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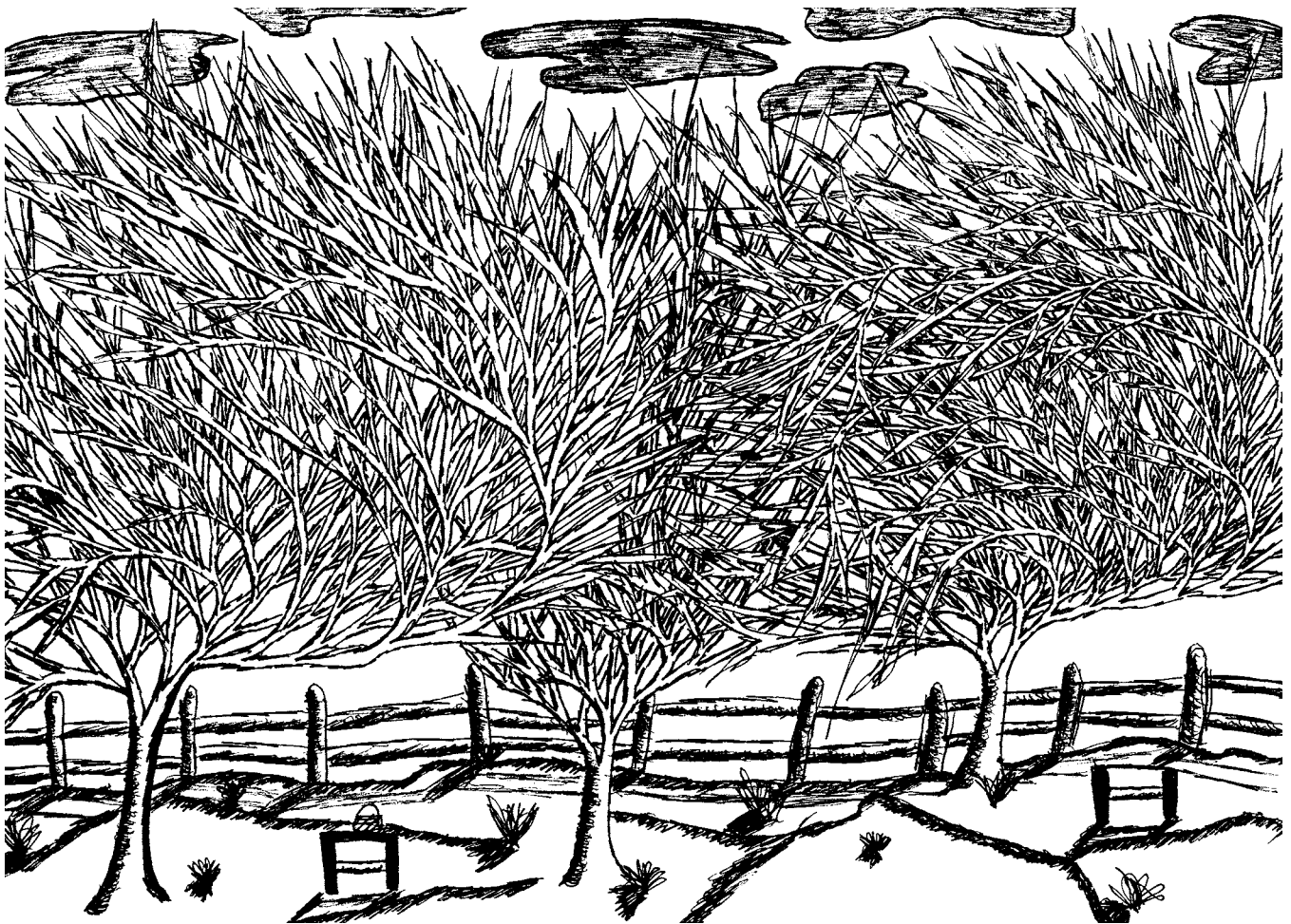
# TEXAS REGISTER

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# 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.

## Ethics Advisory Opinion

**EAO-520.** Whether an elected board member 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. (AOR-588)

### SUMMARY

An elected board member of an agency in the executive branch of state government may accept tuition, food, transportation, or lodging only if acceptance is not prohibited under the applicable laws.

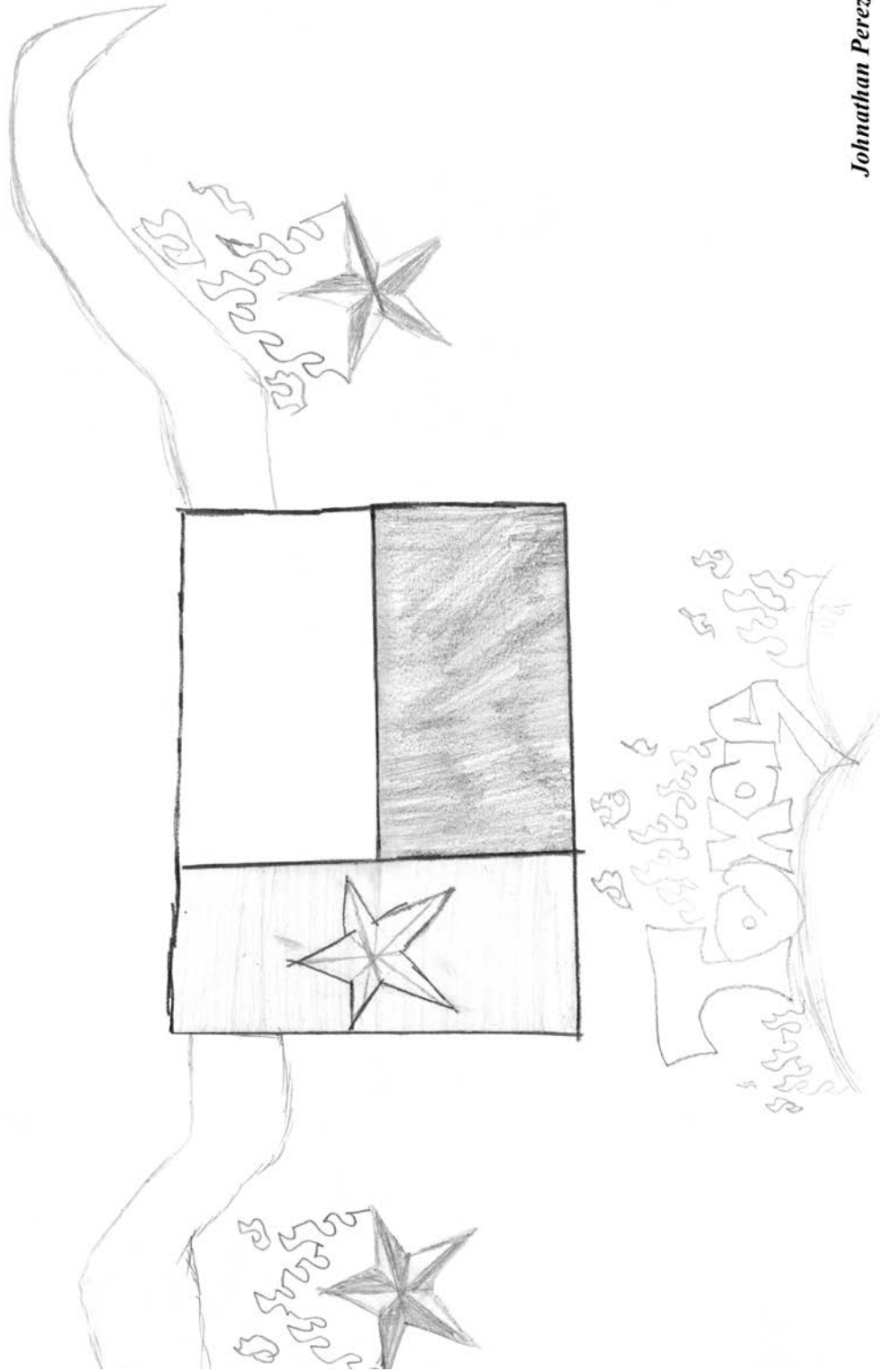
The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305,

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-201405211  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: November 3, 2014





*Johnathan Perez*

# EMERGENCY RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 21. CITRUS

##### SUBCHAPTER A. CITRUS QUARANTINES

###### 4 TAC §21.10

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §21.10, concerning Requirements and Restrictions for Quarantined Articles at Nurseries in Areas of the Citrus Zone Not Quarantined for Citrus Greening, for a 60-day period. The text of the new section was originally published in the July 25, 2014, issue of the *Texas Register* (38 TexReg 5671).

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

TRD-201405163

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Original effective date: July 7, 2014

Expiration date: January 2, 2015

For further information, please call: (512) 463-4075



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 25. TRAFFIC OPERATIONS

##### SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

###### 43 TAC §25.28

The Texas Department of Transportation (department) adopts, on an emergency basis, new §25.28, concerning Traffic and Engineering Investigation Requirements for Reducing Speeds on Certain Types of Roadways.

###### EXPLANATION OF EMERGENCY NEW SECTION

Transportation Code, §201.101, authorizes the Texas Transportation Commission (commission) to establish rules for the conduct of the work of the department. Transportation Code, §545.353, authorizes the commission to establish a reasonable and safe prima facie speed limit for a part of the highway system

if the commission determines that the prima facie speed limit set by statute is unreasonable or unsafe.

The safety issues that have developed due to the increased energy sector traffic and limited maintenance funds require the department to review the speed limits for roadways on the state highway system. The crash rate for rural, two lane, two-way roadways on the state highway system that are less than 24 feet in width is higher than the statewide average crash rate for rural, two lane, two-way roadways on the state highway system. For example, in Bee County (Eagle Ford Shale area), the crash rate for rural, two lane, two-way roadways on the state highway system that are less than 24 feet in width is three times higher than the statewide average crash rate for rural, two lane, two-way roadways on the state highway system.

Under the current rules, a speed zone study and strip map development often take months to complete. However, the speed limits on certain types of roadways need immediate review due to the increase in traffic crashes. The commission finds that the conditions of roadways on the state highway system that are less than 24 feet in width and have a crash rate that is greater than the statewide average for similar roadways create an imminent safety condition that requires the adoption of emergency rules to allow the department to review and quickly revise speed limits on those roadways.

New §25.28 allows the department to use a streamlined speed zone study to determine the prima facie speed for certain roadways. The section authorizes the department to use the streamlined procedure for changes to a speed limit if the roadway or section of the roadway is less than 24 feet in width and has a crash rate greater than the statewide average for similar roadways. The streamlined speed zone study will include the review of several roadway factors including the width of the roadway, horizontal and vertical curves, driveway density, lack of striped or improved shoulders, and the crash rate within the speed zone. The study will be based on the most recent 85th percentile speed and will allow the commission to decrease that speed by up to 12 miles per hour based on the additional roadway factors. The rule also eliminates the need to prepare a strip map, which is unnecessary because the parameters of the speed zone will not be changed.

The roadway factors under this emergency rule are also included under the current full speed study authorized under §25.23 of the department's rules. However, due to changes in roadway conditions, the department needs to review these roadways again to determine if they now warrant a decrease in the 85th percentile speed, using the additional roadway factors included in these emergency rules. The 85th percentile speed portion of the study, under current rules, requires department staff to measure the speeds of 125 cars or all cars within a 2-hour time period at multiple locations within the speed zone. Eliminating the need to complete the 85th percentile speed portion of the study will

allow an expedited review of the speed limits on qualifying roadways on the state highway system that is needed to address the immediate safety concerns.

Adoption on an emergency basis is necessary to allow the commission the flexibility to address immediate traffic safety concerns while department staff reviews the entire speed zone study process to remove any unnecessary steps. The department plans to present the commission with new speed zone procedures for consideration in December.

#### STATUTORY AUTHORITY

The new section is adopted on an emergency basis under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §545.353, which provides the commission the authority to adopt and modify the procedures for establishing speed zones.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §545.353.

§25.28. Traffic and Engineering Investigation Requirements for Reducing Speeds on Certain Types of Roadways.

(a) This section applies only to decreasing the speed limit within an existing speed zone on the state highway system if:

(1) the roadway is less than 24 feet wide; and

(2) the number of crashes within that speed zone is greater than the statewide average for crashes on similarly classified roadways.

(b) The speed zone study necessary for decreasing a speed limit under this section may, at the sole discretion of the department, be limited to the consideration of the following factors:

(1) narrow roadway pavement;

(2) horizontal and vertical curves;

(3) high driveway density;

(4) lack of striped, improved shoulders; or

(5) crash history within the speed zone.

(c) The posted speed limit may be reduced by as much as 12 miles per hour below the 85th percentile speed or trial-run speed that was used to determine the current speed limit for the speed zone.

(d) The final decision on the amount of variation from the posted speed limit should be based on the engineering judgment of the supervising engineer.

(e) Because the boundaries of the existing speed zone have been established, a strip map is not required under this section.

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

Filed with the Office of the Secretary of State on October 30, 2014.

TRD-201405129

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 30, 2014

Expiration date: February 26, 2015

For further information, please call: (512) 463-8683



# 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 2. TEXAS ETHICS COMMISSION

#### CHAPTER 6. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §6.1

The Texas Ethics Commission (the commission) proposes an amendment to §6.1, relating to definitions.

Section 6.1 relates to Title 15 of the Election Code definitions. The proposed amendment adds paragraph (19) to define the phrase "first responder."

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law. The proposed rule provides clarity by defining the phrase "first responder." There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to §6.1 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to rule §6.1 affects Election Code, Title 15, §251.001(12).

###### §6.1. Definitions.

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

(1) - (18) (No change.)

(19) First responder--An individual who is:

(A) a peace officer whose duties include responding rapidly to an emergency;

(B) fire protection personnel, as that term is defined by §419.021, Government Code;

(C) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;

(D) an ambulance driver; or

(E) an individual certified as emergency medical services personnel by the Department of State Health 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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TRD-201405155

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 463-5800



## CHAPTER 18. GENERAL RULES CONCERNING REPORTS

### 1 TAC §18.23

The Texas Ethics Commission (the commission) proposes an amendment to §18.23, relating to administrative waiver of fine.

Section 18.23 relates to reports required to be filed with the commission, and it amends subsection (a)(1) and adds subsection (a)(2) and (3) to expand the circumstances in which the Executive Director may waive a late filing penalty.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be consistent determinations of waivers of report fines by the Executive Director. There will not be an effect on small busi-

nesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment to §18.23 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to rule §18.23 affects Election Code, Title 15, §254.042(b), and Government Code §305.033(c) and §572.033(b).

*§18.23. Administrative Waiver of Fine.*

(a) A filer may request the executive director to waive a late fine by submitting an affidavit to the executive director that states facts that establish that:

(1) the report was filed late because of an unforeseen serious [a] medical emergency or condition or a death that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report;

(2) the report was filed late as a result of verifiable severe weather at the filer's location that prevented the filer from filing the report by the applicable deadline and the report was filed within a reasonable time after the deadline;

(3) the report was filed late because the filer was a first responder, as defined in §6.1 of this title (relating to Definitions), deployed to an emergency situation at the time of the filing deadline or a member of the military deployed on active duty at the time of the filing deadline and the report was filed within a reasonable time after the deadline;

(4) [(2)] the filer of the personal financial disclosure report is not an elected official, a candidate for election, or a salaried public servant, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed no later than 30 days after the individual was notified that the report appeared to be late;

(5) [(3)] the filer of the personal financial disclosure report was an unopposed candidate in a primary election, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed before the primary election.

(6) [(4)] the filer of the campaign finance report:

(A) had filed all previous reports by the applicable deadline;

(B) had no contributions, expenditures, or loans to report; and

(C) filed the report no later than 30 days after the filer was notified that the report appeared to be late;

(7) [(5)] the filer reasonably relied on incorrect information given to the filer by the agency; or

(8) [(6)] other administrative error by the agency.

(b) If, in the executive director's discretion, the affidavit establishes grounds for a waiver under this section, the executive director shall waive the fine.

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 November 3, 2014.

TRD-201405187

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



**1 TAC §18.24**

The Texas Ethics Commission (the commission) proposes new §18.24, relating to general guidelines for administrative waiver or reduction of fines imposed when a report required to be filed with the commission is filed late and the filer does not qualify for a waiver of a fine under commission rule §18.23 of this title.

Section 18.24 is being added to categorize the type of filer and the type of late report, to define "critical report," and to determine good cause, for purposes of an administrative waiver or reduction of a late fine.

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

Mrs. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be consistent determinations of waivers and reductions of late report fines. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed new rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

Section 18.24 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Section 18.24 affects Election Code, Title 15, §254.042, and Government Code, §305.033(c) and §572.033(b).

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Fine.

(a) A filer who does not qualify for a waiver under §18.23 of this title (relating to Administrative Waiver of Fine) may request the executive director to waive a late fine by submitting an affidavit to the executive director. The executive director may waive or reduce the late fine if the filer meets the criteria and the late report meets the qualifications under the guidelines set out in §18.25 of this title (relating to Administrative Waiver or Reduction of Fine: Report Type I) and §18.26 of this title (relating to Administrative Waiver or Reduction of Fine: Report Type II).

(b) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of this title, a late report will be classified by report type, as follows:

(1) Any report that is not a critical report as defined under paragraph (2) of this subsection will be classified as Report Type I and considered under §18.25 of this title.

(2) A critical report will be classified as Report Type II and considered under §18.26 of this title. A "critical report" is:

(A) a campaign finance pre-election report due 30 days before an election;

(B) a campaign finance pre-election report due 8 days before an election;

(C) a runoff report;

(D) a daily special pre-election report required under §254.038 or §254.039, Election Code;

(E) a semiannual report subject to the higher statutory fine under §254.042, Election Code; or

(F) a personal financial statement required under §572.027, Government Code, if the filer is a candidate with an opponent on the ballot in a primary election.

(c) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of this title, a filer requesting a waiver or reduction of a late fine will be categorized by filer type, as follows:

(1) Category A includes candidates for and officeholders of the following offices and specific-purpose committees supporting candidates for and officeholders of the following offices:

(A) statewide office;

(B) legislative office;

(C) district judge;

(D) state appellate court justice;

(E) State Board of Education member; and

(F) Secretary of State.

(2) Category B includes all filers not categorized in Category A, as defined by paragraph (1) of this subsection, or Category C, as defined by paragraph (3) of this subsection. Examples of Category B filers include the following filer types:

(A) lobbyists;

(B) salaried non-elected officials;

(C) candidates for and officeholders of district attorney;

(D) candidates for and officeholders of political party chair; and

(E) political committees with \$3,000 or more in annual activity in the calendar year in which the late report was due.

(3) Category C includes:

(A) unsalaried appointed board members and officials; and

(B) political committees with less than \$3,000 in annual activity in the calendar year in which the late report was due.

(d) For purposes of a reduction of a late fine under §18.25 and §18.26 of this title, the following explanations will be accepted as showing good cause:

(1) The report was filed no more than one day late.

(2) The report was filed within seven days of receipt of a late notice.

(3) The report was not a critical report and was prepared and placed in the mail on time but not postmarked by the deadline.

(4) The filer had technical difficulties after regular business hours, but the report was filed on the next business day that the commission's technical support staff was at work.

(5) The filer's address changed and the filer did not receive notice of the filing deadline.

(6) There are no funds in the filer's campaign or officeholder account and the filer is unemployed.

(7) A first-time filer that is required to file campaign finance reports with a county filing authority and personal financial statements with the commission, who mistakenly files the personal financial statement with the county on the filing deadline and then correctly files with the commission within seven days of realizing the mistake.

(e) For purposes of a reduction of a late fine under §18.25 and §18.26 of this title, the following explanations will not be accepted as showing good cause:

(1) The filer did not know the report was due.

(2) The filer forgot or the person assigned by the filer to prepare the report forgot.

(3) The campaign was very time-consuming.

(4) The filer's job was very time-consuming.

(5) The filer was too overwhelmed by responsibilities to file the report on time.

(6) The filer was a candidate who lost an election and did not know to terminate his or her campaign treasurer appointment and file a final report.

(7) The filer left his or her position and did not know he or she was still required to file a report.

(f) A late fine that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced fine is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(g) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

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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TRD-201405188  
Natalia Luna Ashley  
Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



### **1 TAC §18.25**

The Texas Ethics Commission (the commission) proposes new §18.25, relating to administrative waiver or reduction of a fine imposed when a report required to be filed with the commission is filed late and the filer does not qualify for a waiver or reduction under other commission rules.

Section 18.25 is being added to classify non-critical reports that meet certain criteria.

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

Mrs. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be consistent determinations of waivers and reductions of late report fines. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed new rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

Section 18.25 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Section 18.25 affects Election Code, Title 15, §254.042(b), and Government Code, §305.033(c) and §572.033(b).

§18.25. Administrative Waiver or Reduction of Fine: Report Type I.

(a) The executive director shall apply the guidelines set out in this section to a late report classified as Report Type I under §18.24(b) of this title (relating to General Guidelines for Other Administrative Waiver or Reduction of Fine).

(b) In order to qualify for a waiver or reduction of a late fine under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The filer filed the report within thirty (30) days of learning the report was late;

(3) The filer has not had the late fine for the report at issue increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(4) The filer does not have an outstanding late fine.

(c) The executive director shall use the following levels chart to determine the level of waiver or reduction of a late fine under this section:

Figure: 1 TAC §18.25(c)

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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Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission

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### **1 TAC §18.26**

The Texas Ethics Commission (the commission) proposes new §18.26, relating to administrative waiver or reduction of a fine for critical reports that are filed with the commission after the deadline.

Section 18.26 is being added to classify critical reports that meet certain criteria in order to determine whether a fine will be waived or reduced.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be consistent determinations of waivers and reductions of late report fines. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written



statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

Section 18.26 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Section 18.26 affects Election Code, Title 15, §254.042(b), and Government Code §§305.033(c) and 572.033(b).

§18.26. Administrative Waiver or Reduction of Fine: Report Type II.

(a) The executive director shall apply the guidelines set out in this section to a late report classified as Report Type II under §18.24(b) of this title (relating to General Guidelines for Other Administrative Waiver or Reduction of Fine).

(b) In order to qualify for a waiver or reduction of a late fine under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The filer has not had the late fine for the report at issue increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(3) The filer does not have an outstanding late fine.

(c) The executive director shall use the following levels chart to determine the level of waiver or reduction of a late fine under this section if:

(1) The late report at issue discloses less than \$3,000 in total contributions and less than \$3,000 in expenditures for the reporting period;

(2) The late report at issue was filed no more than thirty (30) days after the filer learned that the report was late; and

(3) The filer has no prior late offenses or only one prior late offense in the five (5) years preceding the filing deadline of the late report at issue.

Figure: 1 TAC §18.26(c)

(d) The executive director shall use the following formulas chart to determine the level of waiver or reduction of a late fine under this section if:

(1) The late report at issue discloses either \$3,000 or more in total contributions or \$3,000 or more in expenditures for the reporting period;

(2) The late report at issue was filed over thirty (30) days after the filer learned that the report was late; or

(3) The filer has two (2) prior late offenses in the five (5) years preceding the filing deadline of the late report at issue.

Figure: 1 TAC §18.26(d)

(e) Comments, Report Type II Formulas Chart Examples:

Figure: 1 TAC §18.26(e)

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 November 3, 2014.

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Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission

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For further information, please call: (512) 463-5800



## CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

### 1 TAC §50.1

The Texas Ethics Commission (TEC) proposes an amendment to §50.1 to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at \$210 for each day during the regular session and any special session.

Natalia Luna Ashley, Executive Director, has determined that for each odd numbered year of the first five years this rule is in effect there will be a fiscal implication of \$16,052,400 for the state and no fiscal implication for local government as a result of enforcing or administering this rule. This amount may increase if special sessions are called.

In 1991, the Texas voters approved an amendment that added Article III, Section 24a, to the Texas Constitution, thereby creating the TEC. Under that section of the Constitution, the TEC is required to set the per diem at issue in this proposed rule. Ms. Ashley has determined that for each year of the first five years the proposed amendment is in effect, the public benefit expected as a result of adoption is that the public mandate that the TEC set the per diem as required under the Constitution is fulfilled.

Ms. Ashley has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Ms. Ashley has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. *Legislative Per Diem.*

(a) The legislative per diem is \$210 [~~\$150~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$210 [~~\$150~~] per diem for 2015 [~~2013~~].

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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Natalia Luna Ashley

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



## PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

### CHAPTER 254. REGIONAL POISON CONTROL CENTERS

#### 1 TAC §§254.1 - 254.4

The Commission on State Emergency Communications (CSEC) proposes amendments to §§254.1 - 254.4, concerning the operation and funding of regional poison control centers, establishing a Poison Control Coordinating Committee (PCCC), the establishment of a framework for Regional Poison Control Centers (RPCCs) to use in developing and submitting for approval strategic plans to CSEC for consideration in awarding grants under §254.1, and the operations of the Texas Poison Control Network (TPCN) made up of the state's six RPCCs.

CSEC is conducting its statutory review of its Chapter 254 rules. Notice of this review is in the "Review of Agency Rules" section of this issue of the *Texas Register*.

#### BACKGROUND AND PURPOSE

Government Code §2001.039 requires each state agency to review and consider for repeal, re-adoption, re-adoption with amendments each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. CSEC conducts its statutory rule review by chapter.

#### SECTION-BY-SECTION EXPLANATION

§254.1 *Operations and Funding of Poison Control Centers.* Amendments consist of deleting the funding criteria factor regarding the development or existence of telecommunications systems in subsection (e)(6). The telecommunications systems funding criteria is a statutory requirement in Health and Safety Code §777.009; however, CSEC, rather than the RPCCs, is responsible for the TPCN communications network under a separate funding strategy in its biennial appropriations. Ac-

cordingly this funding criterion is not applicable to the RPCCs. Subsection (e)(1) is amended to add a "geographical area" factor for CSEC to consider in allocating appropriated funds to an RPCC. The geographical area factor is intended to account for potential differences due to the size of an RPCC's in providing required community programs and assistance to the public and information and education to health professionals involved in the management of poison and overdose. Subsection (g)(5) is added to make clear that achieving and maintaining American Association of Poison Control Centers (AAPCC) accreditation is an allowable use of grant funds. The remaining amendments clarify and reconcile the terminology in the rule for consistency with other Chapter 254 rules, statute, and CSEC Poison Program Policy Statements.

§254.2 *Poison Control Coordinating Committee.* Two substantive amendments are to extend the duration of the Poison Control Coordinating Committee (PCCC) to September 1, 2020, in subsection (o); and to authorize in subsection (h)(3) CSEC's Executive Director to approve reimbursing of PCCC subcommittee member expenses if authorized in the General Appropriations Act or the Budget Execution Process. The remaining amendments include adding new (b)(3)--PCCC advising the Commission on the guidelines for an RPCC to achieve and maintain accreditation through the American Association of Poison Control Centers (AAPCC); deleting the reference to Department of State Health Services, which is no longer directly involved in the management and funding of the Poison Control Program. The remaining amendments clarify and reconcile the terminology in the rule for consistency with other Chapter 254 rules, statute, and CSEC Poison Program Policy Statements.

§254.3 *Strategic Plans for Poison Control Service.* The substantive amendments consist of adding the requirement in subsection (c) that the Commission's RPCC strategic plan form(s) follow the Uniform Grant Management Standards (UGMS); deleting in subsection (d) the RPCC report filing deadlines (which are addressed in a Commission Program Policy Statement); and adding subsection (c)(1)(G) American Association of Poison Control Centers (AAPCC) Compliance and Accreditation Status and deleting the same text from subsection (c)(4). The remaining amendments consist of moving one subsection up in the rule and clarifying and reconciling the rule for consistency with other Poison rules and statute.

§254.4 *Texas Poison Control Network Operations.* Amendments clarify that network-wide scheduling will be conducted by the Commission in collaboration with the TPCN. The remaining amendments consist of moving one subsection up in the rule and clarifying and reconciling the rule for consistency with other Poison rules and statute.

#### FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §§254.1 - 254.4 are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

#### PUBLIC BENEFIT

Ms. Merriweather has determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of the proposed revisions will be added certainty amongst the agency's RPCC stakeholders regarding their obligations and responsibilities; making funding criteria more reflective of the differences amongst the RPCCs in

providing specific statutory services; and further defining the role and purposes of the PCCC.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

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

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

#### PUBLIC COMMENT

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

#### STATEMENT OF AUTHORITY

The amendments are proposed pursuant to Health and Safety Code §777.001(b) and §777.009(b), which require CSEC to adopt rules regarding RPCC service area and funding criteria; §777.001(c) and (d), which authorize CSEC to standardize RPCC operations and implement management controls; and §777.008; and Government Code Chapter 2110, State Agency Advisory Committees, which establishes the PCCC and requires CSEC to adopt by rule the purpose and tasks of the PCCC and the manner in which it will report to CSEC, respectively.

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

CSEC certifies that the proposed rules, as amended, have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

#### §254.1. Designation and Funding of Regional Poison Control Centers.

(a) Purpose. Health and Safety Code, Chapter 777, provides the Commission on State Emergency Communications (Commission) with the authority to establish a program to award grants to fund a network of regional poison control centers (RPCCs). Funding of the grants comes from revenues generated by the equalization surcharge imposed under Health and Safety Code, §771.072 and appropriated to the Commission.

(b) The Commission shall designate the service area region for each RPCC [regional poison control center]. The regions are as follows:

(1) The University of Texas Medical Branch at Galveston-Texas Health and Human Services (HHS) Regions 5 and 6;

(2) The Dallas County Hospital District/North Texas Poison Center--HHS Regions 3 and 4;

(3) The University of Texas Health Science Center at San Antonio--HHS Regions 8 and 11;

(4) The University Medical Center of El Paso, El Paso County Hospital District--HHS Regions 9 and 10;

(5) The Texas Tech University Health Sciences Center at Amarillo--HHS Regions 1 and 2; and

(6) Scott and White Memorial Hospital, Temple--HHS Region 7.

(c) Eligibility for Grants. The entities eligible to request grants are the regional poison control centers for the state, designated in Health and Safety Code, Chapter 777, as follows:

(1) The University of Texas Medical Branch at Galveston;

(2) The Dallas County Hospital District/North Texas Poison Center;

(3) The University of Texas Health Science Center at San Antonio;

(4) The University Medical Center of El Paso, El Paso County Hospital District;

(5) The Texas Tech University Health Sciences Center at Amarillo; and

(6) Scott and White Memorial Hospital, Temple.

(d) Requests for Grants. A regional poison control center shall request a grant by submitting to the Commission a strategic plan or amendment to an approved strategic plan developed in accordance with Commission Rule §254.3, Regional Strategic Plans and Reporting for Poison Control Service.

(e) Grant Criteria. As required by Health and Safety Code, §777.009(b), the criteria for awarding grants to an RPCC includes [the regional poison control centers include] the following:

(1) the need of the region based on criteria including, but not limited to, population and geographical area served for poison control services, and the extent to which the grant would meet the identified need;

(2) the assurance of providing quality services;

(3) the availability of other funding sources;

(4) achieving and/or maintaining accreditation as a poison control center with the American Association of Poison Control Centers (AAPCC); and

(5) maintenance of effort; and

~~[(6) the development or existence of telecommunications systems.]~~

(f) Grant Awards. Upon review and approval of grant requests, the Commission shall award a grant [grants] to an RPCC, [the regional poison control centers] from appropriated equalization surcharge to fund approved strategic plans, or amendments thereto, [of regional poison control centers] to carry out the duties specified in Health and Safety Code[;] Chapter 777. In reviewing requests for grants, the Commission shall consider:

(1) whether the strategic plan or amendment:

(A) complies with Commission rules and policies;

(B) may be effectively implemented;

(C) is cost effective;

(D) is appropriate to providing poison control service; and

(2) the ability of the RPCC [~~regional poison control center~~] to meet the requirements and functions in its strategic plan or amendment.

(g) Use of Grant Funds. As determined by the Commission in approving RPCC Strategic Plans under Commission Rule §254.3, Regional Strategic Plans and Reporting for Poison Control Service, awarded grant funds may only be used to [~~fund qualified staff to~~] provide poison control service as follows:

- (1) Telephone Services;
- (2) Community Programs and Assistance. To inform the public on poison prevention methods and inform and educate health professionals on the management of poison and overdose victims;
- (3) Research Programs; [~~and~~]
- (4) Information at Birth; and[-]
- (5) Achieving or Maintaining AAPCC Accreditation.

(h) Notice. The Commission shall notify each RPCC [~~regional poison control center~~] of the approval or disapproval of its strategic plan or amendment not later than the 90th day after the date the Commission receives an administratively complete plan or amendment. If the Commission disapproves the plan, it shall specify the reasons for disapproval and set a deadline for submission of a modified plan or amendment.

(i) Contracts. Upon approval of a grant request, an RPCC [a regional poison control center] shall execute a contract with the Commission to implement the approved strategic plan, or amend its existing contract as necessary to implement an approved strategic plan [~~or~~] amendment. Per Commission rules, policies, and procedures, and the Uniform Grant Management Standards, the Commission shall provide in a Commission Program Policy Statement a standard form contract to be executed by the parties.

#### §254.2. Poison Control Coordinating Committee.

(a) Purpose. Establish the Poison Control Coordinating Committee (Committee) created by Health and Safety Code §777.008. The Committee shall coordinate the [~~administrative~~] activities of the regional poison control centers [~~(Centers)~~] and advise the Commission on State Emergency Communications (Commission) on:

- (1) promoting public safety and injury prevention through well-coordinated poison control activities within the state of Texas;
- (2) providing information and educational programs for communities and health care professionals;
- (3) providing poison prevention education to the public, and inform and educate health professionals on the management of poison and overdose victims;
- (4) providing technical assistance to state agencies requesting toxicology assistance; and
- (5) providing consultation services concerning medical toxicology.

(b) Tasks. The Committee is tasked with:

- (1) advising the Commission on rules relating to the poison control program;
- (2) advising the Commission regarding the requirements of Health and Safety Code, Chapter 777, Regional Poison Control Centers; and

(3) advising the Commission on the guidelines for an RPCC to achieve and maintain accreditation through the American Association of Poison Control Centers (AAPCC);

(4) [~~(3)~~] coordinating with Commission staff the poison control program's input into the Commission's Strategic Plan and Legislative Appropriations Request.

(c) Composition. The Committee is composed of:

- (1) one public member appointed by the Commission;
- (2) six members who represent the six RPCCs [~~Centers~~], one member each appointed by the chief executive officer of each RPCC [~~Center~~] or the functional equivalent;
- (3) one member appointed by the commissioner of the Department of State Health Services (DSHS); and
- (4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission.

(d) Bylaws. The Committee shall draft bylaws for approval by the Commission.

(e) Terms of Office. Each member shall be appointed for a term of six years.

(1) Member terms begin on September 1 of the year of appointment.

(2) Members shall continue to serve after the expiration of their term until a replacement member is appointed.

(3) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that member's term.

(4) Members serve staggered terms, with the terms of one-third of the members expiring August 31 of each odd-numbered year. To implement staggered terms, the initial terms of each member are as follows:

- (A) public member and two RPCC [~~Center~~] members--2011;
- (B) DSHS member and two RPCC [~~Center~~] members--2013; and
- (C) Commission member and two RPCC [~~Center~~] members--2015.

(f) Committee Meeting Attendance. Members shall attend scheduled Committee meetings.

(1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.

(2) It is grounds for removal, including by the Commission, if a member cannot discharge the member's duties for a substantial part of the member's appointed term because of illness or disability, is absent from more than half of the Committee meetings during a fiscal year, or is absent from at least three consecutive Committee meetings. The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Statement by Members.

(1) The Commission and the Committee shall not be bound in any way by any statement or action on the part of any Committee member except when a statement or action is in pursuit of specific instructions from the Commission or Committee.

(2) The Committee and its members may not participate in legislative activity in the name of the Commission or the Committee except with approval through the Commission's legislative process. Committee members are not prohibited from representing themselves, their RPCC [poison control center], or other entities in the legislative process.

(h) Reimbursement for Expenses. In accordance with the requirements set forth in Government Code, Chapter 2110, a Committee member may only receive reimbursement for the member's expenses, including travel expenses, incurred for each day the member engages in official Committee business from appropriated funds if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to Committee members unless required by law.

(2) A Committee member who is an employee of a state agency, other than the Commission or DSHS, may not receive reimbursement for expenses from the Commission.

(3) A nonmember of the Committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from appropriated funds unless authorized in accordance with subsection (h) and approved by the Commission's Executive Director [DSHS or the Commission].

(4) Each member who is to be reimbursed for expenses shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after each Committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by Commission staff.

(i) Reporting to the Commission. The Committee shall submit written reports to the Commission as requested and including [follows]:

(1) at least quarterly and according to the schedule established by the Commission, a report to the Commission that includes, but is not limited to, the following:

(A) an update on the Committee's work, including:

(i) Committee meeting dates;

(ii) member attendance records;

(iii) description of actions taken by the Committee;

(iv) description of how the Committee has accomplished or addressed the tasks and issues assigned to the Committee by the Commission;

(v) information on available grants and any grant funding received by the RPCCs [Centers]; and

(vi) anticipated future activities of the Committee;

(B) description of the usefulness of the Committee's work; and

(C) statement of costs related to the Committee, including the cost of Commission staff time spent in support of the Committee.

(2) by June 1 in even-numbered years, a report advising and making recommendations regarding development of the Commission's biennial Strategic Plan and Legislative Appropriations Request;

(3) by June 1 in odd-numbered years, a report on [detailing] the distribution of appropriated funding, the implementation of legislative requirements, and other information as may be determined by the Commission.

(j) Commission Staff. Support for the Committee shall be provided by Commission staff.

(k) Advisory Committee. The Committee is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Texas Government Code, Chapter 551).

(l) Applicable law. The Committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(m) Commission Evaluation. The Commission shall annually evaluate the Committee's work, usefulness, and the costs related to the Committee, including the cost of Commission staff time spent supporting the Committee's activities.

(n) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (m) of this section on a biennial basis as part of the Commission's Legislative Appropriations Request.

(o) Review and Duration. By September 1, 2020 [2015], the Commission will initiate and complete a review of the Committee to determine whether the Committee should be continued or abolished. If the Committee is not continued, it shall be automatically abolished on that date.

#### *§254.3. Regional Strategic Plans and Reporting for Poison Control Service.*

(a) Purpose. This [The purpose of this] rule establishes [is to establish] a framework for a regional poison control centers [RPCC [RPCCs]] to use in the development and submission of a strategic plan for poison control service delivery, or amendments to an approved strategic plan, and quarterly reports [reporting].

(b) Requests for Grants. To request a grant award from the Commission, an RPCC must submit a regional strategic plan, or an amendment to its approved plan, consistent with this rule. The Commission's awarding of grants shall be determined in accordance with Commission Rule 254.1, Designation and Funding of Regional Poison Control Centers.

(c) Strategic Plans. In preparing a strategic plan or amendment, an RPCC shall use the Commission's standard RPCC strategic plan form as designated [adopted] in a Commission Program Policy Statement following Uniform Grant Management Standards [UGMS]. A strategic plan must be updated at least once every state fiscal biennium, in addition to any [not including] amendments. The RPCC strategic plan form shall include, at a minimum, the following:

(1) Poison Control Service. A description of how poison control service is to be provided [provisioned] and administered that includes;

(A) Staffing. An RPCC shall be staffed by physicians, pharmacists, nurses, and other professionals, trained in various aspects of toxicology and poison control and prevention;

(B) Telephone Services. An RPCC shall provide [The provisioning of] toll-free, telephone referral and information service for the public and health care professionals according to the criteria established by [requirements of] the American Association of Poison Control Centers (AAPCC);

(C) Community Programs and Assistance. An RPCC shall provide [including the provisioning of]:

(i) community education programs to inform the public on poison prevention methods;

(ii) information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(iii) professional and technical assistance to state agencies requesting toxicological assistance; and

(iv) consultation services concerning medical toxicology to health care facilities, health care professionals, law enforcement, and others. An RPCC may set and charge a fee to cover the costs of providing consultation services;

(D) Research Programs. Description of planned and ongoing toxicology poison treatment research;

(E) Information at Birth. Description includes, but is not limited to, a description of how birth information packets are to be distributed within the RPCC's designated region; and

(F) Healthcare Treatment Facilities Database. Description of the process [means] for maintaining a comprehensive statewide database of treatment facilities, capabilities, and specializations; and[-]

(G) American Association of Poison Control Centers (AAPCC) Compliance and Accreditation Status. Description of how the RPCC provides services in compliance with AAPCC's criteria, and the current status of the RPCC's AAPCC accreditation.

(2) Awarded Grant Funds. Description [A description] of how awarded grant funds will be used consistent with Commission Rule §254.1(g); and

(3) Financial Information. Description [Information] regarding the financing of RPCC operations, including:

(A) Detailed projected financial information for each of the two state fiscal years following the submission of the strategic plan, including the availability of other funding sources; and

(B) General projected financial information for the third, fourth and fifth state fiscal years following the submission of the strategic plan, including the availability of other funding sources.[-; and]

~~[(4) American Association of Poison Control Centers (AAPCC) Compliance and Accreditation Status. A description of how the RPCC provides AAPCC-compliant telephone services, including how the RPCC's poison control activities meet AAPCC criteria. The status of the RPCC's AAPCC accreditation.]~~

(d) Reporting. Each RPCC shall submit financial and performance reports to the Commission at least quarterly and in accordance with Commission Program Policy Statements (PPS)[-; and as requested by the Commission]. The financial status report shall identify actual costs by budget allocation component. The performance report shall reflect the progress of implementing the strategic plan requirements and functions, including performance measures. RPCCs shall use the Commission's standard financial status and performance reports as designated [adopted] in a Commission PPS. [Program Policy Statement. The quarterly performance report is due to the Commission on the 15th day of the month following each fiscal quarter. The quarterly financial report is due to the Commission on the 30th day of the month following each fiscal quarter. When the due date falls on a weekend or state holiday, the report will be due on the next regular work day.]

§254.4. *Texas Poison Control Network Operations.*

(a) Purpose. This [The purpose of this] rule is intended to optimize [standardize] the operations of the regional poison control centers (RPCCs) comprising the Texas Poison Control Network

(TPCN). This rule authorizes RPCCs to provide services for regions served by other RPCCs in the state in order to maximize efficient use of resources and provide appropriate services in each region.

(b) TPCN Scheduling. To improve the efficiency of the TPCN, network-wide scheduling shall be implemented by the Commission. To establish network-wide scheduling, the Commission in collaboration with the TPCN will:

(1) analyze telecommunications data to identify call volume trends to determine the necessary call-taking capacity for the [entire] TPCN during specific times of any 24-hour period;

(2) determine appropriate [~~specialists in poison information (SPI)~~] staffing levels of Specialists in Poison Information (SPI) for the TPCN, and ensure that SPI staffing levels [at each RPCC] are aligned with demand for the TPCN during any 24-hour period; and

(3) adopt a Commission Program Policy Statement [program policy statement] to:

(A) establish and coordinate SPI staffing schedules for the TPCN [each RPCC]; and

(B) establish standard operating procedures for RPCCs related to network-wide scheduling and handling of calls for poison control service.

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 October 31, 2014.

TRD-201405158

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 305-6930



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

The Texas Department of Agriculture (the department) proposes amendments to Subchapter A, §19.1, concerning General Quarantine Provisions. The department also proposes new Subchapter V, §§19.500 - 19.509, concerning a quarantine for the Mexican fruit fly (Mexfly) *Anastrepha ludens* (Loew). Amendments to §19.1 are proposed to clarify terms used in the new proposed sections and in existing sections in Chapter 19. The new sections are proposed to prevent spread of the Mexfly and to maintain its eradicated status in Texas. The proposed new sections establish quarantine restrictions and requirements to be imposed only in the event of a Mexfly outbreak. The new sections establish a mechanism whereby the department can immediately quarantine infested areas and begin enforcement of quarantine restrictions and requirements. The proposed new sections, enforced only during eradication of a Mexfly outbreak,

require application of treatments, prescribe specific restrictions on the handling and movement of regulated articles, and require that premises in quarantined areas be maintained in sanitary condition.

