Fax (888) 223-9048

An electronic version will be accepted as long as Section D of the application is complete. Including signatures, notary signature, date, county, and a notary seal is clearly legible during the transmittal.

Contact Information. For questions regarding submission of the proposal and/or TDA requirements, please contact the Grants Office, at (512) 463-6908, or by e-mail at Grants@TexasAgriculture.gov.

TRD-201403473

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: July 30, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/11/14 - 08/17/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/11/14 - 08/17/14 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 08/01/14 - 08/31/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/14 - 08/31/14 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201403531

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 4, 2014

East Texas Council of Governments

Request for Proposals - Senior Nutrition Services

The Area Agency on Aging of East Texas is seeking proposals from qualified Individuals, organizations or agencies to prepare and deliver approximately 31,200 meals within the counties of Camp, Harrison, Marion and Panola, Texas (10,850 congregate at approximately six congregate meal sites (Carthage, Jefferson, Marshall, Newsome, Pittsburg and Waskom) and 20,350 home delivered (Beckville, Carthage, Hallsville, Jefferson, Marshall, Newsome, Pittsburg and Waskom)).

There will be a Proposers' Conference at 10:00 a.m. on August 8, 2014 at: East Texas Council of Governments 3800 Stone Road Kilgore, Texas 75662. In order to be considered for funding, ETCOG must receive proposals no later than 10:30 a.m. on August 27, 2014 (CST). Request for proposal details can be seen at http://www.etcog.org/647/Senior_Nutrition_Services.htm. For more information, call the Area Agency on Aging of East Texas at 1-800-442-8845.

TRD-201403544

David Cleveland

Communications Manager

East Texas Council of Governments

Filed: August 5, 2014

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs.

TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 15, 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: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2014-0606-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: cogeneration plant; RULE VIOLATED: 30 TAC §122.221(a) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to obtain a federal operating permit renewal and significant revision prior to commencing the operation of the equipment for the plant's redevelopment project; PENALTY: \$6,225; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Arnold Trucking Incorporated; DOCKET NUMBER: 2014-0949-WQ-E; IDENTIFIER: RN107247769; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Alex Laje, (512) 239-2547; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Baker Hughes Incorporated; DOCKET NUMBER: 2014-0740-AIR-E; IDENTIFIER: RN105276042; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: drilling mud facility; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to construction and operation; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Bullard Brothers Properties; DOCKET NUMBER: 2014-0857-WQ-E; IDENTIFIER: RN106398787; LOCATION: Gun Barrel City, Henderson County; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Central Water Control and Improvement District of Angelina County; DOCKET NUMBER: 2014-0553-PWS-E; IDENTIFIER: RN101390128; LOCATION: Pollok, Angelina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 7 million fibers per liter for asbestos based on a running annual average; PENALTY: \$315; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: CHAU MANAGEMENT, INCORPORATED dba Times Market 105; DOCKET NUMBER: 2013-0568-PST-E; IDENTIFIER: RN101444578; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 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: \$12,937; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Cholla Petroleum Incorporated; DOCKET NUMBER: 2014-0858-WR-E; IDENTIFIER: RN107286015; LOCATION: Jayton, Kent County; TYPE OF FACILITY: production of oil and gas; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Hooks; DOCKET NUMBER: 2014-0683-MWD-E; IDENTIFIER: RN101916468; LOCATION: Hooks, Bowie County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010507001, Permit Conditions Number 2.g, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, resulting in the unauthorized discharge of wastewater into or adjacent to water in the state; and 30 TAC §305.125 (1) and (9)(A) and TPDES Permit Number WQ0010507001, Monitoring and Reporting Requirements Numbers 7.a and 7.b, by failing to notify the TCEQ Regional Office and the Enforcement Division within 24 hours of becoming aware of noncompliance, orally or by facsimile transmission and failure to provide a written submission within five working days of becoming aware of the noncompliance; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Kenedy; DOCKET NUMBER: 2014-0731-IWD-E; IDENTIFIER: RN101918639; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: reverse osmosis potable water treat-

ment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0003913000, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: City of Rhome; DOCKET NUMBER: 2014-0842-MWD-E; IDENTIFIER: RN102701620; LOCATION: Rhome, Wise 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 Permit Number WQ0010701002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$6,375; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: COLORADO MATERIALS, Limited; DOCKET NUMBER: 2014-0611-AIR-E; IDENTIFIER: RN106552342; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: rock crushing and aggregate production plant; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 106953L001, General Conditions Number 7, by failing to maintain a copy of NSR Permit Number 106953L001 at the plant; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 106953L001, Special Conditions Number 11, by failing to install permanently mounted spray bars at the inlet and outlet of all crushers, at all shaker screens, and material transfer points; PENALTY: \$2,350; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Cross Roads Corner Store, Limited Liability Company dba Cross Roads Corner Store; DOCKET NUMBER: 2014-0717-PST-E; IDENTIFIER: RN101671386; LOCATION: Brenham, Washington 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: \$3,000; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Edanbra Development LC; DOCKET NUMBER: 2014-0951-WQ-E; IDENTIFIER: RN107210403; LOCATION: Belton, Bell County; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2013-0122-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1419, Special Terms and Conditions Number 10, and New Source Review Permit Number 9423, Special Conditions Number 1A, by failing to comply with annual emissions limits; PENALTY: \$44,362; Supplemental Environmental Project offset amount of \$17,745 applied to Houston Regional Monitoring Project; ENFORCEMENT COORDINATOR: Carol McGrath, (210)

403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Gonzales and Associates; DOCKET NUMBER: 2014-0859-WR-E; IDENTIFIER: RN105828371; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: production of asphalt; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2011-0837-AIR-E; IDENTIFIER: RN100219211; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: industrial wastewater treatment facility; RULE VIOLATED: 30 TAC §116.116(b)(1) and §122.143(4), Texas Health and Safety Code, §382.085(b), Air Quality Permit Number 40782, Special Conditions Number 1, and Federal Operating Permit Number O1708, General Terms and Conditions and Special Terms and Conditions Number 8, by failing to comply with allowable emission rates; PENALTY: \$8,600; Supplemental Environmental Project offset amount of \$6,880 applied to Anahuac Independent School District; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: HILL COUNTRY MINI MART, LP dba Mini Mart 66; DOCKET NUMBER: 2014-0797-PST-E; IDENTIFIER: RN103101614; LOCATION: Kerville, Kerr County; TYPE OF FACILITY: a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: INAARA INVESTMENTS, INCORPORATED dba Fuzzys 2; DOCKET NUMBER: 2014-0710-PST-E; IDENTIFIER: RN101748127; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$1,551; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2014-0496-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Number 2798, Permit Numbers 95 and PSDTX854M2, Special Conditions Number 1, Federal Operating Permit Number O2327, Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to comply with permitted emission rates; PENALTY: \$170,625; Supplemental Environmental Project offset amount of \$68,250 applied to Houston-Galveston Area Council; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Iris Tubb dba Pecan Grove Mobile Home Park; DOCKET NUMBER: 2014-0665-PWS-E; IDENTIFIER: RN101450526; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC

§290.106(f)(2) and §290.122(a)(2) and (f) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) of 10 milligrams per liter for nitrate and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the acute MCL for nitrate; PENALTY: \$1,016; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(21) COMPANY: LANGTRY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0514-PWS-E; IDENTIFIER: RN101454791; LOCATION: Langtry, Val Verde County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: \$630; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(22) COMPANY: LANXESS Corporation; DOCKET NUMBER: 2014-0589-AIR-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: synthetic rubber plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2281, General Terms and Conditions and Special Terms and Conditions Number 11, and New Source Review Permit Number 22508, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$6,563; Supplemental Environmental Project offset amount of \$2,625 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Marathon Oil EF LLC (FC); DOCKET NUMBER: 2014-0932-WR-E; IDENTIFIER: RN107206070; LOCATION: San Antonio, Karnes County; TYPE OF FACILITY: oil production; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: MAXUM OILFIELD RENTALS, LLC; DOCKET NUMBER: 2014-0634-SLG-E; IDENTIFIER: RN107148140; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: sludge transporter facility; RULES VIOLATED: 30 TAC §312.142(a), by failing to apply for registration with the commission to transport sewage sludge on forms furnished by the executive director and receive a registration from the executive director prior to commencing operations; TWC, §26.121(a)(2) and 30 TAC §312.143, by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the facility has written authorization by permit or registration issued by the executive director to receive wastes; 30 TAC §312.145(a), by failing to maintain a record of each individual collection and deposit in the form of a trip ticket; 30 TAC §312.144(f), by failing to prominently mark all discharge valves and ports on all closed vehicles, tanks, or containers used to transport liquid wastes; and 30 TAC §312.144(d), by failing to have sight gauges maintained in a manner which can be used to determine whether or not a vehicle is loaded and the approximate capacity; PENALTY: \$8,175; Supplemental Environmental Project offset amount of \$1,270 applied to Galveston Bay Foundation, Incorporated; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Net-Mar LLC (FC); DOCKET NUMBER: 2014-0862-WR-E; IDENTIFIER: RN105056931; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: contractor; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(26) COMPANY: PHILLIPS 66 COMPANY; DOCKET NUMBER: 2013-0502-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Number 1, and Federal Operating Permit Number O1440, Special Terms and Conditions Number 20, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b) and THSC, §382.085(b), by failing to submit a final record for Incident Number 169193 no later than two weeks after the end of the emissions event; PENALTY: \$43,938; Supplemental Environmental Project offset amount of \$17,575 applied to Borger Independent School District; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: Reece Albert, Incorporated; DOCKET NUMBER: 2014-0972-WR-E; IDENTIFIER: RN107252728; LOCATION: Menard, Menard County; TYPE OF FACILITY: construction and paving; RULE VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(28) COMPANY: Rommie L. Back dba Houston Metal Striping; DOCKET NUMBER: 2014-0394-AIR-E; IDENTIFIER: RN102900891; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: dry abrasive blasting; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to conducting abrasive blasting operations; and 30 TAC §101.4 and §106.452(1)(B) and THSC, §382.085(a) and (b), by failing to prevent visible emissions and failed to prevent nuisance conditions; PENALTY: \$4,012; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Samkwang USA, Incorporated dba Lockwood Texaco Mart; DOCKET NUMBER: 2014-0586-PST-E; IDENTIFIER: RN102480167; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$3,036; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Southwestern Bell Telephone Company dba AT&T Texas; DOCKET NUMBER: 2014-0635-PWS-E; IDENTIFIER:

RN105819742; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to timely submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; PENALTY: \$270; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Teal Construction; DOCKET NUMBER: 2014-0861-WQ-E; IDENTIFIER: RN107229163; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), failure to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(32) COMPANY: Texas SPF Investments, LLC; DOCKET NUMBER: 2014-0608-PWS-E; IDENTIFIER: RN104064274; LOCATION: Springtown, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; PENALTY: \$405; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: T-Rex Properties, LP; DOCKET NUMBER: 2014-0758-PWS-E; IDENTIFIER: RN101203586; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011, 2012, and 2013 monitoring periods; 30 TAC §§290.106(e), 290.107(e) and 290.115(e), by failing to provide the results of the triennial sampling to the executive director for Synthetic Organic Chemical (SOC) contaminants for the January 1, 2009 - December 31, 2011 monitoring period and for Stage 2 Disinfectant Byproducts, SOC contaminants, metals and minerals for the January 1, 2011 - December 31, 2013 monitoring period; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect annual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and provide the results to the executive director for the 2011 and 2013 monitoring periods; PENALTY: \$1,094; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: UGROR ENTERPRISES, INCORPORATED dba Super Stop 5; DOCKET NUMBER: 2014-0765-PST-E; IDENTIFIER: RN102224938; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$1,362; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(35) COMPANY: Valor Telecommunications of Texas, LLC; DOCKET NUMBER: 2014-0751-PST-E; IDENTIFIER: RN101900926; LOCATION: Memphis, Hall County; TYPE OF FACILITY: emergency power generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once per month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: \$3,516; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(36) COMPANY: Webb County; DOCKET NUMBER: 2014-0627-PWS-E; IDENTIFIER: RN101176170; LOCATION: Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(4), by failing to meet the conditions, operation, maintenance, and reporting requirements for an issued exception; and 30 TAC §290.42(e)(3)(G), by failing to obtain an exception prior to using any primary disinfectant other than chlorine; PENALTY: \$364; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(37) COMPANY: Wind Clean Corporation; DOCKET NUMBER: 2014-0307-AIR-E; IDENTIFIER: RN101295384; LOCATION: Coleman, Coleman County; TYPE OF FACILITY: dry abrasive blasting and painting facility; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2695, General Terms and Conditions, by failing to timely submit the semi-annual deviation reports for the November 18, 2012 - May 17, 2013 and May 18, 2013 - November 17, 2013 reporting periods; PENALTY: \$6,750; Supplemental Environmental Project offset amount of \$2,700 applied to Texas Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201403551

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 5, 2014



Enforcement Orders

An agreed order was entered regarding TEXPAC ENTERPRISES, INC. dba Circle A Food Mart 5, Docket No. 2012-0616-PST-E on July 22, 2014 assessing \$2,525 in administrative penalties with \$505 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cosby Management, Inc. dba Cosby Management 2026 and Cosby Management 2028, Docket No. 2012-2678-PST-E on July 22, 2014 assessing \$7,463 in administrative penalties with \$1,492 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hull Fresh Water Supply District, Docket No. 2013-1154-MLM-E on July 22, 2014 assessing \$3,376 in administrative penalties with \$675 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 Lone Pine Enterprises, Inc., Docket No. 2013-1367-WQ-E on July 22, 2014 assessing \$5,625 in administrative penalties with \$1,125 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 City of Boerne, Docket No. 2013-1841-MWD-E on July 22, 2014 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2013-1907-MWD-E on July 22, 2014 assessing \$3,125 in administrative penalties with \$625 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.

An agreed order was entered regarding William Mjaseth, Docket No. 2013-2046-MSW-E on July 22, 2014 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port of Houston Authority, Docket No. 2013-2077-MWD-E on July 22, 2014 assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Dorado, Docket No. 2013-2186-MSW-E on July 22, 2014 assessing \$1,312 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MZ BEST CLEANERS, INC. dba Best Cleaners, Docket No. 2014-0066-DCL-E on July 22, 2014 assessing \$3,070 in administrative penalties with \$614 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 SHORE-TECH, INC., Docket No. 2014-0109-PWS-E on July 22, 2014 assessing \$651 in administrative penalties with \$130 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 City of Archer City, Docket No. 2014-0112-MWD-E on July 22, 2014 assessing \$3,225 in administrative penalties with \$645 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 Mullin Independent School District, Docket No. 2014-0133-PWS-E on July 22, 2014 assessing \$125 in administrative penalties with \$25 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 Aqua Utilities, Inc., Docket No. 2014-0193-MWD-E on July 22, 2014 assessing \$6,637 in administrative penalties with \$1,327 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STX Process Equipment LLC, Docket No. 2014-0216-PWS-E on July 22, 2014 assessing \$1,980 in administrative penalties with \$395 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUSINESSCHASE, INC. dba Town & Country, Docket No. 2014-0233-PST-E on July 22, 2014 assessing \$5,163 in administrative penalties with \$1,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FILZA ENTERPRISES INC. dba Paradise Seafood Market, Docket No. 2014-0246-PST-E on July 22, 2014 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDERSON WATER COMPANY, INC., Docket No. 2014-0256-PWS-E on July 22, 2014 assessing \$572 in administrative penalties with \$113 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morton Road Municipal Utility District, Docket No. 2014-0259-PWS-E on July 22, 2014 assessing \$165 in administrative penalties with \$165 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 Pembroke Ranch Company L.L.P., Docket No. 2014-0279-OSS-E on July 22, 2014 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burkland, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Maypearl, Docket No. 2014-0283-MWD-E on July 22, 2014 assessing \$5,062 in administrative penalties with \$1,012 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 City of Liverpool, Docket No. 2014-0342-PWS-E on July 22, 2014 assessing \$677 in administrative penalties with \$135 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 NEW PROGRESS WATER SUPPLY CORPORATION, Docket No. 2014-0344-PWS-E on July 22, 2014 assessing \$550 in administrative penalties with \$110 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Development/Montgomery LP, Docket No. 2014-0350-PWS-E on July 22, 2014 assessing \$434 in administrative penalties with \$86 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harvey Ike Thomas, Docket No. 2014-0362-WR-E on July 22, 2014 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Branch dba Lakeside Water Supply 4, Docket No. 2014-0401-PWS-E on July 22, 2014 assessing \$150 in administrative penalties with \$30 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Carrizo Springs, Docket No. 2014-0472-PWS-E on July 22, 2014 assessing \$3,451 in administrative penalties with \$689 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Riviera Water Supply Corporation, Docket No. 2014-0493-PWS-E on July 22, 2014 assessing \$755 in administrative penalties with \$151 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anadarko Gathering Company LLC, Docket No. 2014-0509-AIR-E on July 22, 2014 assessing \$2,888 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcorp, Inc. dba Webberville Grocery, Docket No. 2014-0528-PST-E on July 22, 2014 assessing \$4,500 in administrative penalties with \$900 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 field citation was entered regarding Ardyth Parrick, Docket No. 2014-0672-WOC-E on July 22, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Abel Gomez, Docket No. 2014-0673-WOC-E on July 22, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gary A. Aardal, Docket No. 2014-0675-WOC-E on July 22, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jack A. Self, II, Docket No. 2014-0676-WOC-E on July 22, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Noel D. McFairen, Docket No. 2014-0698-WOC-E on July 22, 2014 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201403558