Texas spent more than 80 years under permanent United States Department of Agriculture (USDA) Mexfly quarantine prior to January 3, 2012, when the state's Mexfly population was declared eradicated by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped in Texas since May 8, 2009. However, the continued presence of Mexflies in Mexico creates an ongoing risk of reintroduction of the pest. Consistent with this risk, from time to time ongoing trapping activities detect incipient re-infestations. In response to detection of such incipient infestations, the department enacted emergency quarantines in 2012, 2013 and 2014. The 2013 and 2014 emergency Mexfly quarantines were enhanced by inclusion of provisions for increasing or otherwise updating the quarantined areas and core areas by means of the department's web page. Implementation of those provisions significantly accelerated the department's ability to respond to dynamic field conditions because it eliminated the necessity of publishing a revised emergency quarantine in the *Texas Register* in order to modify a quarantined area. Adoption of the proposed new sections will benefit industry by giving transparency to what restrictions and requirements will be imposed in the event of an infestation and by minimizing any enforcement delays following the detection of a significant incipient infestation. Proposed new §19.506 will strengthen the department's ability to combat Mexfly by enforcement of sanitary conditions in quarantined area premises.

These proposed quarantine requirements provide the department with the ability to rapidly respond to new Mexfly detection information by designating, modifying and deregulating quarantined areas and core areas within quarantined areas; by requiring treatments and other restrictions; and by notifying affected producers of additional designated quarantined areas and core areas within an infested area. The restrictions are unchanged from the restrictions previously prescribed in emergency quarantine actions filed in 2012, 2013 and 2014. The emergency quarantine filed on July 16, 2014, and published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5843) is currently in effect.

The department believes it is necessary to take immediate action to shorten response time in the future to nascent infestations in order to maintain the fly-free status of Texas and to prevent the spread of the Mexfly into commercial citrus growing areas of Texas and other states. The department believes that proposal of these quarantine restrictions is both necessary and appropriate. The citrus industry in particular is in peril because without these proposed quarantine restrictions and treatment of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of important export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This proposed quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's important citrus industry.

Proposed amendments in §19.1 define various significant terms in the new proposed sections and in other parts of Chapter 19. New §19.500 defines the quarantined pest and explains the basis for the quarantine. New §19.501 establishes the duration of the quarantine, to ensure eradication of the pest.

New §19.502 provides for establishing, modifying, combining, renaming, deregulating or otherwise updating quarantined areas and core areas by means of the department's web page. New §19.503 lists articles subject to the quarantine. New §19.504 provides restrictions on the movement of articles subject to the quarantine. New §19.505 provides requirements for monitoring, handling and treating regulated articles in a quarantined area. New §19.506 provides for enforcement against unsanitary premises conditions in quarantined areas. New §19.507 provides consequences for failure to comply with quarantine restrictions. New §19.508 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.509 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations.

Dr. Awinash Bhatkar, coordinator for environmental and biosecurity programs, has determined that for the first five-year period the proposed amendments and new sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections as proposed.

Dr. Bhatkar has also determined that for each of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the proposed sections will be reduction in the spread of Mexfly due to manmade activities. There will be treatment costs to citrus producers, processors and vendors, including small and/or micro-businesses that propagate or move regulated articles into, within or from quarantined areas only during an active eradication program. In order to comply with the proposed amendments and new sections, businesses located in a quarantined area during an eradication of the pest may be required to treat by means specified in the proposed quarantine. The proposed quarantine necessarily includes treatment and handling requirements to mitigate risks associated with movement and processing of harvested commercial citrus fruit. The cost of required treatments will depend on factors such as the quantity of articles being moved as well as treatment materials and methods that are employed. Consequently, the specific cost to impacted businesses cannot be determined at this time. Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

### 4 TAC §19.1

The amendments to §19.1 are proposed under the Texas Agriculture Code, §17.002, which authorizes the department to establish a quarantine against an in-state pest if the department determines that a dangerous insect pest of plant disease not widely distributed in the state exists in the area within an area of the state; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

No other code or statute is affected by the proposal.

§19.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code and the Texas Administrative Code, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Animal and Plant Health Inspection Service or APHIS--The Animal and Plant Health Inspection Service of the USDA.

(2) Article--Any material or tangible object that could harbor plant pests or noxious weeds.

(3) Certified regulated article--A regulated article, under a given subchapter of this chapter, produced in a facility certified by the department, according to program standards, and maintained under program-defined conditions that prevent exposure to pests and diseases.

(4) [(1)] Compliance Agreement--A written signed agreement in which a person engaged in propagating, producing, growing, distributing, or selling or moving quarantined articles agrees to comply with conditions specified in the agreement [concerning the basis upon which a certificate or permit may be issued for movement of quarantined articles].

(5) Core area--Within a given quarantined area, a defined area surrounding a location where one or more quarantined pests have been detected.

(6) Day degree--A unit of measurement equal to the amount of heat required to further the development of an insect or other arthropod through its life cycle. Day-degree life cycle requirements are calculated through a modeling process that is specific to each species.

(7) [(2)] Distribute--Offer for sale or lease, hold for sale or lease, sell, lease, barter, offer to buy, buy, offer to supply, or supply.

(8) [(3)] Free Area--An area not quarantined for a pest or disease.

(9) Fruit fly or fruit flies--The melon fruit fly, Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, peach fruit fly, sapote fruit fly, or West Indian fruit fly, or any other species in family Tephritidae.

(10) [(4)] Host--Any plant or plant product designated in the quarantine upon or in which the quarantined pest completes its life cycle or is dependent for completion of any portion of its life cycle.

(11) [(5)] Infested--Officially determined to be contaminated by a pest using methods prescribed by the department.

(12) Insect exclusionary cover--A bag, box, enclosure, structure or other cover that prevents Asian citrus psyllids from coming into contact with a regulated article; the openings of any incorporated screen mesh shall not exceed 0.3 square millimeters.

(13) Mediterranean fruit fly or Medfly--The insect, *Ceratitis capitata* (Weidemann), in any stage of development.

(14) Mexican fruit fly or Mexfly--The insect, *Anastrepha ludens* (Loew), in any stage of development.

(15) [(6)] Move--To ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

(16) Non-certified regulated article--Any regulated article that is not a certified regulated article.

(17) Oriental fruit fly--The insect, *Bactrocera dorsalis* (Hendel), in any stage of development.

(18) Peach fruit fly--The insect, *Anastrepha zonata* (Saunders), in any stage of development.

(19) [(7)] Permit--In addition to its ordinary meaning, a permit shall include any authorized state or federal quarantine compliance stamp, limited permit, or trip ticket.

(20) Person--Any individual, partnership, corporation, association, joint venture, or other legal entity.

(21) [(8)] Pest--All living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.

(22) [(9)] Phytosanitary Certificate--A document issued by the department regarding the pest condition of plants, parts of plants or plant products required for movement within this state or by other states or foreign countries for such products exported from this state.

(23) [(10)] Phytosanitary Growing Season Inspection Certificate--A document issued by the department regarding the pest condition of field grown crops.

(24) Plant Protection and Quarantine or PPQ--The organizational unit within APHIS that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

(25) Quarantined Area--A described area declared by the department to be subject to requirements and restrictions of a given quarantine.

(26) [(11)] Quarantined Article [Articles]--Any article of any character as described in the quarantine carrying or capable of carrying the quarantined pest [ plant pest against which the quarantine is directed].

(27) Quarantined Pest--The plant pest against which a given quarantine is directed.

(28) Regulated Article--Any article so specified in a given quarantine and therefore subject to quarantine requirements and restrictions.

(29) Sapote fruit fly--The insect, *Anastrepha serpentina*, in any stage of development.

(30) USDA--The United States Department of Agriculture.

(31) West Indian fruit fly--The insect, *Anastrepha obliqua* (Macquart), in any stage of development.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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SUBCHAPTER V. MEXICAN FRUIT FLY  
QUARANTINE



#### 4 TAC §§19.500 - 19.509

The new sections are proposed under the Texas Agriculture Code, §17.002, which authorizes the department to establish a quarantine against an in-state pest if the department determines that a dangerous insect pest of plant disease not widely distributed in the state exists in the area within an area of the state; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

No other code or statute is affected by the proposal.

##### §19.500. Quarantined Pest.

(a) The Mexican fruit fly (Mexfly), *Anastrepha ludens*, a dangerous insect pest of the host plants listed in §19.503 of this subchapter (relating to regulated articles), is the quarantined pest.

(b) Basis for the quarantine. The Mexfly is not native to the United States, but is able to establish infestations in Texas and some other parts of this country through cross-border traffic and trade and by natural dispersal. Mated female Mexflies oviposit in fruit, and resulting larvae feed on the flesh of the fruit, thereby making the fruit unmarketable. The department, many other states, and the USDA consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest identified in this section.

##### §19.501. Duration of Quarantine.

Any quarantined area established under this subchapter shall remain in effect until the quarantined pest described in §19.500 of this title (relating to the Quarantined Pest) is eradicated from that area. The quarantined pest shall be considered eradicated from a quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is temperature dependent; therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

##### §19.502. Geographical Areas Subject to the Quarantine.

(a) Quarantined areas. Those areas described on the department's Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>) as quarantined areas under this subchapter, are declared to be quarantined areas.

(b) Core areas. Those areas described on the department's Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>) as core areas under this subchapter, are declared to be core areas.

(c) New or revised quarantined areas or core areas. On the basis of new or revised information, the department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas and core areas.

(d) Designation or modification of a quarantined area or a core area is effective upon the posting of the notification of the quarantined area or core area on the department's Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>).

##### §19.503. Regulated articles.

(a) An article subject to the quarantine, or regulated article, is any article described as a regulated article for Mexican fruit fly by Title 7, Code of Federal Regulations (CFR) §301.32-2.

(b) A plant is a regulated article only if it has an attached fruit that is a regulated article.

##### §19.504. Restrictions on Movement of Articles Subject to the Quarantine.

(a) A regulated article or quarantined pest shall not be moved into, within, out of, or through a quarantined area except as specified in this subchapter.

(b) Movement of regulated articles that are detached fruit.

(1) Regulated articles that are detached fruit may be moved into, within, out of, or through a quarantined area only if:

(A) the grower, transporter and processor have entered into a compliance agreement with the department or the USDA; and

(B) the fruit is treated and handled in accordance with the requirements set forth in the compliance agreement; and

(C) the fruit is accompanied by documentation of:

(i) treatments required by either this subchapter or a compliance agreement; and

(ii) the origin of the regulated articles.

(2) Detached fruit that are carried in a part of a conveyance or equipment that is open to the outside environment must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the quarantined pest from contacting the fruit.

(3) Detached fruit that have been processed to commercial standards and are free of the quarantined pest may be transported into, within, out of or through a quarantined area if the detached fruit are either in an enclosed vehicle under complete cover that does not allow exposure of the regulated articles to the quarantined pest; however,

(4) Detached fruit or other regulated articles originating outside a quarantined area and transported without being either enclosed or under cover that prevents exposure of the fruit to the quarantined pest, shall be subject to all restrictions and requirements as are regulated articles originating in the quarantined area.

(c) A person who transports a regulated article into, within, out of, or through a quarantined area shall ensure that non-infested regulated articles do not become infested and that the quarantined pest is not spread within the quarantined area or moved out of the quarantined area.

(d) Regulated articles other than detached fruit shall not be moved except under the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(e) Exception. Any quarantined pest that has been rendered sterile or that is being moved as part of a regulatory or other official activity of the department or of the USDA is exempt from the requirements and restrictions of this subchapter.

##### §19.505. Monitoring, Handling and Treatment of Regulated Articles.

(a) A regulated article or quarantined pest located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the department or the USDA and the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with Mexfly exclusionary air curtains, screens, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant the fruit of which is a regulated article shall ensure that each such plant is free of fruit at all times prior to sale or distribution of the plant.

§19.506. Unsanitary Conditions With Regard to Regulated Articles and the Quarantined Pest; Orders of Department.

(a) Persons in a quarantined area shall maintain premises in sanitary condition, with regard to regulated articles and the quarantined pest.

(1) When fruit is present at the location, maintenance shall be performed at least once every 21 days, to prevent accumulation of and remove all fruit that is fallen, decomposing, culled, or not to be harvested, and immediately dispose of such fruit, according to paragraph (3) of this subsection.

(2) Within the harvest period, each person shall clean fallen, refuse, or cull fruit from his or her premises once in each seven-day period and immediately dispose of such fruit, according to paragraph (3) of this subsection.

(3) Fruit that is fallen, decomposing, culled or not to be harvested shall be:

(A) buried at a depth of not less than 18 inches below the surface of well-tamped soil; or

(B) disposed of in another manner that prevents reproduction of the quarantined pest and is satisfactory to the department.

(4) A person maintains an unsanitary condition with regard to regulated articles and the quarantined pest if the person:

(A) is not compliant with the requirements and restrictions in paragraphs (1), (2), and (3) of this subsection; or

(B) has host fruit on trees on the premises during the host-free period.

(b) It is a public nuisance to maintain premises in a quarantined area in unsanitary condition.

(c) The department may order each owner, part owner, or caretaker of premises subject to this chapter to place the premises in sanitary condition with regard to regulated articles and the quarantined pest.

(1) The order shall be in writing, dated, and signed or stamped by the commissioner or the commissioner's designee.

(2) The order shall direct the owner, part owner, or caretaker to place the premises in sanitary condition under the supervision of an inspector of the department.

(3) If the owner is a nonresident, the department shall give the owner a 10 day notice of the order by registered mail.

§19.507. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any regulated article that is found to be infested with the quarantined pest or, regardless of whether infested or not, transported out of, within or through a quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.508. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §72.041.

§19.509. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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**TITLE 7. BANKING AND SECURITIES**  
**PART 7. STATE SECURITIES BOARD**  
**CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS**

## 7 TAC §104.4, §104.5

The Texas State Securities Board proposes amendments to §104.4, concerning registration of securities--review of applications, and §104.5, concerning registration of dealers and investment advisers--review of applications. The amendments to §104.4 and §104.5 would eliminate the requirement that deficiency and comment letters be sent via U.S. mail and recognize the use of email as an alternative method of communication with applicants.

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

Ms. Louterback also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to reduce the time needed to process registration applications by allowing the use of alternative means of communications, such as email, for deficiency and comment letters. There will be no effect on micro- or small businesses. Since the rules will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1 and Texas Government Code, §2005.003. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2005.003 requires state agencies issuing permits to adopt procedural rules for processing permit applications and issuing permits.

The proposals affect Texas Civil Statutes, Articles 581-7, 581-10, 581-13, and 581-15, and Texas Government Code, §2005.003.

### §104.4. *Registration of Securities--Review of Applications.*

(a) Within seven days of receipt by the Agency of an application to register securities, if the application does not contain all required information, the Registration Division will send [by United States mail at the Agency's expense] a written deficiency letter to the applicant setting forth a list of items or exhibits that have not been filed and that, pursuant to requirements of the Texas Securities Act or Board rules, must be filed with the Agency.

(b) Within 45 days of receipt by the Agency of all requested items and exhibits necessary in order to analyze the offering, the Registration Division shall review the application and shall send a written [by United States mail at the Agency's expense an] initial comment letter

setting forth deviations from the substantive requirements of the Act or Board rules relating to the registration of securities. This process may be repeated if the applicant suggests that alternatives be considered, or the applicant's response does not resolve substantive issues.

(c) If the applicant consents, communications from the Registration Division to [Upon request of] the applicant[, comments] may be transmitted [at the applicant's expense] by [telephone,] facsimile, email, or other more timely means of communication.

(d) An application is complete and accepted for filing upon receipt by the Agency of the following:

(1) all items and exhibits required to be filed with the Agency as set forth in paragraphs (a) - (c) of this section; and

(2) complete responses to all comments raised by the division staff pursuant to subsections (b) and (c) of this section.

(e) Within 21 days of receipt by the Agency of a complete application, the division staff shall review the applicant's responses to initial and subsequent comments, if any, and make a recommendation to either grant, deny, or allow withdrawal of the application.

(f) Within 14 days of the division staff's recommendation the application shall be reviewed by the Director (or Assistant Director) of the Registration Division and the Deputy Commissioner and/or Securities Commissioner. Additional comments, if any, raised at these stages of review must be communicated to the applicant immediately.

(g) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division staff's recommendation, or

(2) the receipt by the Agency of complete responses to any additional comments raised pursuant to subsection (f) of this section.

### §104.5. *Registration of Dealers and Investment Advisers--Review of Applications.*

(a) Within 14 days of receipt by the Agency of an application and a fee that is sufficient for registration as a dealer or investment adviser, the Registration Division shall send [by United States mail at the Agency's expense,] a written deficiency letter to the applicant setting forth a list of items or exhibits that either have not been filed or that contain errors or omissions. If the applicant is filing through the Central Registration Depository (CRD) or the Investment Adviser Registration Depository (IARD), deficiency corrections of a procedural, non-disciplinary nature will be handled by the CRD or IARD.

(1) If an insufficient fee is submitted with the application, the fee will be returned to the applicant along with immediate notification as to the correct amount owed.

(2) The application will be held in abeyance until the correct fee is received by the Agency.

(b) Within 14 days of receipt by the Agency of all requested items and exhibits, the division staff shall review the file and, if necessary, shall send [by United States mail at the Agency's expense] a written comment letter setting forth any deviations from the substantive requirements of the Texas Securities Act or Board rules relating to the registration of dealers or investment advisers. This process may be repeated to raise subsequent comments.

(c) An application is complete and accepted for filing upon receipt by the agency of the following:

(1) all items required to be filed with the Agency as set forth in the deficiency letter referred to in subsection (a) of this section; and

(2) complete responses to all comments raised by the division during review of the application.

(d) Within 14 days of receipt by the Agency of a complete application, the division staff shall review the application and the applicant's responses to initial comments and make a recommendation to grant, deny, or allow withdrawal of the application.

(e) Within 14 days of the division staff's recommendation, any remaining issues shall be addressed by the Director of the Registration Division. Additional comments, if any, raised at this stage of review must be communicated to the applicant immediately.

(f) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division's recommendation, or

(2) receipt by the Agency of complete responses to any remaining comments.

(g) If the applicant consents, communications from the Registration Division to the applicant may be transmitted by facsimile, email, or other more timely means of communication.

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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John Morgan

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## CHAPTER 107. TERMINOLOGY

### 7 TAC §107.2

The Texas State Securities Board proposes an amendment to §107.2, concerning definitions. The amendment would change the definition of Form D to include both paper filings (the current method) as well as electronic filings made through the EFD System, which is expected to be deployed in November 2014.

The SEC has required the electronic filing of Form D through EDGAR since March 2009. The EFD System was developed to facilitate the electronic filing of Form D for Rule 506 offerings with state regulators and is designed to interface with the SEC's EDGAR system. The filing of Form D in Texas is time-sensitive and so to allow for a smooth transition by issuers the Securities Commissioner will initially be waiving the requirement in the Board rules that mandates Form D filings be made electronically through the EFD System for issuers that opt to make paper filings during the transition period.

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

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated

as a result of enforcing the rule will be to recognize the information submitted through the EFD System in connection with a Regulation D offering filed in Texas as a Form D filing made with the Securities Commissioner. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

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

The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.

#### §107.2. Definitions.

The following words and terms, when used in Part 7 of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (42) (No change.)

(43) Form D--

(A) For paper filings--Form D, Notice of Exempt Offering of Securities, as effective on September 23, 2013 (referenced in [September 15, 2008 (] 17 Code of Federal Regulations §239.500).

(B) For electronic filings made through the EFD System--The information, relating to a filing designated to be made in Texas, that is submitted through the EFD System in connection with a Form D filing made with the SEC. It includes all information made available to the Securities Commissioner through the EFD System in connection with the Texas filing.

(44) (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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## CHAPTER 115. SECURITIES DEALERS AND AGENTS

### 7 TAC §115.2

The Texas State Securities Board proposes an amendment to §115.2, concerning application requirements. The amendment would reference new Form 133.18, which is being concurrently proposed. The principal financial officer of an applicant for dealer registration would use the new form to certify the applicant's balance sheet. Currently, the Staff provides a template with suggested language on its website, but applicants have some difficulty locating and completing the template. Staff feels this difficulty can be overcome if a specific form is provided and referenced in the rule.

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

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to simplify the registration process by providing a specific certification form for applicants to complete. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

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

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

#### §115.2. *Application Requirements.*

(a) Securities dealer application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner:

(1) - (3) (No change.)

(4) a balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must instead

be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer. [certify as follows: I am the principal financial officer of (name of dealer). The accompanying balance sheet has been prepared under my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title).]

(5) - (6) (No change.)

(b) - (e) (No change.)

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

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## CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

### 7 TAC §116.2

The Texas State Securities Board proposes an amendment to §116.2, concerning application requirements. The amendment would reference new Form 133.18, which is being concurrently proposed. The principal financial officer of an applicant for investment adviser registration would use the new form to certify the applicant's balance sheet. Currently, the Staff provides a template with suggested language on its website, but applicants have some difficulty locating and completing the template. Staff feels this difficulty can be overcome if a specific form is provided and referenced in the rule.

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

Ms. Louterback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to simplify the registration process by providing a specific certification form for applicants to complete. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities

Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

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

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

§116.2. *Application Requirements.*

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following:

(1) (No change.)

(2) items filed in paper form with the Securities Commissioner:

(A) (No change.)

(B) a balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer. [~~certify as follows: I am the principal financial officer of (name of investment adviser). The accompanying balance sheet has been prepared under my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title):]~~

(C) - (E) (No change.)

(b) - (e) (No change.)

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

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CHAPTER 133. FORMS

7 TAC §133.18

The Texas State Securities Board proposes new §133.18, which adopts by reference a form concerning certification of balance sheet by principal financial officer. The form would be used for certification of an applicant's balance sheet to be filed with their application for registration as a dealer or investment adviser.

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

Ms. Louthback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to simplify the registration process by providing a specific certification form for applicants to complete. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

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

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

§133.18. *Certification of Balance Sheet by Principal Financial Officer.*

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at [www.ssb.state.tx.us](http://www.ssb.state.tx.us).

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

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

TRD-201405035

John Morgan  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: December 14, 2014

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



## CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

### 7 TAC §139.27

The Texas State Securities Board proposes new §139.27, concerning mergers and acquisitions dealer exemption. The new rule would add an exemption from the dealer registration requirements for dealers that meet certain criteria. The criteria is based on a no-action letter issued by the SEC Division of Trading and Markets and would craft a state exemption to correspond with the federal guidance. The proposal deviates from the SEC letter by providing more comprehensive bad person disqualifications, requiring the mergers and acquisitions ("M&A") dealer to maintain certain records, requiring those records to be furnished to the Commissioner on request, and providing for the loss of the exemption if the M&A dealer fails to maintain and provide records.

The existing provisions in Chapter 115 that create a restricted registration category for certain business brokers would be left intact for bad actors or others who cannot qualify for the exemption but choose to limit their activities to those described. A business broker who limits its activities as noted also receives a full waiver of the dealer examination requirements.

Additionally, persons in this type of business who do not wish to limit their activities to those permitted under the exemption or the restricted registration have another choice. They have the option of registering as a restricted dealer to deal exclusively in investment banking per §115.1(c)(2)(N). This restricted registration category provides them with the option of taking the Series 79-Investment Banking Qualification Examination under §115.3(b)(3)(G) instead of the more comprehensive Series 7 examination for general dealers.

Ronak V. Patel, Deputy Securities Commissioner, Tommy Green, Director, Inspections and Compliance Division, and Patricia Louthback, Director, Registration Division, have determined that there will be fiscal implications as a result of enforcing or administering the rule on state, but not local government.

The effect on state government for the first five-year period the rule will be in effect is a potential decrease in revenue. It is anticipated that some firms holding a restricted registration to act as a business broker, and the agents registered with those firms, would choose to claim the exemption rather than renewing their registrations. Similarly, some individuals currently registered as finders may opt to change the services they provide to fit within the proposed exemption. Currently, there are 26 restricted dealers registered as business brokers, 91 agents registered under those business brokers, and 40 registered finders. If all of these currently registered persons migrated to the M&A dealer exemption, there would be an annual loss in revenue to the Agency of \$45,545. The annual actual loss in revenue would be something less than this amount.

Mr. Patel, Mr. Green, and Ms. Louthback also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a state exemption that closely corresponds with federal guidance. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to com-

ply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal must be in writing and will be accepted for 45 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 45 days following publication.

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

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

#### §139.27. Mergers and Acquisitions Dealer Exemption.

(a) Dealer and agent exemption. The State Securities Board, pursuant to the Texas Securities Act, §12.C, exempts a Mergers and Acquisitions (M&A) Dealer from registration as a dealer provided the conditions set forth in this section are met. The agents for the M&A Dealer are also exempt from registration provided the conditions set forth in this section are met.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) M&A Dealer--A person engaged in the business of effecting securities transactions solely in connection with a Qualifying M&A Transaction, as identified in subsection (c) of this section.

(2) Actively Operate--The power to elect executive officers and approve the annual budget or serving as an executive or other executive manager.

(3) Privately-Held Company--A company that does not have any class of securities registered or required to be registered with a securities regulator and is not required to file periodic information, documents, or reports under §15(d) of the Exchange Act. The company must be an operating company that is a going concern and not a shell company. For purposes of this definition, a "going concern" need not be profitable so long as it has actually been conducting business, including soliciting or effecting business transactions or engaging in research and development activities.

(4) Shell Company--A company that has no or nominal operations, and has:

(A) no or nominal assets;

(B) assets consisting solely of any amount of cash or cash equivalents; or

(C) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(5) Business Combination Related Shell Company--a Shell Company (as defined in SEC Rule 405) that is:

(A) formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(B) formed by an entity that is not a Shell Company solely for the purpose of completing a business combination transaction (as defined in SEC Rule 165(f)) among one or more entities other than the Shell Company, none of which is a Shell Company.

(c) Qualifying M&A Transactions. To be a Qualifying M&A Transaction, the transaction must meet all the following requirements.

(1) A Qualifying M&A Transaction is a transfer of ownership and control of a Privately-Held Company to a buyer through the purchase, sale, exchange, issuance, repurchase, or redemption of securities, or a business combination involving securities or assets of the company.

(2) Upon completion of the transaction, the buyer or group of buyers must actively operate the company or the business conducted with the assets of the company.

(3) No Qualifying M&A Transaction can involve a public offering of securities. Any offering or sale of securities will be conducted in compliance with an applicable exemption from registration under the Texas Securities Act.

(4) No party to any Qualifying M&A Transaction can be a Shell Company, other than a Business Combination Related Shell Company.

(5) The buyer, or group of buyers, in any Qualifying M&A Transaction must, upon completion of the transaction, control the company. A buyer, or group of buyers collectively, would have the necessary control if it has the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The necessary control will be presumed to exist if, upon completion of the transaction, the buyer or group of buyers has the right to vote 25% or more of a class of voting securities; has the power to sell or direct the sale of 25% or more of a class of voting securities; or in the case of a partnership or limited liability company, has the right to receive upon dissolution or has contributed 25% or more of the capital.

(6) No Qualifying M&A Transaction can result in the transfer of securities to a passive buyer or group of passive buyers.

(7) Any securities received by the buyer or M&A Dealer in a Qualifying M&A Transaction are restricted securities within the meaning of the Securities Act of 1933, Rule 144(a)(3).

(d) Permitted activities. An M&A Dealer may:

(1) advertise a Privately-Held Company for sale with information such as the description of the business, general location, and price range, so long as the dealer does not include an offer for sale of securities; or

(2) facilitate a Qualifying M&A Transaction with a group of buyers only if the group is formed without the assistance of the M&A Dealer.

(e) Prohibited activities. An M&A Dealer may not:

(1) have the ability to bind a party to a Qualifying M&A Transaction;

(2) directly, or indirectly through any of its affiliates, provide financing for a Qualifying M&A Transaction; or

(3) have custody, control, or possession of or otherwise handle funds or securities issued or exchanged in connection with a

Qualifying M&A Transaction or other securities transaction for the account of others.

(f) Disclosures.

(1) To the extent an M&A Dealer represents both buyers and sellers, it must provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.

(2) An M&A Dealer that assists buyers to obtain financing from unaffiliated third parties must comply with all applicable legal requirements and must disclose any compensation in writing to the buyer.

(g) Disqualifications.

(1) Except as provided in paragraph (2) of this subsection, the exemption in this section is not available if the M&A Dealer, or an officer, director, or employee of the M&A Dealer are subject to any of the following disqualifications:

(A) any of those described in Rule 262 of SEC Regulation A, 17 CFR §230.262;

(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor involving the offer, purchase, or sale of any security or the rendering of investment advice, or any felony involving embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

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

(D) is the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years;

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

(F) is subject to an order issued by a state or federal authority that bars the person from association with an entity regulated by the authority that issued the order, or from engaging in the business of securities, insurance, or banking, or savings association or credit union activities; or

(G) is the subject of a suspension or expulsion from membership in or association with a member of a self-regulatory organization that is currently effective and was issued within the last five years.

(2) The prohibitions of paragraph (1) of this subsection shall not apply if:

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

(B) before services are rendered under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification upon a showing of good cause.

(h) Recordkeeping and requests for records.



(1) An M&A Dealer shall maintain and preserve for a period of three (3) years records of all compensation received and communications, agreements, or contracts with buyers and/or sellers in connection with any transaction or transactions in which the dealer received compensation.

(2) Upon a written request from the Securities Commissioner or the Commissioner's authorized representative, an M&A Dealer relying on the exemption provided by this section shall make available to the Commissioner all records required to be maintained and preserved under this subsection. Failure to comply with this subsection will result in the loss of the exemption provided by this section.

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 October 28, 2014.

TRD-201405036

John Morgan

Securities Commissioner

State Securities Board

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



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 65. BOILERS

The Texas Department of Licensing and Regulation (Department) proposes the repeal of existing rules at 16 Texas Administrative Code (TAC) Chapter 65, §§65.1, 65.10, 65.20, 65.30, 65.40, 65.50, 65.60, 65.65, 65.70, 65.80, 65.90, and 65.100 and proposes new rules in Subchapter A, §§65.1 - 65.3; Subchapter B, §65.10 and §65.11; Subchapter C, §§65.12 - 65.15; Subchapter D, §65.25 and §65.26; Subchapter E, §65.30; Subchapter F, §65.40 and §65.41; Subchapter G, §65.45; Subchapter H, §65.50 - 65.52; Subchapter I, §§65.60 - 65.63; Subchapter J, §§65.70 - 65.72; Subchapter K, §§65.80 - 65.85; Subchapter L, §65.90 and §65.91; Subchapter M, §§65.100 - 65.104; Subchapter N, §§65.200 - 65.217; Subchapter O, §65.300; Subchapter P, §§65.400 - 65.402; Subchapter Q, §65.500; and Subchapter R, §§65.600 - 65.615, regarding the Boilers program.

The proposed repeal is necessary to allow for rule simplification by adopting new rules that are better organized, easier to navigate and are in alignment with processes and procedures of the Department's licensing, examination, certification and other boiler related activities.

The proposed new rules are necessary to replace existing rules, which have become cumbersome, dense and not well organized. The proposed new rules are also necessary as part of the Department's agency-wide effort to use plain language in Department rules, forms, letters and other communication.

Proposed new §65.1 sets forth the authority for rule adoption.

Proposed new §65.2 contains definitions for terms used in the rules, including: Alteration, Application for Certification, Approved, ASME Code, Authorized Inspection Agency (In-service), Authorized Inspection Agency (New Construction--ASME Activities), Authorized Inspector, AWP, Board, Boiler, Boiler External Piping, Certificate Inspection, Certificate of Operation, Changeover Valve, Chief Inspector, Code, Commission, Competent Attendant, Condemned Boiler, Department, Deputy Inspector, Disconnected Boiler, Electric Boiler, Electrode Type Boiler, Executive Director, Existing Installation, External Inspection, Heat Recovery Steam Generator (HRSG), Heating Boiler, High-Temperature Water Boiler, Hot Water Heating Boiler, Hot Water Supply Boiler, Immersion Resistance Element Type Boiler, Inspection Agency, Inspector, Install, Installation, Internal Inspection, Maximum Allowable Working Pressure (MAWP), Metric (SI), Metrication, Modular Boiler, Multiple Pressure Steam Generator, National Board, National Board Inspection Code, New Installations, Nominal, Non-Code Boiler, Nonstandard Boiler, Nuclear Boiler, Owner or Operator, Person, Pool Heater, Portable Power Boiler, Potable Water Heater, Power Boiler, Preliminary order, Process Steam Generator, Reinstalled Boiler, Repair, Rules, Safety Appliance, Secondhand Boiler, Serious Accident, Special Inspection, Stacked Boiler, Standard Boiler, Steam Heating Boiler, System Pressure, Texas Commission: ASME Only Commission, In-Service Only Commission, ASME and In-Service Commission, and Unfired Steam Boiler.

Proposed new §65.3 provides exemptions for certain boilers identified by Texas Health and Safety Code, §755.022.

Proposed new §65.10 requires the registration of persons acting as an Authorized Inspection Agency.

Proposed new §65.11 contains the provisions for renewal of an Authorized Inspection Agency registration.

Proposed new §65.12 requires all nonexempt boilers to be registered and have a current Certificate of Operation.

Proposed new §65.13 requires the owner or operator of a boiler to submit a boiler installation report.

Proposed new §65.14 establishes the requirement for obtaining Inspector Commissions.

Proposed new §65.15 provides the eligibility requirements for the initial boiler certification.

Proposed new §65.25 establishes the requirements for obtaining an Authorized Inspector license.

Proposed new §65.26 establishes the requirements for renewing an Authorized Inspector license.

Proposed new §65.30 provides the process for obtaining a waiver of examination for the Texas Commission.

Proposed new §65.40 establishes the requirements for obtaining an Authorized Inspector Commission Card.

Proposed new §65.41 provides the guidelines for reissuance of a commission after reemployment.

Proposed new §65.45 provides the licensing requirements for Portable and Stationary Nonstandard Boilers.

Proposed new §65.50 prohibits Inspectors from engaging in certain conduct declared conflicts of interest.

Proposed new §65.51 charges Inspectors with enforcing all provisions of the Texas Health and Safety Code, Chapter 755 and 16 TAC Chapter 65.

Proposed new §65.52 requires Inspectors to properly document findings or violations identified during an inspection.

Proposed new §65.60 provides that external inspections be performed as part of the application for an extension to the inspection interval.

Proposed new §65.61 requires the inspection of all non-exempt boilers.

Proposed new §65.62 provides that the owner or operator of non-exempt boilers must be prepared for initial inspection, regular inspections, or hydrostatic tests, whenever necessary.

Proposed new §65.63 sets forth the requirements for obtaining an extension of the intervals between internal inspections.

Proposed new §65.70 identifies the method for referring to boilers registered in Texas.

Proposed new §65.71 identifies the location and other requirement for the stamping of boiler numbers on boilers registered in Texas.

Proposed new §65.72 identifies the method for condemning boilers registered in Texas.

Proposed new §65.80 establishes the timing and requirements for notifying the department of boiler risks and other unsafe conditions.

Proposed new §65.81 provides for when and how inspection reports must be submitted to the Department.

Proposed new §65.82 mandates the reporting of defective conditions found at the time of the external inspection.

Proposed new §65.83 requires the reporting of boiler accidents to the Department and the investigation of those accidents.

Proposed new §65.84 requires the submission to the Department of repair and alteration report forms.

Proposed new §65.85 identifies the scope of cooperation between the Department and other agencies.

Proposed new §65.90 authorizes the issuance of commissions to authorized inspectors.

Proposed new §65.91 allows the Department to assign or refer overdue boilers to an Authorized Inspection Agency for completion and provides for the payment of fees.

Proposed new §65.100 sets forth the purpose for creating the Board of Boiler Rules.

Proposed new §65.101 establishes the membership composition of the Board of Boiler Rules.

Proposed new §65.102 provides the criteria for the removal of members from the Board of Boiler Rules and the filing of vacancies.

Proposed new §65.103 authorizes the reimbursement of expenses for members of the Board of Boiler Rules.

Proposed new §65.104 provides for the frequency of meetings held by the Board of Boiler Rules.

Proposed new §65.200 establishes the standards for the new installation of boilers.

Proposed new §65.201 establishes the standards for the installation of secondhand boilers.

Proposed new §65.202 sets the standards for identifying the maximum allowable working pressure for installed boilers.

Proposed new §65.203 establishes the service life for Nonstandard Boilers.

Proposed new §65.204 requires that fittings and appurtenances used for boiler reinstallations comply with this chapter.

Proposed new §65.205 mandates that a competent attendant operate and maintain boilers in accordance with the boiler manufacturer's recommended guidelines.

Proposed new §65.206 establishes the conditions of and standards for maintaining a Boiler Room.

Proposed new §65.207 establishes the conditions of and standards for Boiler Foundations and Levels.

Proposed new §65.208 establishes the minimum clearance for boiler installation.

Proposed new §65.209 sets forth the requirements for boiler safety appliances.

Proposed new §65.210 describes the procedures that must be followed to prepare a boiler for internal inspection.

Proposed new §65.211 describes the procedures that must be followed to prepare a nonstandard boiler for internal inspection.

Proposed new §65.212 provides the procedure for Boiler ASME Code Restamping and Nameplate Replacement.

Proposed new §65.213 provides that Potable water heaters (HLW stamped boilers) are excluded from a hot water heating system as a hot water heating boiler.

Proposed new §65.214 provides a single Texas boiler number for Modular Boilers.

Proposed new §65.215 establishes the requirements for Multiple Pressure Steam Generators.

Proposed new §65.216 requires approval for the stacking rack design or fabrication requirements of Stacked Boilers

Proposed new §65.217 establishes the requirement and procedures for obtaining variances to the boiler rules.

Proposed new §65.300 identifies fee types and amounts that must be collected in order for the Department to recover costs associated with the administration of the boiler program.

Proposed new §65.400 establishes the process for assessing administrative penalties for violations of this chapter or Texas Health and Safety Code, Chapter 755.

Proposed new §65.401 establishes the process for assessing sanctions for violations of this chapter or Texas Health and Safety Code, Chapter 755.

Proposed new §65.402 restates the Department's authority to enforce this chapter and Texas Health and Safety Code, Chapter 755.

Proposed new §65.500 describes the guidelines for the use of US customary units and metric (SI) units.

Proposed new §65.600 allows a person to submit in writing an inquiry to the Department for an opinion or clarification for conditions not covered by rules.

Proposed new §65.601 provides the general safety requirement that unsafe boilers be removed from service.

Proposed new §65.602 requires that chimneys and vents be installed in accordance with boiler/chimney manufacturer recommendations.

Proposed new §65.603 establishes standards for boiler room ventilation.

Proposed new §65.604 fixes the location of discharge outlets.

Proposed new §65.605 establishes the operating standards for Electric Steam Boilers.

Proposed new §65.606 establishes the operating standards for Atmospheric Vents, Gas Vents, Bleed or Relief Lines for Power Boilers, Unfired Steam Boilers and Process Steam Generators with Supplemental Firing.

Proposed new §65.607 establishes the operating standards for Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators.

Proposed new §65.608 establishes the operating standards for Unfired Steam Boilers.

Proposed new §65.609 establishes the operating standards for Process Steam Generators.

Proposed new §65.610 establishes the operating standards for Nuclear Boilers.

Proposed new §65.611 establishes the operating standards for Heating Boilers.

Proposed new §65.612 establishes the standards for boiler repair and alterations.

Proposed new §65.613 establishes the standards for Hydrostatic Pressure Tests.

Proposed new §65.614 describes the authority to set and seal safety appliances.

Proposed new §65.615 lists the exhibits referred to in this chapter.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal and new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed repeal and new rules. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed repeal and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed repeal and new rules are in effect, the public benefit will be a set of rules that allow inspectors, boiler owners and operators, as well as the general public, to readily identify rules of interest without sorting through cumbersome, dense and not well organized rules within rules.

Except for §§65.81(e), 65.210(b)(3), 65.210(b)(11), 65.300, and 65.612(c), the proposed new rules are a restatement of or clarification to existing rules proposed for repeal. The restatements or clarifications will have no economic effect on small or micro-businesses or to persons who are required to comply with the repeal and new rules as proposed.

Costs required to comply with proposed new §65.81(e), relating to the manual filing of inspection reports, is voluntary and not required by the proposed new rules. While a person will incur a filing fee for manual submission of inspection reports, those costs can be avoided by using the Department's online filing system.

The filing fee merely recovers the cost incurred by the Department for processing hard copy inspection reports.

Costs required to comply with proposed new §65.210(b)(3), relating to the removal of loose scale, and proposed new §65.210(b)(11), relating to use of new replacement gaskets on manholes and handholes, should be *negligible* at most and of no economic significance.

Fee changes in proposed new §65.300 are a direct result of the Department's statutory obligation to establish fees in amounts sufficient for each regulatory program and to recover administrative costs without cross-subsidies from other regulatory programs. Thus, any changes to the fee structure are a result of the statutory obligation to recover program costs and are not imposed by this chapter.

Compliance with proposed new §65.612(c), relating to the plugging of boiler tubes, will result in compliance related costs; however, because of the deteriorating condition of the affected boiler, those costs would be incurred without the requirements of this proposed new rule.

Proposed new §65.612(c) merely impacts the timing of the expenditure and not the amount of the repair or economic impact to the persons required to comply.

Since the agency has determined that the proposed repeal and new rules will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

**16 TAC §§65.1, 65.10, 65.20, 65.30, 65.40, 65.50, 65.60, 65.65, 65.70, 65.80, 65.90, 65.100**

*(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 Licensing and Regulation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeal.

§65.1. *Authority.*

§65.10. *Definitions.*

§65.20. *Licensing/Certification/Registration Requirements.*

§65.30. *Exemptions.*

§65.40. *Metrication Policy.*

§65.50. *Reporting Requirements.*

§65.60. *Responsibilities of the Department.*

§65.65. *Boiler Board.*

§65.70. *Responsibilities of the Licensee/Certificate Holder/Registrant.*

§65.80. *Fees.*

§65.90. *Sanctions.*

§65.100. *Technical Requirements.*

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

Filed with the Office of the Secretary of State on November 3, 2014.

TRD-201405192

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 463-8179



## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §§65.1 - 65.3

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.1. *Authority.*

This chapter is adopted under authority of Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51.

#### §65.2. *Definitions.*

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

- (1) Alteration--A substantial change in an original design.
- (2) Application for Certification--The completed first inspection report.
- (3) Approved--Agreed to by the executive director.
- (4) ASME--The American Society of Mechanical Engineers Boiler and Pressure Vessel Code, code cases, and interpretations adopted by the council of the society.
- (5) Authorized Inspection Agency (In-service)--An entity accredited by the National Board meeting NB-369, "Qualifications and Duties for Authorized Inspection Agencies Performing In-service Activities and Qualifications for Inspectors of Boilers and Pressure Vessels".
- (6) Authorized Inspection Agency (New Construction--ASME Activities)--An entity accredited by the National Board

meeting the qualification and duties of NB-360, "Criteria for Acceptance of Authorized Inspection Agencies for New Construction".

(7) Authorized Inspector--An inspector employed by an authorized inspection agency holding a commission issued by the executive director.

(8) AWP--The allowable working pressure at which the boiler can safely operate.

(9) Board--The Board of Boiler Rules.

(10) "Boiler" means:

- (A) a heating boiler;
- (B) a nuclear boiler;
- (C) a power boiler;
- (D) an unfired steam boiler; or
- (E) a process steam generator.

(11) Boiler External Piping--The piping which begins where the ASME Section I or Section VIII, Division 1, 2, or 3 boiler proper or separately fired superheater terminates at:

(A) the first circumferential joint for welding end connections; or

(B) the face of the first flange in bolted flange connections; or

(C) the first threaded joint in that type of connection; and which extends up to and including the valve or valves required by ASME.

(12) Certificate Inspection--The required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(13) Certificate of Operation--A certificate issued by the executive director to allow the operation of a boiler.

(14) Changeover Valve--A valve, which allows two redundant pressure relief valves to be installed for the purpose of changing from one pressure relief valve to the other while the boiler is operating and designed such that there is no intermediate position where both pressure relief valves are isolated from the boiler.

(15) Chief Inspector--The inspector appointed in accordance with Texas Health and Safety Code, §755.023.

(16) Code--ASME Code.

(17) Commission--The Texas Commission of Licensing and Regulation.

(18) Competent Attendant--An individual who has been trained to properly operate, start up, shut down, respond to emergencies and maintain control of the boiler in safe operating condition.

(19) Condemned Boiler--A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the executive director.

(20) Department--Texas Department of Licensing and Regulation.

(21) Deputy Inspector--An inspector appointed by the executive director.

(22) Disconnected Boiler--A boiler in which all fuel, water, steam and electricity are removed from any connection on the boiler.

These connections shall provide an isolated gap and the source shall be safely isolated to prevent potential leaks or electrical hazards.

(23) Electric Boiler--A boiler in which the source of heat is electricity, such as an electrode type boiler and an immersion resistance element type boiler.

(24) Electrode Type Boiler--An electric boiler in which heat is generated by the passage of electric current using water as the conductor.

(25) Executive Director--The executive director of the department.

(26) Existing Installation--Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(27) External Inspection--An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(28) Heat Recovery Steam Generator (HRSG)--A boiler which produces steam where its principle source of thermal energy is a hot gas stream having high ramp rates, such as the exhaust of a gas turbine.

(29) Heating Boiler--A steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(30) High-Temperature Water Boiler--A water boiler designed for operation at pressures exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures exceeding 250 degrees Fahrenheit (121 degrees Celsius).

(31) Hot Water Heating Boiler--A boiler designed for operation at a pressure not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet.

(32) Hot Water Supply Boiler--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts); water temperature exceeds 210 degrees Fahrenheit (99 degrees Celsius); or nominal water-containing capacity exceeds 120 gallons (454 Liters).

(33) Immersion Resistance Element Type Boiler--An electric boiler in which heat is generated by the passage of an electric current through a resistance heating element immersed in water.

(34) Inspection Agency--An authorized inspection agency providing inspection services.

(35) Inspector--The chief inspector, a deputy inspector, or an authorized inspector.

(36) Install--To place, position or fit into position and then to connect, change or modify in such a manner as to bring the boiler into service.

(37) Installation--The act of installing a boiler or associated equipment.

(38) Internal inspection--A complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(39) Maximum Allowable Working Pressure (MAWP)--The greatest pressure at which a boiler is designed to operate.

(40) Metric (SI)--An international system of measurement.

(41) Metrication--The process of converting between US customary units and metric (SI) units.

(42) Modular Boiler--A steam or hot water heating assembly consisting of a group of individual boilers called modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(43) Multiple Pressure Steam Generator--A boiler consisting of several sections of heat exchange surface designed for different pressure levels.

(44) National Board--The National Board of Boiler and Pressure Vessel Inspectors.

(45) National Board Inspection Code--The manual for boiler and pressure vessel inspectors published by the National Board.

(46) New Installations--A boiler constructed, installed, or placed in operation after June 3, 1937.

(47) Nominal--The accepted ASME standard used to designate a size or capacity of an item.

(48) Non-Code Boiler--A complete boiler not constructed to the appropriate ASME Code.

(49) Nonstandard Boiler--A boiler that does not qualify as a standard boiler.

(50) Nuclear Boiler--A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(51) Owner or Operator--Any person, firm, or corporation owning or operating boilers within the State of Texas.

(52) Person--An individual, corporation, partnership, association or other legal entity.

(53) Pool Heater--A hot water supply boiler or a potable water heater designed to provide hot water to a pool.

(54) Portable Power Boiler--A boiler primarily intended for use at a temporary location.

(55) Potable Water Heater--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) and water temperatures not exceeding 210 degrees Fahrenheit (99 degrees Celsius) if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts) or nominal water-containing capacity exceeds 120 gallons (454 liters).

(56) Power Boiler--A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage (103 kilopascals) for a purpose external to the boiler.

(57) Preliminary order--A written order issued by the chief inspector or any commissioned boiler inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued. The Boiler Inspection report which requires repairs to be made or the boiler operation to be ceased which is signed by the chief inspector or a commissioned boiler inspector is a Preliminary Order.

(58) Process Steam Generator--An evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains

a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(59) Reinstalled Boiler--A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(60) Repair--The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(61) Rules--The rules promulgated and enforced by the commission in accordance with Texas Health and Safety Code, §755.032 and Texas Occupations Code, Chapter 51.

(62) Safety Appliance--A safety device such as a safety valve or a pressure relief valve for a boiler provided to diminish the danger of accidents.

(63) Secondhand Boiler--A boiler in which either the location or ownership have changed.

(64) Serious Accident--An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located or emergency medical services are dispatched to the location of the explosion and the injured party is transported to a hospital or other medical facility; or resulted in a fatality.

(65) Special Inspection--An inspection by the chief inspector or deputy inspector other than those in Texas Health and Safety Code, §§755.025 - 755.027.

(66) Stacked Boiler--A design in which one boiler is placed onto a rack above another boiler, as designed by the boiler manufacturer with a rack nameplate, and as approved by the department.

(67) Standard Boiler--A boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(68) Steam Heating Boiler--A boiler designed for operation at pressures not exceeding 15 pounds per square inch gage (103 kilopascals).

(69) System Pressure--The pressure of the boiler system, which is governed by the highest safety valve or pressure relief valve set pressure as allowed by ASME Code and this chapter.

(70) Texas Commission--Authorization to inspect boilers and enforce Texas Health and Safety Code, Chapter 755, and 16 Texas Administrative Code Chapter 65, on behalf of the department.

(A) ASME Only Commission--Only authorizes an inspector to conduct ASME new construction activities.

(B) In-Service Only Commission--Only authorizes an inspector to conduct boiler in-service activities.

(C) ASME and In-Service Commission--Authorizes an inspector to conduct both activities in subparagraphs (A) and (B).

(71) Unfired Steam Boiler--An unfired pressure vessel in which steam is generated. The term does not include: vessels known as evaporators or heat exchangers; or vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

§65.3. Exemptions.

The requirements of this chapter do not apply to boilers exempted by Texas Health and Safety Code, §755.022.

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

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## SUBCHAPTER B. REGISTRATION-- AUTHORIZED INSPECTION AGENCY

### 16 TAC §65.10, §65.11

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

§65.10. Registration--Authorized Inspection Agency.

(a) A person may not act as an Authorized Inspection Agency without first registering with the department under this chapter.

(b) To act as an Authorized Inspection Agency, a person must complete a department-approved registration.

§65.11. Registration Renewal--Authorized Inspection Agency.

To renew an Authorized Inspection Agency registration, a registrant must:

(1) complete a department-approved registration renewal;  
and

(2) provide proof of accreditation by the National Board.

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## SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION-- REQUIREMENTS

### 16 TAC §§65.12 - 65.15

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.12. Boiler Registration and Certificate of Operation Required.

Except as provided by this chapter, each boiler operated in this state must:

- (1) be registered with the department; and
- (2) have qualified for a current certificate of operation.

#### §65.13. Boiler Installation.

(a) The owner or operator of a boiler in this state must submit the following to the department within thirty (30) days after completion of a boiler installation.

- (1) A boiler installation report; and
- (2) A manufacturer's data report for the boiler and venting requirements.

(b) The boiler shall not be test-fired or operated prior to the required first inspection.

#### §65.14. Inspector Commissions.

(a) In-Service Commission. To be eligible for in-service commission, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) successfully pass a criminal background check;
- (3) pass a written examination approved by the department;
- (4) attend a department-approved boiler orientation program; and
- (5) pay the fee required under §65.300.

(b) Texas ASME Commissions. To be eligible for a Texas ASME commission, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) successfully pass a criminal background check;
- (3) hold a valid National Board "A" Endorsement Commission; and
- (4) pay the fee required under §65.300.

#### §65.15. Initial Boiler Certification Requirements.

(a) To be eligible for a certificate of operation each boiler must meet the following:

- (1) comply with §65.200;

- (2) have a completed first inspection report;
- (3) if necessary, complete required repairs; and
- (4) pay the fees required under §65.300.

(b) If the boiler has not been registered with the National Board, the owner or operator may apply to the department for a variance.

(c) Non-code boilers may not be installed or operated without written authorization from the department.

(1) Non-code boilers, if installed, must be completely replaced to ensure the complete boiler meets or exceeds ASME code and this chapter.

(2) Installing code compliant parts onto a non-code boiler does not make a non-code boiler ASME code compliant.

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## SUBCHAPTER D. AUTHORIZED INSPECTOR

### 16 TAC §65.25, §65.26

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.25. Authorized Inspector--Requirements.

To be an authorized inspector, an applicant must have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers.

#### §65.26. Commission--Renewal and Reinstatement.

(a) To renew or reinstate an authorized inspector commission, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) successfully pass a criminal background check;
- (3) attend all training sessions, if any, required by the department in the twelve (12) month period preceding renewal; and
- (4) pay the applicable fee required under §65.300. Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(b) Non-receipt of a license renewal notice from the department does not exempt a person, or entity, from any requirements of this chapter.

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## SUBCHAPTER E. EXAMINATIONS AND WAIVER OF EXAMINATION

### 16 TAC §65.30

The new rule is being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rule are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rule.

#### §65.30. Waiver of Examination.

An applicant for a Texas Commission who is licensed or commissioned in another state that has an examination substantially equivalent to that required by this chapter, as determined by the department, may obtain a commission without examination, if the person:

(1) submits a completed application on a department-approved form; and

(2) except for the examination requirement otherwise meets the requirements in Subchapter F.

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## SUBCHAPTER F. COMMISSION CARDS

### 16 TAC §65.40, §65.41

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.40. Authorized Inspector--Commission Card.

(a) A commission as an authorized inspector and an identifying commission card may be issued by the department to a person who has met the requirements of §65.14(a) and (b).

(b) A commission card issued by the department shall only be used while conducting inspection activities within the State of Texas and shall be in the inspector's possession during these activities.

(c) Written requests for renewals, and applications for new and reinstatements shall specify if the scope of work to be performed will be ASME Code only, In-service only, or both.

(d) When a request is for new issuance or reinstatement as described in §65.14 and §65.26, the inspector shall attend a mandatory commission approved training program prior to issuance of the commission.

(e) If a current commission and/or identifying commission card is lost or destroyed, the inspector shall immediately notify the department in writing and a duplicate will be issued without examination or application, upon request and payment of fees under §65.300.

(f) Within two (2) business days after an inspector's employment terminates:

(1) the inspection agency shall notify the department in writing that the inspector no longer works for the agency; and

(2) on the final day of employment with the inspection agency, the commission card issued to the inspector is void and shall not be used as authorization to perform or otherwise conduct a boiler inspection under this chapter.

(g) The identifying commission card shall be returned to the department by the authorized inspection agency within thirty (30) days after the inspector to whom the commission was issued is no longer employed by the department or the authorized inspection agency.

#### §65.41. Reissuance after Reemployment.

An inspector, commissioned as provided in this subchapter, shall be entitled to another commission upon leaving the employment of the department and entering the employment of an inspection agency without examination, if the following requirements are met.

(1) The inspector is employed by the inspection agency within twelve (12) months from leaving the department;

(2) A Commission application and fee required under §65.300 are submitted to the department; and

(3) All other requirements have been met for obtaining a commission.

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## SUBCHAPTER G. APPLICATION TO OPERATE PORTABLE AND STATIONARY NONSTANDARD BOILERS IN THE STATE

### 16 TAC §65.45

The new rule is being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rule are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rule.

#### §65.45. Portable and Stationary Nonstandard Boilers.

(a) Operation of a portable or stationary nonstandard boiler is prohibited unless the department has granted approval as a nonstandard boiler used for exhibition, instruction, education, show, display, or demonstration.

(b) The applicant must:

- (1) submit a boiler installation report;
- (2) include a description of the materials, methods of construction, drawings, and such other design information sufficient to establish the MAWP; and

(3) pay the fee required under §65.300.

(c) If the materials submitted under subsection (b)(2) are insufficient to establish the MAWP, the department may require a proof test of the nonstandard boiler in accordance with the edition of the code determined to be most applicable for the method of construction.

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## SUBCHAPTER H. INSPECTOR STANDARDS OF CONDUCT

### 16 TAC §§65.50 - 65.52

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.50. Inspectors--Prohibited Conflicts of Interest.

Inspectors shall not engage in the sale of any article or device relating to boilers, pressure vessels, or other appurtenances.

#### §65.51. Enforcement of Rules and Code Violation.

Inspectors are charged with enforcing all provisions of the Texas Health and Safety Code, Chapter 755 and 16 TAC Chapter 65, at all times while conducting boiler inspection and investigation activities.

#### §65.52. Completion of Reports Required.

Inspectors must properly document findings or violations identified during an inspection in accordance with the law, rules, and procedures.

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## SUBCHAPTER I. INSPECTION OF BOILERS

### 16 TAC §§65.60 - 65.63

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.60. External Inspection.

External inspections shall be performed as part of the application for an extension to the inspection interval of Health and Safety Code, §755.026. Otherwise, it shall be conducted in conjunction with the annual internal inspection required in Health and Safety Code, §755.025.

§65.61. Inspection of All Boilers Required.

(a) All boilers not exempted by Texas Health and Safety Code, §755.022 shall be inspected in accordance with Texas Health and Safety Code, §755.025, §755.026, or any applicable rules under this chapter.

(b) Boilers shall be inspected by the inspection agency that issued an insurance policy to cover a boiler located in this state, or authorized representative. All other boilers shall be inspected by the department.

(c) Except in the case of an accident or other emergency, no inspection shall be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday, unless otherwise directed by the department.

(d) Boilers must be inspected prior to the expiration date of the current certificate of operation.

(e) Boilers not inspected prior to the expiration date of the current certificate of operation will be assessed a late fee in accordance with §65.300 and subject to penalties and sanctions as provided under this chapter.

§65.62. Notice of Inspection to Owners or Operators of Boilers.

(a) All boilers, unless otherwise exempted, shall be prepared for initial inspection, regular inspections, or hydrostatic tests, whenever necessary, by the owner or operator when notified by the inspector.

(b) The owner or operator shall prepare each boiler, in accordance with §65.210 and §65.211, for an internal inspection and shall prepare for and apply the hydrostatic tests whenever necessary on the date specified by the inspector.

§65.63. Extension of Interval between Internal Inspections.

(a) For the interval between internal inspection to be extended as provided for in Texas Health and Safety Code, §755.026, the following procedure must be followed.

(1) Not less than thirty (30) days and not more than sixty (60) days prior to the expiration date of the current certificate of operation, the owner or operator shall submit in a manner prescribed by the department a request for each boiler, stating the desired length of extension, which will be no more than one (1) year from the expiration date of the current certificate of operation, the date of the last internal inspection, and a statement certifying that records are available showing compliance with Texas Health and Safety Code, §755.026, and pay the required fees.

(2) The department shall notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved.

(3) Prior to the expiration of the current certificate of operation, the inspection agency shall review all records, make an external inspection, and submit the external inspection report to the department.

(4) Upon completion of paragraphs (1) - (3) and payment of all required fees, a new certificate of operation may be issued for the extended period of operation.

(5) Violations noted during the external inspection may be cause for denial of the extension request.

(6) If the department denies an extension request, the boiler shall be internally inspected prior to the expiration of the certificate of operation, unless authorized in writing to continue operation until an internal inspection can be conducted.

(b) An additional extension for up to one hundred twenty (120) days may be allowed as provided for in Texas Health and Safety Code, §755.026, when it is established an emergency exists.

(1) Prior to the expiration date of the current certificate the owner or operator shall submit to the department a request stating an emergency exists with an explanation of the emergency and the date of the last internal inspection. The request shall be submitted along with the inspection agency's external inspection report, confirming compliance with Texas Health and Safety Code, §755.026.

(2) The department shall notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved.

(3) Upon completion of paragraphs (1) and (2) and payment of all required fees, a new certificate of operation may be issued for the extended period of operation.

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## SUBCHAPTER J. TEXAS BOILER NUMBERS

### 16 TAC §§65.70 - 65.72

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

§65.70. Texas Boiler Numbers--Required.

(a) Each boiler must be identified with a single unique department-issued identification number displayed on a tag and located on the boiler next to the ASME name plate. The decal shall remain on the boiler for the life of the equipment.

(b) After the initial issuance of a tag number, that tag number may not be reassigned or reused.

(c) All correspondence and inspection reports must reference the boiler identification tag number.

(d) On request by the department, the inspector must report to the department regarding the issuance and disposal of all tags issued to the inspector.

§65.71. Texas Boiler Number--Placement on Boiler.

(a) During the first inspection of all boilers, the inspector shall stamp the Texas boiler number, except as provided for in subsections

(c) and (d), as near to the original ASME code name plate and required information as practicable.

(b) The stamping shall consist of the letters "TX" and directly to the right of the TX shall be stamped the Texas boiler number with a five point star stamped immediately adjacent to the first and last digit of the Texas boiler number.

(c) All hard stamping shall be accomplished by low stress steel dies 5/16 inch (8 millimeters) high and shall be arranged as shown in §65.615, Exhibit 1.

(d) In addition to the stamping:

(1) the corrosion-resistant metal tag shall be applied, as permanently as practicable, to the external jacket or other covering where the surface temperature exceeds 200 degrees Fahrenheit (93.3 degrees Celsius); or

(2) the Texas boiler number decal shall be applied where the surface does not exceed 200 degrees Fahrenheit (93.3 degrees Celsius).

(e) The following types of boilers are exempt from the stamping requirements of subsection (c), ASME code name plates stamped with the HLW designator, cast iron sectional boilers, cast aluminum sectional boilers, water tube boilers with cast headers, and other types of boilers that will be damaged by direct impression stamping.

(1) These boilers shall be identified with the Texas boiler number decal or corrosion-resistant tag; and

(2) The Texas boiler number decal or corrosion-resistant tag shall be applied where the surface does not exceed 200 degrees Fahrenheit (93.3 degrees Celsius).

(f) Portable or stationary nonstandard boilers shall be identified by the Texas boiler number as described in subsection (b), with an exception that the Texas boiler number decal shall not be applied. The letters "TEXAS SPECIAL" or "TX SPCL" shall identify portable or stationary nonstandard boilers and shall be stamped directly above the Texas boiler number.

#### §65.72. Condemned Boilers.

(a) Any boiler, stamped or identified with the corrosion-resistant metal tag, having been inspected and declared unsafe by the chief inspector or deputy inspector, shall be stamped by the inspector with an "X" on the star on either side of the Texas boiler number. The stamped tag identifies/designates the boiler as condemned.

(b) Any boiler, identified with the Texas boiler number decal, having been inspected and declared unsafe by the chief inspector or deputy inspector, shall be altered/defaced by the inspector by removing the star on either side of the Texas boiler number. The altered/defaced decal identifies/designates the boiler as condemned.

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 K. REPORTING REQUIREMENTS

### 16 TAC §§65.80 - 65.85

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.80. Notification of Changes in Risks and Inspection Agreements.

(a) All inspection agencies shall notify the department of all boiler risks or inspection agreements written, canceled, or not renewed, within thirty (30) days of the effective date.

(b) The inspection agency shall immediately notify the department of all boiler risks rejected or suspended, or inspection agreements cancelled or not renewed, because of unsafe conditions and shall immediately notify the department and submit a report of the unsafe conditions giving rise to the rejection, suspension, cancellation, or nonrenewal.

(c) Notification may be made electronically or manually using the format provided by the department and shall list, by Texas boiler number, all objects affected by the notice.

#### §65.81. Inspection Report Forms.

(a) At the time of the first inspection of any boiler covered by the provisions of Texas Health and Safety Code, Chapter 755, a first inspection report shall be submitted to the department.

(b) Subsequent inspection reports shall be submitted to the department.

(c) External inspections shall be reported to the department if:

(1) hazardous conditions affecting the safety of the boiler are found; or

(2) the external inspection is a certificate inspection.

(d) Inspection reports shall be filed in a manner prescribed by the department.

(e) Inspection reports filed in a manner other than through the Jurisdiction Online Inspection Report Filing system will be assessed the fee required under §65.600, payable by the Authorized Inspection Agency.

#### §65.82. Defective Conditions Disclosed at Time of External Inspection.

(a) If there is evidence of a leak or crack, the covering of the boiler shall be removed to satisfy the inspector as to the safety of the boiler.

(b) If the covering cannot be removed at that time, an inspector may order the operation of the boiler discontinued, until such time as the covering can be removed and proper examination made.

#### §65.83. Boiler Accidents.

(a) In case of a serious accident, the owner/operator shall immediately notify the chief inspector and authorized inspector.

(b) Neither the boiler nor any of the parts thereof, shall be removed or disturbed, except for the purpose of saving human life or preventing further damage, before an inspection and investigation has been made by an inspector.

(c) The authorized inspector shall immediately notify the chief inspector of each boiler accident.

(d) The chief inspector shall investigate, or cause to be investigated, each boiler accident to the extent necessary to reasonably determine the cause of the boiler accident.

(e) To the extent necessary to conduct an inspection and subsequent investigation of a boiler accident, the owner/operator shall provide an inspector free access to the boiler and accident area.

(f) The owner/operator shall provide the chief inspector, deputy inspector and authorized inspector, with fragments, parts, appurtenances, documents, and records necessary to conduct an investigation of the accident.

(g) The authorized inspector shall submit a report of the boiler accident to the chief inspector. The report shall be submitted in a manner prescribed by the department.

(h) The chief inspector shall file a final report to the executive director.

*§65.84. Repair and Alteration Report Forms.*

All repair and alteration report forms shall be filed, by the organization making the repair or alteration, with the department within ninety (90) days after completion of the repair or alteration.

*§65.85. Interagency Reporting and Requirements.*

(a) Investigators, deputy fire marshals, and inspectors of the Texas Department of Insurance, the Department of State Health Services, and the Commission on Fire Protection who, during routine inspections encounter boilers which are unregistered or in the opinion of the inspector are unsafe, shall report these boilers to the department in a manner prescribed by the department.

(b) In the case of unsafe boilers, notification shall also be made to the chief inspector.

(c) To assist the investigators, deputy marshals and inspectors with their reporting, the department may provide training relating to the boiler law and rules and the department's process for administering the boiler program.

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**SUBCHAPTER L. RESPONSIBILITIES OF THE DEPARTMENT**

**16 TAC §65.90, §65.91**

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

*§65.90. Commissions--Authorized Inspector.*

Upon the request of an inspection agency, authorized to do business in this state, a commission as an authorized inspector and an identifying commission card may be issued by the executive director to an inspector in the employment of such inspection agency, provided the inspector has successfully passed the examination as set forth in §65.14. The identifying commission card shall be returned to the chief inspector, when the inspector to whom the commission was issued is no longer employed, within thirty (30) days. An inspector, commissioned as provided in this section, shall be entitled to another commission upon leaving the employment of one inspection agency and entering the employment of another such agency without examination, provided the executive director is notified immediately of such reemployment and provided that a commission reinstatement fee and new application are submitted.

*§65.91. Overdue Boiler Inspection--Authorized Inspection Agency Referral.*

(a) The department may refer any boiler that is ninety (90) days past its inspection due date to another Authorized Inspection Agency for completion of the past due inspection.

(b) Any boiler referred under this section shall be assessed the inspection fee established under §65.300.

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**SUBCHAPTER M. BOARD OF BOILER RULES**

**16 TAC §§65.100 - 65.104**

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

§65.100. Board of Boiler Rules--Purpose.

(a) The purpose of the Board of Boiler Rules is to advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and appurtenances.

(b) Recommendations of the board will be transmitted to the commission by the executive director.

§65.101. Board of Boiler Rules--Membership.

(a) The Board of Boiler Rules is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member representing organizations that repair or alter boilers in this state;

(5) one member representing a labor union; and

(6) two public members.

(b) All members, except the members appointed under subsection (a)(6), must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(c) The executive director serves as an ex officio board member.

(d) Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(e) The chief inspector serves as presiding officer of the board.

§65.102. Board of Boiler Rules--Removal of Board Members; Vacancy.

(a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

§65.103. Board of Boiler Rules--Reimbursement of Expenses.

(a) A board member may not receive a salary, but is entitled to reimbursement for actual expenses incurred in performing board duties subject to the General Appropriations Act.

(b) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and traveling to and from board meetings. The least expensive method of travel should be used.

(c) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the department's policies governing travel allowances for employees.

§65.104. Board of Boiler Rules--Board Meetings.

(a) The board shall meet at least twice each year, at the call of the presiding officer, at a place designated by the board.

(b) A board decision is not effective unless supported by the vote of at least five board members.

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## SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

### 16 TAC §§65.200 - 65.217

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

§65.200. New Boiler Installations.

(a) No boiler, except reinstalled boilers and those exempted by Texas Health and Safety Code, §755.022, shall be installed in this state unless:

(1) it has been constructed, inspected, and stamped in conformity with the applicable section of the ASME code;

(2) it is registered with the National Board of Boiler and Pressure Vessel Inspectors except cast iron or cast-aluminum sectional boilers; and

(3) it is approved, registered, and inspected in accordance with the requirements of this chapter.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be accepted by the department. Any person desiring to install such a boiler shall file a complete application for the installation of the boiler in compliance with §65.13.

(c) New boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the latest revision of the applicable section of the manufacturer's recommendations, ASME code and this chapter. These boilers shall be inspected prior to operation or test-firing.

§65.201. Secondhand Boiler Installations.

Secondhand boilers shall meet all the requirements for new installations, including code construction and stamping requirements.

§65.202. Maximum Allowable Working Pressure (MAWP).

(a) The MAWP for standard boilers shall be determined in accordance with the ASME code under which they were constructed and stamped.

(b) In no case shall the MAWP of an existing nonstandard boiler be increased to a greater pressure than would be allowed for a new boiler of the same construction.

(c) The MAWP on the shell of an existing riveted heating boiler shall be determined in accordance with the National Board Inspection Code.

§65.203. Maximum In-Service Time for Nonstandard Boilers.

(a) A nonstandard boiler construction, installed prior to 1937, shall have a maximum in-service time of thirty (30) years, unless the following are accepted:

(1) an internal and external annual inspection; and

(2) an annual hydrostatic pressure test of one and one-quarter times the MAWP held for a period of at least thirty (30) minutes, during which no distress or leakage develops. At no time, while applying the hydrostatic pressure test, shall the pressure exceed one and one-quarter times the MAWP by more than 6%.

(b) Any nonstandard boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psig (345 kilopascals) shall have a maximum in service of twenty (20) years; this type of boiler, when removed from the existing setting, shall not be reinstalled for a pressure in excess of 15 psig (103 kilopascals).

(c) Any boiler having other than a lap-riveted longitudinal joint may be continued in operation without reduction in the MAWP.

§65.204. Boiler Reinstallations.

When a boiler is moved and reinstalled, all fittings and appurtenances must comply with this chapter.

§65.205. Required Boiler Personnel.

A boiler shall be operated and maintained in accordance with the boiler manufacturer's recommended guidelines by a competent attendant, regardless of whether or not it is equipped with automatic feed water regulator, fuel and damper regulator, high-and-low-water alarm, or any other form of automatic control.

§65.206. Care of Boiler Room.

(a) The boiler room shall be free from accumulation of rubbish and materials that obstruct access to the boiler, its setting, or firing equipment.

(b) The storage of flammable material or gasoline-powered equipment in the boiler room is prohibited.

(c) The roof over boilers designed for indoor installations, shall be free from leaks and maintained in good condition.

(d) Adequate drainage shall be provided.

(e) All exit doors shall open outward.

(f) It is recommended that the ASME Code, Section VI, covering the care and operation of heating boilers be used as a guide for proper and safe operating practices.

(g) It is recommended that the ASME Code, Section VII, care and operation of power boilers, be used as a guide for proper and safe operating practices.

§65.207. Boiler Foundations and Levels.

(a) All boilers shall be kept reasonably leveled and must be provided with a substantial foundation such as steel, concrete, brick, or stone.

(b) The boiler mud rim or bottom of a vertical boiler setting shall not be less than 6 inches (152 mm) from the ground.

(c) The locomotive-type boiler mud rim or wet bottom shall have the foundation of its setting not less than 12 inches (305 mm) from the floor or ground.

(d) All boiler mud rims shall be accessible to the inspector.

(e) Boilers that are not leveled or do not have substantial foundations shall be removed from service until these deficiencies are corrected.

(f) Supports for boilers shall be masonry or structural steel of sufficient strength and rigidity to safely support the boiler. There shall be no vibration in either the boiler or its connecting piping.

§65.208. Minimum Clearance.

(a) All boilers and appurtenances shall be located so that adequate space will be provided for the proper operation, inspection, maintenance, and repair of the boiler. Manufacturer's recommended clearances must be met.

(b) A minimum of one foot (305 mm) shall be maintained between the bottom of scotch-type boilers and the foundation or floor.

§65.209. Safety Appliances.

(a) No one shall remove (except temporarily for repair), fail to replace after removal, displace, damage, destroy, carry off, tamper with, or fail to use any safety appliance.

(b) When the safety appliance has been removed for repair, it can only be replaced on a boiler if it is in proper working order.

(1) The safety appliances shall not be set at a pressure in excess of the MAWP stated on the boiler.

(2) The seal shall be replaced prior to returning the boiler to service.

(c) If a boiler is dismantled or moved, prior to returning it to service, all safety appliances must conform to the installation requirements of the boiler law and rules.

§65.210. Preparation Standards for Internal Boiler Inspections.

(a) The owner or operator shall prepare a boiler for internal inspection.

(b) Preparation of the boiler for internal inspection shall include:

(1) all water being drawn off;

(2) the boiler internal watersides thoroughly washed;

(3) removal of loose scale as practicable; and

(4) where pressure vessels are equipped with removable internals, these internals need not be completely removed provided assurance exists that deterioration in regions rendered inaccessible by the internals is not occurring to an extent that might constitute a hazard, or to an extent beyond that found in more readily accessible parts of the vessel.

(5) All manholes and handholes, washout plugs, and plugs shall be removed for complete inspection, as required by the inspector.

(6) The furnace and combustion chambers shall be thoroughly cooled and cleaned.

(7) Brickwork and refractory shall be removed as required by the inspector in order to determine the condition of the boiler, headers, furnace, supports, or other parts.

(8) The pressure gage shall be removed for cleaning of the siphon and testing, if necessary.

(9) All low-water cutoff devices shall be dismantled, cleaned, and prepared for inspection. Probe-type low water cutoff devices shall be removed from the boiler. The cross-tees and plugs shall be removed to ensure complete clearance on the water and steam sides.

(10) Before removing the manholes or handholes and entering any part of the boiler connected to a common header with other boilers, any leakage of steam or hot water shall be eliminated.

(A) The nonreturn and stop valves shall be closed, locked out and tagged out and drain valves between the two valves opened.

(B) The feedwater valves must be closed, locked out and tagged out.

(C) After draining the boiler, the blowdown valves shall be closed, locked out and tagged out.

(D) Blowdown lines, where practicable, shall be disconnected between pressure parts and valves.

(E) All vent and drain lines shall be opened.

(11) Gaskets on manholes and handholes of pressure-retaining items, with exception of access and inspection doors of furnace and convection pass, shall be replaced with new gaskets upon reinstallation.

(A) Re-use of gaskets is prohibited.

(B) Gaskets shall be installed in accordance with the manufacturer's recommendations.

(C) The use of sealing compounds is prohibited on manhole and handhole gaskets.

(c) If the boiler is jacketed so that the seams of shells, drums, or domes cannot be seen, enough of the jacketing, setting wall, or other form of casing or housing shall be removed to permit inspection to determine the safety of the boiler, provided such information cannot be determined by other means.

#### §65.211. Preparation of Nonstandard Boilers for Inspection.

Nonstandard boilers shall be prepared for inspection as described in §65.210, with the following additional requirements.

(1) External lagging and insulation shall be removed and ultrasonic thickness measurements shall be performed for the first inspection and at five-year intervals for subsequent inspections; and

(2) Any other inspections or examinations as required by the department shall be performed to determine the condition of the boiler.

#### §65.212. Boiler ASME Code Restamping and Nameplate Replacement.

(a) Restamping or nameplate replacement shall be in accordance with the National Board Inspection Code and this chapter.

(b) Requests shall be in writing on a NB-136 form and provide detailed description and stamping information that verifies traceability to the Manufacturer's Data Report.

(c) Prior to any nameplate replacement or restamping of a boiler, the owner or operator must receive written authorization from the department.

#### §65.213. Hot Water Heating System Restrictions.

Potable water heaters (HLW stamped boilers), shall not be incorporated into a hot water heating system as a hot water heating boiler.

#### §65.214. Modular Boilers.

All modular steam heating and hot water heating boilers that meet all of the requirements of ASME Section IV, HG-716, shall be registered with a single Texas boiler number.

#### §65.215. Multiple Pressure Steam Generators.

(a) A multiple pressure steam generator that meets the requirements of PG-106.12 shall be registered with a single Texas boiler number.

(b) All previously registered multiple pressure steam generators with multiple Texas boiler numbers shall remain as they were originally registered and a separate inspection report will be completed for each boiler number.

#### §65.216. Stacked Boilers.

The owner or operator of boilers designed to be stacked, must submit for approval to the department the manufacturer's stacking rack design or fabrication requirements before operating the boiler.

#### §65.217. Variance.

(a) Requests to waive or modify a rule or code requirement must be submitted on a department-approved variance application form. A separate variance application form shall be submitted for each boiler for which a variance is sought.

(b) Variance applications shall be submitted by the owner/operator of the boiler, and shall be accompanied by the applicable fee and any supporting documentation such as boiler design plans, photos, cost analyses, and code references.

(c) A denial of a variance application may be appealed to the director of compliance, or designee, in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee. Supporting documentation such as boiler design plans, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(d) A denial of a variance appeal from the director of compliance may be appealed to the executive director of the department, or designee, in writing within thirty (30) calendar days of notification of the director of compliance's decision. Supporting documentation such as boiler design plans, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(e) When a variance or variance appeal determination has been made, the owner or operator making the submission shall be advised in writing of the determination.

(f) A denial of a variance appeal from the executive director of the department, or his designee, in writing within thirty (30) calendar days of notification of the executive director, or designee's decision. Supporting documentation such as boiler design plans, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(g) An approved variance must be posted under glass, next to the certificate of operation, of the boiler for which it is issued.

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## SUBCHAPTER O. FEES

### 16 TAC §65.300

The new rule is being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rule are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rule.

#### §65.300. Certificate/Inspection Fees.

##### (a) Certificate of operation.

(1) On or before expiration date--\$70.

(2) After expiration date--Late fees for certificates are provided for under §60.83 of this title (relating to Late Renewal Fees).

(3) Duplicate--\$25.

##### (b) Inspections.

(1) Heating boilers.

(A) With an inspection opening--\$70.

(B) Without an inspection opening--\$40.

(2) Other than heating boilers--\$70.

(c) Special inspections or non-standard boiler reviews--\$1,700, which must be received by the department before scheduling the requested special inspection or non-standard boiler review.

##### (d) Commission Fees.

(1) New--\$50.

(2) Reinstatement--\$50.

(3) Renewal--\$50.

(4) Duplicate--\$25.

(5) Reissuance after re-employment--\$50.

(6) Late renewal fees for commissions issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

##### (e) Authorized Inspection Agency/Letter of Recognition.

(1) Original Application--\$100.

(2) Renewal Application--\$100.

##### (f) Variances--\$50.

(g) Extensions--\$100.

(h) Re-Stamping--\$50.

(i) Boiler Installation Reports--\$25.

(j) Boiler Inspection Fee--\$260.

(k) Non-Jurisdiction Online Inspection Report Filing Fee--\$25.

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## SUBCHAPTER P. ADMINISTRATIVE PENALTIES AND SANCTIONS

### 16 TAC §§65.400 - 65.402

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.400. Administrative Penalties.

If a person violates any provision of Texas Health and Safety Code, Chapter 755, or a rule, or order of the executive director or commission relating to Texas Health and Safety Code, Chapter 755, will be subject to administrative penalties, administrative sanctions, or both under Texas Health and Safety Code, Chapter 755, Texas Occupations Code, Chapter 51, 16 TAC Chapter 65, and applicable agency rules.

#### §65.401. Sanctions.

(a) If a boiler has not been properly prepared for an internal inspection or a hydrostatic test as required by the boiler law and rules, the inspector may decline to make the inspection or witness the test, and the certificate of operation shall be withheld until the owner or operator complies with all requirements. Late certificate of operation fees shall apply if the boiler is not inspected prior to the expiration date of the certificate of operation.

##### (b) Suspension or revocation of a commission.

(1) An inspector's commission may be suspended or revoked by the department for incompetence, untrustworthiness, or falsification of an application or in an inspection report or other requirement under this chapter.

(2) An inspector whose commission is revoked, must wait at least one year after the revocation date to reapply.

#### §65.402. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and Texas Health and Safety Code, Chapter 755, and any



associated rules, may be used to enforce Texas Health and Safety Code, Chapter 755 and this chapter.

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## SUBCHAPTER Q. METRICATION

### 16 TAC §65.500

The new rule is being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rule are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rule.

#### §65.500. Metrication Policy.

(a) The following provides policy guidelines for the use of US customary units and metric (SI) units. Throughout this chapter, metric (SI) units are identified and placed in parentheses after the US customary units in the text and any associated exhibits.

(b) There are two rationales when converting between US customary units and metric (SI) units:

(1) Soft conversions--A soft conversion is an exact conversion.

(A) Example: 200,000 Btu/hr = 58.56208 kW

(B) Example: 120 gallons = 454.24944 liters

(2) Hard conversions--A hard conversion is simply performing a soft conversion and then rounding off within the intended specific range.

(A) Example: 200,000 Btu/hr = 58.6 kW

(B) Example: 120 gallons = 454 liters

(c) Repairs and alterations, when performed, shall be to the specified units used in the original code of construction. If the original units are US customary units, then the repair or alteration shall be to US customary units, and if the original units are metric (SI) units, then the repair or alteration shall be to the metric (SI) units. The selected units shall be used consistently throughout each repair or alteration and all aspects of the work required (i.e. materials, design, procedures, testing, documentation and stamping).

(d) The following procedure shall be used when converting between US customary units and metric (SI) units:

(1) All conversions will be done using a soft conversion;

(2) Soft conversions will be reviewed for accuracy;

(3) Depending upon a specified value in this chapter, an appropriate degree of precision shall be identified; and

(4) Rounding up or down may apply to each conversion to determine the degree of precision needed for each application.

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## SUBCHAPTER R. TECHNICAL REQUIREMENTS

### 16 TAC §§65.600 - 65.615

The new rules are being proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed new rules.

#### §65.600. Conditions Not Covered by Rules.

(a) Any owner or operator of boilers or any deputy inspector, authorized inspector, or interested party, may submit in writing an inquiry to the department for an opinion or clarification.

(b) All conditions not specifically covered by these requirements, shall be treated as new installations or be referred to the chief inspector for instruction.

#### §65.601. General Safety.

A boiler that is unsafe for operation shall be removed from service in a manner prescribed by the department.

#### §65.602. Chimneys and Vents.

All chimney and vents shall be installed in accordance with Boiler Manufacturer recommendations and Chimney/Vent Manufacturer recommendations.

#### §65.603. Boiler Room Ventilation.

(a) The boiler room must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(b) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans.

(1) For a single opening, the opening shall be sized on the basis of one square inch (645 square millimeters) of free area for each 2,000 Btu/hour (.586 kilowatts) input of the combined burners located in the boiler room. For two openings, one commencing not more than 12 inches (304.8 millimeters) from the ceiling of the room and one commencing not more than 12 inches (304.8 millimeters) from the floor of the room, the opening shall be sized on the basis of one square inch (645 square millimeters) of free area for each 3,000 Btu/hour (.586 kilowatts) input per opening of the combined burners located in the boiler room.

(2) The power ventilator or fans shall be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fans shall be interlocked so that the burners will not operate unless a supply of combustion, ventilation and dilution air as required by the boiler manufacturer's recommendations.

(c) Boilers of a sealed combustion design by the manufacture.

(1) When a boiler(s) in the boiler room is of a sealed combustion design by the manufacture of the boiler and the required ventilation opening is not provided, the boiler room shall be equipped with a manual reset type Carbon Monoxide Detector. The Carbon Monoxide Detector and boiler shall be interlocked so that the burners will not operate when the measured level of CO rises above 100ppm. The Carbon Monoxide detector shall disable the appliance burners upon loss of power to the detector.

(2) When the boiler room is configured to include both designs, i.e. a boiler(s) of a sealed combustion design by the manufacture of the boiler and a boiler(s) that is not of a sealed combustion design by the manufacture of the boiler, the requirements in I or II below shall be met.

(A) The boiler room shall be in compliance with subsection (b)(1) or (b)(2).

(B) The boiler(s) that is not of the sealed combustion design is required to meet the ventilation requirement of subsection (b)(1) or (b)(2). The boiler(s) that are of the sealed combustion design are required to meet the ventilation requirement of subsection (c)(1).

(d) Carbon Monoxide Detectors shall be calibrated every eighteen months and a record of calibration shall be posted in a conspicuous place.

#### §65.604. Location of Discharge Outlets.

Pressure relief valve, blowdown pipes, and other outlets shall be discharged to a safe point.

#### §65.605. Electric Steam Boilers.

(a) A cable at least as large as one of the incoming power lines to the generator shall be provided for grounding the generator shell. This cable shall be permanently fastened on some part of the generator and shall be grounded in an approved manner.

(b) In electric boilers of the submerged-electrode type, the water gage glass shall be located to indicate the water levels both at start-up and under maximum load conditions as established by the manufacturer.

(c) Electric boilers of the resistance-element type shall have at least one gage glass. The lowest visible water level in the gage glass shall be at least 1 inch (25 mm) above the lowest permissible water level as determined by the manufacturer. Each boiler of this type shall be equipped with an automatic low-water cutoff to cut off the power supply before the surface of the water falls below the visible level in the gage glass.

(d) Tubular gage glasses on electric boilers shall be equipped with protective rods or shields.

(e) The minimum relieving capacity for pressure relief valves on electric boilers shall be 3 1/2 pounds (24 kilopascals) of steam per hour per kilowatt input.

#### §65.606. Atmospheric Vents, Gas Vents, Bleed or Relief Lines for Power Boilers, Unfired Steam Boilers and Process Steam Generators with Supplemental Firing.

(a) Gas pressure regulators not incorporating integral vent limiters, and all other gas train components requiring atmospheric air pressure to balance a diaphragm or other similar device, shall be provided with a connection for a vent line.

(1) The vent lines in subsection (a) shall be:

(A) sized in accordance with the component manufacturer's instructions; and

(B) at least the same size as the vent outlet of the device.

(2) Where there is more than one gas pressure regulator at a location, each gas pressure regulator shall have a separate vent. The vent lines may be manifolded in accordance with accepted engineering practices to minimize back pressure in the event of a diaphragm failure (see subsections (c) and (d)).

(3) A gas pressure regulator shall not be vented into the boiler flue or exhaust system.

(b) Gas pressure relief valves may discharge into common manifolding only with other gas vent, bleed, or relief lines. When manifolded, the common vent line shall have a cross-sectional area not less than the area of the largest vent line plus 50% of the areas of the additional vent lines.

(c) Atmospheric vent lines, when manifolded, shall be connected into a common atmospheric vent line, having a cross-sectional area not less than the area of the largest vent line, plus 50% of the areas of the additional vent lines.

(d) Atmospheric vent lines shall not be connected to any common or manifolded gas vent, bleed, or relief lines.

(e) All vent and relief lines shall be:

(1) piped to the outdoors at a safe point of discharge, so there is no possibility of discharged gas being drawn into the air intake, ventilating system, or openings of any structure or piece of equipment;

(2) shall extend sufficiently above any structure, so that gaseous discharge does not present a fire hazard; and

(3) a means shall be provided at the terminating point to prevent blockage of the line by foreign material, moisture, or insects.

#### §65.607. Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators.

(a) Safety valves and pressure relief valves.

(1) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(2) Each boiler shall have at least one safety valve and, if it has more than 500 square feet (47 square meters) of water heating surface or has electric power input more than 1,100 kilowatts, it shall have two or more safety valves. These valves shall be "V" stamped per ASME Code.

(3) Safety valves or pressure relief valves shall be connected so as to stand in the upright position, with spindle vertical. The

opening or connection between the boiler and the safety valve or pressure relief valve shall have at least the area of the valve inlet.

(4) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as practicable to the boiler without unnecessary intervening pipe or fittings.

(5) Except for changeover valves as defined in §65.1(13), other valve(s) shall not be placed:

(A) between the required safety valve or pressure relief valve or valves and the boiler; or

(B) in the discharge pipe between the safety valve or pressure relief valve or valves and the atmosphere.

(6) When a discharge pipe is used, it shall be:

(A) at least full size of the safety valve discharge; and

(B) fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge pipe.

(7) When an elbow is placed on a safety valve discharge pipe:

(A) it shall be located close to the safety valve outlet; and

(B) the discharge pipe shall be securely anchored and supported.

(8) In the event multiple safety valves discharge into a common pipe, the discharge pipe shall be sized in accordance with ASME Code, Section I, PG-71.

(9) All safety valve or pressure relief valve discharges shall be located or piped to a safe point of discharge, clear from walkways or platforms.

(10) If a muffler is used on a pressure relief valve, it shall have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve. Mufflers shall not be used on High-Temperature Hot Water Boilers.