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2014



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 15, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Blue Streak Transportation, Inc.; DOCKET NUMBER: 2013-1077-PST-E; TCEQ ID NUMBER: RN105858005; LOCATION: 7700 West Interstate 20, Midland, Midland County; TYPE OF FACILITY: underground storage tank system and self-serve gasoline and diesel facility with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours of delivery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$26,350; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(2) COMPANY: FARHAN INTERNATIONAL, LLC d/b/a Britt's Market; DOCKET NUMBER: 2013-1581-PST-E; TCEQ ID NUMBER:

RN101433522; LOCATION: 3949 Main Avenue, Groves, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC175, (512) 239-1204; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Kenneth D. Wiley d/b/a Wiley's Food Store; DOCKET NUMBER: 2013-1550-PST-E; TCEQ ID NUMBER: RN101894400; LOCATION: 502 South Bryan Avenue, Lamesa, Dawson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC175, (512) 239-1204; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(4) COMPANY: SCI CONSTRUCTION, LTD.; DOCKET NUMBER: 2014-0430-WQ-E; TCEQ ID NUMBER: RN107080525; LOCATION: 149 Klattenhoff Lane, Hutto, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 40 Code of Federal Regulations §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$938; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Austin Regional Office, P.O. Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(5) COMPANY: Whispering Oaks Water Coop; DOCKET NUMBER: 2014-0012-PWS-E; TCEQ ID NUMBER: RN101212181; LOCATION: the intersection of Foster Lane and Private Road 2407, Quinlan, Hunt County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; 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 by an approved laboratory, and submit the results to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the executive director by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for 2011 and 2012; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 91160081 for Fiscal Years 2012 and 2013; PENALTY: \$3,838; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201403549

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 5, 2014

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 15, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: 8 Mile Park, L.P.; DOCKET NUMBER: 2012-2343-MWD-E; TCEQ ID NUMBER: RN101614212; LOCATION: the Autumn Shadows Subdivision on the south side of State Highway 35 approximately 570 feet east of the intersection of State Highway 35 and Farm-to-Market Road 1459, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and §319.4, and Texas Pollution Discharge Elimination System (TPDES) Permit Number WQ0013796001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze samples for *Escherichia coli*; 30 TAC §305.125(5), and TPDES Permit Number WQ0013796001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Number WQ0013796001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Number WQ0013796001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2012, by September 30, 2012; PENALTY: \$49,649; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: D+A Financial Services, LLC dba Astro Autos; DOCKET NUMBER: 2013-2142-MSW-E; TCEQ ID NUMBER: RN106489057; LOCATION: 3049 Highway 69 South, Lumberton, Hardin County; TYPE OF FACILITY: automobile repair shop; RULES VIOLATED: Texas Health and Safety Code, §371.041, 30 TAC §324.6 and §324.15, and 40 Code of Federal Regulations §279.22(d), by failing to perform response action upon detection of a release of used oil; PENALTY: \$250; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Exterior Repair International, LLC; DOCKET NUMBER: 2013-2012-MSW-E; TCEQ ID NUMBER: RN106798630; LOCATION: 2043A South Highway 174, Cleburne, Johnson County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §328.5(d) and §37.901, by failing to demonstrate financial assurance for the closure of a recycling facility that stores combustible material outdoors; 30 TAC §328.5(f)(2), by failing to maintain all records necessary to demonstrate compliance with the requirements of reasonable efforts to maintain source-separation of materials received at the site; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$17,472; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Jeremy Bellman; DOCKET NUMBER: 2013-1401-LII-E; TCEQ ID NUMBER: RN106155385; LOCATION: 845 Ottawa Way, San Antonio, Bexar County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.71(b), by failing to include all written estimates, proposals, bids, and invoices for installation or repair of an irrigation system, the irrigator's name, license number, and the required TCEQ statement; 30 TAC §344.38, by failing to provide or make available records of irrigation services within 10 business days of such a request; 30 TAC §344.51(d)(2) and §344.52(c), by failing to connect the irrigation system through a reduced pressure principal backflow prevention assembly, and by failing to have a backflow prevention device tested prior to being placed into service and provide the results to the local water purveyor and irrigation systems owner within 10 business days; 30 TAC §344.62(b) and (l)(1), by failing to comply with minimum design and installation requirements; and 30 TAC §30.24(l), by failing to notify the executive director of any changes to previously submitted application information within 10 days; PENALTY: \$2,021; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Joshua G. Duke; DOCKET NUMBER: 2013-0808-LII-E; TCEQ ID NUMBER: RN105764138; LOCATION: 807 Northwest Drive, Longview, Gregg County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.70(a), by failing to display the irrigator license number on all vehicles used in the performance of irrigation and installation, maintenance, alteration, repair, or service; 30 TAC §334.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name, license number, and the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-128, P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ's website is www.tceq.state.tx.us"; and 30 TAC §334.50(a), by failing to install a backflow prevention device; PENALTY: \$1,390; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Leldon B. Higgs; DOCKET NUMBER: 2013-1043-PST-E; TCEQ ID NUMBER: RN101841609; LOCATION: 40385 Highway 290 Business, Waller, Waller County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.49(a)(1), by failing to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system; 30 TAC §334.7(d)(3), by failing to provide notice of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor all tanks in the UST system in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to monitor the UST system in a manner which will detect a release from any portion of the piping system; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$14,153; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: MACC Collision Repair Experts, Inc.; DOCKET NUMBER: 2014-0153-AIR-E; TCEQ ID NUMBER: RN100598762; LOCATION: 11201 Rojas Drive, El Paso, El Paso County; TYPE OF FACILITY: auto body shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and TCEQ Agreed Order Docket Number 2011-2120-AIR-E, Ordering Provisions Numbers 2.a. and 2.c., by failing to obtain authorization prior to constructing and operating a source of air emissions; PENALTY: \$6,000; STAFF ATTORNEY: Laura Evans, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: Pamela Sue Hughes d/b/a Big Q Mobile Home Estates; DOCKET NUMBER: 2014-0127-PWS-E; TCEQ ID NUMBER: RN102319464; LOCATION: 1715 90th Street, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.106(f)(3), by failing to comply with the maximum contaminant level (MCL) of 4.0 milligrams per liter (mg/L) for fluoride based on the running annual average; THSC, §341.0315(c) and 30 TAC §290.106(f)(3), by failing to comply with the MCL of 0.010 mg/L for arsenic based on the running annual average; and THSC, §341.031(a) and 30 TAC §290.106(f)(2), by failing to comply with the acute MCL of 10 mg/L for nitrate; PENALTY: \$13,736; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: Riviera Club Inc. dba Stop N Bye; DOCKET NUMBER: 2013-2219-PST-E; TCEQ ID NUMBER: RN100887686; LOCATION: 3760 Roma Street, Houston, Harris County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent

access, tampering, or vandalism by unauthorized persons; PENALTY: \$3,937; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Robert A. Garner; DOCKET NUMBER: 2013-1530-LII-E; TCEQ ID NUMBER: RN106244882; LOCATION: 2907 Lindsey Drive, Copperas Cove, Coryell County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.24(a), by failing to comply with reasonable inspection requirements; 30 TAC §344.62(b)(2), by failing to comply with minimum design and installation requirements; 30 TAC §344.63(4), by failing to provide an irrigation system plan indicating the actual installation of the system to the owner of the system installed at the residence; and 30 TAC §344.72(a), by failing to honor the written warranty provided to the owner of the irrigation system installed at the residence; PENALTY: \$3,416; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Rogelio Esquivel and Angelita Esquivel; DOCKET NUMBER: 2013-1903-MSW-E; TCEQ ID NUMBER: RN106892961; LOCATION: 3526 South Farm-to-Market Road 493, Donna, Hidalgo County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$22,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: Shawn Mark Yarbrough d/b/a Walnut Ridge Estates Water System; DOCKET NUMBER: 2013-1930-PWS-E; TCEQ ID NUMBER: RN101195857; LOCATION: the intersection of Walnut Ridge Road and Lake Road, Angelina, Angelina County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(l), by failing to provide a complete, thorough, and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.43(c)(3), by failing to provide the system's ground storage tanks with an overflow in strict accordance with current American Water Works Association standards that terminates with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch and is not a subject to submergence; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(C)(i) and (c)(1)(B)(i), by failing to provide a total well capacity of 0.6 gallons per minute (gpm) per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(ii) and (c)(1)(B)(ii), by failing to provide a minimum storage tank capacity of 200 gallons per connection for 64 connections and 35 gallons per unit for three non-community units; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(iii) and (c)(1)(B)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection for 64 connections and 1.0 gpm per unit for three non-community units; 30 TAC §290.44(d) and