(11) The safety valve capacity of each boiler must allow the safety valve or valves to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the MAWP. For forced-flow steam generators with no fixed steam and waterline, power-actuated relieving valves may be used in accordance with ASME Code, Section I, PG-67.

(12) One or more safety valves on every drum type boiler shall be set at or below the MAWP. The remaining valve (s) may be set within a range of 3.0% above the MAWP, but the range of setting of all the drum mounted pressure relief valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

(13) When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(14) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus(not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boilers.

(b) Feedwater supply.

(1) Each boiler shall have a feedwater supply, which will permit it to be fed at any time while under pressure, except for automatically fired miniature boilers that meet all of the following criteria:

(A) the boiler is "M" stamped per ASME Code, Section I;

(B) the boiler is designed to be fed manually;

(C) the boiler is provided with a means to prevent cold water from entering into a hot boiler; and

(D) the boiler is equipped with a warning sign visible to the operator not to introduce cold feedwater into a hot boiler.

(2) A boiler having more than 500 square feet (47 square meters) of water heating surface, shall have at least two means of feeding, one of which should be a pump, injector, or inspirator. A source of feed directly from water mains at a pressure of at least 6.0% greater than the set pressure of the safety valve with the highest setting may be considered as one of the means of feeding. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water, provided means are furnished for the immediate shut-off of heat input if the feedwater is interrupted.

(3) Feedwater shall not be discharged close to riveted joints of shell or furnace sheets or directly against surfaces exposed to products of combustion or to direct radiation from the fire.

(4) Feedwater piping to the boiler shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a stop valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(5) In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between boiler and the check valve, and both shall be located as close to the boiler as is practicable. It is recommended that no stop valve be placed in the supply and return pipe connections of a single boiler installation.

(6) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit (49 degrees Celsius), to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit (102 degrees Celsius), so that dissolved gases may be thoroughly released.

(c) Water level indicators.

(1) Each boiler, except forced-flow steam generators with no fixed steam and waterline, and high-temperature water boilers of the forced circulation type that have no steam and waterline shall have at least one water gage glass.

(2) Except for electric boilers of the electrode type, boilers with a MAWP over 400 psig three (3) megapascals shall be provided with two water gage glasses, which may be connected to a single water column or connected directly to the drum.

(3) Two independent remote level indicators may be provided instead of one of the two required gage glasses for boiler drum water level indication, when the MAWP is above 400 psig three (3) megapascals. When both remote level indicators are in reliable operation, the remaining gage glass may be shut off, but shall be maintained in serviceable condition.

(4) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(5) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (15 mm).

(6) No outlet connections, except for damper regulator, feedwater regulator, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water there from, shall be placed in the pipes connecting a water column or gage glass to a boiler.

(7) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (20 mm). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (20 mm), and shall be piped to a safe point of discharge.

(8) Connections from the boiler to remote level indicators shall be at least 3/4 inch nominal pipe size (20 mm), to and including the isolation valve, and at least 1/2 inch (13 mm) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(d) Low-water fuel cutoff and water feeding devices.

(1) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved low-water fuel cutoffs.

(A) These devices shall be installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus.

(B) In boilers with a fixed water line, the low-water fuel cutoff devices shall be tested regularly by lowering the water level sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation. Boilers that do not have a fixed water line shall be equipped with a flow sensing device, thermal couple or expansion ring that is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(C) The low-water cutoff shall be rated for a pressure and temperature equal to or greater than the MAWP and temperature of the boiler.

(D) For High-Temperature Water Boilers requiring forced flow circulation, an approved flow sensing device shall be installed on the outlet, as close to the boiler as possible.

(2) When a low-water fuel cutoff and feedwater pump control is combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(3) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the lower-water fuel cutoff device.

(4) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(e) Pressure gages.

(1) Each boiler shall have a pressure gage that is easily readable.

(A) The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure.

(B) The pressure gage shall be connected to the steam space, to the water column, or its steam connection.

(C) A valve or cock shall be placed in the gage connection adjacent to the gage.

(D) An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position.

(E) No other shutoff valves shall be located between the gage and the boiler.

(F) The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down.

(G) For a steam boiler, the gage or connection shall contain a siphon or equivalent device which will develop and maintain a water seal that will prevent steam from entering the gage tube.

(2) Each boiler must have a valved connection at least 1/4 inch nominal pipe size (6 mm) connected to the steam space for the exclusive purpose of attaching a test gage when the boiler is in service to test the accuracy of the pressure gage.

(f) Stop valves.

(1) Each steam outlet from a boiler (except safety valve connections) shall be fitted with a stop valve located as close as practicable to the boiler.

(2) When a stop valve is located that allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the boiler or its setting.

(3) When boilers provided with manholes or other similar opening that permits access for human occupancy and that are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves, with an ample drain between them. The discharge of the drain shall be visible to the operator while manipulating the valves and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler), and a second valve of the outside-screw-and-yoke type.

(g) Blowdown connection.

(1) The construction of the setting around each blowdown pipe shall permit free expansion and contraction. These setting openings must be sealed without restricting the movement of the blowdown piping.

(2) All blowdown piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material, and constructed to allow the piping to be inspected readily or easily.

(3) Each boiler shall have a blowdown pipe, fitted with a valve or cock, in direct connection with the lowest water space. The piping shall be run full size without the use of a reducer or bushings and shall not be galvanized. Cocks shall be of gland or guard type and suitable for the pressure allowed. The use of globe valves shall be in accordance with ASME code.

(4) When the MAWP exceeds 100 psig (700 kilopascals), the piping shall be at least schedule 80 steel and shall not be galvanized. Each blowdown pipe shall be provided with two valves or a valve and cock, such valves and cocks shall be adequate for design conditions of the boiler.

(5) All fittings between the boiler and blowdown valve shall be of steel or extra-heavy malleable iron. In case of renewal of blowdown pipe or fittings, they shall be installed in accordance with the requirements of the applicable section of the ASME code.

(6) It is recommended that blowdown tanks be designed, constructed, and installed in accordance with National Board recommended rules for boiler blowoff equipment.

(h) Boiler external piping. All boiler external piping, as referenced in the ASME code, shall be examined for compliance to the boiler's code of construction and shall be documented in the appropriate block on the inspection report.

(i) Provisions for thermal expansion for High-Temperature Hot Water Boilers.

(1) An airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed. Expansion tanks shall be constructed in accordance with the ASME Code, Section VIII, Division 1, and the pressure and temperature ratings of the tank shall be equal to or greater than the pressure and temperature ratings of the system pressure. A pressure relief valve shall be installed with a set pressure at or below the MAWP of the expansion tank. Alternately the boiler pressure relief valve may be used provided the expansion tank's MAWP is equal to or lower than the set pressure of the pressure relief valve.

(2) Provisions shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.

(3) If the expansion tank was originally equipped with a sight glass, the sight glass and sight glass valves shall be in working condition at all times, and the water level shall be maintained as per the manufacturer's recommendations.

§65.608. Unfired Steam Boilers.

(a) Unfired steam boilers referred to in §65.2 are shown in §65.615, Exhibits 2 and 3.

(b) Unfired steam boilers shall be constructed in accordance with ASME Code, Section I, or ASME Code, Section VIII, Division 1.

(1) Unfired steam boilers constructed to ASME Code, Section VIII, Division 1, shall meet jurisdictional limits established in §65.615, Exhibit 2.

(2) Unfired steam boilers constructed to ASME Code, Section I, shall meet jurisdictional limits established in §65.615, Exhibit 3.

(c) Safety valves and pressure relief valves.

(1) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(2) Each ASME Code, Section VIII, Division 1, unfired steam boiler shall:

(A) have all pressure relief valves fabricated in accordance with ASME Code, Section VIII, Division 1 or Section I; and

(B) have at least one pressure relief valve.

(C) Isolation valves may be installed between the unfired steam boiler and the safety valve in accordance with §65.615, Exhibit 2.

(D) Full-area stop valves may be installed on the inlet side of a safety valve in accordance with §65.615, Exhibit 2. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves shall be car sealed or locked in the open position.

(E) One or more safety valves on every unfired steam boiler shall be set at or below the MAWP. The remaining valves, if any, shall be set within the range specified and have the capacity required by the applicable section of the ASME Code.

(3) Each ASME Code, Section I, unfired steam boiler shall have one safety valve and if it has more than 500 square feet (47 square meters) of water heating surface, it shall have two or more safety valves.

(A) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as practicable to the boiler without unnecessary intervening pipe or fittings.

(B) Valves, except a changeover valve, shall not be placed between the required safety valve or pressure relief valve or valves and the boiler nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) The safety valve capacity of each unfired steam boiler must allow the safety valve or valves to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the MAWP.

(4) When a discharge pipe open to the atmosphere is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge piping. The drain or drains shall be piped to a safe point of discharge. When an elbow or fitting is installed on the discharge pipe it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. All safety valve discharges shall be located or piped to a safe point of discharge clear from walkways or platforms. If a muffler is used on a pressure relief valve, it shall have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve.

(5) When two or more unfired steam boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(6) Safety valve and pressure relief valve mountings.

(A) For ASME Code, Section I installations, pressure relief valves shall be connected so as to stand in the upright position, with spindle vertical. The opening or connection between the boiler and the pressure relief valve shall have at least the area of the valve inlet.

(B) For ASME Code, Section VIII, Division 1 installations, pressure relief valves normally should be installed in the upright position, with spindle vertical. Where space or piping configurations preclude such an installation, the valve may be installed in other than the vertical position, provided that:

(i) the valve design is satisfactory for such position;

(ii) the media is such that material will not accumulate at the inlet of the valve; and

(iii) drainage of the discharge side of the valve body and discharge piping is adequate.

(d) Feedwater supply.

(1) Each unfired steam boiler shall have a feedwater supply which will permit it to be fed at any time while under pressure.

(2) Feedwater piping to the unfired steam boiler constructed to ASME Code, Section I, shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source there shall also be a stop valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(3) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit (49 degrees Celsius), to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit (102 degrees Celsius), so that dissolved gases may be thoroughly released.

(e) Water level indicators.

(1) ASME Code, Section I, unfired steam boilers with a MAWP of 400 psig three (3) megapascals or less, shall have at least one gage glass. For a MAWP over 400 psig three (3) megapascals, shall have two required gage glasses. When two gage glasses are required, one of the gage glasses may be replaced by two independent remote level indicators that are maintained in simultaneous operation while the boiler is in service.

(2) Each steam drum of an ASME Code, Section VIII, Division 1 unfired steam boiler, irrespective of pressure and temperature, shall be provided with one direct reading water level indicator (water gage glass), or two independent remote level indicators, that are maintained in simultaneous operation while the boiler is in service.

(3) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(4) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (15 mm).

(5) No outlet connections, except for feedwater regulators, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed in the pipes connecting a water column or gage glass to a boiler.

(6) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (20 mm). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (20 mm) and shall be piped to a safe point of discharge.

(7) Connections from the unfired steam boiler to remote level indicators shall be at least 3/4 inch nominal pipe size (20 mm), to and including the isolation valve, and at least 1/2 inch (13 mm) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(f) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner/operator is responsible for the design and installation of any low water protection devices as required to prevent damage to the unfired steam boiler. All installed low water cutoffs, alarms and feeding devices shall be designed for pressure and temperature equal or greater than the MAWP of the unfired steam boiler.

(2) When a low-water cutoff, and/or alarm is housed in either the water column or a separate chamber, it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column

is blown down, the water level in it will be lowered sufficiently to activate the low-water cutoff and/or alarm device.

(3) Should an unfired steam boiler be installed in a system without a local and constant attendant, and it is not a fail-safe design, it shall be provided with a low-water cutoff as required for power boilers.

(g) Pressure gages.

(1) Each unfired steam boiler shall have a pressure gage that is easily readable. The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure. The pressure gage shall be connected to the steam space, to the water column, or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves shall be located between the gage and the boiler. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down. The gage or connection shall contain a siphon or equivalent device which will develop and maintain a water seal that will prevent steam from entering the gage tube.

(2) Each unfired steam boiler, must have a valved connection at least 1/4 inch nominal pipe size (8 mm), connected to the steam space for the exclusive purpose of attaching a test gage when the boiler is in service to test the accuracy of the pressure gage.

(h) Stop valves.

(1) Each steam outlet from an ASME Code, Section I unfired steam boiler, shall be fitted with a stop valve located as close as practicable to the boiler.

(2) When a stop valve is located such that it allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the boiler or its setting.

(3) When boilers that are provided with manholes or other similar openings that permit access for human occupancy are connected to a common steam main, the owner or operator shall ensure that the boiler to which entry is being made is completely isolated from the steam main. This may be accomplished with the use of two stop valves with an ample drain between them, with a full isolation blind or removal of piping such that the boiler is no longer connected to the steam main.

§65.609. Process Steam Generators.

(a) Some process steam generators referred to in §65.2, are shown in §65.615, Exhibits 4 and 5.

(b) The steam collection or liberation drums of a process steam generator shall be constructed in accordance with the American Society of Mechanical Engineers (ASME) Section VIII, Division 1, Division 2, or Division 3. As an alternate, the process steam generator may be constructed to ASME Code, Section I.

(c) When the owner/operator elects to construct a process steam generator to ASME Code, Section I, the limits as shown in §65.615, Exhibits 4 and 5, are as defined in the rules of ASME Section I.

(d) Safety valves and pressure relief valves.

(1) The use of weighted-lever safety valves or safety valves having either the seat or disk of cast iron is prohibited.

(2) Each ASME Code, Section VIII, Division 1 or Division 2, steam collection or liberation drum of a process steam generator, shall have at least one safety valve designed for steam service in

accordance with applicable ASME Code of Construction. The valve body drain shall be open and piped to a safe point of discharge.

(A) The installation of full-area stop valves between the steam collection or liberation drum of a process steam generator and the safety valve is permitted as depicted in §65.615, Exhibits 4 and 5. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves shall be car sealed or locked in the open position.

(B) One or more safety valves on every steam collection or liberation drum of a process steam generator shall be set at or below the MAWP. The remaining valves, if any, shall be set within the range specified and have the capacity required by the applicable ASME code.

(3) Each ASME Code, Section I, process steam generator, shall have one safety valve and if it has more than 500 square feet (47 square meters) of water heating surface, it shall have two or more safety valves. ASME Code, Section I, safety valves shall be applicably stamped.

(A) The valve or valves shall be connected to the steam collection or liberation drum of the process steam generator, independent of any other steam connection, and attached as close as practicable to the steam collection or liberation drum without unnecessary intervening pipe or fittings.

(B) No valves of any description shall be placed between the required safety valve or pressure relief valve or valves and the steam collection or liberation drum, nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) The safety valve capacity of each process steam generator, must allow the safety valve or valves to discharge all the steam that can be generated by the process steam generator without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the MAWP.

(4) When a discharge pipe open to the atmosphere is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge piping. The drain or drains shall be piped to a safe point of discharge. When an elbow or fitting is installed on the discharge pipe it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. All safety valve discharges shall be located or piped to a safe point of discharge clear from walkways or platforms. If a muffler is used on a pressure relief valve, it shall have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve.

(5) When two or more steam collection or liberation drums of process steam generators, operating at different pressures and safety valve settings are interconnected, the lower pressure process steam generator(s) or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all of process steam generators.

(6) Safety valve and pressure relief valve mountings.

(A) For ASME Code, Section I installations, safety valves or pressure relief valves shall be connected so as to stand in the upright position, with spindle vertical. The opening or connection between the boiler and the safety valve or pressure relief valve shall have at least the area of the valve inlet.

(B) For ASME Code, Section VIII, Division 1 or Division 2 installations, safety valves or pressure relief valves normally should be installed in the upright position, with spindle vertical. Where space or piping configurations preclude such an installation, the valve may be installed in other than the vertical position, provided that:

(i) the valve design is satisfactory for such position;

(ii) the media is such that material will not accumulate at the inlet of the valve; and

(iii) drainage of the discharge side of the valve body and discharge piping is adequate.

(e) Feedwater supply.

(1) Each steam collection or liberation drum of a process steam generator shall have a feedwater supply which will permit it to be fed at any time while under pressure.

(2) Feedwater piping to a process steam generator constructed to ASME Code, Section I, shall be provided with a check valve near the process steam generator and a stop valve or cock between the check valve and the process steam generator. When two or more process steam generators are fed from a common source there shall also be a stop valve on the branch to each process steam generator between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(3) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit (49 degrees Celsius), to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit (102 degrees Celsius), so that dissolved gases may be thoroughly released.

(f) Water level indicators.

(1) ASME Code, Section I, process steam generators with a MAWP of 400 psig three (3) megapascals or less shall have at least one gage glass. For a MAWP over 400 psig three (3) megapascals, shall have two required gage glasses. When two gage glasses are required, one of the gage glasses may be replaced by two independent remote level indicators that are maintained in simultaneous operation while the process steam generator is in service.

(2) Each steam collection or liberation drum of an ASME Code, Section VIII, Division 1, Division 2, or Division 3 process steam generator, irrespective of pressure and temperature, as shown in §65.615, Exhibits 4 and 5, shall be provided with one direct reading water level indicator (water gage glass) or two independent remote level indicators that are maintained in simultaneous operation while the process steam generator is in service.

(3) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(4) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (15 mm).

(5) No outlet connections, except for feedwater regulator, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed on the pipes connecting a water column or gage glass on the steam collection or liberation drum of a process steam generator.

(6) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (20 mm). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (20 mm) and shall be piped to a safe point of discharge.

(7) Connections from the steam collection or liberation drum of a process steam generator to remote level indicators shall be at least 3/4 inch nominal pipe size (20 mm), to and including the

isolation valve, and at least 1/2 inch (13 mm) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(g) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner/operator is responsible for the design and installation of any low water protection devices as required, to prevent damage to the process steam generator. All installed low water cutoffs, alarms and feeding devices, shall be designed for a pressure and temperature equal to or greater than the MAWP and temperature of the process steam generator steam collection or liberation drum.

(2) When a low-water cutoff, and/or alarm is housed in either the water column or a separate chamber, it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water cutoff and/or alarm device.

(3) Should a steam collection or liberation drum of a process steam generator be installed in a system without a local and constant attendant, and it is not a failsafe design, it shall be provided with a low-water cutoff as required for power boilers.

(h) Pressure gages.

(1) Each steam collection or liberation drum of a process steam generator shall have a pressure-indicating device that is easily readable from the primary operating station. The range shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure. The pressure-indicating device shall be connected to the steam space, or to the water column, or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the steam collection or liberation drum of the process steam generator. No other shutoff valves shall be located between the gage and the steam collection or liberation drum of the process steam generator. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down or flushing. The pressure-indicating device shall be provided with a siphon or equivalent device, which will develop and maintain a water seal that will prevent steam from entering the pressure-indicating device.

(2) Each steam collection or liberation drum of a process steam generator, must have a valved connection at least 1/4 inch nominal pipe size (8 mm), connected to the steam space for the purpose of attaching a test gage when the process steam generator is in service, to test the accuracy of the pressure-indicating device.

(i) Stop valves.

(1) Each steam outlet from an ASME Code, Section I, process steam generator, shall be fitted with a stop valve located as close as practicable to the steam collection or liberation drum of the process steam generator.

(2) When a stop valve is located that allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the process steam generator or its setting.

(3) When boilers that are provided with manholes or other similar openings that permit access for human occupancy are connected to a common steam main, the owner or operator shall ensure that the boiler to which entry is being made is completely isolated from the steam main. This may be accomplished with the use of two stop valves with an ample drain between them, with a full isolation blind or re-

moval of piping such that the boiler is no longer connected to the steam main.

§65.610. Nuclear Boilers.

(a) Nuclear boilers shall be inspected in-service by the owner or operator, in accordance with ASME Boiler and Pressure Vessel Code, Section XI.

(b) The owner or operator shall engage the services of an inspection agency, qualified in accordance with American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) N626.1, licensed by the Texas State Board of Insurance, and authorized to provide inspection services by the department.

(c) The department shall assign, after receipt of the completed N-3 owner's data report, a state serial number to the nuclear boiler.

(1) All N-5 data reports for piping systems and N-3 owner's data reports shall be filed with the department.

(2) National Board registration described in §65.200 is not required.

(d) The certificate of operation will be issued after receipt of the preservice inspection summary report and prior to commercial service. The summary report shall include all activities required by ASME Code, Section XI, except for the results of examinations or test of items obtainable only during power ascension testing. These items shall be filed as an amendment to the summary report within sixty (60) days of the completion of the power ascension testing. The items identified to be submitted in the amendment, shall be agreed upon by mutual consent as provided for in subsection (k), prior to power ascension testing and issuance of the certificate of operation.

(e) The in-service inspection plan shall be submitted to the department by the owner or operator prior to commercial service.

(f) The department shall review the in-service inspection plan and select those items necessary to verify compliance with Texas Health and Safety Code, Chapter 755 and ASME Code, Section XI. Items selected for verification shall be from within the verification boundary of the nuclear boiler consisting of the components and component supports of the systems illustrated in §65.615, Exhibit 6.

(g) The department shall, upon reasonable notification by the owner or operator, of in-service inspection activities to be accomplished during any outage on items selected in subsection (h), coordinate with the owner or operator the verification activities.

(h) The chief inspector shall review and maintain summary reports of the in-service inspections that are submitted by the owner or operator in accordance with ASME Code, Section XI.

(i) Repairs and/or replacements shall conform to the requirements of ASME Code, Section XI.

(j) The owner or operator shall, in case of serious accidents to a nuclear boiler involving a breach of the pressure boundary integrity of components included in §65.615, Exhibit 6, immediately notify the chief inspector by the most expeditious means available and report the nature of the accident. The chief inspector shall assess the nature of the accident, formulate inspection activities as required, and coordinate these activities with the owner or operator and as necessary with other state and federal agencies having jurisdiction.

(k) If exceptions or situations arise, which are not specifically addressed in this section or other sections of the boiler law and rules, or in ASME Code, Section XI, the owner or operator shall contact the chief inspector for guidance or interpretation.

§65.611. Heating Boilers.



(a) Steam Heating Boilers.

(1) Safety valves.

(A) Each steam boiler shall have one or more officially rated safety valves, that are identified with applicable ASME Certification Mark of the spring pop type, adjusted and sealed to discharge at a pressure not to exceed 15 psig (103 kilopascals). Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the MAWP of the boiler. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole shall not be less than 1/4 inch (6 mm) in diameter.

(B) Each safety valve 3/4 inch nominal pipe size (20 mm) or over, used on a steam boiler, shall have a substantial lifting device, which will positively lift the disk from its seat at least 1/16 inch (1.6 mm), when there is no pressure on the boiler. The seats and disks shall be of suitable material to resist corrosion.

(C) No safety valve for a steam boiler shall be smaller than 1/2 inch nominal pipe size (15 mm). No safety valve shall be larger than 4 1/2 inches nominal pipe size (15 mm). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter.

(D) The minimum relieving capacity of valve or valves shall be governed by the capacity marking on the boiler.

(E) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum Btu output at the boiler nozzle obtained by the firing of any fuel, for which the unit is installed by 1,000, or shall be determined on the basis of the pounds of steam generated per hour, per square foot of boiler heating surface as given in §65.615, Exhibit 7. For cast iron boilers, the minimum valve capacity shall be determined by the maximum output method. In every case, the safety valve capacity for each steam boiler shall be such that with the fuel burning equipment installed, and operated at maximum capacity, the pressure cannot rise more than 5psig (35 kilopascals) above the MAWP.

(F) Safety valve piping. No valve shall be placed between the safety valve and the boiler or on the discharge pipe between the safety valve and the atmosphere. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety valve or pressure relief valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve. If a muffler is used on a pressure relief valve, it shall have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve.

(G) Safety valves and pressure relief valves shall be installed on the boiler with spindles positioned vertically. The opening or connection between the boiler and any safety valve or pressure relief valve shall have at least the area of the valve inlet.

(2) Feedwater connections.

(A) Feedwater or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater or water treatment shall not be introduced through openings or connections pro-

vided for inspection or cleaning, safety valve, surface blowoff, water column, water gage glass, pressure gage, or temperature gage.

(B) Feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

(3) Low-water fuel cutoffs and water feeding devices.

(A) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved automatic low-water fuel cutoffs installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus. The low-water fuel cutoff devices shall be tested regularly by lowering the water level in the boiler sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation.

(B) The MAWP of all low water fuel cutoff devices shall be set at or above the boiler stamped MAWP.

(C) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(D) When a low-water fuel cutoff is housed in either the water column or a separate chamber, it shall be provided with a blowdown pipe and valve, not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(E) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(4) Pressure gages.

(A) Each steam heating boiler shall have a pressure gage connected to the device exterior to the boiler. The gage shall be of sufficient capacity to keep the gage tube filled with water and arranged so that the gage cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(B) The scale on the dial of a steam heating boiler pressure gage shall be graduated to not less than 30 psig (207kilopascals) nor more than 60 psig (414 kilopascals). The travel of the pointer from zero to 30 psig (207 kilopascals) pressure shall be at least three inches.

(5) Stop valves.

(A) Single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam heating boiler, there shall be one used in the return pipe connection.

(B) Supply and return line. Each supply and return line to a steam heating boiler, which may be entered while adjacent boilers are in operation, shall be fitted with either two stop valves with ample drain between or a stop valve and figure 8 blank. The blank shall be installed between the stop valve and the boiler.

(C) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow

opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(6) Bottom blowdown or drain valve.

(A) Bottom blowoff valve. Each steam heating boiler shall have a bottom blowoff connection fitted with a valve or cock, connected to the lowest water space practicable with a minimum size as shown in §65.615, Exhibit 8. The discharge piping shall be full size to the point of discharge. Boilers having a capacity of 25 gallons (95 liters) or less are exempt from these requirements.

(B) Drain valve. Each boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (20 mm). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(C) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(7) Water gage glasses.

(A) Each steam heating boiler shall have one or more water gage glasses attached to the water column or boiler, by means of valved fittings not less than 1/2 inch nominal pipe size (15 mm). The lower fitting shall have a drain valve of the straightway type, with opening not less than 1/4 inch (8 mm) diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure.

(B) Transparent material, other than glass, may be used for the water gage, provided that the material will remain transparent and has proved suitable for the pressure, temperature, and corrosive conditions encountered in service.

(8) Piping, Fittings and Valves.

(A) All piping, fittings and valves on the steam line, shall have a pressure rating equal to or greater than the MAWP of the boiler and a temperature rating of no less than 250 degrees Fahrenheit.

(B) All piping, fittings and valves other than the steam line, shall have a minimum pressure and temperature rating equal to or greater than the maximum expected pressure and temperature that may be reached.

(b) Hot Water Heating Boilers.

(1) Pressure relief valves.

(A) Each hot water heating boiler shall have at least one officially rated pressure relief valve, of the automatic reseating type, identified with the "V" or "HV" ASME Code Symbol, and set to relieve at or below the MAWP of the boiler.

(B) When more than one pressure relief valve is used on a hot water heating boiler, the additional valve or valves shall be officially rated and may have a set pressure within a range not to exceed 6 psig (42 kilopascals) above the MAWP of the boiler up to and including 60 psig (414 kilopascals), and 5.0% for those having a MAWP exceeding 60 psig (414 kilopascals).

(C) Pressure relief valves shall be spring loaded and shall be set and sealed, so that they cannot be reset without breaking the seal. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain

hole or holes shall be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves of 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole shall not be less than 1/4 inch (6 mm) diameter.

(D) Each pressure relief valve shall have a substantial lifting device, which will positively lift the disk from its seat at least 1/16 inch (1.6 mm) when there is no pressure on the boiler.

(E) Seats and disks of pressure relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.

(F) No pressure relief valve shall be smaller than 3/4 inch nominal pipe size (20 mm) nor larger than 4 1/2 inch nominal pipe size (115 mm) except that boilers having a heat input not greater than 15,000 Btu/hr (4.4 kilowatts) may be equipped with a rated pressure relief valve of 1/2 inch nominal pipe size (15 mm). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch (6 mm) diameter or its equivalent area.

(G) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in Btu at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000 or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in §65.615, Exhibit 7. For cast iron boilers the minimum valve capacity shall be determined by the maximum output method.

(H) In every case, the pressure relief valve capacity for each boiler with a single pressure relief valve shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than 10% above the MAWP. When more than one pressure relief valve is used, the overpressure shall be limited to 10% above the set pressure of the highest set valve.

(I) Pressure relief valve piping. No valve shall be placed between the pressure relief valve and the boiler or on the discharge pipe between the pressure relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the pressure relief valve or in the discharge pipe. When an elbow is placed on the pressure relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve. Mufflers shall not be used on hot water heating boilers.

(J) Pressure relief valves and safety valves shall be installed on the boiler with spindles positioned vertically. The opening or connection between the boiler and any pressure relief valve or safety valve shall have at least the area of the valve inlet.

(2) Makeup water connections.

(A) Makeup water or water treatment shall be introduced into a boiler through the return piping system or through an independent makeup water connection, which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, pressure relief valve, pressure gage, or temperature gage.

(B) Makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler, or between the check valve and the piping system.

(3) Low-water fuel cutoffs and water feeding devices.

(A) All automatically fired hot water heating boiler shall have an automatic low-water fuel cutoff that has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to a level below the normal waterline established.

(B) The MAWP of all low water fuel cutoff and flow sensing devices shall be set at or above the boiler stamped MAWP.

(C) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(D) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(E) As there is no normal water line to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.

(F) All automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(G) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(4) Pressure and Temperature gages.

(A) Each hot water heating boiler shall have a pressure or altitude gage connected to it or to its flow connection, which cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(B) The scale on the dial of the pressure or altitude gage shall be graduated to not less than 1 1/2 nor more than 3 1/2 times the pressure at which the pressure relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

(C) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than 1 inch nominal pipe size (25 mm).

(D) Each hot water heating boiler shall have a thermometer or temperature gage located and connected, that it shall be easily readable, and shall be located so that it shall at all times indicate the temperature of the water in the boiler at or near the outlet. If placed on the outlet piping, it must be located between the stop valve and the boiler.

(5) Stop valves.

(A) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a

single hot water heating boiler installation to permit draining the boiler without emptying the system.

(B) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.

(C) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(6) Drain valve.

(A) Each hot water heating boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (20 mm). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(B) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(7) Provisions for thermal expansion.

(A) Heating systems with open expansion tank - An indoor overflow from the upper portion of the expansion tank shall be provided in addition to an open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture or basement.

(B) Closed heating system.

(i) If the system is of closed type, an airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed.

(ii) If the system is designed for a working pressure of 30 psig (207 kilopascals) or less, the tank shall be suitably designed for a minimum hydrostatic pressure of 75 psig (520 kilopascals).

(iii) Expansion tanks for systems designed to operate above 30 psig (207 kilopascals) shall be constructed in accordance with the ASME Code, Section VIII, Division 1, or Section X, and the pressure and temperature ratings of the tank shall be equal to or greater than the pressure and temperature ratings of the system pressure. A pressure relief valve shall be installed with a set pressure at or below the MAWP of the expansion tank. Alternately the boiler pressure relief valve may be used provided the expansion tank's MAWP is equal to or lower than the set pressure of the pressure relief valve.

(iv) Provisions shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.

(v) If the expansion tank was originally equipped with a sight glass, the sight glass and sight glass valves shall be in working condition at all times, and the water level shall be maintained as per the manufacturer's recommendations.

(8) Piping, Fittings and Valves.

(A) All piping, fittings and valves on the boiler supply and return lines shall have a pressure rating equal to or greater than

the MAWP of the boiler and a temperature rating of no less than 250 degrees Fahrenheit.

(B) All piping, fittings and valves other than the boiler supply and return lines shall have a minimum pressure and temperature rating equal to or greater than the maximum expected pressure and temperature that may be reached.

(c) Hot Water Supply Boilers.

(1) Pressure relief valves.

(A) Each hot water supply boiler shall have at least one officially rated pressure relief valve, of the automatic reseating type, identified with the "V" or "HV" ASME Code Symbol, and set to relieve at or below the MAWP of the boiler.

(B) When more than one pressure relief valve is used on a hot water supply boiler, the additional valve or valves shall be officially rated and may have a set pressure within a range not to exceed 6 psig (42 kilopascals) above the MAWP of the boiler up to and including 60 psig (414 kilopascals), and 5.0% for those having a MAWP exceeding 60 psig (414 kilopascals).

(C) Pressure relief valves shall be spring loaded. Pressure relief valves shall be set and sealed so that they cannot be reset without breaking the seal. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves of 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole shall not be less than 1/4 inch (6 mm) diameter.

(D) Each pressure relief valve shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch (1.6 mm) when there is no pressure on the boiler.

(E) Seats and disks of pressure relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.

(F) No pressure relief valve shall be smaller than 3/4 inch nominal pipe size (20 mm) nor larger than 4 1/2 inch nominal pipe size (115 mm) except that boilers having a heat input not greater than 15,000 Btu/hr (4.4 kilowatts) may be equipped with a rated pressure relief valve of 1/2 inch nominal pipe size (15 mm). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch (6 mm) diameter or its equivalent area.

(G) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in Btu at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in §65.615, Exhibit 7. For cast iron boilers, the minimum valve capacity shall be determined by the maximum output method.

(H) In every case, the pressure relief valve capacity for each boiler with a single pressure relief valve shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than 10% above the MAWP. When more than one pressure relief valve is used, the overpressure shall be limited to 10% above the set pressure of the highest set valve.

(I) Pressure relief valve piping. No valve shall be placed between the pressure relief valve and the boiler nor on the discharge pipe between the pressure relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the pressure relief valve or in the discharge pipe. When an elbow is placed on the pressure relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve. Mufflers shall not be used on hot water supply boilers.

(J) Pressure relief valves and safety valves shall be installed on the boiler with spindles positioned vertically. The opening or connection between the boiler and any pressure relief valve or safety valve shall have at least the area of the valve inlet.

(2) Makeup water connections.

(A) Makeup water or water treatment shall be introduced into a boiler through the return piping system or through an independent makeup water connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, pressure relief valve, pressure gage, or temperature gage.

(B) Makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the piping system.

(3) Low-water fuel cutoffs and water feeding devices.

(A) All automatically fired hot water supply boiler shall have an automatic low-water fuel cutoff that has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to a level below the normal waterline established.

(B) The MAWP of all low water fuel cutoff and flow sensing devices shall be set at or above the boiler stamped MAWP.

(C) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(D) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (20 mm). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(E) As there is no normal water line to be maintained in a hot water supply boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.

(F) All automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(G) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(4) Pressure and Temperature gages.

(A) Each hot water supply boiler shall have a pressure or altitude gage connected to it or to its flow connection which cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(B) The scale on the dial of the pressure or altitude gage shall be graduated to not less than 1 1/2 nor more than 3 1/2 times the pressure at which the pressure relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

(C) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than 1 inch nominal pipe size (25 mm).

(D) Each hot water supply boiler shall have a thermometer or temperature gage located and connected so that it shall be easily readable, and shall be located so that it shall at all times indicate the temperature of the water in the boiler at or near the outlet. If placed on the outlet piping, it must be located between the stop valve and the boiler.

(5) Stop valves.

(A) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a single hot water supply boiler installation to permit draining the boiler without emptying the system.

(B) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.

(C) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(6) Drain valve.

(A) Each hot water supply boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (20 mm). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(B) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(7) Provisions for thermal expansion.

(A) If a system is equipped with a check valve or pressure reducing valve in the cold water inlet line, consideration should be given to the installation of an airtight expansion tank or other suitable air cushion. Otherwise, due to the thermal expansion of the water, the pressure relief valve may lift periodically.

(B) If an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1

or Section X, and the pressure and temperature ratings of the tank shall be equal to or greater than the pressure and temperature ratings of the system pressure. Except for pre-pressurized tanks, which should be installed on the cold water side, provisions shall be made for draining the tank without emptying the system.

(C) If the expansion tank was originally equipped with a sight glass, the sight glass and sight glass valves shall be in working condition at all times, and the water level shall be maintained as per the manufacturer's recommendations.

(8) Piping, Fittings and Valves.

(A) All piping, fittings and valves on the boiler supply and return lines shall have a pressure rating equal to or greater than the MAWP of the boiler and a temperature rating of no less than 250 degrees Fahrenheit (121 degrees Celsius).

(B) All piping, fittings and valves other than the boiler supply and return lines shall have a minimum pressure and temperature rating equal to or greater than the maximum expected pressure and temperature that may be reached.

(d) Potable Water Heaters (ASME Code HLW).

(1) Pressure relief valves.

(A) Potable water heaters (tank type) shall have at least one officially rated temperature and pressure relief valve, or one officially rated pressure relief valve, set to relieve at or below the maximum allowable pressure of the heater. No pressure relief valve shall be smaller than 3/4 inch nominal pipe size (20 mm). The valve (s) shall be marked with the ASME Code Symbol "V" or "HV". At no time shall the temperature probe of the temperature and pressure relief valve be removed or modified.

(B) The pressure relief valve shall have a capacity equal to or exceeding the rated burner input of the heater. The relieving capacity for electric water heaters shall be 3,500 Btu/hr (1.0 kilowatts) per kilowatt of input.

(C) The ASME Btu rating on the valve shall be used to determine the relieving capacity.

(D) Pressure relief valves shall be connected directly to the heater within the top 6 inches of the tank.

(E) Pressure relief valves may be installed vertically or horizontally. The center line of the horizontal connection shall be no lower than 4 inches from the top of the shell.

(F) Pressure relief valves shall not be connected to an internal pipe in the heater, or to a cold water feed line connected to the heater.

(G) Pressure relief valve piping. No valve shall be placed between the pressure relief valve and the boiler nor on the discharge pipe between the pressure relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the pressure relief valve or in the discharge pipe. When an elbow is placed on the pressure relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve. Mufflers shall not be used on potable water heaters.

(2) Water supply.

(A) Water supply shall be introduced into a water heater through an independent water supply connection. Water shall not be introduced through openings or connections provided for cleaning, pressure relief valves, drains, pressure gage or temperature gage.

(B) If the water supply pressure to a hot water heater exceeds 75% of the set pressure of the pressure relief valve, a pressure reducing valve is required.

(3) Flow sensing device.

(A) All automatically fired potable water heater, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(B) The MAWP of all flow sensing devices shall be set at or above the boiler stamped MAWP.

(4) Gages.

(A) Temperature gages. Each hot water heater shall have a thermometer located and connected at or near the outlet that is easily readable. The thermometer shall at all times indicate the temperatures of the water in the hot water heater. If placed on the outlet piping, it must be located between the stop valve and the boiler.

(B) Pressure gages. Each hot water heater that is of the coil type or water tube shall have a pressure gage located as close to the boiler as possible that is graduated to not less than 1 1/2 or more than 3 1/2 times the pressure at which the pressure relief valve is set.

(5) Stop valves. Stop valves should be placed in the supply and discharge pipe connections of the hot water heater installation to permit draining the heater without emptying the system.

(6) Drain valves. Each hot water heater shall have a bottom drain pipe connection fitted with a valve or cock connected to the lowest water space practical. The minimum size bottom drain shall be 3/4 inch nominal pipe size (20 mm).

(7) Provisions for thermal expansion.

(A) If a system is equipped with a check valve or pressure reducing valve in the cold water inlet line, consideration should be given to the installation of an airtight expansion tank or other suitable air cushion. Otherwise, due to the thermal expansion of the water, the pressure relief valve may lift periodically.

(B) If an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1 or Section X, and the pressure and temperature ratings of the tank shall be equal to or greater than the pressure and temperature ratings of the system pressure.

(C) Except for pre-pressurized tanks, which should be installed on the cold water side, provisions shall be made for draining the tank without emptying the system.

(D) If the expansion tank was originally equipped with a sight glass, the sight glass and sight glass valves shall be in working condition at all times, and the water level shall be maintained as per the manufacturer's recommendations.

(8) Piping, Fittings and Valves.

(A) All piping, fittings and valves on the boiler supply and return lines shall have a pressure rating equal to or greater than the MAWP of the boiler and a temperature rating of no less than 210 degrees Fahrenheit (99 degrees Celsius).

(B) All piping, fittings and valves other than the boiler supply and return lines shall have a minimum pressure and temperature rating equal to or greater than the maximum expected pressure and temperature that may be reached.

§65.612. Repair and Alterations.

(a) Repairs and alterations shall conform to the current edition of the National Board Inspection Code (NBIC) and shall be acceptable to the inspector, except that repairs and alterations may be performed by the following, provided the intended work is within the scope of the issued certificate of authorization:

(1) holders of a certificate of authorization from the National Board of Boiler and Pressure Vessel Inspectors for use of the R repair symbol stamp; or

(2) owner/operators of boilers who have been issued a certificate of authorization by the department.

(A) Issuance of the certificate of authorization will be made upon submission of an application, on forms provided by the department.

(B) Review of the applicant's program and facilities initially and at subsequent three-year intervals will be done.

(i) The review will determine the applicant has a documented program to control repairs and/or alterations conforming to minimum requirements established by the department.

(ii) The review will require demonstration of the applicant's ability to perform repairs and/or alterations by implementing on representative work the requirements of the written program.

(iii) The guidelines of the NBIC for the quality control system are a minimum, except that an Authorized Inspection Agency is not required and the Repair and Alteration forms are issued by the department. The National Board's forms shall not be used by these certificate holders.

(b) Derating a boiler's MAWP and/or allowable temperature (in accordance with the NBIC), shall be approved by the department prior to commencement of the alteration. If the derating is approved, the MAWP and/or allowable temperature shall not be increased without the prior approval from the department.

(c) Plugging of boiler tubes.

(1) Tube plugs shall be made of a material which is compatible with the material of the boiler tube being plugged and shall be tapered and welded into place, or manufactured to be expanded into the tube sheet.

(2) Plugging boiler tubes on Fire Tube Boilers.

(A) Plugging boiler tubes that are adjacent to another plugged boiler tube is prohibited.

(B) No more than 10% of the total number of boiler tubes shall be plugged.

(C) All plugged boiler tubes shall be replaced prior to the next required Certificate Inspection.

(3) Plugging boiler tubes in tube sheets of Drum Type Water Tube Boilers.

(A) No more than 5 adjacent tubes in the steam generating section shall be plugged.

(B) No more than 10% of the steam generating tubes shall be plugged.

(4) Water Wall tubes may not be plugged, where the tube forms a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple (gas) pass boiler.

(d) Non-welded repairs.

(1) Replacement parts made of plate material used for pressure retaining shall require material test reports (MTR). Traceability to the MTR must be maintained at all times.

(2) Replacement parts fabricated by welding shall be certified, stamped with the appropriate ASME Code symbol and inspected by an authorized inspector as required by the ASME Code.

(3) When a non-welded repair involves the replacement of cast or forged parts that are identified with the ASME Code symbol at the time of casting or forging, these parts shall be replaced with cast or forged parts that are identified with the ASME Code symbol or so certified by the manufacturer to be in accordance with the original code of construction.

(4) All other materials shall not require MTR's, provided the material is identified with the material specification, grade, lot and rating as required by the material or product specification and the ASME Code.

(5) When used parts are utilized for non-welded repairs, it is the repair entity's responsibility to ensure the parts are identified as required above.

(6) Boiler tubes shall be replaced with tubes of the allowed material and in accordance with the original code of construction.

(e) Lap seam cracks. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted lap-type joint shall be immediately and permanently discontinued for use under pressure. A lap seam crack is the typical crack frequently found in lap seams, which extends parallel to the longitudinal joint and is located either between or adjacent to rivet holes.

§65.613. Hydrostatic Pressure Tests.

(a) When there is a question or doubt about the extent of a defect found in a boiler, the inspector may require a hydrostatic pressure test.

(b) In preparing a boiler for a hydrostatic pressure test, the boiler shall be filled with water to the stop valve and all air vented off. If the boiler to be tested is connected with other boilers that are under pressure, such connections shall be blanked off unless they have double stop valves on all connection pipes with a drain between.

(c) During a hydrostatic pressure test of a boiler, the safety valve or valves shall be removed or each valve disc shall be held to its seat by means of a testing clamp and not by screwing down the compression screw under the spring.

(d) The metal temperature for the pressure test shall not be less than 60 degrees Fahrenheit (16 degrees Celsius), unless the owner provides information on the toughness characteristics of the material for a lower test temperature, but the maximum metal temperature shall not exceed 120 degrees Fahrenheit (50 degrees Celsius), unless a higher temperature is specified and is acceptable to the inspector.

(e) When a hydrostatic pressure test is to be applied after inspection, the pressure shall be as follows.