§290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.39(l)(4), by failing to meet the conditions for an issued exception; PENALTY: \$3,568; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201403550

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 5, 2014



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 15, 2014**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone

numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: HNQ, INC. DBA Kool Corner; DOCKET NUMBER: 2013-1447-PST-E; TCEQ ID NUMBER: RN101496644; LOCATION: 6413 Manor Road, Austin, Travis County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection by agency personnel; PENALTY: \$10,630; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201403548

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 5, 2014



Notice of Water Quality Applications

The following notices were issued on July 25, 2014 through August 1, 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

SANDERSON FARMS INC PROCESSING DIVISION which operates the Sanderson Farms Brazos Processing Division Plant (a poultry processing facility), has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003821000, which authorizes the discharge of treated process wastewater, domestic wastewater, utility wastewater, stormwater, and truck wash water at a daily average flow not to exceed 1,678,000 gallons per day via Outfall 001. The facility is located at 2000 Shiloh Drive, approximately 1.6 miles southwest of the intersection of State Highway 21 and Farm-to-Market Road 2818 in the City of Bryan, Brazos County, Texas 77803.

AES DEEPWATER LLC operator of the AES Deepwater Cogeneration Plant, has applied for a renewal of TPDES Permit No. WQ0004795000, which authorizes the discharge of cooling tower blowdown, previously monitored effluents (low volume waste sources and coke pile runoff), and stormwater at a daily average flow not to exceed 1,400,000 gallons per day via Outfall 001. The facility is located at 701 Light Company Road in Pasadena, Harris County, Texas 77506.

CITY OF CARRIZO SPRINGS has applied for a major amendment to TPDES Permit No. WQ0010145001 to authorize an increase in the 2-hour peak flow. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 0.5 mile

northeast of the intersection of U.S. Highway 83 and State Highway 85 in the City of Carrizo Springs, Dimmit County, Texas 78834.

JACKSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0010196001, 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 approximately 2,000 feet east of Farm-to-Market Road 234 and approximately 1,200 feet north of the Farm-to-Market Road 616, outside of the City of Vanderbilt in Jackson County, Texas 77991.

CITY OF HENRIETTA has applied for a major amendment to TPDES Permit No. WQ0010454001 to authorize the addition of a second Outfall. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.245 gallons per day. The facility is located approximately 1,800 feet west of Farm-to-Market Road 1197, approximately 4,700 feet northwest of the intersection of U.S. Highway 82 and Farm-to-Market Road 1197 (locally known as the intersection of Bridge and Omega Street), northwest of the City of Henrietta in Clay County, Texas 76365.

CITY OF RANKIN has applied for a renewal of TCEQ Permit No. WQ0010601001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via surface irrigation of 60 acres of non-public access agriculture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.5 miles southwest of the intersection of U.S. Highway 67 and Farm-to-Market Road 349 in Upton County, Texas 79778.

CITY OF PFLUGERVILLE has applied for a renewal of TPDES Permit No. WQ0011845006 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 975,000 gallons per day. The facility is located at 17601 Weiss Lane in Travis County, Texas 78660.

NEEDVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012010001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 82,000 gallons per day. The facility is located approximately 3,100 feet northeast of the intersection of Fritzella Street and State Highway 36, on the east side of Fritzella Street in Fort Bend County, Texas 77461.

RENN ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012078001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 9535 Sugarland-Howell Road, Houston, in Fort Bend County, Texas 77083.

SHERIDAN WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013452001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 5399 East 2nd Street, Sheridan, approximately 1,400 feet east-southeast of the intersection of U.S. Highway 90 Alternate and Farm-to-Market Road 2437 in Colorado County, Texas 77475.

CITY OF SINTON has applied for a major amendment to TPDES Permit No. WQ0013641001 to reduce the monitoring frequency for E. coli bacteria. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located in the Rob and Bessie Welder Park on U.S. Highway 181, approximately 2.4 miles north of the intersection of U.S. Highway 181 and Farm-to-Market Road 881 in San Patricio County, Texas 78387.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a renewal of TCEQ Permit No. WQ0013747003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 122,000 gallons per day via surface irrigation of 34 acres of non-public access 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 6,000 feet southwest of the intersection of Farm-to-Market Road 490 and Farm-to-Market Road 493, southwest of the City of Hargill in Hidalgo County, Texas 78549.

SG LAND HOLDINGS LLC has applied for a renewal of TPDES Permit No. WQ0013987001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 135,000 gallons per day. The facility will be located approximately 0.5 mile east-south-east of the intersection of Fuchs Grove Road and Rector Loop and approximately 1.0 mile north of the City of Manor in Travis County, Texas 78653.

HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TCEQ Permit No. WQ0014309001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via drip irrigation of 34.44 acres of public access land. The applicant also requested a change to include an additional interim phase at a daily average flow not to exceed 100,000 gallons per day via drip irrigation of 22.96 acres of public access 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 2,050 feet north of U.S. Highway 290 and approximately 7.2 miles west of the intersection of U.S. Highway 290 with Texas Highway 71 in Hays County, Texas 78737.

REUNION RANCH WATER CONTROL AND IMPROVEMENT DISTRICT has applied to for a renewal of TCEQ Permit No. WQ0014480002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 96,200 gallons per day via public access subsurface drip irrigation system with a minimum area of 22.1 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 1.33 miles southeast of the intersection of Farm-to-Market Road 1826 and Bear Creek Pass, approximately 1.33 miles south-southeast of the intersection of Farm-to-Market Road 1826 and proposed Barrett Boulevard in Hays County, Texas 78737.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 16 has applied for a renewal of TCEQ Permit No. WQ0014664001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 125,500 gallons per day via surface irrigation of 50 acres of public access land. The wastewater treatment facility and disposal site is located at 9606 Crumley Ranch Road, Austin, approximately 5,000 feet south of Hamilton Pool Road (Farm-to-Market Road 3238) and 2,250 feet west of Crumley Ranch Road in Travis County, Texas 78738. The wastewater treatment facility and disposal site is located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin. No discharge of pollutants into water in the State is authorized by this permit.

SHERRY SMITH MILNER has applied for a new permit TPDES Permit No. WQ0015207001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 7,300 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014693001 which expired August 1, 2011. The facility is located at 5896 State Highway 147, Zavalla in Angelina County, Texas 75980.

CYPRESS 600 Development Partners LP has applied for a new permit, proposed TPDES Permit No. WQ0015231001, to authorize the discharge of treated domestic wastewater at a daily average flow not to

exceed 500,000 gallons per day. The facility will be located 2.2 miles north of U.S Highway 290, approximately 280 feet north of the intersection of Lazy Kay Lane and Becker Road, on the east side of Becker Road in Harris County, Texas 77447.

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-201403556

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2014



Notice of Water Rights Applications

Notices issued July 15 and July 24, 2014.

APPLICATION NO. 12949; Boasso America Corporation, 16230 DeZavala Road, Channelview, Texas 77530, seeks a Water Use Permit to divert and use not to exceed ten acre-feet of water per year from a point on Carpenters Bayou, tributary of Buffalo Bayou, tributary of the San Jacinto River, San Jacinto River Basin at a diversion rate of 0.1114 cfs (50 gpm) for industrial purposes (dust suppression) in Harris County. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would authorize the appropriation of ten acre-feet per year from a point on Carpenters Bayou, San Jacinto River Basin at a maximum diversion rate of 0.1114 cfs (50 gpm) for industrial purposes in Harris County. The application and Executive Director's draft Permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

CERTIFICATE OF ADJUDICATION NO. 12-4355; The City of Marlin, P.O. Box 980, Marlin, Texas 76661, Applicant, has applied for an extension of time to complete construction of the Soil Conservation Service Dam, SCS Site No. 19, Big Creek (Tri-County) Watershed Project Reservoir (Brushy Creek Reservoir) on Brushy Creek, Brazos River Basin, in Falls County. The Applicant seeks an extension of time to complete construction of the authorized dam and reservoir (Brushy Creek Reservoir) and proposes May 8, 2019 as the new deadline to complete construction. The application and fees were received on April 22, 2014. Additional information was received on April 25, 2014. The application was declared administratively complete and accepted for filing on May 8, 2014. The Executive Director has determined the Applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize extending the time to complete construction to May 8, 2019. The application and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201403557

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: August 6, 2014



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 31, 2014, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Leroy Moody and Ernestine L. Moody d/b/a Leroy's Mobile Home Park; SOAH Docket No. 582-14-1792; TCEQ Docket No. 2013-1088-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Leroy Moody and Ernestine L. Moody d/b/a Leroy's Mobile Home Park on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201403559

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2014



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-026 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to implement the Community First Choice (CFC) program under section 1915(k) of the Social Security Act. CFC services would be provided at an enhanced federal match rate to individuals who have a physical or intellectual disability, who meet categorical coverage requirements for Medicaid or meet financial eligibility for home and community-based services, and who meet an institutional level of care. The proposed amendment is effective March 1, 2015.

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 Program Specialist, 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-201403538

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: August 5, 2014



Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-017 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to revise the Texas Health and Human Services Commission's (HHSC's) potentially preventable events program. Specifically, it would revise the timing of the reporting process relative to reimbursement reductions, include financial disincentives for hospitals that do not properly code "present on admission" conditions, and refine the methodology previously used in potentially preventable readmission and potentially preventable complication reports. The proposed amendment is effective September 1, 2014.

The proposed amendment is estimated to have no fiscal impact. The changes to HHSC's potentially preventable events program are not expected to change Medicaid utilization or costs.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Policy Specialist, 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-201403539
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2014



Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-027 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to establish Prescribed Pediatric Extended Care Centers (PPECCs) in Texas as a permissible Medicaid provider type, as directed by Texas Human Resources Code §32.024(jj). In 2013, the Texas Legislature enacted legislation that provided for the licensing and regulation of PPECCs, which provide non-residential, facility-based care as an alternative to private-duty nursing (PDN) for individuals under the age of 21 with complex medical needs. See Act of May 24, 2013, 83d Leg., R.S., ch. 1128, §6, 2013 Tex. Gen. Laws 2898, 2898-907 (S.B. 492).

Consistent with the 2013 legislation, the amendment specifies that a PPECC may not provide services for a minor for more than 12 hours in any 24 hour period. See Tex. Health & Safety Code §248A.152. The amendment also sets a reimbursement rate for the services of a licensed PPECC that comports with legislative direction, which limited the rate to "not more than 70 percent of the average hourly" PDN rate. Act of May 24, 2013, 83d Leg., R.S., ch. 1128, §8(c), 2013 Tex. Gen. Laws 2898, 2907. The amendment further provides that receiving services in a PPECC setting does not supplant a child's right to PDN services when PDN services are determined medically necessary.

The proposed amendment is effective June 1, 2015.

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 Program Specialist, 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-201403540
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2014



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2014.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for:

- Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;
- Early and Periodic Screening, Diagnosis, and Treatment Services;
- Family Planning Services; and

Physicians and Other Practitioners.

These rate actions comply with applicable adjustments in response to direction from the Texas Legislature as set out in the 2012-2013 General Appropriations Act and the 2014-2015 General Appropriations Act, effective September 1, 2013. Within HHSC's portion of article II, Rider 51 of the current appropriations act directs HHSC to reduce expenditures by, among other things, implementing certain payment adjustments. See General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, rider 51, at II-100 to II-101, 2013 Tex. Gen. Laws (Health & Hum. Servs. Section, Health & Hum. Servs. Comm'n); see also General Appropriations Act, 82d Leg., R.S., ch. 1355, art. II, §16, at II-108, 2011 Tex. Gen. Laws (Health & Hum. Servs. Section, Special Provisions Related to All Health & Hum. Servs. Agencies). All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual cost of \$3,954,238 for federal fiscal year (FFY) 2015, consisting of \$2,295,435 in federal funds and \$1,658,803 in state general revenue. For FFY 2016, the estimated annual cost is \$4,171,564, consisting of \$2,387,386 in federal funds and \$1,784,178 in state general revenue. For FFY 2017, the estimated annual cost is \$4,348,757, consisting of \$2,488,794 in federal funds and \$1,859,963 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@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-201403554
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2014



Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Youth Empowerment Services (YES) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through March 31, 2018. The proposed effective date for the amendment is September 1, 2014, with no changes to cost neutrality.

The YES waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families.

The YES waiver currently can serve up to 400 youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months. A purpose of this amendment is to increase the number of waiver slots to allow the program to serve up to 550 individuals.

To obtain copies of the proposed waiver amendment, interested parties may contact Beth Rider by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 730-7421, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201403571
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 6, 2014



Public Notice of Intent to Submit State Plan Amendment for Day Activity and Health Services

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2014.

The proposed amendment will adjust payment rates for the Day Activity and Health Services (DAHS) program as a result of the 2014-15 General Appropriations Act, which appropriated general revenue funds for provider rate increases for the DAHS program. General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, II-136 to II-137, 2013 Tex. Gen. Laws 3743, 3987-88 (Health & Human Servs. Section, Special Provisions Relating to All Health & Human Servs. Agencies, §61. The proposed amendment will modify the reimbursement methodology to indicate that for the period beginning on September 1, 2014, DAHS payment rates will be equal to the payment rates in effect August 31, 2014, plus \$0.15 per unit of service.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$5,629 for federal fiscal year (FFY) 2014, with approximately \$3,416 in federal funds and approximately \$2,213 in state general revenue. For FFY 2015, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$67,611, with approximately \$40,600 in federal funds and approximately \$27,011 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Victor Perez, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6223; by facsimile at (512) 730-7475; or by e-mail at victor.perez@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-201403545
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2014



Public Notice of Intent to Submit State Plan Amendment for Nursing Facilities

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2014.

The purpose of this amendment is to update Medicaid payment rates for the Nursing Facility (NF) program as a result of the 2014-2015 General Appropriations Act, which appropriated funds to provide for a six percent increase for the NF with a two percent increase applied in state fiscal year (SFY) 2014 and an additional four percent increase to be applied in SFY 2015. General Appropriations Act, 83d Leg.,

R.S., ch. 1411, art. II, II-20, 2013 Tex. Gen. Laws 3743, 3987-88 (Health & Human Servs. Section, Dep't of Assistive & Rehabilitative Servs., Rider 40). The proposed amendment will modify the NF reimbursement methodology to indicate that, effective September 1, 2014, for each Resource Utilization Group and supplemental reimbursement group, each rate component will be equal to the rate component in effect on August 31, 2013, increased by six percent.

Effective March 1, 2015, nearly all NF services will be delivered through managed care health plans, but certain NFs will continue to operate through the current fee-for-service model.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$9,441,466 for federal fiscal year (FFY) 2014, with approximately \$5,541,196 in federal funds and approximately \$3,900,270 in state general revenue. For FFY 2015, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$51,071,866, with approximately \$29,647,218 in federal funds and approximately \$21,424,648 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Victor Perez, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6223; by facsimile at (512) 730-7475; or by e-mail at victor.perez@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-201403546
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2014



Public Notice of Intent to Submit State Plan Amendment for Primary Home Care

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2014.

The proposed amendment will adjust payment rates for the Primary Home Care (PHC) program as a result of the 2014-2015 General Appropriations Act, which appropriated general revenue funds for provider rate increases for the PHC program. General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, II-136 to II-137, 2013 Tex. Gen. Laws 3743, 3987-88 (Health & Human Servs. Section, Special Provisions Relating to All Health & Human Servs. Agencies, §61. The proposed amendment will modify the reimbursement methodology to indicate that for the period beginning on September 1, 2014, PHC nonpriority payment rates will be equal to the payment rates in effect August 31, 2014, plus \$0.39 per unit of service.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$1,554,604 for federal fiscal year (FFY) 2014, with approximately \$943,489 in federal funds and approximately \$611,115 in state general revenue. For FFY 2015, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$18,796,177 with approximately \$11,287,105 in federal funds and approximately \$7,509,072 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Victor Perez, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6223; by facsimile at (512) 730-7475; or by e-mail at victor.perez@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-201403547

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: August 5, 2014

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Texas Department of Housing and Community Affairs

Announcement of Public Comment Period and Public Hearing for Comment on the Draft 2015 Regional Allocation Formula Methodology for the HOME, Housing Tax Credit, and Housing Trust Fund Programs

The Texas Department of Housing and Community Affairs ("TDHCA") announces the public comment period for the Draft 2015 HOME, Housing Tax Credit and Housing Trust Fund Regional Allocation Formula ("RAF") Methodology. **The Draft 2015 RAF Methodology will be made available for official public comment from August 15, 2014 through September 15, 2014, at 6:00 p.m. Central Time.**

A public hearing will be held as follows:

Tuesday, September 9, 2014

2:00 p.m.