(1) For all cases involving the question of tightness, the pressure shall be no more than the set pressure of the safety valve or valves having the lowest setting.

(2) For all cases involving the question of safety, the pressure applied shall not exceed the lesser of that which was required by the original code of construction, or the pressure equal to that which results in an applied stress no greater than 90% of the specified minimum yield stress at test temperature of the material as published by ASME Code, Section II, Part D, current edition.

(f) A hydrostatic test shall be held for a minimum of fifteen (15) minutes at the required pressure without leakage

(g) The actual pressure in the boiler shall not exceed 1.59 x MAWP.

§65.614. Authority to Set and Seal Safety Appliances.

(a) All safety and pressure relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the organizations listed in this section, provided the scope of the issued certificate of authorization covers the work to be performed.

(b) The following organizations are authorized to set and seal safety appliances:

(1) an organization holding a valid V, HV, or UV certificate of authorization, as appropriate, issued by the American Society of Mechanical Engineers (ASME); or

(2) an organization holding a valid VR certificate of authorization issued by the National Board of Boiler and Pressure Vessel Inspectors; or

(3) an organization holding a valid owner/operator certificate of authorization issued by the department to repair, test, set and seal safety appliances for boilers meeting the requirements of this chapter only at the approved owner/operators facilities. Such authorization may be granted or withheld by the department.

(A) If authorization is granted and proper administrative fees as provided for in §65.300, are paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair ASME Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual.

(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six (6) months prior to the date of expiration.

(C) The owner/operator certificate of authorization is renewable every three (3) years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector. Original code books and the National Board's Pressure Relief Device Certifications (NB-18), as required to set and seal safety appliances, shall be available during the review of the quality control system.

(D) Before the owner/operator certificate of authorization may be issued or renewed, two valves which have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) visual examination to ensure the quality of material and workmanship;

(ii) verification that critical parts meet the valve manufacturer's specifications. Critical parts that are replaced must be fabricated to the valve manufacturer's specifications. Critical parts which require repair shall meet the valve manufacturer's specifications;

(iii) tightness tests and verification; and

(iv) set pressure test and verification.

(E) The purpose of the tests is to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the test shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future recurrences. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the certificate of authorization will be granted.

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/operator facilities without the use of mobile facilities. Organizations that obtain the owner/operator certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and pressure relief valves provided that:

(i) qualified technicians perform such repairs;

(ii) an acceptable quality control system covering field repairs is maintained; and

(iii) periodic audits of the work carried out in the field are made by quality control personnel of the certificate of authorization holder to ensure that the requirements of the quality control system are met.

(G) Provided the provisions in subparagraph (F)(i) - (iii) are met, verification testing of field repaired valves shall not be required.

(H) Organizations that perform field repairs only must demonstrate field repair capabilities to an inspector before the certificate of authorization may be issued or renewed. Two valves must be repaired in the field and successfully complete verification tests as described in subparagraph (D). A quality control manual as required in subparagraph (J), must be prepared describing all field repair activities.

(I) Repair of a safety and pressure relief valve is considered to be the replacement, remachining, or cleaning of any part, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, reassembly, and/or adjustments which affect the safety or pressure relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a pressure relief valve in a boiler are not considered a repair.

(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in §65.615, Exhibit 9.

(i) The written quality control system shall also include provisions for making revisions, enabling the system to be kept current as required.

(ii) A review of the applicant's quality control system will be performed by an inspector. The review will include a demonstration of the implementation of the applicant's quality control system.

(iii) Each applicant to whom a certificate of authorization is issued, shall maintain thereafter a controlled copy of the ac-

cepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable to the inspector.

(K) It is essential that owner/operator valve repair organizations ensure that personnel making repairs to safety and pressure relief valves are knowledgeable and qualified. The owner/operator shall provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) working knowledge of the organization's quality control manual;

(ii) working knowledge of the applicable requirements; and

(iii) working knowledge of the technical aspects and mechanical skills for valves being repaired or tested.

(L) Performance testing of repaired valves.

(i) For shop valves, a test stand shall be used. The test stand shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment, if possible. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every ninety (90) days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(ii) Valves marked for liquid service shall be set according to the applicable manufacturer's specification.

(iii) Valves marked for steam service or having special internal parts for steam should be tested with steam. However, valves for steam service may be tested with air or nitrogen for correct opening(popping), pressure setting, and, if possible, blowdown adjustment, provided the differential in popping pressure between steam and air or nitrogen, as specified in the quality control manual, are applied to the popping point.

(iv) Valves which are repaired in place shall be tested to demonstrate set pressure.

(v) For valves which are repaired in place, a device (hydraulic, pneumatic, etc.) may be used to apply an auxiliary lifting load on the spring to a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases, the manufacturer's recommendations shall be used to establish blowdown.

(M) When a safety or pressure relief valve is repaired, a metal repair tag, as described in the quality control manual, shall be attached to the valve. As a minimum, the information on the tag will include the valve identification number, set pressure, date of repair, and certificate of authorization number.

§65.615. Exhibits 1 - 9.

The following Exhibits are integral components of the subchapter and incorporated for all purposes.

(1) Exhibit 1--Hard Stamping.

Figure: 16 TAC §65.615(1)

(2) Exhibit 2--Unfired Steam Boiler Constructed to ASME Section VIII.

Figure: 16 TAC §65.615(2)



(3) Exhibit 3--Unfired Steam Boiler Constructed to ASME Section I Power Boiler Code.

Figure: 16 TAC §65.615(3)

(4) Exhibit 4--Process Steam Generator.

Figure: 16 TAC §65.615(4)

(5) Exhibit 5--Process Steam Generator (Alternative Configuration).

Figure: 16 TAC §65.615(5)

(6) Exhibit 6--Typical Nuclear Boiler Verification Boundary.

Figure: 16 TAC §65.615(6)

(7) Exhibit 7--Minimum Pounds of Steam per Hour.

Figure: 16 TAC §65.615(7)

(8) Exhibit 8--Size of Bottom Blowoff Piping, Valves, and Cocks.

Figure: 16 TAC §65.615(8)

(9) Exhibit 9--Basic Elements of a Written Quality Control System.

Figure: 16 TAC §65.615(9)

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 November 3, 2014.

TRD-201405210

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 463-8179



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

The Texas Education Agency (TEA) proposes the repeal of §§97.1031, 97.1033, 97.1035, and 97.1037 and amendments to §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1065, 97.1071, 97.1072, and 97.1073, concerning planning and accountability. Sections 97.1031, 97.1033, 97.1035, and 97.1037 address investigative reports, sanctions, and record reviews. Sections 97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1065, 97.1071, 97.1072, and 97.1073 address accreditation status, standards, and sanctions. The proposed rule actions would provide clarity as to the applicable processes and procedures related to reviews, hearings, and appeals and delete provisions that are no longer relied upon or no longer applicable due to the repeal of statutory provisions referenced within the rules.

The proposed amendments to 19 TAC Chapter 97, Subchapter EE, and repeal of 19 TAC Chapter 97, Subchapter DD, would clarify that, with the adoption of 19 TAC Chapter 157, Subchapter EE, effective September 18, 2014, the majority of the provisions

contained in Subchapter DD are no longer valid as the review processes referenced therein are addressed in Chapter 157.

Additionally, the proposed amendments to 19 TAC Chapter 97, Subchapter EE, would make conforming changes to chapter and section references; provide definitions offering greater clarity; delete provisions that are no longer relied upon or no longer applicable due to the repeal of statutory provisions referenced within the rules; and include provisions from 19 TAC Chapter 97, Subchapter DD, §97.1035, which is proposed for repeal, that are not addressed in recently amended 19 TAC Chapter 157, Subchapter EE.

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

Alice McAfee, associate commissioner for complaints, investigations, and enforcement, has determined that for the first five-year period the amendments and repeals 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. McAfee has 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 the rule actions would be clarification of the applicable procedures relied upon related to reviews, hearings, and appeals of sanctions. Additionally, the proposed repeals would delete provisions that are no longer relied upon or no longer applicable due to the repeal of statutory provisions referenced within the rules. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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 November 14, 2014, and ends December 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](mailto: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 November 14, 2014.

#### SUBCHAPTER DD. INVESTIGATIVE REPORTS, SANCTIONS, AND RECORD REVIEWS

##### 19 TAC §§97.1031, 97.1033, 97.1035, 97.1037

*(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), §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district; TEC, §§39.056-39.058, which authorize the commissioner to adopt procedures for conducting on-site and special accreditation

investigations; TEC, §39.0823, which requires submission of a financial plan in the event of a school district projected deficit and authorizes the commissioner to adopt related accreditation status requirements; and TEC, §§39.102-39.115, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, campuses, and open-enrollment charter schools, including campus improvement plans; campus intervention teams; reconstitution, repurposing, alternative management, and closure; annual review, acquisition of professional services; costs paid by district; conservator or management team; and board of managers.

The repeals implement the TEC, §§39.051, 39.052, 39.056-39.058, 39.0823, and 39.102-39.115.

§97.1031. *Preliminary Investigative Report.*

§97.1033. *Informal Review of Preliminary Investigative Report; Final Investigative Report.*

§97.1035. *Procedures for Accreditation Sanctions.*

§97.1037. *Record Review of Certain Decisions.*

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 EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

### 19 TAC §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1065, 97.1071 - 97.1073

The amendments are proposed under the Texas Education Code (TEC), §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district; TEC, §§39.056-39.058, which authorize the commissioner to adopt procedures for conducting on-site and special accreditation investigations; TEC, §39.0823, which requires submission of a financial plan in the event of a school district projected deficit and authorizes the commissioner to adopt related accreditation status requirements; and TEC, §§39.102-39.115, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, campuses, and open-enrollment charter schools, including campus improvement plans; campus intervention teams; reconstitution, repurposing, alternative management, and closure; annual review, acquisition of professional services; costs paid by district; conservator or management team; and board of managers.

The amendments implement the TEC, §§39.051, 39.052, 39.056-39.058, 39.0823, and 39.102-39.115.

§97.1051. *Definitions.*

For purposes under Texas Education Code (TEC), Chapter 39<sub>2</sub> [Subchapter DD of this chapter (relating to Investigative Reports, Sanctions, and Record Reviews);] and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) Board of trustees--The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.

(2) Campus--An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated or Not Rated: Data Integrity Issues [~~Not Rated--Other or Not Rated--Data Integrity Issues~~]. The definition of this term includes a charter school campus as defined by §100.1001(3)(C) [~~§100.1011(3)(C)~~] of this title (relating to Definitions).

(3) Campus closure--Cessation of all instructional activity on the campus in each grade level served in the school year immediately preceding the closure of the campus. An order of closure does not preclude the district from reusing the facility for another purpose such as administration, storage, or instruction in other grades not served during the school year immediately preceding the closure of the campus.

(4) Charter school--This term has the meaning assigned by §100.1001(3) [~~§100.1011(3)~~] of this title. References to a charter school in TEC, Chapter 39, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.

(5) Charter school site--This term has the meaning assigned by §100.1001(3)(D) [~~§100.1011(3)(D)~~] of this title.

(6) Newspaper of general circulation--A newspaper that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.

(7) [~~(6)~~] Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

(8) [~~(7)~~] Reconstitution--

(A) The removal or reassignment of some or all campus administrative and/or instructional personnel in accordance with at least the minimum requirements of TEC, §39.107, taking into consideration proactive measures the district or campus has taken regarding campus personnel; and

(B) the implementation of a campus redesign, approved by the commissioner of education, that:

(i) provides a rigorous and relevant academic program;

(ii) provides personal attention and guidance;

(iii) promotes high expectations for all students; and

(iv) addresses comprehensive school-wide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.

(9) [~~(8)~~] School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.

§97.1053. *Purpose.*

(a) The provisions of Texas Education Code (TEC), Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation statuses assigned under TEC, §39.051 and §39.052, and the purposes of accreditation sanctions, which are to:

(1) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers of the academic, fiscal, and compliance performance of each district or campus on the standards adopted by the commissioner of education under TEC, §39.052(b) and (c), and/or listed in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations);

(2) encourage the district or campus to improve its academic, fiscal, and/or compliance performance by addressing each area of deficiency identified by the commissioner of education;

(3) enable the parents of students enrolled in the district, property owners in the district, general public, and policymakers to assist the district or campus in improving the district or campus performance by addressing each area of deficiency identified by the commissioner;

(4) encourage other districts or campuses to improve their performance so as to avoid similar action and to retain their accreditation; and

(5) improve the Texas public school system by eliminating poor academic, fiscal, and compliance performance by districts and campuses on the standards listed in §97.1059 of this title.

(b) The accreditation status assigned a district under §97.1055 of this title (relating to Accreditation Status) generally reflects performance under the state academic accountability rating system and financial accountability rating system beginning with the district's 2006 ratings. However, performance under these systems for earlier years shall be considered for purposes of accreditation statuses and sanctions under this subchapter. Accordingly:

(1) consideration of or failure to consider any rating of the district under §97.1055 of this title does not preclude consideration of that rating when determining accreditation sanctions under this subchapter; and

(2) when determining accreditation sanctions under this subchapter, the commissioner shall consider the entire ratings history of the district and its campuses to the extent it is material.

(c) ~~The [Except as provided by §97.1055(g) of this title, the] provisions of TEC, Chapter 39, and this subchapter apply in the same manner to an open-enrollment charter school as to a district.~~

*§97.1055. Accreditation Status.*

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.

(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule;

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(7) An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.

(8) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic ac-

accountability ratings for the applicable prior school years, as determined under subsections (b) - (d) of this section.

(9) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive.

(b) Determination of Accredited-Warning status.

(1) A district shall be assigned Accredited-Warning status if, beginning with its 2006 rating, the district is assigned:

(A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted [of Academically Unacceptable or insufficient performance] under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warning status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (G) [§7.056(e)(3)(C) - (F)]; or

(B) after investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warning status if the commissioner

determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

~~[(4) Notwithstanding any provisions in this subsection, a district shall be assigned Accredited-Warning status if it has otherwise earned the Accredited status; but the commissioner determines:]~~

~~[(A) the district failed to submit a plan as provided by TEC, §39.0823(b);]~~

~~[(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b);]~~

~~[(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b); or]~~

~~[(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.]~~

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if, beginning with its 2006 rating, the district is assigned:

(A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted [of Academically Unacceptable or insufficient performance] under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (G) [§7.056(e)(3)(C) - (F)]; or

(B) after investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

~~[(4) Notwithstanding any provision in this subsection, a district shall be assigned Accredited-Probation status if it has otherwise earned the Accredited-Warning status, but the commissioner determines:]~~

~~[(A) the district failed to submit a plan as provided by TEC, §39.0823(b);]~~

~~[(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b);]~~

~~[(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b); or]~~

~~[(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.]~~

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if, beginning with its 2006 rating, the district is assigned:

(A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted [of Academically Unacceptable or insufficient performance] under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C) - (G) [~~§7.056(e)(3)(C) - (H)~~]; or

(B) after investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

~~[(4) Notwithstanding any provision in this subsection, a district shall be assigned Not Accredited-Revoked status if it has otherwise earned the Accredited-Probation status, but the commissioner determines:]~~

~~[(A) the district failed to submit a plan as provided by TEC, §39.0823(b);]~~

~~[(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b);]~~

~~[(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b); or]~~

~~[(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.]~~

(4) ~~[(5)]~~ The commissioner's decision to revoke a district's accreditation may be reviewed ~~[appealed]~~ under Chapter 157, Subchapter EE, [§97.1037] of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings [Record Review of Certain Decisions]). If, after review, the decision is sustained ~~[on appeal]~~, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1002 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;

(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and

(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).

(f) Required notification of Accredited-Warning, ~~[or] Accredited-Probation, or Not Accredited-Revoked status.~~

(1) A district assigned an accreditation status of Accredited-Warning, ~~[or] Accredited-Probation, or Not Accredited-Revoked~~ shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the

commissioner. The district's notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in a [the] newspaper of general [with the greatest] circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

(D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or

(D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.

(g) Substitute criteria if no charter school financial accountability rating. In considering the financial performance of a charter operator during a fiscal year for which no financial accountability ratings were assigned to charter operators under §109.1002 of this title, the commissioner shall apply the following substitute criteria:—

(1) Finding in lieu of rating. Any of the following findings, made after an opportunity for a record review under paragraph (2)(B) of this subsection, shall be deemed the equivalent of a financial accountability rating of Substandard Achievement or Suspended—Data Quality under §109.1002 of this title:—

(A) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title (relating to Accounting for State Funds) was received more than 180 days after the close of the entity's fiscal year;—

(B) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title disclosed total assets of less than 80% of total liabilities; or—

(C) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title contained:—

(i) an adverse opinion, including a going concern disclosure, or a disclaimer of opinion; and—

(ii) the adverse or disclaimed opinion pertained to:—

(I) financial resources or expenditures that were not properly documented; or—

(II) a material weakness in internal controls that led to the misallocation of financial resources. —

(2) Provisions concerning finding. Whenever a provision of this section calls for consideration of the financial accountability rating of a charter operator for a fiscal year, a finding described by paragraph (1) of this subsection shall be deemed the financial accountability rating and applied as if such finding were issued under §109.1002 of this title. —

(A) If a provision of this section calls for consideration of the financial accountability rating of a charter operator for more than one fiscal year, and financial accountability ratings were assigned to charter operators under §109.1002 of this title for at least one but fewer than all of the relevant fiscal years, a finding described by paragraph (1) of this subsection shall be deemed the financial accountability rating only for the fiscal year(s) for which no financial accountability ratings were assigned to charter operators. —

(B) A finding described by paragraph (1) of this subsection shall be issued using the process provided by §97.1035 of this title (relating to Procedures for Accreditation Sanctions) and shall be subject to a record review under §97.1037 of this title (relating to Record Review of Certain Decisions). —

(C) A finding described by paragraph (1) of this subsection shall be issued pertaining to each fiscal year beginning with the 2007-2008 fiscal year. For the 2006-2007 fiscal year, the TEA shall report the performance of each open-enrollment charter operator for informational purposes only. —

(h) Third-party accreditation. The commissioner may recognize a supplemental accreditation issued by a rating agency approved by the commissioner to a charter operator that meets the standards determined by the commissioner under subsection (a)(1)(A) of this section. A charter operator that fails to meet the standards for accreditation under subsection (a)(1)(A) of this section may not receive such recognition until the charter operator meets the standards for the Accredited status as determined by the commissioner. —

§97.1057. [Accreditation] Interventions and Sanctions; Lowered Rating or Accreditation Status [or Rating].

(a) The provisions of Texas Education Code (TEC), Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation sanctions, which are specified in §97.1053 of this title (relating to Purpose).

(b) If the commissioner of education finds that a district or campus does not satisfy the accreditation criteria under TEC, §39.051 and §39.052, the academic performance standards under TEC, §39.054, or any financial accountability standard as determined by the commissioner, the commissioner may lower the district's accreditation status, academic accountability rating, or financial accountability rating, as applicable, and take appropriate action under this subchapter.

(c) Regardless of whether the commissioner lowers a district's status or rating under subsection (b) of this section, the commissioner may take action under TEC, Chapter 39, or this section if the commis-

sioner determines that the action is necessary to improve any area of performance by the district or campus.

(d) Subject to subsections (g) - (j) [§97.1035] of this section [title (relating to Procedures for Accreditation Sanctions)], once the commissioner takes action under this subchapter, the commissioner may impose on the district or campus any other sanction under TEC, Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title.

(e) In determining whether to impose a particular sanction under TEC, Chapter 39, or this subchapter, the commissioner may consider the costs and logistical concerns of the district, but shall give primary consideration to the best interest of the district's students. The sanction selected shall be reasonably calculated to address the district's or campus' deficiencies immediately or within a reasonable time, in the best interest of its present and future students. The following shall be considered as being contrary to the best interests of the district's students:

- (1) inefficient or ineffectual use of district funds or property;
- (2) failure to adequately account for funds; and
- (3) receipt of a substantial over-allocation of funds for which the district has failed to plan prudently in light of its obligation to repay the funds under TEC, §42.258.

(f) In determining whether to impose a particular sanction under TEC, Chapter 39, or this subchapter based on resource allocation practices as authorized by TEC, §39.0821 and §39.057(a)(12), (d) and (e), the commissioner shall consider the factors specified in §97.1053 of this title.

(g) The commissioner shall notify the school district or open-enrollment charter school in writing of a sanction imposed under this subchapter or §100.1023 of this title (relating to Intervention Based on Charter Violations). The notice must state the basis for finding that the district or open-enrollment charter school does not satisfy the applicable criteria as indicated in this subchapter or §100.1023 of this title. The finding(s) may be made in the notice or in a final investigative report or based on a final investigative report.

(h) If a finding is made for the first time in the notice required by subsection (g) of this section, the Texas Education Agency shall comply with Chapter 157, Subchapter EE, Division I, of this title (relating to Informal Review) with respect to the new finding.

(i) A determination under this section must be made in writing and may be included in a written notice under subsection (g) of this section. The determination may be made in the notice or in a final investigative report or based on a final investigative report. A determination under this section may be based on a report on the progress of a prior action under this subchapter.

(j) The commissioner shall annually review a sanction imposed under subsection (g) of this section and shall increase the sanction, as required by TEC, §39.108. The commissioner shall quarterly review the need for a conservator or a management team imposed under this subchapter, as required by TEC, §39.111. If reviews are required under both TEC, §39.108 and §39.111, a quarterly review under TEC, §39.111, may satisfy the annual review under TEC, §39.108. An annual or quarterly review is not subject to the requirements of this section.

§97.1059. *Standards for All Accreditation Sanction Determinations.*

(a) The commissioner of education shall impose district and campus accreditation sanctions under this subchapter individually or

in combination as the commissioner determines necessary to achieve the purposes identified in §97.1053 of this title (relating to Purpose).

(b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA), and shall impose one or more accreditation sanctions on a district and its campuses as needed to address:

(1) each material deficiency identified by the TEA through its systems for district and campus accountability, including:

(A) an accreditation status under §97.1055 of this title (relating to Accreditation Status);

(B) an academic accountability rating under §97.1001 of this title (relating to Accountability Rating System);

(C) a financial accountability rating under §109.1002 of this title (relating to Financial Accountability Ratings) or a financial audit or investigation;

(D) program effectiveness under §97.1071 of this title (relating to Special Program Performance; Intervention Stages) or other law;

(E) the results of a special accreditation investigation under Texas Education Code, §39.057;

(F) the results of an investigative report under Chapter 157, Subchapter EE, [§97.1033] of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings [Informal Review of Preliminary Investigative Report; Final Investigative Report]); complaint investigation; special education due process hearing; or data integrity investigation, including an investigation of assessment or financial data; or

(G) other information related to subparagraphs (A) - (F) of this paragraph.

(2) any ongoing failures to address deficiencies previously identified or patterns of recurring deficiencies;

(3) any lack of district responsiveness to, or compliance with, current or prior interventions or sanctions; and

(4) any substantial or imminent harm presented by the deficiencies of the district or campus to the welfare of its students or to the public interest.

(c) If the commissioner identifies a district and one or more of its campuses for accreditation sanction under subsection (a) of this section, the commissioner may elect to combine activities to be undertaken at the district and campus levels as needed to achieve the purposes of each sanction.

(d) When making any campus-level determination under this subchapter, the commissioner shall also consider the district-level performance of the district on applicable academic, fiscal, and compliance standards.

(e) The commissioner must review at least annually the performance of a district for which the accreditation status or academic accountability rating has been lowered due to insufficient student performance and may not raise the accreditation status or rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

§97.1065. *Repurposing, Alternative Management, or Campus Closure.*

(a) Action required. The commissioner of education shall order repurposing, alternative management, or closure of a campus as provided in this section, if the campus is assigned an unacceptable performance rating under the state academic accountability system for the third consecutive school year after reconstitution is required to be implemented under §97.1064 of this title (relating to Reconstitution).

(b) Other actions permitted. In combination with action under this section, the commissioner may impose on the district or campus any other sanction under Texas Education Code (TEC), Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title (relating to Purpose). In particular, the commissioner may impose sanctions as specified in §97.1064(d) of this title and/or may assign a monitor, conservator, management team, or board of managers in order to ensure and oversee district-level support to low-performing campuses and the implementation of the updated school improvement plan (SIP) and the reconstitution plan.

(c) Petition allowed. In accordance with TEC, §39.107(e-2), for a campus subject to an order of repurposing, alternative management, or closure under subsection (a) of this section, if a written petition, signed by the parents of a majority of the students enrolled at the campus and specifying the action requested under subsection (a) of this section, is presented to the commissioner in accordance with this section and related procedures adopted by the Texas Education Agency (TEA), the commissioner shall, except as otherwise authorized by this section, order the specific action requested. If the board of trustees of the school district in which the campus is located presents to the commissioner, in accordance with this section and related procedures adopted by the TEA, a written request that the commissioner order a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition, along with a written explanation of the basis for the board's request, the commissioner may order the action requested by the board of trustees.

(1) A written petition under this subsection must be:

(A) finalized and submitted to the district superintendent no later than October 15 for purposes of validation;

(B) certified by the district as a valid petition in accordance with paragraph (2) of this subsection;

(C) adopted as a valid petition by the board of trustees in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(D) if determined to be a valid petition, submitted by the district superintendent to the commissioner no later than December 1.

(2) Only a written petition determined to be valid in accordance with this section and TEA procedures may be submitted to the commissioner. At a minimum, the following criteria must be met for a petition to be determined valid.

(A) The petition must include all information required by the TEA as reflected in TEA model forms and related procedures and must be submitted to the district superintendent in accordance with the deadline established in paragraph (1)(A) of this subsection.

(B) The petition must clearly state the sanction action under subsection (a) of this section being requested by the parents.

(C) In accordance with this subparagraph, the parent(s) of more than 50% of the students enrolled at the campus must provide the handwritten or typed name and an original signature on the petition.

(i) For the purposes of the petition, a parent means the parent who is indicated on the student registration form at the campus.

(ii) A student will be considered enrolled at the campus for the purposes of the petition if the student is enrolled and in membership at the campus on a TEA-determined enrollment snapshot date, as reflected in TEA procedures (generally the Public Education Information Management System (PEIMS) fall data submission for that school year).

(iii) For the purposes of determining whether parents of more than 50% of the students enrolled at the campus have signed the petition, only one parent signature per enrolled student can be counted by the district in its calculation assuring validity of the petition.

(3) If the board of trustees of the school district requests that the TEA consider a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition and submitted to the TEA in accordance with this subsection, the board must submit a written request to the commissioner and include a written explanation of the basis for the board's request for an action other than the one reflected in a valid parent petition. Any written request must be:

(A) approved by a majority of the board members in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(B) submitted to the commissioner no later than December 15 in accordance with procedures established by the TEA.

(4) If a valid parent petition under paragraph (1) of this subsection or board of trustees submission under paragraph (3) of this subsection requests that the commissioner order campus repurposing, the district must submit, no later than January 30, a comprehensive plan for campus repurposing that meets the requirements of the TEC, §39.107, and subsection (d) of this section.

(5) Following the submission to the TEA of a valid petition and any subsequent board request under this section, the commissioner will order, no later than February 15, a sanction in compliance with the TEC, §39.107, and this section. The sanction shall be implemented for the subsequent school year regardless of the state academic accountability rating assigned to the campus in that school year. For example: A campus is assigned an unacceptable performance rating for the sixth consecutive year on or around June 15, 2013. In February 2014, the commissioner orders a sanction under this paragraph. The sanction must be implemented for the 2014-2015 school year.

(6) Notwithstanding this subsection, in the case of a charter school granted under the TEC, Chapter 12, Subchapter D or E, the commissioner shall retain authority under the TEC and Chapter 100, Subchapter AA, Division 2, of this title (relating to Commissioner Action and Intervention) to take any adverse action allowed by statute and rule and to approve or disapprove any proposed change in campus or charter structure resulting from a petition or board request under this subsection.

(d) Campus repurposing.

(1) If the commissioner orders repurposing of a campus under this section, the school district shall develop a comprehensive plan for repurposing the campus and submit the plan to the board of trustees for approval and to the commissioner for approval, using the procedures described by §97.1063 of this title (relating to Campus Intervention Team) for SIP approvals. The plan must include a description of a



rigorous and relevant academic program for the campus. The plan may include various instructional models.

(2) The commissioner may not approve the repurposing of a campus unless:

(A) all students in the assigned attendance zone of the campus in the school year immediately preceding the repurposing of the campus are provided with the opportunity to enroll in and are provided transportation on request to a campus approved by the commissioner, unless the commissioner grants an exception because there is no other campus in the district in which the students may enroll;

(B) the principal is not retained at the campus, unless the commissioner determines that students enrolled at the campus have demonstrated significant academic improvement; and

(C) teachers employed at the campus in the school year immediately preceding the repurposing of the campus are not retained at the campus, unless the commissioner or the commissioner's designee grants an exception, at the request of a school district, for:

(i) a teacher who provides instruction in a subject other than a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), who demonstrates to the commissioner satisfactory performance; or

(ii) a teacher who provides instruction in a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), if the district demonstrates that the students of the teacher demonstrated satisfactory performance or improved academic growth on that assessment instrument.

(3) If an educator is not retained under paragraph (2)(C) of this subsection, the educator may be assigned to another position in the district.

(e) Alternative management. The commissioner may order alternative management of a campus under this section and may require the campus to remain open, when:

(1) the commissioner does not approve repurposing of the campus under subsection (d) of this section and does not order the closure of the campus under §97.1051(3) of this title (relating to Definitions);

(2) the commissioner determines that alternative management has a reasonable expectation of producing an acceptable or higher campus performance rating in the state academic accountability system within three rating cycles of assignment of the alternative management service provider under §97.1067 of this title (relating to Alternative Management of Campuses);

(3) an alternative management service provider with the necessary skills and required expertise is available under §97.1069 of this title (relating to Providers of Alternative Campus Management); and

(4) such action is determined warranted under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) and other standards for accreditation sanction determinations.

(f) Closure. The commissioner may order closure of the campus when action is required under this section and:

(1) the commissioner approves neither repurposing of the campus under subsection (d) of this section nor alternative management under subsection (e) of this section;

(2) the district fails to enter into a contract for alternative management under §97.1067 of this title as required by §97.1067 of this title; or

(3) the commissioner does not approve the contract for alternative management under §97.1067 of this title; and

(4) such action is determined warranted under §97.1059 of this title and other standards for accreditation sanction determinations.

(g) Alternative management unsuccessful. The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39.107(n); and

(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating under the state academic accountability system.

(h) Appeal. An order proposing action under this section may be appealed only as provided by Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings) [§97.1037 of this title (relating to Record Review of Certain Decisions)].

(i) Waiver. The commissioner may waive the requirement to enter an order under subsection (a) of this section for not more than one school year if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be assigned an acceptable performance rating under the state academic accountability system for the following school year.

(j) Targeted technical assistance. In addition to the grounds specified in TEC, §39.109, if the commissioner determines that the basis for the unsatisfactory performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance.

(k) Lack of improvement. The commissioner shall order repurposing, alternative management, or campus closure under this section if the students enrolled at a campus assigned an unacceptable performance rating under the state academic accountability system for two or more consecutive school years fail to demonstrate substantial improvement in the areas targeted by the campus' updated SIP and such order is needed to achieve the purposes listed in §97.1053 of this title. If the commissioner orders repurposing, alternative management, or campus closure under this subsection, a district may submit a request to the TEA to defer the sanction action to provide the commissioner an opportunity to review the academic progress of the campus during the school year subsequent to the performance rating leading to the order. If the commissioner grants a district's deferral request under this subsection and subsequently determines that a sanction will be ordered, the district may not appeal under TEC, §39.152, the final sanction order of the commissioner.

*§97.1071. Special Program Performance; Intervention Stages.*

(a) The commissioner of education shall assign a school district to an intervention stage based on performance levels under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) according to the following general criteria:

(1) the degree to which the district's performance reflects a need for intervention, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);

(2) a comparison of the district's performance to aggregated state performance and to the performance of other districts;

(3) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and

(4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.

(b) In addition to performance levels determined under §97.1005 of this title, the commissioner may consider any other applicable information, such as:

- (1) complaints investigation results;
- (2) special education due process hearing decisions;
- (3) data validation activities;
- (4) integrity of assessment or financial data; and
- (5) longitudinal intervention history.

(c) The standards used to assign districts to specific intervention stages under this section are established annually by the commissioner and communicated to all school districts.

(d) The commissioner may use graduated stages of intervention to address student performance, program effectiveness, and/or data quality deficiencies referenced in §97.1005 of this title. In addition to any sanction authorized by Texas Education Code (TEC), Chapter 39, such intervention may require a district to implement and/or participate in:

- (1) focused analysis of district data;
- (2) required district review of program effectiveness;
- (3) required public meetings;
- (4) focused compliance reviews conducted by review teams established by the TEA;
- (5) on-site reviews; and/or
- (6) continuous improvement planning.

(e) The commissioner shall notify each district selected for intervention under this section via the Intervention Stage and Activity Manager (ISAM) on the TEA secure website.

(1) The TEA shall notify districts that intervention stages have been posted to ISAM by:

- (A) posting a "To the Administrator Addressed" letter on the TEA web page for correspondence; or
- (B) sending a "To the Administrator Addressed" letter via electronic mail or first-class mail.

(2) It is the district's obligation to access the correspondence by:

- (A) subscribing to the listserv for "To the Administrator Addressed Correspondence;" and
- (B) accessing the ISAM system as directed to retrieve intervention instructions and information.

(f) Intervention actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1005 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

(1) The level of intervention selected under this section does not reflect any decision on, or consideration of, the need for other sanctions.

(2) A decision to impose other sanctions shall be based on the accreditation and compliance performance of the district, as determined under §97.1057 [~~§97.1035~~] of this title (relating to Interventions and Sanctions; Lowered Rating or [Procedures for] Accreditation Status [Sanctions]) and this subchapter, and not on the level of intervention chosen under this section.

(g) Intervention actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA, such as:

- (1) required fiscal audit of specific program(s) and/or of the district, paid for by the district;
- (2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;
- (3) expanded oversight including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan; and submission of district/program data;
- (4) public release of monitoring review findings;
- (5) denial of requests under TEC, §7.056 and/or §12.114;
- (6) reduction, suspension, redirection, or withholding of program funds;
- (7) lowering of the special education monitoring status of the district; and/or
- (8) lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating.

(h) As a system safeguard, the TEA will conduct desk review or on-site data verification activities through a random or other means of selection to verify system effectiveness and/or district implementation of monitoring requirements, including, but not limited to, accuracy of data reporting, implementation of intervention activities, implementation of plans for improvement or correction, and accuracy of findings made through the performance-based monitoring system process.

*§97.1072. Residential Facility Monitoring; Determinations, Investigations, and Sanctions.*

(a) Students with disabilities residing in residential facilities (RFs) are a unique and vulnerable population that often has limited access to family members who can advocate for their educational needs. Accordingly, the commissioner of education hereby establishes the Residential Facility Monitoring (RFM) system, through which the Texas Education Agency (TEA) will meet its federal and state special education monitoring obligations under 34 Code of Federal Regulations §300.149 and §300.600 and Texas Education Code (TEC), §29.010, for this population. The definition of an RF for purposes of the RFM system will be included in the Residential Facility Monitoring (RFM) Manual provided in subsection (f) of this section. Districts serving students with disabilities residing in RFs located within the districts' geographic boundaries and/or jurisdictions will be subject to the RFM system. These districts are referred to as RF districts.

(b) RF districts shall report data, as directed by the TEA, in a data collection system accessible through the TEA secure website.

(c) The commissioner shall determine which RF districts will be subject to RFM activities based on a review of available information according to the following general criteria or other factors set forth in the Residential Facility Monitoring (RFM) Manual:

(1) the degree to which the district's data reflect a need for monitoring and intervention, as indicated by the number of RF students

with disabilities enrolled in the district; the presence of new RFs within the district; and the district's performance on certain critical indicators related to compliance with special education program requirements;

(2) a comparison of the district's performance to aggregated state performance and to the performance of other districts;

(3) a review of the district's longitudinal performance;

(4) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and

(5) the length of time since the district was last subject to RFM activities.

(d) In addition to the criteria under subsection (c) of this section, the commissioner may use random district selection as a method of system validation and/or may consider any other applicable information such as:

(1) complaints investigation results;

(2) special education due process hearing decisions;

(3) data validation activities;

(4) monitoring results under §97.1071 of this title (relating to Special Program Performance; Intervention Stages);

(5) the degree to which the district has achieved timely correction of previously identified noncompliance with program requirements;

(6) longitudinal intervention history; and

(7) other relevant factors.

(e) The commissioner may use graduated monitoring and intervention activities to implement the RFM system. In addition to any investigation, intervention, or sanction authorized by TEC, Chapter 39, or §89.1076 of this title (relating to Interventions and Sanctions), such intervention may require an RF district to implement and/or participate in:

(1) focused analysis of district data;

(2) reviews of district program effectiveness;

(3) public meetings;

(4) focused compliance reviews conducted by review teams established by the TEA;

(5) on-site reviews; and/or

(6) corrective action planning.

(f) The specific criteria, standards, and procedures for implementing the RFM system are described in the Residential Facility Monitoring (RFM) Manual, dated August 2011, provided in this subsection. The specific criteria, standards, and procedures used in the RFM manual adopted for use prior to 2011 remain in effect for all purposes with respect to the applicable period of adoption.

Figure: 19 TAC §97.1072(f) (No change.)

(g) RFM activities under this section are intended to assist the RF district in achieving compliance with federal and state special education requirements and do not preclude or substitute for a sanction under another provision of this subchapter.

(1) The TEA will implement sanctions authorized under TEC, Chapter 39, or this subchapter as necessary to promote timely and complete correction of identified noncompliance.

(2) A decision to impose sanctions shall be based on the accreditation and compliance performance of the district, as determined

under §89.1076 of this title, ~~§97.1057~~ [§97.1035] of this title (relating to ~~Interventions and Sanctions; Lowered Rating or~~ [Procedures for Accreditation Status ~~Sanctions~~]), and this subchapter.

(h) RFM actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA such as:

(1) assignment of required professional services, paid for by the district;

(2) required submission of an improvement and/or corrective action plan, including the provision of compensatory services as appropriate, paid for by the district;

(3) expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or a corrective action plan, and submission of district/program data;

(4) public release of RFM review findings;

(5) issuance of a public notice of deficiencies and planned corrective actions to the district's board of trustees;

(6) denial of requests under TEC, §7.056 and/or §12.114;

(7) appointment of a monitor, conservator, management team, or board of managers under TEC, Chapter 39, and/or §97.1073 of this title (relating to Appointment of Monitor, Conservator, or Board of Managers);

(8) reduction, suspension, redirection, or withholding of program funds;

(9) lowering of the district's special education monitoring status; and/or

(10) lowering of the district's accreditation status.

(i) As a system safeguard, the TEA will conduct desk review or on-site verification activities through random or other means of selection to verify system effectiveness and/or district implementation of RFM requirements, including, but not limited to, accuracy of data reported through the data collection system accessible through the TEA secure website and other data reporting, timely and sufficient implementation of monitoring and intervention activities, implementation of corrective action plans, and continued district compliance after completion of a corrective action plan.

*§97.1073. Appointment of Monitor, Conservator, or Board of Managers.*

(a) The commissioner of education shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by this section. Action under any other section of this subchapter is not a prerequisite to acting under this section.

(b) The commissioner shall appoint a monitor under Texas Education Code (TEC), §39.102(a)(6), when:

(1) the deficiencies identified under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) require a monitor to participate in and report to the commissioner on the activities of the district's board of trustees and superintendent;

(2) the deficiencies identified under §97.1059 of this title are not of such severity or duration as to require direct Texas Education Agency (TEA) oversight of district operations;

(3) the district has been responsive to and generally compliant with previous commissioner sanctions and TEA interventions; and

(4) stronger intervention is not required to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.

(c) The commissioner shall appoint a conservator under TEC, §39.102(a)(7) and §39.111, or a management team under TEC, §39.102(a)(8) and §39.111, when:

(1) the nature or duration of the deficiencies require that the TEA directly oversee the operations of the district in the area(s) of deficiency;

(2) the district has not been responsive to or compliant with TEA intervention requirements; or

(3) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.

(d) The decision whether to appoint a conservator or management team under subsection (c) of this section shall be based solely on logistical concerns, including the competencies required and the volume of work involved. Selecting a management team rather than a conservator does not reflect on the severity of the deficiencies to be addressed.

(e) The commissioner ~~may~~ ~~shall~~ appoint a board of managers under TEC, §39.112, ~~and~~ §39.102(a)(9) or (b), or §12.116(d)(1), as applicable, when:

(1) sanctions under subsection (b) or (c) of this section have been ineffective to achieve the purposes identified in ~~§97.1057~~ ~~[§97.1035]~~ of this title (relating to Interventions and Sanctions; Lowered Rating or [Procedures for] Accreditation Status [Sanctions]);

(2) the commissioner has initiated proceedings ~~[under §97.1037 of this title (relating to Record Review of Certain Decisions)]~~ to close or annex the district;

(3) the commissioner has initiated proceedings ~~[under §97.1037 of this title]~~ to close a campus, and such intervention is needed to cease operations of the campus; or

(4) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.

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 October 31, 2014.

TRD-201405144

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: December 14, 2014

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

#### 19 TAC §228.70

The State Board for Educator Certification (SBEC) proposes new §228.70, concerning requirements for educator preparation programs. As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended a management action that adopts procedures for educator preparation program (EPP) complaints that outline all phases of the EPP complaint process, as well as track and analyze complaint data. Proposed new 19 TAC §228.70 would establish procedures for filing a complaint against an EPP, impose specific responsibilities on an EPP regarding complaints, and establish the consequences if an EPP is found to be in violation of SBEC rules; Texas Education Code, Chapter 21; and/or Public Law 110-315, Sections 205-208.

The SBEC rules in 19 TAC Chapter 228 establish requirements for EPPs. Complaints regarding EPPs have been lodged with the Texas Education Agency (TEA), and the TEA has generally engaged in an informal mediating process between the individual and the EPP. As part of its report to the 83rd Texas Legislature (2013), the Sunset Advisory Commission recommended that the complaint procedures should be updated to better account for tracking and resolution.

At the August 2014 meeting, TEA staff presented for discussion an outline of a comprehensive complaint process. Following the August 2014 SBEC meeting, discussions were held during a stakeholder meeting with the Educator Preparation Advisory Committee on August 22, 2014, and with other stakeholders at meetings in September and October 2014.

Proposed new 19 TAC §228.70 would establish the procedures for filing a complaint against an EPP. The new complaints procedure proposed would: 1) direct EPPs to establish grievance procedures to attempt to solve the issue(s) at the EPP level first and, if unable to do so, to provide individuals access to complaint submission instructions either by directing the candidate to the relevant portion of the TEA website or by providing written instructions; 2) require EPPs to comply with an investigation by TEA staff and direct TEA to presume non-compliance with the allegation(s) if the EPP fails to cooperate with an investigation; and 3) require TEA staff to incorporate a determination of non-compliance into the review for the continuing approval determination of an EPP.

The proposed new section would have a minimal increase in the procedural and reporting implications and the locally maintained paperwork requirements for EPPs because the proposal is similar to the TEA's current complaint process.

Ryan Franklin, interim associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed new section is in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed new section.

Mr. Franklin has determined that for the first five-year period the proposed new section is in effect the public and student benefit anticipated as a result of the proposed new section would be increased accountability for EPPs on the preparation of candidates. There are no additional costs to persons required to comply with the proposed new section.

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

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on proposed new 19 TAC §228.70 at the January 9, 2015 special meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

The new section is proposed under the Texas Education Code (TEC), §§21.031, which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; 21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; 21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; 21.045(b), which states that each educator preparation program shall submit specific performance data, information, and data elements as required by the SBEC for an annual performance report to ensure candidate access and equity; 21.045(c), which states that the SBEC shall propose rules establishing performance standards based, at a minimum, on subsection (a) for the accountability system for educator preparation for accrediting educator preparation programs; and 21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional educator preparation programs.

The proposed new section implements the TEC, §§21.031, 21.041(b)(1), 21.045, and 21.049(a).

§228.70. Complaints and Investigations Procedures.

(a) Purpose. Texas Education Agency (TEA) staff shall maintain a process through which a candidate in an educator preparation program (EPP), an applicant for candidacy in an EPP, a cooperating

teacher, a mentor, or an administrator in a school district, charter school, or private school may submit, in writing, a complaint about an EPP for investigation and resolution.

(b) EPP responsibilities.

(1) The EPP shall adopt and send to TEA staff, for inclusion in the EPP's records, a grievance procedure that requires the EPP to attempt to resolve grievances at the EPP level before the grievance is forwarded to TEA staff.

(2) The EPP shall post on its website a link to the TEA complaints website.

(3) The EPP shall post a notification at its physical site(s), in a conspicuous location, information regarding filing a written complaint with TEA staff.

(4) Upon request of an individual, the EPP shall provide information in writing regarding the procedures to submit a written complaint to TEA staff.

(c) TEA responsibilities.

(1) Filing a complaint. TEA staff will develop a complaint form to standardize information received from an individual making a complaint against an EPP. The complaint form will be available on the TEA website. All complaints filed against an EPP must be in writing on the complaint form. The written complaint must clearly state the facts that are the subject of the complaint and must state the measures the complainant has taken to attempt resolution of the complaint with the EPP. Anonymous complaints may not be accepted or investigated.

(2) Processing the complaint.

(A) TEA staff will record all complaints in the TEA complaints tracking system. Each complaint, no matter the severity, shall be assigned a tracking number.

(B) The complaint will be forwarded to the division responsible for educator preparation for further action, including assessing the complaint, providing a severity status and prioritizing the complaint accordingly, and determining jurisdiction.

(C) If TEA staff determines that the complaint is not within the State Board for Educator Certification's (SBEC's) jurisdiction, TEA staff shall notify the complainant that the complaint will be closed without action for lack of jurisdiction.

(D) If a complainant knew or should have known about the events giving rise to a complaint more than two years before the earliest date the complainant filed a complaint with either TEA staff or the EPP, TEA staff will notify the complainant that the complaint will be closed without action.

(E) TEA staff will not initiate an investigation if the complainant has not exhausted all grievance and appeal procedures that the EPP has established to address complaints.

(3) Investigating the complaint.

(A) If TEA staff determines a complaint is within the SBEC's jurisdiction, TEA staff will notify the respondent EPP that a complaint has been made, provide a summary of the allegations in the complaint, and request that the EPP respond to the complaint.

(B) TEA staff may request further information from the individual and from the EPP.

(C) An EPP shall:

(i) cooperate fully with any SBEC investigation; and

(ii) respond within 21 business days of receipt to requests for information regarding the complaint(s) and other requests for information from the TEA, except where:

(I) TEA staff imposes a different response date;

or

(II) the EPP is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(D) If an EPP, at any time during an investigation, fails to cooperate with the investigation, including failing to provide requested information in a timely manner, or provides insufficient information, the EPP may be deemed to be out of compliance with the SBEC rules; Texas Education Code (TEC), Chapter 21; and/or Public Law 110-315, Sections 205-208, as alleged in the complaint.

(4) Resolving the complaint.

(A) Upon completion of an investigation, TEA staff will notify both the individual and the EPP in writing of the findings of the investigation.

(B) Each party will have ten business days to present additional evidence or to dispute the findings of the investigation.

(C) After reviewing any additional evidence, TEA staff will make a proposed recommendation and notify both parties in writing. If TEA staff finds that the EPP has violated SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208, the proposed recommendation will include a recommendation that SBEC impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval).

(D) The EPP shall be entitled to an informal review of the proposed recommendation under the conditions and procedures set out in §229.7 of this title (regarding Informal Review of Texas Education Agency Recommendations).

(E) When a final recommendation following the opportunity for informal review finds that an EPP is out of compliance with SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208, the EPP shall provide to TEA staff evidence of compliance within 30 business days after receiving the final recommendation. If evidence of compliance is insufficient or is not received within the required time frame, SBEC may include a determination of non-compliance in the EPP's consumer information posted on the TEA website and may impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title and continuing approval status in accordance with §229.6 of this title, in accordance with the procedures set out in §229.7 of this title, and §229.8 of this title (relating to Contested Cases for Accreditation Revocation). These sanctions for non-compliance may be in addition to sanctions imposed against the EPP for other violations of SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208.

(F) The final disposition of the complaint will be recorded in the TEA complaints tracking system.

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  
State Board for Educator Certification

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



## CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

### 19 TAC §§229.4 - 229.6

The State Board for Educator Certification (SBEC) proposes amendments to §§229.4 - 229.6, concerning accountability system for educator preparation programs (EPPs). As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended a management action that adopts procedures for EPP complaints that outline all phases of the EPP complaint process. Proposed new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §228.70, Complaints and Investigations, would add these procedures in rule, and, as a result, proposed amendments to Chapter 229 are necessary.

The Texas Education Code (TEC), §21.045, states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs. Current SBEC rules in 19 TAC Chapter 229 provide for rules that establish the process used for issuing annual accreditation ratings for all EPPs.

The proposed amendments to 19 TAC §§229.4-229.6 would clarify the authority of the SBEC to adjust an accreditation status based on compliance with SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208. The proposed amendments would also update the rules to clarify the authority of the SBEC to assign an accreditation status of Not Accredited-Revoked after one year of Accredited-Probation status. The proposed amendments would also clarify the ability of Texas Education Agency staff to recommend sanctions if the TEA staff finds that an EPP has failed to comply with SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208. The proposed amendments reflect discussions held during meetings with stakeholders in September and October 2014.

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

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

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

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

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§229.4-229.6 at the January 9, 2015 special meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

The amendments are proposed under the Texas Education Code (TEC), §§21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; 21.045(b), which states that each educator preparation program shall submit specific performance data, information, and data elements as required by the SBEC for an annual performance report to ensure candidate access and equity; 21.045(c), which states that the SBEC shall propose rules establishing performance standards based, at a minimum, on subsection (a) for the accountability system for educator preparation for accrediting educator preparation programs; 21.0451, which states that the SBEC shall propose rules for the sanction of educator preparation programs that do not meet accountability standards and shall annually review the accreditation status of each educator preparation program. The costs of technical assistance required under subsection (a)(2)(A) or the costs associated with the appointment of a monitor under subsection (a)(2)(C) shall be paid by the sponsor of the educator preparation program; 21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an educator preparation program and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website; and 21.0453, which states that the SBEC may propose rules as necessary to ensure that all educator preparation programs provide the SBEC with accurate information.

The amendments implement the TEC, §§21.045, 21.0451, 21.0452, and 21.0453.

#### *§229.4. Determination of Accreditation Status.*

(a) Accountability performance indicators. The accreditation status of an educator preparation program (EPP) shall be determined at least annually, based on performance standards established in rule by the State Board for Educator Certification (SBEC), with regard to the

following EPP accountability performance indicators, disaggregated with respect to gender and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act), and other requirements of this chapter:

(1) the pass rate performance standard of certification examinations of EPP candidates is 80% for the academic year;

(2) the results of appraisals of beginning teachers by school administrators, based on an appraisal document and standards that must be independently developed by the Texas Education Agency (TEA) staff and approved by the SBEC;

(3) to the extent practicable, as valid data become available and performance standards are developed, the improvement in student achievement of students taught by beginning teachers for the first three years following certification; and

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(f) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision of teachers during their internship year. The performance standard is a 95% compliance rate with SBEC requirements as to the frequency, duration, and required documentation of field supervision for each EPP candidate.

(b) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(c) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(d) Accredited-Warning status. ~~[An EPP shall be assigned Accredited-Warning status if the EPP:]~~

(1) An EPP shall be assigned Accredited-Warning status if the EPP:

(A) [(1)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the four performance indicators set forth in subsection (a) of this section in any one year;

(B) [(2)] fails to meet the standards in any two gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(C) [(3)] fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(2) An EPP may be assigned Accredited-Warning status if the SBEC determines that the EPP has violated SBEC rules; Texas Education Code (TEC), Chapter 21; and/or Public Law 110-315, Sections 205-208.

~~(e) Accredited-Probation status. [An EPP shall be assigned Accredited-Probation status if the EPP:]~~

(1) An EPP shall be assigned Accredited-Probation status if the EPP:

(A) [(1)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the

four performance indicators set forth in subsection (a) of this section for two consecutively measured years;

(B) [(2)] fails to meet the standards in any three gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(C) [(3)] fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(2) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules; TEC, Chapter 21; and/or Public Law 110-315, Sections 205-208.

(f) Not Accredited-Revoked status.

(1) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(2) An EPP may be assigned Not Accredited-Revoked status if the EPP is assigned Accredited-Probation status for one year [~~two consecutively measured years~~], and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(3) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(4) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(5) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification, but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(g) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 20.

(2) For an EPP candidate group disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year.

(3) For an EPP candidate group not disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(4) If the preceding year's EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contained 20 or fewer individuals, that group performance shall be combined with the following year's group performance, and if the two-year cumulated group contains more than 20 individuals, then the two-year cumulated

group performance must be measured against the standards in that second year.

(5) If the two-year cumulated EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contains 20 or fewer individuals, then the two-year cumulated group performance shall be combined with the following year's group performance. The three-year cumulated group performance must be measured against the standards in that third year, regardless of how small the cumulated number of group members may be.

(6) In any reporting year in which the EPP candidate group, not disaggregated by gender and ethnicity, or in which the EPP candidate group, disaggregated by certification field, does not meet the necessary number of individuals needed to measure against performance standards for that year, any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. TEA staff may modify the sanction as TEA staff deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

(h) Action plan. An EPP that fails to meet a required performance standard shall develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates, especially regarding the performance standard that was not met. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP of the failure to meet a performance standard.

(i) Controlling section. To the extent of any conflict, this section controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

§229.5. *Accreditation Sanctions and Procedures.*

(a) The State Board for Educator Certification (SBEC) may assign an educator preparation program (EPP) Accredited-Warned or Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules; Texas Education Code, Chapter 21; and/or Public Law 110-315, Sections 205-208.

(b) [(a)] If an EPP [educator preparation program (EPP)] has been assigned Accredited-Warned or Accredited-Probation status, or if the SBEC [State Board for Educator Certification (SBEC)] determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC; and/or

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC.

(c) [(b)] Notwithstanding the accreditation status of an EPP, if the performance of all candidates admitted to an individual certification field offered by an EPP fail to meet any of the standards in §229.4(a) of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification field shall be revoked. Any candidates already admitted for preparation in that field may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be



admitted for preparation in that field unless and until the SBEC reinstates approval for the EPP to offer that certification field.

(d) [(e)] For purposes of determining compliance with subsection (b) of this section, candidate performance in individual certification fields in only the 2012-2013 academic year and subsequent academic years will be considered. To the extent of any conflict, this subsection controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

(e) [(d)] Performance indicators by gender and ethnic groups shall not be counted for purposes of subsection (b) of this section, relating to performance standards for individual certification fields. If the number of counted performance indicators for a certification field is 20 or fewer, and the performance indicators fail to meet any of the standards in §229.4(a) of this title, those performance indicators shall not count that year, but shall be cumulated and counted in the same manner as provided in §229.4(c) and (d) of this title.

(f) [(e)] An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warning, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(g) [(f)] All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

#### §229.6. *Continuing Approval.*

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.10(b) of this title (relating to Approval Process), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program admissions, operations, coursework, training, recommendation for certification, and the integrity of required data submissions.

(b) After a continuing approval review pursuant to §228.10(b) of this title or a complaint investigation pursuant to §228.70 of this title (relating to Complaints and Investigations Procedures), if the Texas Education Agency (TEA) staff finds that an EPP has failed to comply with SBEC rules [relating to the qualifications of candidates recommended for certification or to the integrity of reported program data], the TEA staff may issue a proposed recommendation for SBEC action relating to the EPP's approval to recommend candidates for educator certification. The proposed recommendation for SBEC action may include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations), and an EPP shall be entitled to an informal review of the proposed recommendation, under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal review, a final recommendation will be issued by the TEA staff. The final recommendation may in-

clude changes or additions to the proposed recommendation and such modifications are not subject to another informal review procedure.

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

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

State Board for Educator Certification

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



#### **19 TAC §229.9**

The State Board for Educator Certification (SBEC) proposes an amendment to §229.9, concerning accountability system for educator preparation programs (EPPs). The section specifies the fees for EPP approval and accountability. As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended a management action that fees in rule for educator certification and EPPs be evaluated and adjusted to cover costs and ensure equity. The proposed amendment to 19 TAC §229.9 would adjust certain fees to more adequately cover costs and increase the equity of fees across different types of fee payers.

The proposed amendment to 19 TAC §229.9 reflects discussions held during a stakeholder meeting with the Educator Preparation Advisory Committee on August 22, 2014, and with other stakeholders at meetings in September and October 2014. Following is a description of the recommended changes based on an analysis of the actual costs of services.

Section 229.9 would be amended to increase the fees for new EPP applications and new EPP approvals to more adequately provide for the administrative cost of approving EPPs. The ten-year reapplication fee for an EPP would be removed because the ten-year renewal approval process was removed from rule when the SBEC adopted an amendment to 19 TAC §228.10, Approval Process, in August 2014. The five-year continuing approval visit fee would be replaced with an annual continuing approval fee to more adequately provide for the administrative cost of renewing the approval of EPPs. The annual continuing approval fee would be based on a three-year average of candidates completing an EPP and the number of approved certification fields offered by an EPP. The cost of a monitoring or technical visit would also be increased to more adequately provide for the administrative

cost of appropriately ensuring the accountability of EPPs. No adjustments to the fees for the addition of a new certification field, the addition of clinical teaching, or the addition of each new class of certificate are recommended.

The proposed amendment would have no procedural and reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

Ryan Franklin, interim associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendment is in effect there are fiscal implications as a result of the proposed amendment. The following fiscal implications are based on costs for state government (education service centers, public universities, and state colleges), local government (public community colleges, counties, and school districts), and small businesses and microbusinesses (EPPs) for fiscal years (FYs) 2015-2019. The proposed decreases in the fee structure in 19 TAC §230.101, which may be found in the Proposed Rules section of this issue, would cover the cost of the proposed increases in the fee structure in 19 TAC §229.9 so there is neither a projected increase nor a projected loss in revenue for the TEA. There are no additional costs to persons required to comply with the proposed amendment.

The proposed amendment to 19 TAC §229.9 would increase educator preparation programs - accountability and program management fees to more adequately cover costs and more equitably distribute fees across fee payers. Currently, all EPPs pay a \$1,500 fee every five years to maintain accreditation for their EPPs. The proposed amendment to 19 TAC §229.9 would remove the five-year continuing approval fee and add an annual continuing approval fee that would range from \$2,300 to \$9,200. The proposed annual continuing approval fee is based on a four-tiered, two-part formula, which is comprised of a three-year average number of completers and the number of certification fields offered by each program. For FY 2015 there would be no anticipated fiscal implications since the proposed amendment to §229.9 would not take effect until September 1, 2015. The TEA estimates the total costs for state government-operated EPPs at \$369,600 in FY 2016, \$371,100 in FY 2017, \$374,100 in FY 2018, and \$369,600 in FY 2019 for other operating costs. The TEA estimates the total costs for local government-operated EPPs at \$23,100 in FY 2016, \$24,600 in FY 2017, \$27,600 in FY 2018, and \$29,100 in FY 2019. The TEA estimates the total costs for small businesses and microbusinesses that operate EPPs at \$170,100 in FY 2016, \$159,600 in each year for FY 2017 and FY 2018, and \$168,600 in FY 2019.

There would be an anticipated economic impact for small businesses and microbusinesses that serve as approved EPPs. It is estimated that the proposed amendment to §229.9 would affect between 1-100 small businesses and 1-100 microbusinesses (businesses with 20 or fewer employees). The projected economic impact would be for compliance costs such as an increase in continuing approval fees.

The proposed fees are structured to mitigate costs for small businesses and microbusinesses by charging based on the average number of completers prepared or certified by the EPP, so that smaller programs pay less in fees than do larger programs. Three alternatives that would further minimize the adverse impacts on small businesses and microbusinesses include:

1. Add a base tier for the three-year average number of completers that is a lower cost (\$1,000) than the first tier (\$1,500) and

place small businesses and microbusinesses at the next lowest tier after applying the formula.

2. Add a base tier for the number of certification fields offered that is a lower cost (\$500) than the first tier (\$800) and place small businesses and microbusinesses at the next lowest tier after applying the formula.

3. Add base tiers for the three-year average number of completers and the number of certification fields offered that are lower than the first tiers and place small businesses and microbusinesses at the next lowest tier after applying the formula.

The TEA staff assessed alternatives, as described earlier, to the proposed amendment to §229.9 that would diminish the impact on small businesses and microbusinesses; however, it is not possible to provide regulatory flexibility on this matter.

These methods for mitigating costs to small businesses and microbusinesses would increase the costs of administering the rule and, therefore, would increase the costs that must be covered by fees from EPPs, requiring an increase in fees accordingly. Thus, efforts to mitigate costs to small businesses and microbusinesses would actually result in increased costs to all EPPs, including small businesses. Moreover, these alternatives would increase costs for local and state government-operated EPPs.

Mr. Franklin has determined that for the first five-year period the proposed amendment is in effect the public and student benefit anticipated as a result of the proposed amendment would be an increased equity of fees across the different types of fee payers.

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the proposed amendment to 19 TAC §229.9 at the January 9, 2015 special meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

The amendment is proposed under the Texas Education Code (TEC), §21.041(c), which requires the State Board for Educator Certification (SBEC) to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B, and §21.041(d), which authorizes the SBEC to adopt fees for the approval or renewal of an educator preparation program or for the addition of a certificate or field of certification to the scope of a program's approval; and Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

The proposed amendment implements the TEC, §21.041(c) and (d), and Texas Occupations Code, §53.105.

§229.9. *Fees for Educator Preparation Program Approval and Accountability.*

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application (nonrefundable; includes pre-approval visit)--~~\$2,000~~ [~~\$1,000~~].

(2) New educator preparation program approval (includes post-approval visit)--~~\$2,000~~ [~~\$1,000~~].

(3) Annual continuing approval fee calculated as follows:

(A) Fee based on average number of completers over three years:

(i) Tier 1: 0-20 completers--\$1,500;

(ii) Tier 2: 21-57 completers--\$3,000;

(iii) Tier 3: 58-170 completers--\$4,500; or

(iv) Tier 4: more than 170 completers--\$6,000.

(B) Fee based on number of certification fields offered by program:

(i) Tier 1: 0-25 certification fields--\$800;

(ii) Tier 2: 26-40 certification fields--\$1,600;

(iii) Tier 3: 41-53 certification fields--\$2,400; or

(iv) Tier 4: more than 53 certification fields--\$3,200.

(C) The annual continuing approval fee is calculated based on the fee for the number of completers identified in subparagraph (A) of this paragraph plus the fee for the number of certification fields identified in subparagraph (B) of this paragraph.

~~[(3) Ten-year reapplication for an educator preparation program approved after August 31, 2008 (includes approval visit)--\$2,000.]~~

~~[(4) Five-year continuing approval visit pursuant to §228.10(e) of this title (relating to Approval Process)--\$1,500.]~~

(4) ~~[(5)]~~ Monitoring or technical assistance visit--~~\$2,000~~ [~~\$1,500~~].

(5) ~~[(6)]~~ Addition of new certification field or addition of clinical teaching--\$500.

(6) ~~[(7)]~~ Addition of each new class of certificate--\$1,000.

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

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Cristina De La Fuente-Valadez

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



## CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

### SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

#### 19 TAC §230.101

The State Board for Educator Certification (SBEC) proposes an amendment to §230.101, concerning professional educator preparation and certification. The section specifies the fees for certification services. As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended a management action that fees in rule for educator certification and EPPs be evaluated and adjusted to cover costs and ensure equity. The proposed amendment to 19 TAC §230.101 would adjust certain fees to more adequately cover costs and increase the equity of fees across different types of fee payers.

The proposed amendment to 19 TAC §230.101 reflects discussions held during a stakeholder meeting with the Educator Preparation Advisory Committee on August 22, 2014, and with other stakeholders at meetings in September and October 2014. Following is a description of the recommended changes based on an analysis of the actual costs of services.

Section 230.101 would be amended to decrease the fee for a request for preliminary criminal history evaluation to adequately cover the cost of performing this evaluation based on the number of evaluations that are currently requested. Other fees would also be decreased to offset the increase in fees for EPP approval and accountability.

The proposed amendment would have no procedural and reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

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

The following fiscal implications are based on costs for persons (individuals) for fiscal years (FYs) 2015-2019. The proposed decreases in the fee structure in 19 TAC §230.101 would cover the cost of the proposed increases in the fee structure in 19 TAC §229.9, which may be found in the Proposed Rules section of this issue, so there is neither a projected increase nor a projected loss in revenue for the TEA.

The proposed amendment to 19 TAC §230.101 would decrease fees for educator certification services to more adequately cover costs. The TEA staff anticipates that the proposed amendment would create a cost savings for individuals who pay a fee for these services. For FY 2015 there would be no anticipated fiscal implications since the proposed amendment to 19 TAC §230.101 would not take effect until September 1, 2015. However, in each year for FYs 2016-2019, the TEA estimates the total savings for persons at \$851,000.

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.

Mr. Franklin has determined that for the first five-year period the proposed amendment is in effect the public and student benefit

anticipated as a result of the proposed amendment would be an increased equity of fees across the different types of fee payers.

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the proposed amendment to 19 TAC §230.101 at the January 9, 2015 special meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

The amendment is proposed under the Texas Education Code (TEC), §21.041(c), which requires the State Board for Educator Certification (SBEC) to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B, and §21.041(d), which authorizes the SBEC to adopt fees for the approval or renewal of an educator preparation program or for the addition of a certificate or field of certification to the scope of a program's approval; and Texas Occupations Code, §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the Texas Occupations Code, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the Texas Occupations Code, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

The proposed amendment implements the TEC, §21.041(c) and (d), and Texas Occupations Code, §53.105.

§230.101. *Schedule of Fees for Certification Services.*

(a) An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

- (1) Standard educational aide certificate--\$30.
- (2) Standard certificate--~~\$65~~ [\$75].
- (3) Probationary certificate--~~\$40~~ [\$50].
- (4) Addition of certification based on completion of appropriate examination--~~\$65~~ [\$75].
- (5) Review of a credential issued by a jurisdiction other than Texas (nonrefundable)--~~\$150~~ [\$175].
- (6) Temporary credential based on a credential issued by a jurisdiction other than Texas--~~\$40~~ [\$50].
- (7) Emergency permit (nonrefundable)--~~\$45~~ [\$55].
- (8) National criminal history check (nonrefundable)--The fee, posted on the Texas Education Agency website, shall vary according to the current cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a

national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.

(9) Temporary teacher certificate based on recommendation by an approved Texas school district--~~\$40~~ [\$50].

(10) Review of credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable)--~~\$150~~ [\$175].

(11) On-time renewal of standard educational aide certificate--\$10.

(12) Additional fee for late renewal of standard educational aide certificate--\$5.

(13) Reactivation of an inactive standard educational aide certificate--\$15.

(14) Reinstatement following restitution of child support or student loan repayment for standard educational aide certificate--\$20.

(15) On-time renewal of a standard certificate (to include any educational aide certificate if held)--\$20.

(16) Additional fee for late renewal of a standard certificate--\$10.

(17) Reactivation of an inactive standard certificate--\$40; except for an inactivation pursuant to §232.9 of this title (relating to Inactive Status and Late Renewal).

(18) Reinstatement following restitution of child support or student loan repayment--\$50.

(19) Visiting international teacher certificate--\$50.

(20) Request for preliminary criminal history evaluation (nonrefundable)--~~\$50~~ [\$150].

(b) The fee for correcting a certificate or permit when the error is not made by the Texas Education Agency shall be equal to the fee for the original certificate or permit.

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 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

### SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to §§231.151, 231.255, 231.271, 231.283, 231.287, 231.307, 231.331, 231.361, 231.401, 231.403, 231.441, 231.445, 231.503, 231.541, 231.565, 231.569, and 231.575; new §§231.365, 231.391, 231.392, 231.393, and

231.394; and the repeal of §231.365, concerning requirements for public school personnel assignments. The sections establish Grades 9-12 assignments. The proposed revisions to 19 TAC Chapter 231, Subchapter E, would clarify the appropriate credential for placement in a particular teaching assignment and ensure alignment with changes to public school curriculum as a result of House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, Subchapter E, provides guidance to school districts with regard to the certificates required for specific Grades 9-12 assignments of public school educators with corresponding certificates for each assignment for ease of use by school district personnel.

The proposed revisions to 19 TAC Chapter 231, Subchapter E, would identify the appropriate certificates for placement in particular Grades 9-12 classroom assignments. In addition, Finance, Grades 9-12 assignments, would be added as proposed new Division 15, and subsequent divisions would be renumbered accordingly. The proposed revisions would also correct any omissions due to the major reorganization of 19 TAC Chapter 231 in 2013.

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

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

Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be updated requirements relating to the assignment of educators in Texas public schools. There are no additional costs to persons 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.

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the proposed rule actions to 19 TAC Chapter 231, Subchapter E, at the March 6, 2015, meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed rule actions submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

## DIVISION 2. LANGUAGES OTHER THAN ENGLISH, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.151

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

#### §231.151. *Languages Other Than English, Grades 9-12.*

An assignment for Languages Other Than English, Exploratory Languages, [or] Cultural and Linguistic Topics, or Special Topics in Language and Culture, Grades 9-12, is allowed with one of the following certificates.

(1) Languages Other Than English certificate in the appropriate language (Early Childhood-Grade 12).

(2) Secondary teacher certificate in the appropriate language of assignment.

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 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.255

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

#### §231.255. *Discrete Mathematics for Computer Science, Grades 9-12.*

An assignment for Discrete Mathematics for Computer Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
- (4) Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Computer Information Systems (Grades 6-12).

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 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.271

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.271. *Career Development, Grades 9-12.*

(a) Subject to the requirements in subsection (c) of this section, an assignment for Career Preparation I and II, Grades 9-12, is allowed with any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to

Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(b) An assignment for Problems and Solutions, Grades 9-12, is allowed with any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.

(c) The school district is responsible for ensuring that each teacher assigned to Career Preparation I and II or Problems and Solutions, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.283, §231.287

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.283. *Advanced Animal Science and Advanced Plant and Soil Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Advanced Animal Science or Advanced Plant and Soil Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Life Science: Grades 7-12.
- (5) Life Science: Grades 8-12.
- (6) Master Science Teacher (Grades 8-12).
- (7) Science: Grades 7-12.

- (8) Science: Grades 8-12.
- (9) Secondary Biology (Grades 6-12).
- (10) Secondary Science, Composite (Grades 6-12).

(b) All teachers assigned to these courses shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching these courses effective with the 2013-2014 school year. [Teachers assigned to these courses in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.]

§231.287. *Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.]

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 11. ARCHITECTURE  
 AND CONSTRUCTION, GRADES 9-12  
 ASSIGNMENTS**

**19 TAC §231.307**

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.307. *Construction Management and Construction Technology, Grades 9-12.*

(a) An assignment for Construction Management, Advanced Construction Management, Construction Technology, or Advanced Construction Technology, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) [(2)] Any vocational agriculture certificate.
- (4) [(3)] Mathematics/Physical Science/Engineering: Grades 6-12.
- (5) [(4)] Mathematics/Physical Science/Engineering: Grades 8-12.
- (6) [(5)] Secondary Industrial Arts (Grades 6-12).
- (7) [(6)] Secondary Industrial Technology (Grades 6-12).
- (8) [(7)] Technology Education: Grades 6-12.
- (9) [(8)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (10) [(9)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (11) [(40)] Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Construction Management, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) [(2)] Any vocational agriculture certificate.
- (4) [(3)] Mathematics/Physical Science/Engineering: Grades 6-12.
- (5) [(4)] Mathematics/Physical Science/Engineering: Grades 8-12.
- (6) [(5)] Secondary Industrial Arts (Grades 6-12).
- (7) [(6)] Secondary Industrial Technology (Grades 6-12).
- (8) [(7)] Technology Education: Grades 6-12.

(9) [(8)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) [(9)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) [(40)] Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Construction Management, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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 12. ARTS, AUDIO VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.331

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.331. *Professional Communications, Grades 9-12.*

An assignment for Professional Communications, Grades 9-12, is allowed with one of the following certificates.

(1) All-Level Speech and Drama/Theatre Arts (Prekindergarten-Grade 12).

(2) Any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)) with a minimum of a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordination Board and six semester credit hours in speech.

(3) Mathematics/Physical Science/Engineering: Grades 6-12. This assignment requires six semester credit hours in speech.

(4) Mathematics/Physical Science/Engineering: Grades 8-12. This assignment requires six semester credit hours in speech.

(5) Secondary English Language Arts, Composite (Grades 6-12). This assignment requires six semester credit hours in speech.

(6) Secondary Speech (Grades 6-12).

(7) Secondary Speech Communications (Grades 6-12).

(8) Speech: Grades 7-12.

(9) Speech: Grades 8-12.

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 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.361, §231.365

The amendment and new section are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment and new section implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.361. [~~Accounting;~~] *Business Information Management; Business Law; [Financial Analysis; Insurance Operations; Securities and Investments;] and Touch System Data Entry, Grades 9-12.*

(a) An assignment for [~~Accounting I and II;~~] Business Information Management I and II, Business Law, [~~Financial Analysis; Insurance Operations; Securities and Investments;~~] or Touch System Data Entry, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.



(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Business Management, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Business Management, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.365. Business English, Grades 9-12.

(a) An assignment for Business English, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) English Language Arts and Reading: Grades 7-12.
- (5) English Language Arts and Reading: Grades 8-12.
- (6) Grades 6-12 or Grades 9-12--English.
- (7) Grades 6-12 or Grades 9-12--English Language Arts,

Composite.

(8) Junior High School (Grades 9-10 only) or High School--English.

(9) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite.

(10) Secondary English (Grades 6-12).

(11) Secondary English Language Arts, Composite (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year.

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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### 19 TAC §231.365

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

The repeal is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed repeal implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.365. Statistics and Risk Management, Grades 9-12.

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## DIVISION 15. FINANCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.391 - 231.394

The new sections are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed new sections implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.391. Banking and Financial Services, Grades 9-12.

An assignment for Banking and Financial Services, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Any marketing or distributive education certificate.
- (3) Business and Finance: Grades 6-12.
- (4) Business Education: Grades 6-12.
- (5) Marketing: Grades 6-12.
- (6) Marketing Education: Grades 8-12.

§231.392. Money Matters, Grades 9-12.

An assignment for Money Matters, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Any homemaking or home economics certificate.
- (3) Any marketing or distributive education certificate.
- (4) Business and Finance: Grades 6-12.
- (5) Business Education: Grades 6-12.
- (6) Family and Consumer Sciences, Composite: Grades 6-12.
- (7) Marketing: Grades 6-12.
- (8) Marketing Education: Grades 8-12.

§231.393. Accounting; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12.

An assignment for Accounting I; Accounting II; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.

§231.394. Statistics and Risk Management, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Statistics and Risk Management, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year.

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 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.401, §231.403

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

*§231.401. Government and Public Administration, Grades 9-12.*

(a) An assignment for Foreign Service and Diplomacy, Planning and Governance, Political Science I and II, Principles of Government and Public Administration, or Public Management and Administration, Grades 9-12, is allowed with one of the following.

- (1) Grades 6-12 or Grades 9-12--Government.
- (2) Grades 6-12 or Grades 9-12--Social Studies.
- (3) Junior High School (Grades 9-10 only) or High School--Government-Political Science.
- (4) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (5) [(+) Secondary Government (Grades 6-12).
- (6) [(2) Secondary Political Science (Grades 6-12).
- (7) [(3) Secondary Social Science, Composite (Grades 6-12).
- (8) [(4) Secondary Social Studies, Composite (Grades 6-12).
- (9) [(5) Social Studies: Grades 7-12.
- (10) [(6) Social Studies: Grades 8-12.
- (11) [(7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) [(8) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) [(9) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Local, State, and Federal Government, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Government.

- (2) Grades 6-12 or Grades 9-12--Social Studies.
- (3) Junior High School (Grades 9-10 only) or High School--Government-Political Science.
- (4) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (5) [(4)] Secondary Government (Grades 6-12).
- (6) [(2)] Secondary Political Science (Grades 6-12).
- (7) [(3)] Secondary Social Science, Composite (Grades 6-12).
- (8) [(4)] Secondary Social Studies, Composite (Grades 6-12).
- (9) [(5)] Social Studies: Grades 7-12.
- (10) [(6)] Social Studies: Grades 8-12.
- (11) [(7)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) [(8)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) [(9)] Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Local, State, and Federal Government, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.403. *Revenue, Taxation, and Regulation, Grades 9-12.*  
An assignment for Revenue, Taxation, and Regulation, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Grades 6-12 or Grades 9-12--Social Studies.
- (5) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (6) [(4)] Secondary Social Science, Composite (Grades 6-12).
- (7) [(5)] Secondary Social Studies, Composite (Grades 6-12).
- (8) [(6)] Social Studies: Grades 7-12.
- (9) [(7)] Social Studies: Grades 8-12.

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## DIVISION 18. HOSPITALITY AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.441, §231.445

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.441. *Hospitality and Tourism, Grades 9-12.*

(a) An assignment for Hospitality Services, Hotel Management, Principles of Hospitality and Tourism, Restaurant Management, or Travel and Tourism Management, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Any marketing or distributive education certificate.
- (3) Family and Consumer Sciences, Composite: Grades 6-12.
- (4) Hospitality, Nutrition, and Food Sciences: Grades 8-12.
- (5) Marketing: Grades 6-12.
- (6) Marketing Education: Grades 8-12.
- (7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (8) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (9) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Hospitality ~~Services~~ ~~and Tourism~~, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Any marketing or distributive education certificate.
- (3) Family and Consumer Sciences, Composite: Grades 6-12.
- (4) Hospitality, Nutrition, and Food Sciences: Grades 8-12.
- (5) Marketing: Grades 6-12.
- (6) Marketing Education: Grades 8-12.
- (7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (8) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(9) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Hospitality Services [and Tourism], Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.445. *Food Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Food Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Chemistry: Grades 7-12.
- (3) Chemistry: Grades 8-12.
- (4) Family and Consumer Sciences, Composite: Grades 6-12.
- (5) Hospitality, Nutrition, and Food Sciences: Grades 8-12.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Secondary Biology (Grades 6-12).
- (12) Secondary Chemistry (Grades 6-12).
- (13) Secondary Science (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.]

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**DIVISION 21. LAW, PUBLIC SAFETY,  
CORRECTIONS, AND SECURITY, GRADES  
9-12 ASSIGNMENTS**

**19 TAC §231.503**

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.503. *Forensic Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Forensic Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Chemistry: Grades 7-12.
- (2) Chemistry: Grades 8-12.
- (3) Health Science: Grades 6-12.
- (4) Health Science Technology Education: Grades 8-12.
- (5) Life Science: Grades 7-12.
- (6) Life Science: Grades 8-12.
- (7) Master Science Teacher (Grades 8-12).
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- (10) Secondary Biology (Grades 6-12).
- (11) Secondary Chemistry (Grades 6-12).
- (12) Secondary Science (Grades 6-12).
- (13) Secondary Science, Composite (Grades 6-12).
- (14) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.
- (15) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.
- (16) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (17) Vocational Health Science Technology. This assignment requires a bachelor's degree.
- (18) Vocational Trades and Industry. This assignment requires a bachelor's degree and appropriate work approval.

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.]

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## DIVISION 23. MARKETING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.541

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.541. *Marketing, Grades 9-12.*

(a) An assignment for Sports and Entertainment Marketing [or ~~Marketing Dynamics~~], Grades 9-12, is allowed with one of the following certificates.

- (1) Any marketing or distributive education certificate.
- (2) Marketing: Grades 6-12.
- (3) Marketing Education: Grades 8-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Marketing Dynamics or Practicum in Marketing Dynamics, Grades 9-12, is allowed with one of the following certificates.

- (1) Any marketing or distributive education certificate.
- (2) Marketing: Grades 6-12.
- (3) Marketing Education: Grades 8-12.

(c) The school district is responsible for ensuring that each teacher assigned to Marketing Dynamics or Practicum in Marketing Dynamics, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.565, 231.569, 231.575

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.565. *Advanced Biotechnology, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Advanced Biotechnology, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Health Science: Grades 6-12.
- (5) Health Science Technology Education: Grades 8-12.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (12) Secondary Biology (Grades 6-12).
- (13) Secondary Science (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).
- (15) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (16) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.]

§231.569. *Engineering Mathematics, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Mathematics, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Mathematics Teacher (Grades 8-12).

- (2) Mathematics: Grades 7-12.
- (3) Mathematics: Grades 8-12.
- 6-12. (4) Mathematics/Physical Science/Engineering: Grades
- 8-12. (5) Mathematics/Physical Science/Engineering: Grades
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- Grades 6-12. (8) Science, Technology, Engineering, and Mathematics:
- (9) Secondary Mathematics (Grades 6-12).
- (10) Secondary Industrial Arts (Grades 6-12).
- (11) Secondary Industrial Technology (Grades 6-12).
- (12) Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [~~Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.~~]

§231.575. *Engineering Design and Problem Solving, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Design and Problem Solving, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Science Teacher (Grades 8-12).
- 6-12. (2) Mathematics/Physical Science/Engineering: Grades
- 8-12. (3) Mathematics/Physical Science/Engineering: Grades
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- Grades 6-12. (10) Science, Technology, Engineering, and Mathematics:
- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science (Grades 6-12).
- (15) Secondary Science, Composite (Grades 6-12).
- (16) Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency [(TEA)]-approved training prior to teaching this course effective with the 2013-2014 school year. [~~Teachers assigned to this course in the 2010-2011, 2011-2012, and/or 2012-2013 school years will have 12 months from the date the training is first offered to complete the TEA-approved training requirement.~~]

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## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §§233.3 - 233.5, 233.14

The State Board for Educator Certification (SBEC) proposes amendments to §§233.3-233.5 and 233.14, concerning categories of classroom teaching certificates. The sections contain the current classroom teaching certificates by category, grade level, and subject areas. The proposed amendments to 19 TAC §§233.3-233.5 and 233.14 would add deadlines for completion and submission requirements for specific Grades 8-12 certificates in the subject areas of English Language Arts and Reading, Social Studies, Mathematics, Science, Technology Applications and Computer Science, and Career and Technical Education (Certificates requiring experience and preparation in a skill area).

The Texas Education Code, §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of educators. Sections 233.3, English Language Arts and Reading; Social Studies; 233.4, Mathematics; Science; 233.5, Technology Applications and Computer Science; and 233.14, Career and Technical Education (Certificates requiring experience and preparation in a skill area), address the source of general authority for 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, and establish teaching assignment certificates for English Language Arts and Reading, Social Studies, Mathematics, Science, Technology Applications and Computer Science, and Career and Technical Education (Certificates requiring experience and preparation in a skill area). The following changes would establish deadlines to complete all requirements for the issuance of the last group of those certificates the SBEC will issue and establish a deadline for candidates and EPPs to submit completed applications to the Texas Education Agency (TEA).

In 19 TAC §233.3(d), (f), and (h), language would be amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2015, for candidates to complete all requirements for issuance of the last group of English Language Arts and Reading: Grades 8-12; Social Studies: Grades 8-12; and History: Grades 8-12 certificates the SBEC will issue. Language would also be amended to provide a deadline of October 30, 2015, for candidates and EPPs to submit completed applications to the TEA. In 19 TAC §233.3(j), language would be amended to remove provisions for expiration of the subsection and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of the Journalism: Grades 8-12 certificate the

SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA. In addition, §233.3(m) would be deleted since the Speech: Grades 8-12 examination was administered for the last time on August 31, 2011.

In 19 TAC §233.4(d), (f), (h), (j), and (p), language would be amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2015, for candidates to complete all requirements for issuance of the last group of Mathematics: Grades 8-12; Science: Grades 8-12; Life Science: Grades 8-12; Physical Science: Grades 8-12; and Chemistry: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2015, for candidates and EPPs to submit completed applications to the TEA. In §233.4(l) and (n), language would be amended to remove provisions for expiration of the subsections and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of Physics/Mathematics: Grades 8-12 and Mathematics/Physical Science/Engineering: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA.

Development of the new technology applications educator standards for the Technology Applications: Grades 7-12 certificate is currently underway, and TEA staff anticipates that the new examination would be available in fall 2016. The current examination would be administered for the last time in summer 2017. As a result, language would be amended in 19 TAC §233.5(a) to remove the provision for expiration of the subsection of the rule and, instead, provide a deadline of August 31, 2018, for candidates to complete all requirements for issuance of the last group of the Technology Applications: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2018, for candidates and EPPs to submit completed applications to the TEA.

In 19 TAC §233.14(b) and (d), language would be amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2017, for candidates to complete all requirements for issuance of the last group of Marketing Education: Grades 8-12 and Health Science Technology Education: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2017, for candidates and EPPs to submit completed applications to the TEA. In §233.14(f), language would be amended to remove the provision for expiration of the subsection and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of the Trade and Industrial Education: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

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

Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the continuation of guidelines for categories of classroom teach-

ing certificates and clarification of the courses that can be taught by the holders of these certificates. There are no costs to persons required to comply with the proposed amendments.

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

The public comment period on the proposal begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§233.3-233.5 and 233.14 at the March 6, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, interim associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2014.

The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; §21.044(f), which provides that SBEC rules for a person to obtain a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under §21.044(e); §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of cer-

tificate issued by the board; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The proposed amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1) - (4) and (6), 21.044(e) and (f), 21.048(a), 21.050, and 22.0831(f).

### §233.3. *English Language Arts and Reading; Social Studies.*

(a) English Language Arts and Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 4-8 certificate may teach English language arts and reading in Grades 4-8.

(b) Social Studies: Grades 4-8. The Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 4-8 certificate may teach social studies in Grades 4-8.

(c) English Language Arts and Reading/Social Studies: Grades 4-8. The English Language Arts and Reading/Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading/Social Studies: Grades 4-8 certificate may teach English language arts and reading, and social studies in Grades 4-8.

(d) English Language Arts and Reading: Grades 8-12. The English Language Arts and Reading: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 8-12 certificate may teach English language arts and reading in Grade 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses. A candidate must meet the requirements for an English Language Arts and Reading: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(e) English Language Arts and Reading: Grades 7-12. The English Language Arts and Reading: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the English Language Arts and Reading: Grades 7-12 certificate may teach English language arts and reading in Grades 7 and 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses.

(f) Social Studies: Grades 8-12. The Social Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 8-12 certificate may teach social studies in Grade 8 and all social studies and economics courses in Grades 9-12. A candidate must meet the requirements for a Social Studies: Grades 8-12 certificate by August 31, 2015. All applications

must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(g) Social Studies: Grades 7-12. The Social Studies: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Social Studies: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all social studies and economics courses in Grades 9-12.

(h) History: Grades 8-12. The History: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the History: Grades 8-12 certificate may teach social studies in Grade 8 and all history courses in Grades 9-12. A candidate must meet the requirements for a History: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(i) History: Grades 7-12. The History: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the History: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all history courses in Grades 9-12.

(j) Journalism: Grades 8-12. The Journalism: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: Grades 8-12 certificate is eligible to teach all journalism courses in Grades 8-12. A candidate must meet the requirements for a Journalism: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016. [The provisions of this subsection shall expire on September 1, 2015.]

(k) Journalism: Grades 7-12. The Journalism: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Journalism: Grades 7-12 certificate is eligible to teach all journalism courses in Grades 7-12.

(l) Speech: Grades 7-12. The Speech: Grades 7-12 certificate may be issued no earlier than November 1, 2010. The holder of the Speech: Grades 7-12 certificate is eligible to teach all speech courses in Grades 7-12.

~~{(m) Speech: Grades 8-12. The Speech: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Speech: Grades 8-12 certificate is eligible to teach all speech courses in Grades 8-12. The provisions of this subsection shall expire on September 1, 2012.}~~

### §233.4. *Mathematics; Science.*

(a) Mathematics: Grades 4-8. The Mathematics: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 4-8 certificate may teach mathematics in Grades 4-8, including Algebra I for high school credit.

(b) Science: Grades 4-8. The Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 4-8 certificate may teach science in Grades 4-8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: Grades 4-8 certificate may teach mathematics and science in Grades 4-8.

(d) Mathematics: Grades 8-12. The Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 8-12 certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. A candidate must meet the requirements for a Mathematics: Grades 8-12 certificate by August 31, 2015. All applications must be complete and



received by the Texas Education Agency (TEA) by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(e) Mathematics: Grades 7-12. The Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Mathematics: Grades 7-12 certificate may teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12.

(f) Science: Grades 8-12. The Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 8-12 certificate may teach science in Grade 8 and all science courses in Grades 9-12. A candidate must meet the requirements for a Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(g) Science: Grades 7-12. The Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all science courses in Grades 9-12.