Stephen F. Austin Building, Room 170

1700 North Congress Avenue

Austin, Texas 78701

Texas Government Code, §2306.111(d) and §2306.1115 requires that TDHCA use a RAF to allocate funding for its HOME, Housing Tax Credit, and Housing Trust Fund programs. The RAF uses appropriate statistical data to measure affordable housing needs and available resources in 13 State Service Regions used for planning purposes. The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The Draft 2015 RAF Methodology will be available on TDHCA's website at <http://www.tdhca.state.tx.us/housing-center/pubs-drafts.htm>. A hard copy of the Draft 2015 RAF Methodology can be requested by contacting the Housing Resource Center via mail at TDHCA, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941; or phone at (512) 475-3800; or e-mail at info@tdhca.state.tx.us.

Anyone may submit comments on Draft 2015 RAF Methodology in written form or oral testimony at the September 9, 2014, public hearing. Written comments concerning the Draft 2015 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than 6:00 p.m. Central on Monday, September 15, 2014.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least three (3) days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes by phone at (512) 475-4577 or by e-mail at jorge.reyes@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres (3) días antes de la junta para hacer los preparativos apropiados.

TRD-201403499

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 1, 2014

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HOME Investment Partnerships Program

2014 HOME Single Family Programs Reservation System Notice of Funding Availability (NOFA)

(1) Summary.

(a) The Texas Department of Housing and Community Affairs (Department) announces a Notice of Funding Availability (NOFA) of approximately \$8,630,407 in HOME funds for single family housing programs under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement. The availability and use of these funds are subject to HOME Program rules including, but not limited to the 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, and 10 TAC Chapter 23, the Single Family HOME Program, as amended, concerning the state HOME rules (State HOME Rules), the federal HOME regulations governing the HOME program at 24 CFR Part 92, as amended (Federal HOME Rules), and Texas Government Code, Chapter 2306. Other federal regulations include but are not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for procurement conflict of interest, 24 CFR §135.38 for Section 3 requirements and, 24 CFR Part 5, Subpart A for fair housing. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

(b) Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules and the Federal HOME Rules.

(2) Allocation of HOME Funds.

(a) The funds are made available through the Department's 2014 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). In accordance with Texas Government Code, §2306.111(d-1), \$5,406,236 under this NOFA is subject to the Regional Allocation Formula (RAF). Refer to the RAF tables located on the Department's website at www.tdhca.state.tx.us. The remaining \$3,224,171 under this NOFA are legislative mandated set-asides and therefore are not subject to the RAF.

(b) Approximately \$5,406,236 in funds is available under this NOFA for non set-aside activities and subject to the RAF. Funds may be reserved for individual households for the following non set-aside Program Activities:

(i) Homeowner Rehabilitation Assistance (HRA). HRA provides funds for the rehabilitation or reconstruction of single family residence

owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 - 23.32.

(ii) Homebuyer Assistance (HBA). HBA provides down payment and closing cost assistance to eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 - 23.42.

(iii) Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.

(c) Approximately \$3,224,171 in funds available under this NOFA are not subject to the RAF and may be reserved for individual Households for the following set-aside Program Activities:

(i) Persons with Disabilities (PWD) Set-Aside. Approximately \$1,224,171 is set aside to assist Persons with Disabilities and will be incorporated into the most current PWD set-aside Reservation balance to assist eligible Households.

(ii) Contract for Deed Conversion (CFDC) Set-Aside. Approximately \$2,000,000 in set-aside funding will be incorporated into the most current CFDC set-aside Reservation balance to assist eligible Households until March 10, 2015, at which time Staff may reprogram \$1,000,000 into other Single Family Activities if insufficient demand exists in this set-aside and funds are needed to satisfy excess demand of other Single Family HOME Program Activities. Any funds which have not been requested by June 1, 2015, may be reprogrammed out of the CFDC set-aside, if insufficient demand still exists and a need to satisfy excess demand in other Single Family HOME Program Activities.

CFDC provides funds for the conversion of a contract for deed to a traditional mortgage. Additional funds for rehabilitation or reconstruction are also available. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Conversion Program, §§23.50 - 23.52.

(iii) Disaster Relief Set-Aside. Approximately \$1,000,000 in funding from Program Income and deobligated funds is set aside to provide HRA, HBA, or TBRA assistance to eligible Households affected directly by a disaster.

(d) Except as limited in this NOFA or by statute, the Department may reprogram funds at anytime to the Reservation System, or to administer directly.

(3) HOME funds subject to the RAF are reserved for HRA, HBA, and TBRA non set-aside HOME Activities. HOME funds subject to the RAF totaling \$5,406,236 specified under §2(b) of this NOFA will be available under each Uniform State Service Region and by sub-region (Rural and Urban) beginning on Tuesday, September 9, 2014, at 10:00 a.m. CST until Tuesday, October 14, 2014 at 9:00 a.m. CST.

(a) On Wednesday, October 15, 2014 at 10:00 a.m. CST any funds which have not been requested under §2(b) of this NOFA will collapse within each region and will be available by Region until Tuesday, December 16, 2014, at 9:00 a.m. CST.

(b) On Wednesday, December 17, 2014 at 10:00 a.m. CST any funds which have not been requested under §2(b) of this NOFA will be collapsed together with any available Program Income and Deobligated Funds and will be made available in all eligible areas statewide for any non set-aside activity under this NOFA for HRA, HBA, and TBRA activities.

(c) Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System.

(4) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications specifically requesting to access funds under the Persons with Disabilities set-aside.

For questions regarding this NOFA, please contact Sandy Garcia, HOME Program Administrator for the Single Family HOME Program Division, at (512) 475-1391 or via email at HOME@tdhca.state.tx.us.

TRD-201403570

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 6, 2014



Notice of Public Hearing on the Section 8 PHA 2015 5-Year and Annual Plan

Notice of Public Hearing on the Section 8 PHA 2015 5-Year and Annual Plan Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P. L. 205-276) requires the Texas Department of Housing and Community Affairs (the Department) to prepare a 2015 Annual Plan covering operations of the Section 8 Program. Title 24, §903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding that plan. The Department will hold a public hearing to receive oral and written comments for the development of the Department's 2015 5-Year and Annual Plan. The hearing will take place at the following time and location:

Monday, September 29, 2014

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 108

Austin, Texas 78701

2:00 p.m. - 4:00 p.m.

The proposed 2015 5-Year and Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th Street, Attn: Section 8 Program, Austin, Texas from August 4, 2014 - September 29, 2014, on weekdays during the hours of 8:00 a.m. until 4:30 p.m. The proposed plan will also be available for viewing on the Department's website at: www.tdhca.state.tx.us/section-8/announcements.htm.

Written comments from any interested persons unable to attend the hearing may submit by e-mail Andre Adams, Section 8 Program Manager, Community Affairs Division at andre.adams@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941. Comments must be received by 5:00 p.m. Monday, September 29, 2014. Questions or requests for additional information may be directed to Andre Adams by calling (512) 475-3884 or the e-mail listed above.

Individuals who require a language interpreter for the hearing should contact Ms. Gina Esteves, ADA responsible employee at (512) 475-3943 or Relay Texas at 1 (800) 735-2989 at least two days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por

lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing so that appropriate arrangements can be made.

TRD-201403500
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 1, 2014



Proposed Changes to the Texas Minimum Construction Standards

The Texas Department of Housing and Community Affairs (the "Department") proposes changes to the Texas Minimum Construction Standards ("TMCS"). The revised TMCS will go into effect on January 1, 2015.

PURPOSE: The purpose of TMCS is to provide minimum construction standards, materials, and methods when rehabilitating existing one- and two-story detached single family housing. Construction standards are required by the United States Department of Housing and Urban Development ("HUD") when utilized HOME funds. The Department is required to submit TMCS to HUD.

FISCAL NOTE: Mr. Timothy Irvine, Executive Director, has determined that, for each year of the first five years the revised TMCS is in effect, enforcing or administering TMCS does not have any foreseeable implications related to costs or revenues of the state or local government.

PUBLIC BENEFIT/COST NOTE: Mr. Irvine also has determined that, for each year of the first five years the revised TMCS is in effect, the public benefit anticipated as a result will be improved construction quality and clear direction on construction requirements when rehabilitating existing housing. There will not be any economic cost to any individuals required to comply with the revised TMCS. The revised TMCS will not impact local employment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES: The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT: Written public comment may be submitted to the Texas Department of Housing and Community Affairs, Will Gudeman, TMCS Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to the following address: will.gudeman@tdhca.state.tx.us. ALL FEEDBACK MUST BE RECEIVED BY 5:00 P.M. September 15, 2014.

The full text of the revised TMCS may be viewed at the Department's website: www.tdhca.state.tx.us.

STATUTORY AUTHORITY: The revised TMCS fulfills a federal requirement when utilizing HUD funds. The proposed amendment affects no other code, article or statute.