(h) Life Science: Grades 8-12. The Life Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Life Science: Grades 8-12 certificate may teach science in Grade 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12. A candidate must meet the requirements for a Life Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(i) Life Science: Grades 7-12. The Life Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Life Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12.

(j) Physical Science: Grades 8-12. The Physical Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: Grades 8-12 certificate is eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Physical Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(k) Physical Science: Grades 6-12. The Physical Science: Grades 6-12 certificate may be issued no earlier than September 1, 2013. The holder of the Physical Science: Grades 6-12 certificate is eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(l) Physics/Mathematics: Grades 8-12. The Physics/Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Physics/Mathematics: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grade 8 and all physics courses in Grades 9-12. A candidate must meet the requirements for a Physics/Mathematics: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016. [The provisions of the subsection shall expire on September 1, 2016.]

(m) Physics/Mathematics: Grades 7-12. The Physics/Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Physics/Mathematics: Grades 7-12 certifi-

cate is eligible to teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grades 7 and 8 and all physics courses in Grades 9-12.

(n) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Mathematics/Physical Science/Engineering: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016. [The provisions of this subsection shall expire on September 1, 2016.]

(o) Mathematics/Physical Science/Engineering: Grades 6-12. The Mathematics/Physical Science/Engineering: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Mathematics/Physical Science/Engineering: Grades 6-12 certificate is eligible to teach mathematics in Grades 6-8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(p) Chemistry: Grades 8-12. The Chemistry: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: Grades 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12. A candidate must meet the requirements for a Chemistry: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015. [The provisions of this subsection shall expire on September 1, 2015.]

(q) Chemistry: Grades 7-12. The Chemistry: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Chemistry: Grades 7-12 certificate is eligible to teach science in Grades 7 and 8 and all chemistry courses in Grades 9-12.

#### §233.5. *Technology Applications and Computer Science.*

(a) Technology Applications: Grades 8-12. The Technology Applications: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Technology Applications: Grades 8-12 certificate may teach Technology Applications in Grade 8 and the following technology applications courses in Grades 9-12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications. A candidate must meet the requirements for a Technology Applications: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018. [The provisions of this subsection shall expire on September 1, 2016.]

(b) Technology Applications: Grades 7-12. The Technology Applications: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Technology Applications: Grades 7-12 certificate may teach Technology Applications in Grades 7 and 8 and the following technology applications courses in Grades 9-12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications.

(c) Technology Applications: Early Childhood-Grade 12. The Technology Applications: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2002. The holder of the Technology Applications: Early Childhood-Grade 12 certificate may teach the

technology applications curriculum in prekindergarten, kindergarten, and Grades 1-12, with the exception of Computer Science I and II.

(d) Computer Science: Grades 8-12. The Computer Science: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Computer Science: Grades 8-12 certificate may teach Computer Science I and II in Grades 8-12.

§233.14. *Career and Technical Education (Certificates requiring experience and preparation in a skill area).*

(a) All individuals seeking a career and technical education certificate specified in this section must have the required number of years of qualified work experience and preparation in a skill area approved in accordance with the provisions of subsection (h) of this section prior to issuance of the certificate and assignment in a Texas school.

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. A candidate must meet the requirements for a Marketing Education: Grades 8-12 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017. [The provisions of this subsection shall expire on September 1, 2016.] The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all marketing education courses in Grades 8-12. A candidate for the Marketing Education: Grades 8-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB); and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(c) Marketing: Grades 6-12. The Marketing: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Marketing: Grades 6-12 certificate is eligible to teach all marketing courses in Grades 6-12. A candidate for the Marketing: Grades 6-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(d) Health Science Technology Education: Grades 8-12. A standard Health Science Technology Education: Grades 8-12 certificate shall be based on experience and academic preparation in the skill area. A candidate must meet the requirements for a standard Health Science Technology Education: Grades 8-12 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017. [The provisions of this subsection shall expire on September 1, 2016.]

(1) The standard Health Science Technology Education: Grades 8-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved educator preparation program (EPP), of two years of wage-earning ex-

perience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science Technology Education: Grades 8-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(e) Health Science: Grades 6-12 certificate. The standard Health Science: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A standard Health Science: Grades 6-12 certificate shall be based on experience and academic preparation in the skill area.

(1) The standard Health Science: Grades 6-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved EPP [educator preparation program], of two years of full-time wage-earning experience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science: Grades 6-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(f) Trade and Industrial Education: Grades 8-12 certificate. A standard Trade and Industrial Education: Grades 8-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training. A candidate must meet the requirements for a standard Trade and Industrial Education: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016. [The provisions of this subsection shall expire on September 1, 2016.]

(1) The standard Trade and Industrial Education: Grades 8-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(2) The standard Trade and Industrial Education: Grades 8-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate National Occupational Competency Testing Institute (NOCTI) assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 8-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP [educator preparation program] must submit a statement of qualifications to the Texas Education Agency (TEA) within 60 calendar days of approval.

(g) Trade and Industrial Education: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2014. A standard Trade and Industrial Education: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Education: Grades 6-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP [educator preparation program] approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(2) The standard Trade and Industrial Education: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate NOCTI assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title, on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 6-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP [educator preparation program] must submit a statement of qualifications to the TEA within 60 calendar days of approval.

(h) Career and technical education certificates. Approval of career and technical education certificates in this section shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the EPP [educator preparation program] approved to prepare teachers for the career and technical education certificate sought. The certification officer of the EPP [educator preparation program] shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection. In the case of an educator who otherwise qualifies for certification by examination in Marketing Education: Grades 8-12 and Marketing: Grades 6-12, the review and approval of required work experience may be performed by a certified school administrator.

(2) Under this subsection, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours, but at least 20 hours per week, shall be calculated at a 50%

rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seeking certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience requirements must be met, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency.

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 November 3, 2014.

TRD-201405237

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: December 14, 2014

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



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

#### SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

##### 22 TAC §1.65

The Texas Board of Architectural Examiners proposes an amendment to §1.65, concerning Annual Renewal Procedure. The amendment would require each architect to maintain a current email address as a part of the architect's registration records with the board. The architect would be required to notify the board in writing of each change of the architect's email address. The amendment would require the board to send annual registration renewal notices to architects via email only. The amendment would also strike from the rule provisions which require the board to send registration renewal notices via U.S. Mail and allowing for email notice only upon the request of the architect.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government and no fiscal impact on local government. The amendment would have a cost-saving impact on the Texas Board of Architectural Examiners in eliminating postage and printing costs.

Mr. Gibson also has determined that for the first five-year period the amended rule is in effect the public benefit expected as a result is to reduce use of paper products and resources necessary to send paper materials through the U.S. Mail. Registered architects would benefit from receiving renewal notices promptly.

The proposed rule will have no adverse impact upon those who are required to comply with it. The amendment to the rule will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The amendments implement §1051.352, Texas Occupations Code, which requires the Board to send written notice of the impending expiration of a registrant's certificate of registration to the registrant's last known address not later than 30 days before the certificate of registration is scheduled to expire.

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

##### §1.65. Annual Renewal Procedure.

(a) The Board shall send via email an annual registration renewal notice to each Architect. An Architect must notify the Board in writing (~~email [e-mail]~~, fax, on the Board's Web site, or by U.S. mail) each time the Architect's email address or mailing address of record changes. ~~The[; and the]~~ written notice of the Architect's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. ~~[Upon request by an Architect, the Board shall send the annual registration renewal notice via e-mail. An Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.]~~

(b) An Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice.

(c) Each Architect must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

(d) If an Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Architect's registration, the Board shall impose a late payment penalty that must be paid before the Architect's registration may be renewed.

(e) If the Board receives official notice that an Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGS LC), the Board may not renew the Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Architect presents to the Board a certificate from TGS LC certifying that the Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Architect presents to the Board a certificate from TGS LC certifying that the Architect is not in default on a loan guaranteed by TGS LC.

(f) If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's registration.

(g) If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §1.21 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §1.22 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the application.

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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Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 305-9040



## CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §3.65

The Texas Board of Architectural Examiners proposes an amendment to §3.65, concerning Annual Renewal Procedure. The amendment would require each landscape architect to maintain a current email address as a part of the landscape architect's registration records with the board. The landscape architect would be required to notify the board in writing of each change of her or his email address. The amendment would require the board to send annual registration renewal notices to landscape architects via email only. The amendment would also strike from the rule provisions which require the board to send registration renewal notices via U.S. Mail and allowing for email notice only upon the request of the landscape architect.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government and no fiscal impact on local government. The amendment would have a

cost-saving impact on the Texas Board of Architectural Examiners in eliminating postage and printing costs.

Mr. Gibson also has determined that for the first five-year period the amended rule is in effect the public benefit expected as a result is to reduce use of paper products and resources necessary to send paper materials through the U.S. Mail. Landscape architects would benefit from receiving renewal notices promptly.

The proposed rule will have no adverse impact upon those who are required to comply with it. The amendment to the rule will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The amendment implements §1051.352, Texas Occupations Code, which requires the Board to send written notice of the impending expiration of a registrant's certificate of registration to the registrant's last known address not later than 30 days before the certificate of registration is scheduled to expire.

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

#### §3.65. Annual Renewal Procedure.

(a) The Board shall send via email an annual registration renewal notice to each Landscape Architect. A Landscape Architect must notify the Board in writing (~~email [e-mail]~~, fax, on the Board's Web site, or by U.S. mail) each time the Landscape Architect's email address or mailing address of record changes. ~~The[; and the]~~ written notice of the Landscape Architect's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. ~~[Upon request by a Landscape Architect, the Board shall send the annual registration renewal notice via e-mail. A Landscape Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Landscape Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.]~~

(b) A Landscape Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information and documentation requested by the annual registration renewal notice.

(c) If a Landscape Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Landscape Architect's registration, the Board shall impose a late payment penalty that must be paid before the Landscape Architect's registration may be renewed.

(d) If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Landscape Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect is not in default on a loan guaranteed by TGSLC.

(e) If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect's registration.

(f) If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §3.21 of this title (regarding Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §3.22 of this title (regarding Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the application.

(g) Each Landscape Architect must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

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 November 3, 2014.

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Cathy L. Hendricks, RID, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-9040



## CHAPTER 5. REGISTERED INTERIOR DESIGNERS

### SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

#### 22 TAC §5.75

The Texas Board of Architectural Examiners proposes an amendment to §5.75, concerning Annual Renewal Procedure. The amendment would require each registered interior designer to maintain a current email address as a part of her or his registration records with the board. The registered interior designer would be required to notify the board in writing of each change

of her or his email address. The amendment would require the board to send annual registration renewal notices to registered interior designers via email only. The amendment would also strike from the rule provisions which require the board to send registration renewal notices via U.S. Mail and allowing for email notice only upon the request of the registered interior designer.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government and no fiscal impact on local government. The amendment would have a cost-saving impact on the Texas Board of Architectural Examiners in eliminating postage and printing costs.

Mr. Gibson also has determined that for the first five-year period the amended rule is in effect the public benefit expected as a result is to reduce use of paper products and resources necessary to send paper materials through the U.S. Mail. Registered interior designers would benefit from receiving renewal notices promptly.

The proposed rule will have no adverse impact upon those who are required to comply with it. The amendment to the rule will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The amendments implement §1051.352, Texas Occupations Code, which requires the Board to send written notice of the impending expiration of a registrant's certificate of registration to the registrant's last known address not later than 30 days before the certificate of registration is scheduled to expire.

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

#### §5.75. Annual Renewal Procedure.

(a) The Board shall send via email an annual registration renewal notice to each Registered Interior Designer. A Registered Interior Designer must notify the Board in writing (email [e-mail], fax, on the Board's Web site, or by U.S. mail) each time the Registered Interior Designer's email address or mailing address of record changes. The[; and the] written notice of the Registered Interior Designer's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. [Upon request by a Registered Interior Designer, the Board shall send the annual registration renewal notice via e-mail. A Registered Interior Designer who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Registered Interior Designer's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.]

(b) A Registered Interior Designer may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice.

(c) If a Registered Interior Designer fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Registered Interior Designer's registration, the Board shall impose a late payment penalty that must be paid before the Registered Interior Designer's registration may be renewed.

(d) If the Board receives official notice that a Registered Interior Designer has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGS LC), the Board may not renew the Registered Interior Designer's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Registered Interior Designer presents to the Board a certificate from TGS LC certifying that the Registered Interior Designer has entered into a repayment agreement for the defaulted loan; or

(3) the Registered Interior Designer presents to the Board a Certificate from TGS LC certifying that the Registered Interior Designer is not in default on a loan guaranteed by TGS LC.

(e) If the Board receives official notice that a Registered Interior Designer has failed to pay court ordered child support, the Board may be prohibited from renewing the Registered Interior Designer's registration.

(f) If a registration is not renewed within two (2) years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §5.31 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §5.32 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the application.

(g) Each Interior Designer must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

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 November 3, 2014.

TRD-201405243

Cathy L. Hendricks, RID, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 305-9040



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

##### 22 TAC §801.112, §801.114

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §801.112 and §801.114, concerning the licensing and regulation of marriage and family therapists.

##### BACKGROUND AND PURPOSE

The proposed amendments indicate certain academic requirements for examination and licensure. The amendments specify the academic requirements, and the amendments also include new requirements for applicants beginning a graduate degree program in marriage and family therapy on or after August 1, 2017.

##### SECTION-BY-SECTION SUMMARY

The following amendments are proposed concerning Subchapter F (relating to Academic Requirements for Examination and Licensure).

Amendments to §801.112 define the type of degrees that meet the academic requirements for licensure and also specify requirements regarding coursework, including changes to those candidates that begin their academic program on or after January 1, 2017.

Amendments to §801.114 add language to include additional courses that will be required for applicants beginning a graduate degree program in marriage and family therapy or a mental health-related field, starting on or after August 1, 2017.

##### FISCAL NOTE

Sarah Faszholz, Interim Executive Director, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

##### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Faszholz has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

##### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are potential economic costs to persons who are required to comply with the sections as proposed. Those candidates beginning a graduate degree program in marriage and family therapy or a mental health-related field and who wish to practice marriage and family therapy may face additional economic costs if

they begin the graduate degree program on or after August 1, 2017, as these applicants must complete additional coursework not required for candidates who begin their graduate degree program prior to August 1, 2017. Additionally, a marriage and family therapist associate who begins their program on or after January 1, 2017, will also face potential additional costs due to the additional required courses. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Faszholz has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. 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 marriage and family therapists.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the 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 proposed rules may be submitted to Sarah Faszholz, Interim Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [mft@dshs.state.tx.us](mailto:mft@dshs.state.tx.us). When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

#### §801.112. General.

(a) The board shall accept the following as meeting academic requirements for licensure as a marriage and family therapist associate:

(1) a master's [degree] or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), Marriage, Couples, and Family

Counseling (MCFC) specialization which meets the requirements of §801.114(b)(8) of this title (relating to Academic Course Content) and starts on or after January 1, 2017; or

~~[(2) a master's degree or doctorate degree in marriage and family therapy from an accredited institution or program as defined in §801.2 of this title (relating to Definitions), but the program is not accredited by COAMFTE, provided that the practicum is at least 9 credit hours or 12 months. If the practicum is not at least 9 credit hours or 12 months an applicant may be approved to take the licensing examination and may be issued an associate license upon successfully passing the examination. Prior to receiving a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions); or]~~

(3) a master's or doctorate degree from an accredited institution or program as defined in §801.2 of this title (relating to Definitions) in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with the required minimum course content as described in §801.114 of this title [~~(relating to Academic Course Content)~~]. Prior to being qualified to receive a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).

(b) - (c) (No change.)

(d) Undergraduate courses taken by an applicant that meet the academic requirements shall not be accepted by the board unless the applicant's official transcripts clearly show that the courses were awarded graduate credit by the school.

(e) Coursework submitted by an applicant must clearly show that it was completed with a passing grade or for credit.

~~[(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcripts clearly shows that the course was awarded graduate credit by the school.]~~

~~[(e) The board shall accept no coursework which an applicant's transcripts indicate was not completed with a passing grade or for credit.]~~

(f) - (g) (No change.)

#### §801.114. Academic Course Content.

(a) An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas (one course is equal to three semester hours):

(1) theoretical foundations of marriage and family therapy--one course;

(2) assessment and treatment in marriage and family therapy--four courses;

(3) human development, gender, multicultural issues and family studies--two courses;

(4) psychopathology--one course;

(5) professional ethics--one course;

(6) applied professional research--one course; and



(7) supervised clinical practicum--12 months or nine hours.

(b) An applicant who begins a graduate degree program in marriage and family therapy or a mental health-related field on or after August 1, 2017, must complete course work and the minimum required semester hours in each of the following areas (one course is equal to three semester hours):

(1) theoretical knowledge and foundations of marriage and family therapy--including but is not limited to the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy (3 semester hours);

(2) assessment and treatment in marriage and family therapy--including but is not limited to treatment approaches specifically designed for use with a wide range of diverse couples, families, and children, including sex therapy, same sex couples, young children, adolescents, interfaith couples, crisis intervention, and elderly (12 semester hours);

(3) human development, gender, multicultural issues and family studies (6 semester hours);

(4) psychopathology--including but is not limited to traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders (3 semester hours);

(5) professional ethics--including but is not limited to professional identity of the marriage, couple, and family therapist, including professional socialization, scope of practice, professional organizations, licensure and certification; and ethical issues related to the profession of marriage, couple, and family therapy as well as the practice of individual therapy (3 semester hours);

(6) applied professional research--including but is not limited to research evidence related to MFT, becoming an informed consumer of research, and research and evaluation methods (3 semester hours);

(7) treatment of addictions and management of crisis situations (no minimum requirements);

(8) supervised clinical practicum--12 months or nine semester hours. During the supervised clinical practicum, the applicant must have 300 hours of experience (direct and non-direct), including a minimum of 75 hours of direct client contact with couples and families out of an overall minimum of 150 hours of direct client contact). The board may count excess practicum hours toward the experience requirements of this subchapter if:

(A) the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;

(B) the relational, or other direct client contact hours and/or non-direct hours that are in excess of the 300-hour practicum required by this paragraph; and

(C) no more than 400 hours of the direct plus non-direct hours.

(c) The remaining courses needed to meet the 45/60 graduate semester hour requirement shall be marriage and family therapy or related course work that are in areas directly supporting the development of an applicant's professional marriage and family, individual, or group therapy skills.

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 November 3, 2014.

TRD-201405244

Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 14, 2014

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

##### 28 TAC §1.414

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §1.414, concerning the 2015 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2015 on the basis of gross premium receipts for calendar year 2014.

EXPLANATION. Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a) - (f), and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) to update rates to reflect the methodology the department developed for 2015.

The department proposes amendments in subsection (h) to delete the Comptroller of Public Accounts' address to reduce changes to the subsection each time the address is updated.

Finally, the department proposes amendments that are nonsubstantive in nature to conform with the department's writing style guides, including subsection (a)(2) to delete the comma between "casualty insurance and fidelity" to be consistent with the Insurance Code; subsection (c)(3), to add an "s" to services to be consistent with the Insurance Code; and subsection (e) to delete the first occurrence of the word "percent" as unnecessary.

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2015:

In general, the department's 2015 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2014.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2015 fiscal year until the next assessment collection period in 2016. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation (DWC) and the workers' compensation research and evaluation group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle main-

tenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for fiscal year 2014 (August 31, 2014) and estimated fee revenue collections for fiscal year 2015. The resulting balance is the estimated revenue need that must be supported during the 2015 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC).

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2015 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2015 fiscal year until the next assessment collection period in 2016. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at August 31, 2014, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2015. The resulting

balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2015 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2015 fiscal year until the next assessment collection period in 2016. The department adds these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2014. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 (created by SB 734, 83rd Legislature, Regular Session, 2013) provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is estimated income of \$138,984,794 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Meyer also has determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be facilitating the collection of maintenance tax and fee assessments.

The cost in 2015 to an insurer that received premiums in 2014 will be: for motor vehicle insurance, .060 of 1 percent of those gross premiums; for casualty insurance and fidelity, guaranty, and surety bonds, .080 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .340 of 1 percent of those gross premiums; for workers' compensation insurance, .066 of 1 percent of those gross premiums; and for title insurance, .076 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2014 will also pay 1.533 percent of that premium

for the operation of DWC and OIEC and .016 of 1 percent of that premium to fund the Workers' Compensation Research and Evaluation Group's activities. A workers' compensation self-insurance group will pay 1.533 percent of its 2014 gross premium for the group's retention under Labor Code §407A.301 and .066 of 1 percent of its 2014 gross premium for the group's retention under Labor Code §407A.302.

The cost in 2015 for an insurer that received premiums in 2014 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2015, an HMO will pay \$.28 per enrollee if it is a single service HMO or a limited service HMO, and \$.84 per enrollee if it is a multi-service HMO. In 2015, a third party administrator will pay .010 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2014. In 2015, for a nonprofit legal services corporation issuing prepaid legal services contracts, the cost will be .020 of 1 percent of correctly reported gross revenues for 2014.

In 2015, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .016 of 1 percent of the tax base calculated under Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .016 of 1 percent of the tax base calculated under Labor Code §407.103(b).

Finally, in 2015, a workers' compensation certified self-insurer will pay 1.533 percent of the tax base calculated under Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Based on the information obtained by the department, the actual cost of gathering the information required to calculate the assessment, and complete the form will be identical for the same number of lines of insurance for micro, small, and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated between \$24 - \$40 an hour by small and large insurers. The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take six hours to complete the form. In the case of a certified self-insurer, DWC will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal. Rates of assessment proposed by the department are the same for micro, small, or large businesses. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small or micro businesses.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic effect on approximately 117 insurance companies and HMOs and

approximately 275 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit and cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends on the amount of gross premiums in 2014: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on the amount of gross considerations in 2014. For HMOs, the cost of compliance depends on the number of enrollees in 2014. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2014. For nonprofit legal services corporations issuing prepaid legal services contracts, the cost of compliance depends on the correctly reported gross revenues. For workers' compensation certified self-insurers and workers' compensation certified self-insurance groups, the cost of compliance depends on the tax base calculated under Labor Code §407.103(b).

In accord with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2015 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; HMOs; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

*Not adopting the proposed rule.* Under Insurance Code §251.003, if the commissioner does not advise the comptroller of the applicable maintenance tax assessment rates, the comptroller must assess taxes based on the previous year's assessment. Use of the previous year's rates and the estimated assessment bases for 2014, the department estimates revenue collections would exceed amounts needed by approximately \$5.6 million. If no rule is adopted the department would collect excess revenue to fund the department's costs. The department has rejected this option.

*Adopting different taxes for small and micro businesses.* The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is deter-

mined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of administrative or service fees. However, based on the proposed rule, a small or micro business would pay a smaller assessment, and would reduce its risk of economic harm. The department has rejected this option.

*Exemption of small and micro businesses from the tax requirements.* As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed lower taxes. If the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. The department has rejected this option.

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

**REQUEST FOR PUBLIC COMMENT.** Submit any written comments on the proposal no later than 5:00 p.m., Central time, on December 15, 2014, 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](mailto:chiefclerk@tdi.texas.gov). Simultaneously submit an additional copy of the comments to Texas Department of Insurance, Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [joe.meyer@tdi.texas.gov](mailto:joe.meyer@tdi.texas.gov). Separately submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with

state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing workers' com-

pensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers. Section 257.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code 258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the commissioner on HMOs may not exceed \$2 per enrollee. Section 258.003 also provides that the commissioner shall annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably

reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO shall pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed 1 percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the commissioner shall annually determine the rate

of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under this chapter on the correctly reported gross premiums from writing title insurance in Texas.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C. Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer shall pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the commissioner of insurance to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-

insurance groups to fund the workers' compensation research and evaluation group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Section 407.104(b) provides that the department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer shall remit the taxes and fees to DWC.

The Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section shall be collected by the comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter

407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it shall be collected by the comptroller in the manner provided by Insurance Code Chapter 255.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The amendments to §1.414 in this proposal affect Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

§1.414. *Assessment of Maintenance Taxes and Fees, 2015 [2014].*

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2014 [2013] for the lines of insurance specified in paragraphs (1) - (9) of this subsection:

(1) for motor vehicle insurance, under Insurance Code §254.002, the rate is .060 [~~.061~~] of 1.0 percent;

(2) for casualty insurance[;] and fidelity, guaranty, and surety bonds, under Insurance Code §253.002, the rate is .080 [~~.112~~] of 1.0 percent;

(3) for fire insurance and allied lines, including inland marine, under Insurance Code §252.002, the rate is .340 [~~.365~~] of 1.0 percent;

(4) for workers' compensation insurance, under Insurance Code §255.002, the rate is .066 [~~.065~~] of 1.0 percent;

(5) for workers' compensation insurance, under Labor Code §403.003, the rate is 1.533 [~~1.543~~] percent;

(6) for workers' compensation insurance, under Labor Code §405.003, the rate is .016 [~~.014~~] of 1.0 percent;

(7) for workers' compensation insurance, under Labor Code §407A.301, the rate is 1.533 [~~1.543~~] percent;

(8) for workers' compensation insurance, under Labor Code §407A.302, the rate is .066 [~~.065~~] of 1.0 percent; and

(9) for title insurance, under Insurance Code §271.004, the rate is .076 [~~.072~~] of 1.0 percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2014 [2013] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under Insurance Code §257.002, is .040 of 1.0 percent.

(c) The department assesses rates for maintenance taxes for calendar year 2014 [2013] for the following entities as follows:

(1) under Insurance Code §258.003, the rate is \$.28 [~~\$.26~~] per enrollee for single service health maintenance organizations, \$.84 [~~\$.78~~] per enrollee for multi-service health maintenance organizations, and \$.28 [~~\$.26~~] per enrollee for limited service health maintenance organizations;

(2) under Insurance Code §259.003, the rate is .010 [~~.027~~] of 1.0 percent of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) under Insurance Code §260.002, the rate is .020 of 1.0 percent of the correctly reported gross revenues for nonprofit legal services [~~service~~] corporations issuing prepaid legal services [~~service~~] contracts.

(d) Under Labor Code §405.003, each certified self-insurer must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2015 [2014] at a rate of .016 [~~.014~~] of 1.0 percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Under Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2015 [2014] at a rate of .016 [~~.014 percent~~] of 1.0 percent of the tax base calculated under Labor Code §407.103(b).

(f) Under Labor Code §407.103 and §407.104, each certified self-insurer must pay a self-insurer maintenance tax in calendar year 2015 [2014] at a rate of 1.533 [~~1.543~~] percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts[; P.O. Box 149356, Austin, TX 78714-9356] on March 1, 2015 [2014].

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 October 30, 2014.

TRD-201405125  
Sara Waitt  
General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 14, 2014

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

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CHAPTER 7. CORPORATE AND FINANCIAL  
REGULATION  
SUBCHAPTER J. EXAMINATION EXPENSES  
AND ASSESSMENTS

**28 TAC §7.1001**

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes



a health maintenance organization (HMO) as defined in Insurance Code §843.002.

EXPLANATION. The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2015 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2015 calendar year, based on admitted assets and gross premium receipts for the 2014 calendar year, and from each foreign insurance company examined during the 2015 calendar year, based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsection (b)(2), and (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2015.

The department proposes amendments to subsection (e) and deletes the department address and substitutes "at the address provided on the invoice" to reduce changes to the subsection each time the address is updated.

Finally, the department proposes amendments that are nonsubstantive in nature to conform with the department's writing style guides. In subsection (c)(4) the department deletes the words "a" and "total" because the language describing the \$25 assessment is redundant.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2015.

In general, the department's 2015 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2014.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-

directed budget account from the end of the 2015 fiscal year until the next assessment collection period in 2016. This estimate includes an amount to contribute to funding the examination premium tax credits reimbursement that will occur in 2015. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2015 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2014 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2014 to determine the proposed rate of assessment for admitted assets.

The department did not alter the methodology to include changes provided for in HB 2163, 83rd Legislature, Regular Session, 2013. The bill amended Insurance Code §401.152 allowing the department to impose an annual assessment on insurers not organized under the laws of this state in the same manner as domestic companies are assessed under Insurance Code §401.151(c). The intent of the bill, as found in the Senate Research Center's Bill Analysis, was to level the playing field with other states through reducing costs to Texas domestic insurers by spreading the cost of examination overhead assessments imposed by the department to all insurers licensed in Texas. The department intends to defer implementation for the 2015 assessment, because of unintended consequences, which may increase the cost to the same insurers that the bill was designed to reduce.

In the 2015 rule amendments, the department will implement the provisions of Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), Article I, Rider 16, Page 28. This rider directs the department to reimburse the General Revenue Fund from the Texas Department of Insurance Operating Fund Account for the costs of insurance premium tax credits for examination fees and overhead assessments. The amount is estimated to be \$12.7 million. SB 1665 and HB 2163, 83rd Legislature, Regular Session, 2013, allow the department to use dollars received from the examination overhead assessment (deposited to the self-directed budget account and subsequently transferred to the Texas Department of Insurance Operating Fund Account) to pay for the reimbursement of premium tax credits for examination costs. In this year's assessment, the department added an amount to contribute to funding the reimbursement in 2015. In calendar year 2015, the department will assess companies paying the examination overhead assessment to collect additional revenues to fund the reimbursement.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of \$17,932,696 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Meyer also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2015 calendar year. Mr. Meyer has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company or group.

The amount of the assessment in 2015 for domestic companies will be .00231 of 1.0 percent of the company's admitted assets as of December 31, 2014, excluding pension assets specified in subsection (c)(2)(A), and .00928 of 1.0 percent of the company's gross premium receipts for 2014, excluding pension related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6). The amount of the assessment in 2015 for foreign companies examined in 2015 will be 35 percent of the gross salary paid to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment. Based on information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment, and complete the form will be the same for micro, small, and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between \$24 and \$40 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. There is no difference in proposed rates of assessment for micro, small, and large businesses, except that for those domestic companies with an overhead assessment of less than \$25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of \$25 will be assessed.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 18 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the department conducts on foreign insurance companies. The department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on: for foreign insurers and for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and expenses associated with the examination; and for domestic insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accord with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and

foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempting small or micro businesses from the assessment requirements.

*Not adopting the proposed rule.* Without adopting the proposed rule the department would be unable to collect the necessary funds to cover the examination functions of the department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure of the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §401.151(c), which directs the department to impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

*Adopting a different assessment requirement for small and micro businesses.* The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of \$25, for domestic insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic insurer that is a small or micro business most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

*Exempting small or micro businesses from the assessment requirements.* As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the department can develop. The department applies a methodology that contemplates a domestic insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

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

**REQUEST FOR PUBLIC COMMENT.** Submit any written comments on the proposal no later than 5:00 p.m., Central Time, on December 15, 2014, 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](mailto:chiefclerk@tdi.texas.gov). Simultaneously submit an additional

copy of the comments to Texas Department of Insurance, Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [joe.meyer@tdi.texas.gov](mailto:joe.meyer@tdi.texas.gov). Separately submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

**AUTHORITY.** The new section is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority shall pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

Insurance Code §401.151 also provides that the department shall collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department shall consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas shall reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, §401.152 provides that the commissioner shall determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as nec-

essary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropiate.

Labor Code §407A.252(b) provides that the commissioner of insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

CROSS REFERENCE TO STATUTE. Amendments in this proposal to §7.1001 affect Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b).

§7.1001. *Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2015 [2014].*

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2015 [2014]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under Insurance Code §401.155, a foreign insurance company must pay an additional assessment of 35 [34] percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accord with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2015 [2014]. The expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00231 [0.00245] of 1.0 percent of the admitted assets of the company as of December 31, 2014 [2013], taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) .00928 [0.00903] of 1.0 percent of the gross premium receipts of the company for the year 2014 [2013], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2014 [2013], the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2014 [2013].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than [a] \$25 [total], a domestic insurance company must pay a minimum overhead assessment of \$25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.).

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year.

The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2015 [2014]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance at the address provided on the invoice[; Accounting Division, P.O. Box 149104, MC 9999, Austin, Texas 78714-9104] not later than 30 days from the invoice date.

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 October 30, 2014.

TRD-201405124

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 14, 2014

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



## CHAPTER 25. INSURANCE PREMIUM FINANCE

### SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

#### 28 TAC §25.88

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §25.88, concerning an assessment that will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies.

**EXPLANATION.** The proposed amendments are necessary to adopt the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for each year.

The department has determined that the estimated revenue need requires the collection of the minimum assessment amount of \$250 from each insurance premium finance company for each year.

The department proposes an amendment in the first sentence of the section to update the reference when the assessment is due and substitutes "of each year" after April 1 instead of a specific year to reflect the payment is due every year. If the assessment does not change, then §25.88 will not have to be amended annually to change the year.

The department proposes an amendment to the second sentence of this section relating to where payments must be sent. The department deletes the specific address and adds that the address can be found on department invoices sent to premium finance companies. If the assessment amount does not change, then §25.88 will not have to be amended when the address changes.

Finally, the department proposes amendments that are nonsubstantive in nature to conform with the department's writing style guides. In the first sentence, the department deletes the word "each" and adds the word "every" before insurance premium finance company so that "each" is not used twice in the same sentence.

The following paragraphs provide an explanation of the methodology the department used to determine its assessments for insurance premium finance companies for each year.

In general, the department's revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance exam assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from the previous fiscal year.

To determine its total cost need, the department combined costs from the following: (i) appropriations set out in the General Appropriations Act by the Texas Legislature, which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of each fiscal year until the next assessment collection period. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source.

The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

The department's examination division bases its current allocation on the number of hours market conduct staff performs examinations on premium finance companies.

To complete the calculation of the revenue need, the department combined the costs allocated to the premium finance assessment source and the self-directed source attributable to regulation of premium finance insurance companies. The department subtracted the current fiscal year estimated amount of premium finance fee revenue and the estimated combined previous fiscal year's ending funding balance of the premium finance assessment source and the self-directed budget attributable to premium finance from the amount of the combined costs for regulation of premium finance insurance companies. The resulting balance was the amount of revenue need for the purpose of calculating the premium finance assessment rate. The department divided the revenue need by the estimated loan dollar volume to determine the proposed rate of assessment for premium finance insurance companies. Based on this, the department determined that the estimated revenue need requires the collection of the minimum assessment amount of \$250 from each insurance premium finance company.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is estimated income of \$48,500 to the Texas Department of Insurance examination self-directed account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Meyer also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit expected as a result of enforcing the section will be sufficient funds to cover the department's expenses for regulating insurance premium finance companies.

There are two components of costs for entities required to comply with the proposal: the cost to gather information and complete the required forms, and the cost of the assessment.

The actual cost of gathering the information required to fill out and complete the form will be the same for micro, small, and large businesses. A person familiar with the accounting records of the company and accounting practices in general will probably perform the activities necessary to comply with the section. These persons are similarly compensated by micro, small, and large insurance premium finance companies. The compensation is generally between \$24 and \$40 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours.

The requirement to pay the assessment is the result of the legislative enactment of the statute that imposes the assessment and is not a result of the adoption or enforcement of this proposal.

There is no difference in proposed rates of assessment for micro, small, and large businesses. The cost of the assessment to a premium finance company next year, regardless of whether the company is micro, small, or large, will be \$250, which has been the minimum assessment cost under §25.88 in previous years.

The department, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposal for small and micro businesses.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 99 licensed insurance premium finance companies that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from costs associated with the amount of the required examination fee resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit and cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on each insurance premium finance company paying the \$250 minimum assessment.

In accord with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to issue a rule addressing the rate of assessment to cover the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies each year.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment for small and micro businesses, and (iii) exempting small and micro businesses from the assessment requirements.

*Not adopting the proposed rule.* Without adopting a rule the department will be unable to collect the necessary funds to cover costs of the examination function of the department. The purpose of conducting examinations is to monitor the activities and solvency of premium finance companies. Failure of the department to perform its examination functions could result in public harm if an insurance premium finance company ceased compliance with the Insurance Code or became insolvent and this was not detected because of the lack of regular examinations. Not adopting the rule would also result in premium finance companies being out of compliance with Insurance Code §651.006, which requires a licensed insurance premium finance company to pay an amount that covers the direct and indirect costs of an examination or investigation and a proportionate share of the general administrative expense attributable to the regulation of licensed insurance premium finance companies. This option has been rejected.

*Adopting a different assessment for small and micro businesses.* The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that this year results in an assessment of \$250. This amount is equal to the minimum assessment required by previous versions of the rule extending back to its initial adoption in 1995. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has a lower loan dollar volume. However, based on the proposed rule, a small or micro business would pay this minimum assessment, thereby reducing its risk of economic harm. This option has been rejected.

*Exempting small and micro businesses from the assessment requirements.* As previously noted, the current methodology used to develop the proposed amendments is already the most equitable that the department can develop. The department applies a methodology that contemplates companies, including those that are small or micro businesses, paying the minimum assessment that has been required under this section. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

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

**REQUEST FOR PUBLIC COMMENT.** Submit any written comments on the proposal no later than 5:00 p.m., Central Time, on December 15, 2014, 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](mailto:chiefclerk@tdi.texas.gov). Simultaneously submit an additional copy of the comments to Texas Department of Insurance, Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [joe.meyer@tdi.texas.gov](mailto:joe.meyer@tdi.texas.gov). Separately submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); 651.006(a); and 36.001.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §651.003 authorizes the commissioner to adopt and enforce rules necessary to administer Insurance Code Chapter 651.

Insurance Code §651.005(b) requires that the department deposit an assessment or fee associated with examination costs, as defined by §401.251, to the account described by §401.156(a).

Insurance Code §651.006(a) requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs

of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The amendments to §25.88 affect Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); and 651.006(a).

§25.88. *General Administrative Expense Assessment.*

No later than April 1 of each year, every [~~2014, each~~] insurance premium finance company holding a license issued by the department under Insurance Code Chapter 651 must pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company must send payment to the Texas Department of Insurance at the address provided on the invoice [~~Financial - Market Conduct, Mail Code 9999, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104~~]. The assessment to cover general administrative expenses is \$250.

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 October 30, 2014.

TRD-201405126

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 14, 2014

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

###### 34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities, including nexus, permits, returns and reporting periods, collection and exemption rules, and criminal penalties. The section is being amended to reflect the changes made to Tax Code, Chapter 151 by the following legislation: House Bill 11, 82nd Legislature, 2011; House Bill 268, 82nd Legislature, 2011; House Bill 1841, 82nd Legislature, 2011; Senate Bill 934, 82nd Legislature, 2011; Senate Bill 1, 82nd Legislature, First Called Session, 2011; House Bill 1223, 83rd Legislature, 2013; and House Bill 800, 83rd Legislature, 2013. The section is also being amended to memorialize longstanding comptroller practice that is not addressed in the current section.

The title of §3.286 is proposed to be changed to delete the phrase "Criminal Penalties." The proposed title is "Seller's and Purchaser's Responsibilities, Including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules." The comptroller has determined that the descriptions of criminal offenses and penalties in this section are unnecessary as criminal offenses and penalties are addressed in detail in §3.305 of this title (relating to Criminal Offenses and Penalties). The portions of this section describing criminal offenses and penalties are proposed to be deleted. The title amendment reflects the proposed deletions in the body of the section.

Subsection (a), relating to definitions, is amended to define several additional terms. Subsection (a) is further amended to clarify several terms found in the current section. The words "in this state" are substituted for the word "Texas" throughout this subsection for uniformity, and changes are made to improve clarity and readability.

New paragraph (1) defines the term "consignment sale." This term is added to implement Section 30.01 of Senate Bill 1, 82nd Legislature, 1st Called Session, 2011, which amended the definition of "seller" or "retailer" in Tax Code, §151.008(b) to include: "A person who, under an agreement with another person, is: (A) entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest; and (B) authorized to sell, lease, or rent the property without additional action by the person having title to or another ownership interest in the property." Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (2) is amended to add the phrase "directly to purchasers," and to replace the term "salespeople" with the term "salespersons," which is used elsewhere in the section. Additional changes are made to the paragraph to correct grammatical errors.

Renumbered paragraph (3), which defines the term "engaged in business," is amended to follow more closely the language of Tax Code, §151.107(a). The reference to the term "nexus" in this paragraph is deleted, as the definition of the term "nexus" is revised to state that a person has nexus with this state if the person is engaged in business in this state. Subparagraph (D) is amended to explain that the term "independent salesperson" includes distributors, representatives, and consultants. See, for example, Comptroller's Decision No. 37,308 (2000) (holding that distributors were "independent salespersons"). Subparagraph (E) is amended to use the more accurate phrase "sale, lease, or rental" instead of the phrase "rental or lease," and to implement House Bill 1841, 82nd Legislature, 2011, which added Tax Code, §151.108 (Hosting). The paragraph currently states that a person is engaged in business in this state if the person "derives receipts from the sale, lease, or rental of tangible personal property that is located in this state or owns or uses tangible personal property that is located in this state, including a computer server or software." This language could be construed to be contrary to Tax Code, §151.108(b), which provides that a person whose only activity in this state is conducted as a user of Internet hosting is not engaged in business in this state. Consequently, the last clause of subparagraph (E) is amended to read, "including a computer server or software, unless the person uses the software as a purchaser of an Internet hosting service." Additional minor changes are made to other existing paragraphs, such as the addition of the word "otherwise" to subparagraph (G). New subparagraph (H), stating that persons formed, organized, or incorporated under, and governed by, the laws of this state are

engaged in business in this state, is added in order to memorialize current comptroller policy. See, e.g., STAR Accession No. 200209447L (September 19, 2002). In addition, new subparagraph (I) is added to implement Senate Bill 1, 82nd Legislature, 1st Called Session, 2011, which expanded the definition of a retailer engaged in business in this state.

New paragraph (4) is added to define the term "Internet hosting service" pursuant to House Bill 1841, 82nd Legislature, 2011. Existing paragraphs are renumbered accordingly.

Renumbered paragraph (6), defining the term "kiosk," is amended to replace the term "customer" with the term "purchaser" to use uniform terminology throughout the section.

Renumbered paragraph (7), defining the term "nexus," is amended by adding new subparagraph (A), which states that a person engaged in business in this state has nexus with this state, and new subparagraph (B), which states that a person does not have nexus with this state if the person's only activity in this state is conducted as an unrelated user of an Internet hosting service. See Tax Code, §151.108. Subparagraph (B) also provides that a person whose only connection with this state is the possession of a certificate of authority to do business in this state issued by the Texas Secretary of State does not have nexus with this state. See *Rylander v. Bandag Licensing Corporation*, 18 S.W.3d 296 (Tex. App. Austin 2000, pet denied).

Renumbered paragraph (8), defining the term "permit holder," is amended to clarify that the term includes persons holding an active sales and use tax permit, but does not include a person whose sales and use tax permit is suspended or cancelled, or a person who has not received a permit due to an unsigned or incomplete sales tax application.

Renumbered paragraph (9), defining the term "person," is amended to add the term "limited liability company." Renumbered paragraph (10), which previously defined the term "place of business of the seller," is revised as that phrase does not appear in elsewhere in the section. The paragraph now defines the term "place of business" by reference to the definition of that term in §3.334 of this title (Local Sales and Use Taxes).

Renumbered paragraph (11), defining the term "seller," is amended to conform more closely to the statutory definition of the term in Tax Code, §151.008. In addition, subparagraph (D), relating to the sale of tangible personal property held for sale on consignment, is added to implement §30.01 of Senate Bill 1, 82nd Legislature, 1st Called Session, 2011. Subsequent subparagraphs are re-lettered accordingly.

Renumbered paragraph (12), defining the term "taxable item," is also amended to conform more closely to the statutory definition of the term in Tax Code, §151.010.

Subsection (b) addresses which persons must hold a sales and use tax permit in this state. This subsection is amended to use the phrase "sales and use tax permit" in place of the terms "tax permit" and "permit," and to substitute the words "this state" for the word "Texas," throughout the subsection for consistency.

Subsection (b)(1) is amended to state that each seller who has nexus with this state, rather than each seller who is engaged in business in this state, must apply for and obtain a sales and use tax permit for each place of business operated in this state. Previously, the term "nexus" was not used in the body of the section. This amendment provides that every seller who has sufficient contact with, or activity within, this state to require that person



to collect and remit sales and use tax must also obtain a sales and use tax permit. This amendment reflects the amendment to subsection (a)(7), which is revised to state that a person who is engaged in business in this state has nexus with this state.