TRD-201403537
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 5, 2014



Texas Department of Licensing and Regulation

Vacancy on Licensed Breeders Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Licensed Breeders Advisory Committee (Committee) established by Texas Occupations Code, Chapter 802. The purpose of the Committee is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on matters related to the administration and enforcement of Chapter 802, including licensing fees and standards adopted under Subchapter E.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The committee consists of the following members: two members who are licensed breeders; two members who are veterinarians; two members who represent animal welfare organizations each of which has an office based in this state; two members who represent the public; and one member who is an animal control officer as defined in §829.001, Health and Safety Code. Members of the committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. This announcement is for a licensed breeder.

Interested persons should download an application from the Department website at: www.tdlr.texas.gov. Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone (800) 803-9202, FAX (512) 475-2874 or email advisory.boards@tdlr.texas.gov. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicants' expense.

TRD-201403543
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 5, 2014



Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Bionomics, Inc. (TLLRDCC #1-0074-00)
1550 Bear Creek Road
Oak Ridge, Tennessee 37763

The application will be placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by August 28, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission
Attn: Leigh Ing, Executive Director
333 Guadalupe St., #3-240
Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201403505
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: August 1, 2014



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Duke Energy-Brunswick Nuclear Plant (TLLRWDC #1-0075-00)

8470 River Road SE (Hwy 87N)

Southport, North Carolina 28461

The application will be placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the application are due to be received by August 28, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201403506

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: August 1, 2014



Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Duke Energy-McGuire Nuclear Station (TLLRWDC #1-0076-00)

13339 Hagers Ferry Road

Huntersville, North Carolina 28078

The application will be placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the application are due to be received by August 28, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201403507

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: August 1, 2014



Notice of Receipt of Revised Amendment Request for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received a revised amendment request for an agreement for import for disposal of low-level radioactive waste from:

Bionomics, Inc. (TLLRWDC #1-0032-04)

P.O. Box 817

Kingston, Tennessee 37763

The amendment request will be placed on the Compact Commission web site, www.tllrwdec.org, where it will be available for inspection and copying.

Comments on the amendment request are due to be received by August 13, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdec.org.

TRD-201403488

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: August 1, 2014



Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 1, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of DSCI, LLC for a Service Provider Certificate of Operating Authority, Docket Number 42719.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant seeks to provide service throughout the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than August 22, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the com-

mission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42719.

TRD-201403527
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2014



Notice of Application to Partially Relinquish 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 August 1, 2014, to partially relinquish designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP).

Docket Title and Number: Application of DialToneServices, L.P. to Relinquish its Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier in Certain Areas Served by AT&T, Docket Number 42718.

The Application: DialToneServices, L.P. (DTS) seeks concurrent partial relinquishment of its ETP and ETC designations only in the following four (4) exchanges served by AT&T: Bruni (BRUNTXBR), Batesville (BTVLTXBV), Midkiff (MDKFTXMK) and Marathon (MRHTXMA).

The relinquishment would be effective 90 days from the filing date of the application, i.e., October 30, 2014. DTS affirmed that AT&T continues to hold a certificate of convenience and necessity and continues to provide service throughout those exchanges and can serve DTS's customers without the purchase or construction of facilities.

Persons who wish to intervene in the proceeding or comment upon the action sought should notify the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission's Office of Customer Protection at (512) 936-7120 or (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 correspondence should refer to Docket Number 42718.

TRD-201403555
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 2014



Notice of Proceeding for 2014 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2014 annual compliance affidavit proceeding initiated by the Public Utility Commission of Texas for eligible telecommunications providers (ETP) and resale eligible telecommunications providers (RETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The Public Utility Commission of Texas (commission) initiated this proceeding pursuant to Public Utility Regulatory Act (PURA) §56.030 and P.U.C. Substantive Rules §26.417 and §26.419. PURA §56.030

requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from TUSF program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP and RETP receiving support from the TUSF. In accordance with PURA §56.030 and P.U.C. Substantive Rules §26.417 and §26.419, each ETP and RETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds.

Carriers designated as ETPs may contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 32567.

TRD-201403536
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 2014



Notice of Proceeding for 2014 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2014 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 C.F.R. §54.314, the Public Utility Commission of Texas (commission) annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) by October 1, 2014. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under P.U.C. Substantive Rule §26.418(k), on or before September 1 of each year, each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission shall submit an affidavit by August 29, 2014.

Carriers seeking to be certified may contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or

by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-201403535

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 5, 2014

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Sam Houston State University

Notice of Intent to Seek Consulting Services

In compliance with the provisions of Texas Government Code, Chapter 2254, Sam Houston State University in Huntsville, Texas, solicits Invitation For Proposals (IFP) for a consultant for the university's capital fund-raising campaign. The President of Sam Houston State University has made a finding of fact that the consulting services are necessary and Sam Houston State University does not have the in-house expertise to conduct the campaign. Pursuant to Texas Government Code §2254.029(b) notice is given that the consulting services sought in this solicitation relate to services previously provided by Dini Spheris, 2727 Allen Parkway, Suite 1650, Houston, Texas 77019-2125, and that SHSU intends to award the contract for the solicited consulting services to Dini Spheris, unless an offer of better value is received. The chosen consulting firm will consult both on campus and from the consultant's offices. The firm will work with the administration, volunteers, and staff to instruct them with regard to major gift fund-raising activities and provide detailed campaign procedures in writing. The firm will provide a fee range for a one-to-two year relationship based on the length of the campaign.

The chosen consulting firm will be responsible for the following: 1) Provide ongoing advice and counsel to the University's President, Vice President for Advancement, Associate Vice President for Development, and Campaign Manager for the preparation, implementation, and successful conduct of the capital campaign; 2) Work closely with the senior administration and advancement staff to compile a case for support, which includes objectives and an overall fund-raising target; 3) Develop a comprehensive campaign plan, including staff and volunteer organization and scheduling; 4) Work with advancement staff to develop a strategy to inform the key faculty, staff, and major donors regarding the campaign planning and its general purposes; 5) Assist with the development of a strategy to create awareness about the campaign, especially one that involves major donors and prospects; 6) Work with development staff to identify top prospects and enlist the campaign's volunteer leadership, providing job descriptions and materials for use by volunteers and staff; 7) Assist with the writing and preparation of all campaign printed material and visual communication, including video, the SHSU website and social media, and PowerPoint presentations; 8) Work with the development staff in formulating specific strategies to cultivate and solicit certain major prospects for lead gifts to the campaign; 9) Provide advice and counsel regarding qualified foundation and corporation prospects for support of campaign objectives and assist with guidance for proposal preparation; 10) Develop functional system to report the progress of the campaign, including its funding objectives and overall goal (once they are determined); 11) Assist with developing efficient procedures to acknowledge, receipt, record, and track campaign pledges and a follow-up program for accurate and timely collection of pledges; 12) Assist with a program to market the University and the campaign to prospective donors and influential leaders.

Selection criteria will be based on the best value which will be determined by the university, and cover such areas as previous experience, client references and responsibilities listed in this IFP.

The value of the contract is expected to exceed \$ 100,000, therefore, a HUB Subcontracting Plan must be submitted with the proposal. The university will take responsibility for printing, mail-outs, advertising and other related responsibilities. For information regarding the HUB Subcontracting Plan contact the HUB Coordinator, Bob Chapa at (936) 294-4670.

Persons interested in a copy of the IFP 753-015-UA003DJF should contact Dan Fry, Purchaser II, Sam Houston State University, Procurement Office at (936) 294-1997 or pur_djf@shsu.edu to request a copy.

The closing date for receipt of offers is August 28, 2014. The date of award is anticipated to be on or before September 15, 2014.

TRD-201403553

Rhonda Beassie

General Counsel

Sam Houston State University

Filed: August 5, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Angelina County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Angelina County; TxDOT CSJ No.: 1511LUFKN.

Scope: Provide engineering/design services to

1. Reconstruct Taxiway D
2. Rehabilitate Apron
3. Rehabilitate Hangar Access Taxiway

The DBE goal for the design of the current project is 11%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Robert Johnson.

The following is a listing of proposed projects at the Angelina County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark runway; construct perimeter fencing.

Angelina County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Angelina County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services".

The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 16, 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 local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201403561

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 6, 2014



Aviation Division - Request for Qualifications for Professional Services

The Texas Department of Transportation (TxDOT), Aviation Division (AVN), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT AVN will solicit and receive qualifications for professional services as described below:

TxDOT CSJ: 14AVNWILD. TxDOT intends to enter into four or five specific deliverable contracts for a five year period with prime providers to perform Wildlife Hazard Assessments and Wildlife Haz-

ard Management Plans at various general aviation airports in Texas. TxDOT will issue lump sum work authorizations to authorize all work under the contract. Work authorizations will be issued at the discretion of TxDOT. While it is TxDOT's intent to issue a work authorization under the contract, the selected providers shall have no cause of action based on the number of work authorizations issued. Contract duration is expected for a period of five years or the latest work authorization termination date.

Scope: Conduct a Wildlife Hazard Site Visit or a Wildlife Hazard Assessment (WHA) under the direction of a qualified airport wildlife biologist meeting the requirements established by FAA Advisory Circular 150/5200-36A (or AC 150/5200-38 or other revised edition), or by an individual working under direct supervision of such an individual, and, if required by either FAA or TxDOT AVN following review of the WHA Final Report, produce a Wildlife Hazard Management Plan (WHMP).

Services of the Consultant: The WHA will include, but is not limited to, an analysis of the events or circumstances that prompted the assessment; identification of the wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on and near the airport that attract wildlife; a description of wildlife hazards to air carrier operations; and recommended actions for reducing identified wildlife hazards to air carrier operations.

When either FAA or TxDOT determine that a WHMP is needed, a WHMP must be formulated and implemented using the wildlife hazard assessment as a basis. The WHMP must include at least the following elements.

1. A list of the individuals having authority and responsibility for implementing each aspect of the plan.
2. A list prioritizing the following actions identified in the WHA and target dates for their initiation and completion:
 - i. Wildlife population management;
 - ii. Habitat modification; and
 - iii. Land use changes.
3. Requirements for and, where applicable, copies of local, State, and Federal wildlife control permits.
4. Identification of resources that airport management will provide to implement the plan.
5. Procedures to be followed during airport operations, including air carrier operations at Part 139 airports, which at a minimum include:
 - i. Designation of personnel responsible for implementing the procedures;
 - ii. Provisions to conduct physical inspections of the aircraft movement areas and other areas critical to successfully manage known wildlife hazards before airport or air carrier operations begin;
 - iii. Wildlife hazard control measures; and
 - iv. Ways to communicate effectively between personnel conducting wildlife control or observing wildlife hazards and the air traffic control tower (when an air traffic control tower is present).
6. Procedures to review and evaluate the wildlife hazard management plan every 12 consecutive months or following an event described in paragraphs (b)(1), (b)(2), and (b)(3) of 14 CFR 139.337, including:
 - i. The plan's effectiveness in dealing with known wildlife hazards on and in the airport's vicinity and

ii. Aspects of the wildlife hazards described in the WHA that should be reevaluated.

7. A training program conducted by a qualified airport wildlife biologist to provide airport personnel with the knowledge and skills needed to successfully carry out the WHMP.

There will be no DBE/HUB requirement for each contract. The TxDOT Project Manager is Robert Jackson.

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:

Five 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. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Trudy Hill.

The consultant selection committee will be composed of Aviation Division staff. 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 Trudy Hill, Grant Manager, or Robert Jackson, Project Manager for technical questions at 1-800-68-PILOT (74568). *n Texas Department of Transportation Aviation Division Request for Qualifications for Professional Architectural/Engineering Services

Angelina County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Angelina County; TxDOT CSJ No.: 1511LUFKN.

Scope: Provide engineering/design services to

1. Reconstruct Taxiway D
2. Rehabilitate Apron
3. Rehabilitate Hangar Access Taxiway

The DBE goal for the design of the current project is 11%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Robert Johnson.

The following is a listing of proposed projects at the Angelina County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark runway; construct perimeter fencing.

Angelina County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Angelina County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 16, 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 local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201403560
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 6, 2014

Texas Water Development Board

Application for August 7, 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following application:

Project ID #62641, a request from the Harris County Water Control and Improvement District No. 36, 903 Hollywood Street, Houston, Texas 77015-4649, received April 11, 2014, for financial assistance totaling \$4,976,413 consisting of a \$3,885,000 loan and \$1,091,413 in loan forgiveness from the Drinking Water State Revolving Fund for design and construction costs to fund efficiency improvements and equipment rehabilitation at four water treatment plant sites.

TRD-201403468
Les Trobman
General Counsel
Texas Water Development Board
Filed: July 30, 2014

Applications for August 13, 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62643, a request from the Brazosport Water Authority, 1251 FM 2004, Lake Jackson, Texas 77566, received May 22, 2014, for a \$15,500,000 loan from the Drinking Water State Revolving Fund to finance design and construction of water system improvements to address efficiency at the water treatment plant.

Project ID #62535, a request from the Lake Palo Pinto Water Supply Corporation, P.O. Box 410, Gordon, Texas 76453-4817, received May 9, 2014, for a \$1,480,000 loan from the Drinking Water State Revolving Fund to finance construction to expand the existing water treatment plant.

Project ID #73691, a request from the City of Laredo, 5816 Daugherty Avenue, Laredo, Texas 78041, received June 18, 2014, for a \$10,000,000 loan from the Clean Water State Revolving Fund to finance construction of a new wastewater treatment plant to serve the Sombreretillo Creek and Mines Road areas.

TRD-201403552
Les Trobman
General Counsel
Texas Water Development Board
Filed: August 5, 2014

Texas Windstorm Insurance Association

Request for Information

Purpose of the Request for Information

On or after July 30, 2014, the Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association (TFPA) will issue a Request for Information (RFI) seeking detailed information from qualified Claims Management System (CMS) providers interested in providing services to TWIA and TFPA.

About this Request for Information

TWIA and TFPA intend to submit a formal Request for Proposals (RFP) after reviewing responses to this RFI. Note that only Bidders who submit responses to this RFI will be eligible to submit proposals to any subsequent related RFP.

For the purposes of this document, the terms "Bidder" and "Bidders" refer to the entity/entities, company/companies, vendor(s) or any associated person(s) responding to this RFI.

TWIA and TFPA will not pay any expenses of the Bidder in submitting a response to this RFI.

The due date and time for full response applications is 5:00 P.M. Central Daylight Time (CDT) Tuesday, September 2, 2014. Bidders are encouraged to submit information earlier, if possible. Responses will not be accepted unless received or postmarked on or before this deadline.

Obligations for Request for Information Costs

TWIA and TFPA accept no obligations for costs incurred in responding to this RFI. All costs and expenses incurred by any Bidder in connection with or arising out of possible or actual response to this RFI are entirely the responsibility of the Bidder and will not be borne or reimbursed, directly or indirectly, by TWIA and TFPA.

Response Form

The RFI and application forms will be published on the TWIA and TFPA websites on or about July 30, 2014 at: www.twia.org and www.texasfairplan.org. A direct link to the RFI document, which includes the response form, will be available at this address: http://www.twia.org/Portals/0/Documents/CMS_Request_for_Information.pdf

Additional Contact Information

Contact for the purpose of this RFI should be directed to:

Email:

James Simmons, Claims Business Analyst
ClaimsRFI@twia.org

Mail:

Texas Windstorm Insurance Association
Claims Management System RFI
Attn: James Simmons, Claims Business Analyst
P.O. Box 99080
Austin, Texas 78709-9080
TRD-201403476

Wesley Koehl
Human Resources Coordinator
Texas Windstorm Insurance Association
Filed: July 31, 2014



Request for Qualifications

Purpose of Request for Qualifications

On or after July 31, 2014, the Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association (TFPA) will issue a Request For Qualifications (RFQ) for a First Notice of Loss Call Center. As described in the RFQ, an approved call center will provide staff to handle the reporting of claims, 24/7/52, on an around-the-clock basis to TWIA and TFPA from their policyholders, agents, as well as the customer care of those policyholders.

Application Form

The RFQ and application forms will be published on the TWIA website on or about July 31, 2014 at: <http://www.twia.org>. Further information regarding the RFQ will also be available on TWIA's website at this address, including any updates, amendments, and clarifications.

Approval Process

Applications must meet all requirements of the RFQ. Applications will be reviewed by the Association and evaluated as outlined in the RFQ.

Rights and Obligations

TWIA/TFPA is not responsible for any costs incurred in responding to this RFQ, and TWIA/TFPA reserves the right to accept or reject

any or all applications in its sole discretion. TWIA/TFPA is under no obligation to award a contract on the basis of the RFQ. TWIA/TFPA reserves the right to issue other RFQs for the services outlined in this RFQ, or for any other services in connection with claims handling, at the Associations' discretion.

Contact Information

Any requests for information for the purpose of this RFQ should be directed to:

Email:

rfp@twia.org

Mail:

Texas Windstorm Insurance Association
Claims FNOL RFQ

Attn: Ryan Layne

P.O. Box 99090

Austin, Texas 78709-9090

TRD-201403477

Wesley Koehl

Human Resources Coordinator

Texas Windstorm Insurance Association

Filed: July 31, 2014



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

SALES AND CUSTOMER SUPPORT

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.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printcdsc



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It's how you know[™]