Subsection (b)(2) is amended to delete the statement that an out-of-state seller who has been engaged in business in this state continues to be responsible for collection of use tax on sales made into this state for 12 months after the seller ceases to be engaged in business in this state. The comptroller has determined that this requirement, which is sometimes referred to as "trailing nexus" or "deemed nexus," is contrary to the physical presence test articulated in *Quill v. North Dakota*, 504 U.S. 298 (1992). The paragraph is further amended by adding a statement that an out-of-state seller will only be responsible for collection of Texas sales and use tax until the seller ceases to be engaged in business in this state. Examples are provided to explain when an out-of-state seller ceases to be engaged in business in this state. An out-of-state seller will also be required to maintain, for at least four years after the out-of-state seller ceases to be engaged in business in this state, all records required by subsection (j) of this section, including sufficient documentation to verify the reporting period in which the out-of-state seller ceased to be engaged in business in this state. The comptroller intends that this proposed amendment be effective retroactively.

Subsection (b) is further amended to delete paragraph (4), concerning criminal penalties. The comptroller has determined that this paragraph is unnecessary as criminal offenses and penalties are addressed in detail in §3.305 of this title. Renumbered paragraph (4) is amended to make clear that the phrase "non-permitted" refers both to purchasers who are not required to hold a sales and use tax permit and those who do not have a direct payment permit. Renumbered paragraph (5) is amended to make clear that sellers whose permits are suspended or canceled, or who failed to obtain or receive a sales and use tax permit, are required to collect and remit sales and use tax on their sales of taxable items.

Subsection (c), obtaining a sales and use tax permit, is amended to use the phrase "sales and use tax permit" in place of the terms "tax permit" and "permit," and to substitute the words "this state" for the word "Texas," throughout the subsection for consistency.

Subsection (d), collecting sales and use tax due, is amended to use the phrase "sales and use tax" in place of the term "tax," and to use the term "purchaser" in place of the term "customer," throughout the subsection for consistency.

In addition, paragraph (2)(A), which explains that sales and use tax due is a debt of the purchaser to the seller, is amended to follow more closely the language of Tax Code, §151.052 (Collection by Retailer) and §151.515 (Proceedings Against Consumer). Paragraph (3) is deleted as unnecessary because criminal offenses and penalties are addressed in detail in §3.305 of this title. Subsequent paragraphs are renumbered. Renumbered paragraph (3), concerning direct sales organizations, is revised for clarity and readability. Renumbered paragraph (4), concerning printers, is amended to add the phrase "in this state," as printers' sales tax collection obligations are limited to sales that are consummated in this state. Additionally, paragraph (4)(C) is amended to state that a purchaser must issue a properly completed exemption certificate to a printer in order for the printer to be allowed to make a tax-free sale. Renumbered paragraph (5) is amended to use the defined term "permit holder." Additional minor revisions are made for clarity. Renumbered paragraph (6) is amended to replace the phrase "engaged in business in" with

the phrase "has nexus with," in keeping with the revisions to subsection (b). This paragraph is further amended to state that a person who has nexus with this state is required to properly collect and remit local sales and use tax. The reference in this paragraph to kiosks is deleted as unnecessary due to the revisions to the definition of the term "place of business" in subsection (a), renumbered paragraph (10). Finally, paragraph (6) is amended by providing citations to Tax Code, Title 3, Subtitle C in place of the current citation to publication 96-105.

Subsection (e), concerning sales and use tax returns and remitting tax due, is amended to use the phrase "sales and use tax returns" in place of the term "returns," and to replace the term "report" with the term "sales and use tax return." Paragraph (3) is amended for clarity. In addition, subparagraph (B) is deleted as unnecessary as the occasional sale exemption is addressed in detail in §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters.) Subsequent subparagraphs are relettered.

Subsection (f), relating to due dates, is amended to use the phrase "sales and use tax returns" in place of the term "returns" throughout the subsection for consistency. Paragraph (2) is amended to refer taxpayers to §3.9(c) of this title for additional information regarding due dates for electronic payments. The comptroller recently amended §3.9 to provide updated information about the requirements for submitting payment information using the State of Texas Financial Network (TexNet). In addition, paragraph (3) is amended to conform more closely to the statutory language of Tax Code, §151.350 (Labor to Restore Certain Property). Paragraph (3) is also amended to provide that the term "natural disaster area" has the meaning given in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

Subsection (g), relating to reporting periods, is amended to use the phrase "sales and use tax returns" in place of the term "returns;" to use the term "return" in place of the term "report;" and to use the defined term "permit holder" in place of the terms "person" and "seller." Additional minor revisions are made to improve the readability of the subsection. In addition, paragraph (4) is amended to state that printers are required to file Form 01-157, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form. Paragraph (7) is amended to refer taxpayers directly to §3.360 of this title (relating to Customs Brokers) as the rights and responsibilities of sellers who refund sales tax on exports based on customs broker certifications are addressed in greater detail in that section. Paragraph (8) is amended to refer taxpayers directly to §3.288 of this title (relating to Direct Payment Procedures and Qualifications) as that section addresses in more detail the required sales and use tax returns and remittances of direct payment permit holders. Paragraph (9) is amended to state that non-permitted purchasers who owe sales or use tax that is not collected by the seller must pay the sales and use tax they owe to the comptroller using Form 01-156, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

Subsection (h), relating to discounts, prepayments, and penalties and interest relating to filing sales and use returns, is amended to use the phrase "sales and use tax returns" in place of the term "returns," and to use the defined term "permit holder" in place of the term "person." Additional minor changes are made to improve the readability of the section. In addition, para-

graph (1) is amended to state that the timely filing discount is a reimbursement for the expense of collecting and remitting sales and use tax. Paragraph (2)(E) is amended for accuracy to replace the word "required" with the word "described." Paragraph (3)(B) is amended to implement Senate Bill 1, 82nd Legislature, 1st Called Session, 2011, which repealed Tax Code, §151.7031 (Failure to Report on Three or More Occasions; Civil Penalty) and amended Tax Code, §151.703(d) to impose a penalty of \$50 on any person who fails to timely file a report required by Tax Code, Chapter 151.

Subsection (i) is amended to direct taxpayers to §3.9 of this title for information regarding reports of alcoholic beverage sales to retailers. The comptroller has determined that the additional detail currently provided in this subsection is unnecessary, and potentially confusing, as it duplicates information provided in §3.9.

Subsection (j) is amended to direct taxpayers to §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records). The comptroller has determined that the additional detail currently provided in this subsection is unnecessary, and potentially confusing, as it duplicates information provided in §3.281 and §3.282.

The caption for subsection (k) is amended for readability. Subsection (k) itself is amended by adding references to agricultural sales and use tax exemption certificates, timber operations sales and use tax exemption certificates, qualifying data center exemption certificates, and qualifying research and development exemption certificates. These amendments implement the following legislation: House Bill 268, 82nd Legislature, 2011, which enacted Tax Code, §151.1551, relating to registration numbers for agricultural and timber items; House Bill 1223, 83rd Legislature, 2013, which enacted Tax Code, §151.359, relating to an exemption from sales and use tax for qualified data centers; and House Bill 800, 83rd Legislature, 2013, which enacted Tax Code, §151.3182, relating to an exemption from sales and use tax for qualified research and development. Subsection (k) is amended to direct taxpayers to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates). The remainder of subsection (k) is deleted as the comptroller has determined that the additional detail currently provided in this subsection is unnecessary, and potentially confusing, as it duplicates information provided in §3.285 and §3.287.

Subsection (l), relating to suspension of permits, is amended to use the term "person" in place of the term "seller." In addition, paragraph (4) is deleted as unnecessary because criminal offenses and penalties are addressed in detail in §3.305 of this title.

Subsection (n), relating to cancellation of sales and use tax permits, is amended to use the phrase "sales and use tax permit" in place of the terms "permit" and "sales tax permit." In addition, the section is amended so that the phrase "Business Activity" is no longer capitalized.

Subsection (o) is amended to include the phrases "and Fraudulent Transfers" and "or Acquisition" in the description of §3.7 of this title.

Finally, subsection (p), concerning criminal penalties, is amended to delete the phrase "specific penalties identified throughout this section" as unnecessary because those descriptions of penalties have been removed from the section. Instead, taxpayers are referred directly to §3.305 of this title

for information regarding criminal penalties imposed under Tax Code, Chapter 151.

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 incorporating into the rule current statutory provisions and comptroller tax policy, and by providing improved clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§111.0041 (Records), 151.008 ("Seller" or "Retailer"), 151.010 (Taxable Item), 151.025 (Records Required to be Kept), 151.052 (Collection by Retailer), 151.107 (Retailer Engaged in Business in This State), 151.108 (Internet Hosting), 151.1551 (Registration Number Required for Timber and Certain Agricultural Items), 151.156 (Tax-Free Purchases of Certain Exported Items), 151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation), 151.350 (Labor to Restore Certain Property), 151.359 (Property Used in Certain Data Centers; Temporary Exemption), 151.417 (Direct Payment of Tax by Purchaser), 151.419 (Application for Direct Payment Permits; Qualifications), 151.462 (Reports by Brewers, Manufacturers, Wholesalers, and Distributors), 151.515 (Proceedings Against Consumer), 151.703 (Failure to Report or Pay Tax), and 151.7075 (Failure to Produce Certain Records After Using Resale Certificate; Criminal Penalty).

*§3.286. Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules[, and Criminal Penalties].*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Consignment sale--The sale, lease, or rental of tangible personal property by a seller who, under an agreement with another person, is entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest, and is authorized to sell, lease, or rent the tangible personal property without additional action by the person having title to or another ownership interest in the tangible personal property.

(2) ~~(1)~~ Direct sales organization--A person that typically sells taxable items directly to purchasers through independent salespersons [salespeople] and not in or through a place of business. The term "independent salespersons [salespeople]" includes, but is not limited to, distributors, representatives, and ~~or~~ consultants. Items are typically sold person-to-person through in-home product

demonstrations, parties, catalogs, and one-on-one selling. The term includes, but is not limited to, direct marketing and multilevel marketing organizations.

(3) ~~[(2)] Engaged in business--~~A person is engaged in business in this state ~~[Texas]~~ if the person ~~[has nexus with the state as evidenced by, but not limited to, any of the following]:~~

(A) maintains, occupies, or uses in this state, permanently or temporarily, directly or indirectly, or through an agent~~[-]~~ by whatever name called, a kiosk, office, ~~[place of]~~ distribution center, sales or sample room or place, warehouse or storage place, or any other physical location ~~[place]~~ where business is conducted;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates ~~in this state]~~ under the authority of the person ~~[seller]~~ to conduct business in this state, including selling, delivering, or taking orders for taxable items;

(C) promotes a flea market, arts and crafts show, trade day, festival, or other event in this state that involves sales of taxable items;

(D) uses independent salespersons, who may include, but are not limited to, distributors, representatives, or consultants, in this state in direct sales of taxable items;

(E) derives receipts from the sale, lease, or ~~[a]~~ rental ~~[or lease]~~ of tangible personal property that is located in this state or owns or uses tangible personal property that is located in this state, including a computer server or software, unless the person uses the software as a purchaser of an Internet hosting service;

(F) allows a franchisee or licensee to operate under its trade name in this state if the franchisee or licensee is required to collect ~~[Texas]~~ sales or use tax in this state; ~~[or]~~

(G) otherwise conducts business in this state through employees, agents, or independent contractors~~[-]~~;

(H) is formed, organized, or incorporated under the laws of this state and the person's internal affairs are governed by the laws of this state, notwithstanding the fact that the person may not be otherwise engaged in business in this state pursuant to this section; or

(I) holds a substantial ownership interest in, or is owned in whole or substantial part by, another person who:

~~(i) maintains a distribution center, warehouse, or similar location in this state and delivers property sold by the person to purchasers in this state;~~

~~(ii) maintains a location in this state from which business is conducted, if both persons sell the same or substantially similar lines of products under the same or substantially similar business names; or~~

~~(iii) maintains a location in this state from which business is conducted if the person with the location in this state:~~

~~(I) uses its facilities or employees to advertise, promote, or facilitate sales by the other person to purchasers; or~~

~~(II) otherwise performs any activity on behalf of the other person that is intended to establish or maintain a marketplace for the person in this state, including receiving or exchanging returned merchandise.~~

~~(iv) For purposes of this subparagraph only, "ownership" includes direct ownership, common ownership, or indirect ownership through a parent entity, subsidiary, or affiliate, and "substantial,"~~

with respect to ownership, constitutes an interest, whether direct or indirect, of at least 50% of:

(I) the total combined voting power of all classes of stock of a corporation;

(II) the beneficial ownership interest in the voting stock of the corporation;

(III) the current beneficial interest in the corpus or income of a trust;

(IV) the total membership interest of a limited liability company;

(V) the beneficial ownership interest in the membership interest of a limited liability company; or

(VI) the profits or capital interest of any other entity, including, but not limited to, a partnership, joint venture, or association.

(4) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(5) ~~[(3)] Itinerant vendor--~~A seller who does not operate a place of business in this state ~~[Texas]~~ and who travels to various locations in this state to solicit sales.

(6) ~~[(4)] Kiosk--~~A ~~[Kiosk means a]~~ small, stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser ~~[customer]~~.

(7) ~~[(5)] Nexus--~~Sufficient ~~[Nexus means sufficient]~~ contact with or activity within this state, as determined by state and federal law, to require a person to collect and remit sales and use tax.

(A) A person has nexus with this state if the person is engaged in business in this state.

(B) A person does not have nexus in this state if:

(i) the person's only activity in this state is conducted as an unrelated user of an Internet hosting service; or

(ii) the person has no connection with this state except the possession of a certificate of authority to do business in this state issued by the Texas Secretary of State.

(8) ~~[(6)] Permit holder--~~A person to whom the comptroller has ~~[who has been]~~ issued a sales and ~~[or]~~ use tax permit. The term includes permitted sellers as well as permitted purchasers, but does not include a person who does not hold a Texas sales and use tax permit or whose sales and use tax permit is suspended, pursuant to subsection (I) of this section, or cancelled, pursuant to subsection (n) of this section, or a person who has not received a sales and use tax permit due to an unsigned or incomplete application ~~[who owe tax that was not collected by a seller]~~.

(9) [(7)] Person--A [The term person includes a] natural person or a[;] corporation, limited liability company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or [and] any other legal entity.

(10) [(8)] Place of business [~~of the seller~~]--This term has the meaning given in §3.334 of this title (relating to Local Sales and Use Taxes). [The term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant. As of September 1, 2009, a kiosk as defined in paragraph (4) of this subsection, is not a place of business for purposes of collecting local sales and use taxes.]

(11) [(9)] Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person engaged in the business of selling taxable items in this state who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services in this state [items] for [a] consideration. Seller is further defined as follows:

(A) A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller [~~and is~~] responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless those persons hold active sales tax permits that the comptroller has issued.

(B) A direct sales organization that is engaged in business in this state [as defined in paragraph (4) of this subsection] is a seller responsible for the collection and remittance of the sales tax collected by the organization's independent salespersons.

(C) Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are sellers responsible for the collection and remittance of the sales tax on the sale of such tangible personal property.

(D) A person engaged in business in this state who sells, leases, or rents tangible personal property owned by another person by means of a consignment sale is a seller responsible for the collection and remittance of the sales tax on the consignment sale.

(E) [(D)] An auctioneer who does not receive payment for the sale of taxable items [~~item sold~~], does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner or provider of the item sold by the auctioneer is not considered a seller responsible for the collection of the sales tax. In this instance, the owner or provider of the auctioned item is responsible for collecting and remitting the sales tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors) for more information.

(12) [(10)] Taxable item--Except as otherwise provided in Tax Code, Chapter 151, the term includes tangible personal property and taxable services transferred or used in any electronic form or media now in existence or which may be later devised instead of in or on physical media. [Taxable item means tangible personal property and taxable services.]

(A) Tangible personal property means property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, including a computer program as defined in §3.308 of this title (relating to Computers--Hardware, Software, Services, and Sales) and a telephone prepaid calling card, as defined in §3.344 of this title.

(B) Taxable services are those identified in Tax Code, §151.0101.

(b) Who must have a permit.

(1) Sellers [Seller]. Each seller who has nexus with this state [~~is engaged in business in this state, including itinerant vendors, persons who own or operate a kiosk, and sellers operating temporarily in this state,~~] must apply to the comptroller and obtain a sales and use tax permit for each place of business operated in this state.

(2) Out-of-state sellers. Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a sales and use tax permit. An out-of-state seller is responsible for the collection and remittance of sales and use tax on all sales of taxable items made in this state until the seller ceases to be engaged in business in this state. An out-of-state seller ceases to be engaged in business in this state when the seller no longer has nexus with this state and no longer intends to engage in activities that would establish nexus with the state. For example, an out-of-state seller who enters the state each year to participate in an annual trade show does not cease to be engaged in business in this state between one trade show and the next. In contrast, an out-of-state seller who discontinues the product line that it marketed and sold in this state, and who does not anticipate entering the state to solicit new business, has ceased to be engaged in business in this state. An out-of-state seller is required to maintain, for at least four years after the out-of-state permit holder ceases to be engaged in business in this state, all records required by subsection (j) of this section, including sufficient documentation to verify the date in which the out-of-state permit holder ceased to be engaged in business in this state. For more information regarding reporting periods, refer to subsection (g) of this section. [An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.]

(3) Direct sales organizations. Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations engaged in business in this state are responsible for holding sales and use tax [Texas] permits and for the collection and remittance of sales and use [Texas] tax on all sales of taxable items by their independent salespersons. See subsection (d)(4) of this section for more information about the collection and remittance of tax by direct sales organizations.

[(4) Criminal penalties. A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person engages in business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).]

(4) [(5)] Non-permitted purchasers. Persons who are not required to have a sales and use tax permit or who do not have a direct payment permit are still responsible for paying to the comptroller [~~be permitted still owe~~] sales or use tax due on purchases of taxable items from sellers who do not collect and remit tax [~~that is due~~]. See subsection (g)(9) of this section for return and payment information and §3.346 of this title (relating to Use Tax).

(5) [(6)] Non-permitted sellers. Failure to obtain a sales and use tax permit does not relieve a person required by [~~to have a permit from the requirements of~~] this section or other applicable law to have a sales and use tax permit from the obligation to properly collect and remit sales and use taxes. Sellers whose sales and use tax permits are suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, and sellers who have not received sales and use tax permits due to unsigned or incomplete applications, are still responsible for properly collecting and remitting sales

and use taxes. See subsection (g) of this section for return and payment information.

(c) Obtaining a sales and use tax permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate sales and use tax permit under the same taxpayer account number is issued to the applicant for each place of business. Sales and use tax permits [Permits] are issued without charge.

(2) Each person must apply for a sales and use tax permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The sales and use tax permit cannot be transferred from one person to another. The sales and use tax permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the sales and use tax permit. If a person operates two or more types of business at the same location, then only one sales and use tax permit is required.

(3) The sales and use tax permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from a central office needs only one sales and use tax permit, which must be displayed at that office.

(4) All sales and use tax permits of the seller will have the same taxpayer account number; however, each place of business will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations operated by a person.

(d) Collecting sales and use tax due.

(1) Bracket system.

(A) Each seller must collect sales or use [the] tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053. The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Copies of the bracket system should be displayed in each place of business so both the seller and the purchaser [customers] may easily use them.

(B) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for \$.07, then the seller must collect the tax on the total sum of \$.14. Tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from the purchasers [customers].

(2) Sales and use tax [Tax] due is debt of the purchaser; document requirements.

(A) The tax due is a debt of the purchaser to the seller until collected. Unpaid sales or use tax is recoverable by the seller in the same manner as the original sales price of the taxable item itself, if unpaid, would be recoverable. The comptroller may proceed against either the seller or purchaser, or against both, until all applicable tax, penalty, and interest due has been paid.

(B) The amount of tax due must be separately stated on the bill, contract, or invoice to the purchaser or there must be a written statement to the purchaser that the stated price includes sales or use

taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or purchaser may overcome the presumption by using the seller's records to show that sales and use tax was included in the sales price. [Out-of-state sellers must identify the tax as Texas sales or use tax.]

~~[(3) Criminal offense for not collecting tax due. A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.]~~

(3) [(4)] Direct sales organizations. A direct sales organization is responsible for the collection and remittance of the sales tax on all sales of taxable items in this state by the independent salespersons who sell the organization's product or service as explained in this paragraph [subsection]. See subsection (b)(3) of this section for information about sales and use tax permits required to be held by direct sales organizations.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after taking the customer's order [has been taken], then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, sales and use tax on the actual sales price for which the independent salesperson sold [of] the taxable item to the customer.

(B) If an independent salesperson purchases a taxable item from a direct sales organization before the customer's order is taken, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax [from the salesperson] based on the organization's suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual sales price for which the item was sold to the salesperson at the tax rate in effect for the salesperson's location.

(D) Incentives, including rewards, gifts, and prizes.

(i) Direct sales organizations owe sales and use tax on the cost of all taxable items used as incentives that are transferred to a recipient in this state, including purchasers [customers], independent salespersons, and persons who host a direct sales event.

(ii) Direct sales organizations must collect sales tax on the total amount of consideration received in exchange for taxable items, including items purchased with hostess points or similar forms of compensation paid to a person for hosting a direct sales event and items [or] that are earned by the host based on the volume of [customer] purchases. The redemption of reward points in exchange for taxable items is subject to sales tax under Tax Code, §151.005(2). See also §3.283 of this title (relating to Bartering Clubs and Exchanges).

(4) [(5)] Printers. A printer is a seller of printed materials and is required to collect sales and use tax on sales of those materials in this state. A printer who is engaged in business in this state [Texas], however, is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both inside [in Texas] and outside of this state [Texas]; and

(C) the purchaser issues a properly completed [an] exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to this state [Texas] all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (g)(4) of this section for additional reporting requirements.

(5) [(6)] Fundraisers by exempt entities. Regardless of the contractual terms between a [any] for-profit entity and a non-profit exempt entity relating to the sale of taxable items, other than amusement services, as part of any fundraiser, the for-profit entity will be considered the seller of the items under Tax Code, §151.024, must be a permit holder [permitted], and is responsible for the proper collection and remittance of any tax due. The exempt entity and its representatives will be considered as representatives of the for-profit entity. The for-profit entity may advertise in a sales catalog or state on each invoice that sales and use tax is included, as provided under paragraph (2) of this subsection, or may require that tax be calculated and collected by its [the] representatives based on the sales price of each taxable item. Fundraisers conducted by exempt entities in this manner do not qualify as a tax-free sale day. For more information on exempt entities and tax-free sales days, see [See] §3.322 of this title (relating to Exempt Organizations). For [for] more information on amusement services, see [exempt entities and tax-free sales days and] §3.298 of this title (relating to Amusement Services).

(6) [(7)] Local sales and use tax. A person who has nexus with [engaged in business in] this state is required to properly collect and remit local sales and use tax even if no sales and use tax permit is required at the location where taxable items are sold. [See subsection (a)(4) of this section for information about sales at kiosks.] For more information on the proper collection of local taxes, see Tax Code, Title 3, Subtitle C. [sections in this subchapter relating to specific taxable items and the persons who sell them and comptroller publication 94-105, Guidelines for Collecting Local Sales and Use Tax.]

(e) Sales and use tax returns and [Return requirements;] remitting tax due.

(1) Forms prescribed by the comptroller. Sales and use tax returns [Returns] must be filed on forms that the comptroller prescribes. The fact that a person does not receive or obtain the correct forms from the comptroller does not relieve a person of the responsibility to file a sales and use tax return and to remit the required tax.

(2) Signatures. Sales and use tax returns [Returns] must be signed by the person who is required to file the sales and use tax return [report] or by the person's duly authorized agent, but need not be verified by oath.

(3) Permit holders.

(A) Each permit holder is [Permit holders are] required to file a sales and use tax return for each reporting period, [returns] even if the permit holder has no sales or use tax to report for the reporting period.

[(B) Permit holders do not qualify for the occasional sale exemption provided under Tax Code, §151.304(b)(1), either as sellers or purchasers. See §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).]

(B) [(C)] Each permit holder must remit tax on all receipts from [the] sales or purchases of nonexempt taxable items, less any applicable discounts [deductions] as provided by subsection (h) of this section.

(C) [(D)] Each permit holder shall file a single sales and use tax return together with the tax payment for all businesses that operate under the same taxpayer number. The sales and use tax return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet.

(D) [(E)] Consolidated reporting by affiliated entities is not allowed. Each legal entity engaged in business in this state is responsible for filing a separate sales and use tax return.

(4) Electronic returns and remittances. Certain persons must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For more information, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(f) Due dates.

(1) General rule. Sales and use tax returns [Returns] and remittances are due no later than the 20th day of the month following each reporting period end date unless otherwise provided by this section. Sales and use tax returns [Returns] and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(A) Sales and use tax returns [Returns] submitted by mail must be postmarked on or before the due date to be considered timely.

(B) Sales and use tax returns [Returns] filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(2) Due dates for [electronic] payments made using an electronic funds transfer method approved by the comptroller are provided at §3.9(c) of this title.

[(A) Electronic Funds Transfer (EFT) system payments. To be considered timely, a payment submitted through an EFT system must enter into the applicable EFT program by 6:00 p.m., central time, on any day on or before the due date other than a weekend or banking holiday.]

[(B) A person who files tax returns and makes payments through the electronic data interchange (EDI) system must enter the payment information into the EDI system by 2:30 p.m., central time, to meet the 6:00 p.m. central time requirement that is noted in subparagraph (A) of this paragraph.]

[(C) If the due date falls on a weekend or banking holiday, payment information must be submitted by the time parameters noted in subparagraphs (A) and (B) of this paragraph on the business date prior to the due date to be considered timely. For more information see §3.9 of this title.]

(3) Extensions for persons located in a natural disaster area [due to disasters]. The comptroller may grant [to a person whom the comptroller finds to be a victim of a disaster] an extension of not more than 90 days to make or file a sales and use tax return or pay a tax that is due by a person located in a natural disaster area whom the comptroller finds to be a victim of the natural disaster. The person owing the tax may file a written request for an extension at any time before the expiration of 90 days after the original due date. If an extension is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and tax penalties are assessed and determined as though the last day of the extension were the original due date. The term "natural disaster area" has the meaning given in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(g) Reporting periods.

(1) Quarterly filers. Permit holders who have less than \$1,500 in state sales and/or use tax per quarter to report may file sales and use tax returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(2) Yearly filers. Permit holders who have less than \$1,000 in state sales and use tax to report during a calendar year may file yearly sales and use tax returns upon authorization from the comptroller.

(A) Authorization to file sales and use tax returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file sales and use tax returns on a yearly basis will be denied if a permit holder's [person's] liability exceeded \$1,000 in the prior calendar year.

(C) A permit holder [person] who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a permit holder's [person's] state sales and use tax liability is greater than \$1,000 during a calendar year. The permit holder [person] must file a sales and use tax return for that month or quarter, depending on the amount, in which the sales and use tax payment [remittance] or liability is greater than \$1,000. On that return [report], the permit holder [person] must report all sales and use taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, thereafter for as [so] long as the yearly sales and use tax liability is greater than \$1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly sales and use tax returns.

(F) Yearly filers must report on a calendar year basis. The sales and use tax return and payment are due on or before January 20 of the next calendar year.

(3) Monthly filers. Permit holders who have \$1,500 or more in state tax per quarter to report must file monthly sales and use tax returns except for permit holders [sealers] who prepay the tax as provided in subsection (h) of this section.

(4) Printers. A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(5) of this section must file a quarterly special use tax report, Form 01-157, Texas Special Use Tax Report for Printers, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form, with the comptroller on or before the last day of the month following the quarter. The report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(5) of this section.

(5) Local tax sales and use tax [returns]. Each permit holder [person] who is required to collect, report, and remit [file] a city, county, special purpose district [(SPD)], or metropolitan transit authority/city transit department [(MTA/CTD)] sales and use tax [return] must report the amount subject to local sales and use tax on the state sales and use tax return described in subsection (e) of this section [file the return with the comptroller's office and remit taxes due at the same time that the state sales and use tax return is filed].

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate sales and use tax return. A fully completed deposit request voucher is deemed to be the sales and use tax return filed by these agencies. Paragraphs (1) - (3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Refunds on exports. [Sellers must report the total amount of sales tax refunded for sales of merchandise exported beyond the territorial limits of the United States and documented by licensed customs broker certifications under Tax Code, §151.307(b)(2).] Sellers who refund sales tax on exports based on customs broker certifications should refer to [must file this report on comptroller form 01-148, Sales and Use Tax Return Credits and Customs Broker Schedule. Sellers file the supplemental reports at the same time and for the same reporting period as the seller's state sales and use tax return. See] §3.360 of this title (relating to Customs Brokers).

(8) Direct payment [pay] permit holders. [Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.] Yearly and quarterly filing requirements, as discussed in this subsection, and prepayment procedures and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(9) Non-permitted purchasers. A person who does not hold a sales and use tax permit or a direct payment permit [is not permitted] must [still] pay sales or use tax that is due on purchases of taxable items when the tax is not collected by the seller [or sealers and must do so] using comptroller Form [form] 01-156, Occasional Sales and Use Tax Return, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) A non-permitted purchaser who owes less than \$1000 in sales and use tax on all purchases made during a calendar year on which tax [that] was not collected by the [a] seller [or sealers] must file the return on or before the 20th of January following the year in which the purchases were made.

(B) A non-permitted purchaser who owes \$1000 or more in sales and use tax on all purchases made during a calendar year on which tax [that] was not collected by the [a] seller [or sealers] must file a return and remit taxes due on or before the 20th of the month following the month when the \$1000 threshold is reached and thereafter file monthly returns and make tax payments on all purchases on which tax is due.

(h) Discounts; prepayments; penalties and interest relating to filing sales and use tax returns [return filings].

(1) Discounts. Unless otherwise provided by this section, each permit holder may claim a discount for timely filing a sales and use tax return and paying the taxes due [payment] as reimbursement for the expense of collecting and remitting [collection of] the tax. The discount is equal to 0.5% of the amount of tax due and may be claimed on the return for each reporting period and is computed on the amount timely reported and paid with that return.

(2) Prepayments. Prepayments may be made by permit holders [persons] who file monthly or quarterly sales and use tax returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount

equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A permit holder [person] who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made.

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) A permit holder who makes a timely prepayment must file a sales and use tax return showing the actual liability and remit any amount due in excess of the prepayment on [On] or before the 20th day of the month that follows the quarter or month for which a prepayment was made; the person must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the permit holder [person] may retain the 0.5% reimbursement on the additional amount due, provided that both the sales and use tax return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the permit holder [person] will be mailed an overpayment notice or refund warrant.

(E) Remittances that are less than a reasonable estimate, as described [required] by this paragraph, [subsection] are not regarded as prepayments and the 1.25% discount will not be allowed. If the permit holder [person] owes more than \$1,500 in a calendar quarter, the permit holder [person] is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

### (3) Penalties and interest.

(A) If a permit holder [person] does not file a sales and use tax return together with payment on or before the due date, the permit holder [person] forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the permit holder [person], and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(B) A permit holder [person] who fails to [has failed to file] timely file a report when due shall [reports on two or more previous occasions must] pay an additional penalty of \$50 [for each subsequent report that is not filed timely]. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(i) Reports of alcoholic beverage sales to retailers. Each brewer, manufacturer, wholesaler, winery, distributor, or package store local distributor [by wholesalers and distributors of beer, wine and malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor] shall electronically file [on or before the 25th day of each month] a report of alcoholic beverage sales to retailers as provided in [in this state. See] §3.9(e)(2) of this title.

(j) Records required for comptroller inspection.

[(+)] [Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate.] See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records) for more information.

[(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.]

[(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.]

(k) Resale and exemption certificates. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

[(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.]

[(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out-of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.]

[(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. There is no exemption number. An exemption certificate does not require a number to be valid]

[(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.]

[(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.]

[(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title.]

[(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras)].

[(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the



seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title.]

(l) Suspension of permit.

(1) If a person fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a person's [seller's] permit is suspended, the person [seller] is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the person [seller] at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

(3) After a permit has been suspended, a new permit will not be issued to the same person [seller] until the person [seller] has posted sufficient security and satisfied the comptroller that the person [seller] will comply with both the provisions of the law and the comptroller's rules and regulations.

[(4) A person who engages in business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.]

(m) Refusal to issue permit. The comptroller is required by Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(n) Cancellation of sales and use tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales and use tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the comptroller may cancel the permit. "No business activity [Business Activity]" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales and use tax permit upon request, provided the issuance is not prohibited by subsection (m)[(1) or (2)] of this section, or by Tax Code, §111.0046.

(o) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability and Fraudulent Transfers: Liability Incurred by Purchase or Acquisition of a Business).

(p) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See [specific penalties identified throughout this section and] §3.305 of this title (relating to Criminal Offenses and 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 October 20, 2014.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 475-0387



## SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.430

The Comptroller of Public Accounts proposes an amendment to §3.430, concerning records required, information required. This section is being amended to implement House Bill 2148, 83rd Legislature, 2013, which requires the tax on compressed natural gas and liquefied natural gas to be collected at the time of delivery into the fuel supply tank of a motor vehicle and to provide an alternative method of record keeping requirements for certain dyed diesel fuel bonded users.

Subsection (a) states this section applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a), as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

In addition, re-lettered subsection (a) is amended to implement House Bill 2148, 83rd Legislature, 2013, with the exception of paragraph (15). Paragraph (11) is amended to include compressed natural gas and liquefied natural gas in the purchase invoice and distribution log requirements of an interstate trucker, and to require an interstate trucker that delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a motor vehicle to obtain a compressed natural gas and liquefied natural gas dealer license. New paragraph (13) is added to require an aviation fuel dealer that delivers compressed natural gas or liquefied natural gas to obtain a compressed natural gas and liquefied natural gas dealer license. Subsequent paragraphs are re-numbered.

Addressing requests from the industry, new paragraph (15) is added to identify records which may be kept as an alternative to a distribution log by dyed diesel fuel bonded users who operate stationary engines as components of a drilling rig operating system. Subsequent paragraphs are re-numbered.

New paragraph (18) is added to identify the records required to be maintained by a compressed natural gas and liquefied natural gas dealer. New paragraph (19) is added to identify the records

required to be maintained by a metropolitan transit authority or regional transit authority that operates a compressed natural gas or liquefied natural gas refueling facility. New paragraph (20) is added to require a metropolitan transit authority or regional transit authority that delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a non-transit motor vehicle or motor vehicle not operated by the metropolitan transit authority or regional transit authority to obtain a compressed natural gas and liquefied natural gas dealer license. Re-numbered paragraph (21) is amended to identify the compressed natural gas and liquefied natural gas records required when a person who does not hold a license under Tax Code, Chapter 162, claims a refund.

Non-substantive changes due to grammatical corrections and to improve readability are made to subsection (a)(1), (7)(ii), (9), (9)(E), (11), (11)(A)(vi), (11)(B), (11)(C), (11)(D), (12)(C) and (D), (16)(G), and (17).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by updating and clarifying statutory provisions, and comptroller policy, regarding records and information requirements. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§162.115 (Records), 162.127 (Claims For Refunds), 162.216 (Records), 162.229 (Claims For Refunds), 162.363 (Records), and 162.367 (Claims For Refunds).

§3.430. *Records Required, Information Required.*

[(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.]

(a) [(b)] Records Required.

(1) A supplier and permissive supplier, as those terms are defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show [showing]:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(2) A supplier or permissive supplier when acting as a distributor, importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(3) A distributor of gasoline or diesel fuel, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin; and

(G) proof of payment of tax to the destination state in a form acceptable to the comptroller for gasoline or diesel fuel exported from this state under Tax Code, §162.204(a)(4)(A).

(4) A distributor when acting as an importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(5) An importer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(6) An importer when acting as an exporter or blender is subject to the record keeping requirements of that license.

(7) An exporter, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading; and

(ii) exported from this state by destination state or country; and

(G) proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller if an exemption under Tax Code, §162.104(a)(4)(B) and §162.204(a)(4)(B) is claimed.

(8) A blender, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel refined, compounded, or blended;

(C) all blending agents blended with gasoline or diesel fuel;

(D) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(E) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(F) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident.

(9) A terminal operator, as that term is defined in Tax Code, §162.001, shall keep records that show [a record showing]:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline or diesel fuel held for each owner;

(B) the number of gallons of all gasoline or diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(D) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(E) the number of gallons on [of] an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(10) A dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline or diesel fuel sold or used, showing the date of the sale or use; and

(D) all gasoline or diesel fuel lost by fire, theft, or accident.

(11) An interstate trucker, as that term is defined in Tax Code, §162.001, shall keep records [a record] on an individual-vehicle basis of:

(A) the total miles traveled, evidenced by odometer or hubodometer readings, everywhere by all vehicles traveling to or from this state, and the total miles traveled, evidenced by odometer or hubodometer readings, in this state, including for each individual vehicle:

- (i) date of each trip (starting and ending);
- (ii) trip origin and destination;
- (iii) beginning and ending odometer or hubodometer reading of each trip;
- (iv) odometer or hubodometer reading entering Texas, and odometer or hubodometer reading leaving Texas; and
- (v) power unit number or vehicle identification number or license plate number;

(B) the total quantity purchased and delivered at retail of gasoline, diesel fuel, ~~or~~ liquefied gas, compressed natural gas, or liquefied natural gas everywhere by all vehicles traveling to or from this state, and the total quantity of gasoline, diesel fuel, ~~or~~ liquefied gas, compressed natural gas, or liquefied natural gas purchased and delivered into the fuel supply tanks of motor vehicles in this state, including for each individual vehicle:

- (i) date of purchase;
- (ii) name and address of seller;
- (iii) number of gallons or liters purchased;
- (iv) type of fuel purchased;
- (v) price per gallon or liter; and
- (vi) unit number of the vehicle into which the fuel was placed;[-]

(C) in the case of an ~~An~~ interstate trucker that uses a distribution log to record removals from the person's own bulk storage into a motor vehicle, ~~must include on each log~~ the person's stamped or preprinted name and address, and for each individual delivery:

- (i) date of delivery;
- (ii) number of gallons or liters of gasoline, diesel fuel, or liquefied gas delivered;
- (iii) diesel gallon equivalent or gasoline gallon equivalent of compressed natural gas or liquefied natural gas delivered;
- (iv) ~~[(iii)]~~ license plate or vehicle identification number or power unit number;
- (v) ~~[(iv)]~~ odometer or hubodometer reading; and
- (vi) ~~[(v)]~~ signature of the user;[-]

(D) in the case of an ~~An~~ interstate trucker that maintains bulk fuel storage, ~~must keep a record of~~ the number of gallons of gasoline, diesel fuel, or liquefied gas beginning and ending inventories, all invoices of bulk purchases, and records to substantiate all fuel withdrawals from storage; and[-]

(E) in the case of an interstate trucker who delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a motor vehicle, must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements pursuant to paragraph (18) of this subsection.

(12) An aviation fuel dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping document that relates to each receipt for distribution and shall keep records that show:

- (A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;
- (B) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(D) the number of gallons of all gasoline or diesel fuel sold or used in aircraft or aircraft servicing equipment, including for each individual aircraft or aircraft equipment;[-] and

- (i) the name of the purchaser or user of gasoline or diesel fuel;
- (ii) the date of the sale or use of gasoline or diesel fuel; and
- (iii) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline or diesel fuel is used.

(13) An aviation fuel dealer who delivers compressed natural gas or liquefied natural gas must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements pursuant to paragraph (18) of this subsection.

(14) [(13)] A dyed diesel fuel bonded user, as that term is defined in Tax Code, §162.001, shall keep a record showing the number of gallons of:

- (A) dyed and undyed diesel fuel inventories on hand at the first of each month;
- (B) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
- (C) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;
- (D) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes and described in Tax Code, §162.229(c); and
- (E) dyed and undyed diesel fuel lost by fire, theft, or accident.

(15) A dyed diesel fuel bonded user who operates an oil or gas well drilling rig that satisfies the requirements of this paragraph may keep, as an alternative to the distribution log described in paragraph (14) of this subsection, purchase and delivery records and supply tank inventory records that document the amount of dyed diesel fuel used by the drilling rig engines. The operator of the oil or gas well drilling rig may use this method if:

- (A) one or more than one stationary engines are component parts of the drilling rig;
- (B) each stationary engine is connected directly to a single fuel supply tank by way of a fuel supply line; and
- (C) the single fuel supply tank is locked or otherwise secured:
  - (i) so that dyed diesel fuel can only be withdrawn from the supply tank through the fuel supply lines to the stationary engines;
  - (ii) to move the single fuel supply tank to another well location, or;
  - (iii) for emergencies such as a fire or leaking tank.

(16) [(14)] A motor fuel transporter, as that term is defined in Tax Code, §162.001, shall keep a complete and separate record of each intrastate and interstate transportation of gasoline or diesel fuel, showing:

- (A) the date of transportation;

- (B) the name of the consignor and consignee;
- (C) the means of transportation;
- (D) the quantity and kind of gasoline or diesel fuel transported;
- (E) the points of origin and destination;
- (F) the import verification number if that number is required by §3.441 of this title (relating to Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers); and

(G) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce, and the diversion number if that number is required by §3.441 of this title.

(17) ~~[(+5)]~~ A licensed liquefied gas dealer, as that term is described in Tax Code, §162.304, shall keep records ~~[a record]~~ of all liquefied gas sold or delivered for taxable purposes.

(18) A person who holds a compressed natural gas and liquefied natural gas dealer's license, as that term is defined in Tax Code, §162.357, shall keep records that show:

(A) all compressed natural gas and liquefied natural gas inventories on hand at the first of each month;

(B) the amount of natural gas compressed and liquefied by the dealer;

(C) all compressed natural gas and liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of taxable diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of motor vehicles, showing the date of the delivery;

(E) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of motor vehicles or other equipment exempt from tax under Tax Code, §162.356, including:

(i) the name of the owner or operator of the motor vehicle;

(ii) the type or description of the equipment; and

(iii) date of delivery;

(F) all compressed natural gas or liquefied natural gas lost by fire, theft, or accident; and

(G) in the case of a dealer located on an Indian reservation recognized by the federal government of the United States, the number of diesel gallon equivalents or gasoline gallon equivalents delivered tax-free into the fuel supply tank of motor vehicles operated by an exempt tribal entity or tribal member. The dealer must maintain a copy of the invoice showing:

(i) the name of the purchaser;

(ii) the date of the sale;

(iii) the number of gallons sold;

(iv) the type of fuel sold; and

(v) a written statement that no state tax was collected or that it was a tax-free sale.

(19) A metropolitan rapid transit authority created under Transportation Code, Chapter 451, or a regional transportation author-

ity created under Transportation Code, Chapter 451, that operates a refueling facility accessible only by vehicles used to provide transportation services and that elects to prepay the tax on compressed natural gas and liquefied natural gas used by those transit vehicles shall keep records that show:

(A) all compressed natural gas and liquefied natural gas inventories on hand at the first of each month;

(B) the amount of natural gas compressed and liquefied by the authority;

(C) all compressed natural gas and liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of vehicles which display a current liquefied gas prepaid tax decal, showing the date of the delivery;

(E) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of other equipment exempt from tax under Tax Code, §162.356, including:

(i) the type or description of the equipment; and

(ii) date of delivery; and

(F) all compressed natural gas or liquefied natural gas lost by fire, theft, or accident.

(20) A metropolitan rapid transit authority created under Transportation Code, Chapter 451, or a regional transportation authority created under Transportation Code, Chapter 451, that delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a non-transit vehicle or a motor vehicle not operated by the metropolitan rapid transit authority or regional transportation authority must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements of that license.

(21) ~~[(+6)]~~ A person who does not hold a license under Tax Code, Chapter 162, who files a claim for refund of gasoline, ~~[or]~~ diesel fuel, compressed natural gas, or liquefied natural gas taxes shall keep the shipping document that relates to each receipt of gasoline, ~~[or]~~ diesel fuel, compressed natural gas, or liquefied natural gas, original invoice issued by the seller, and distribution log to support gallons of gasoline, ~~[or]~~ diesel fuel, compressed natural gas, or liquefied natural gas removed from the person's own bulk storage and for each individual delivery:

(A) the date of delivery;

(B) the number of gallons of gasoline or diesel fuel delivered or the diesel gallon equivalents or gasoline gallon equivalents delivered;

(C) the signature of user; and

(D) the type or description of off-highway equipment into which the gasoline or diesel fuel was delivered or the type of motor vehicle identified by state highway license ~~[Heensed]~~ plate number, vehicle identification number, or unit number assigned to the motor vehicle and odometer or hubmeter reading.

(b) ~~[(e)]~~ The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of gasoline or diesel fuel if the schedules are consistent with the requirements of Tax Code, Chapter 162.

(c) [(d)] The records required by this section must be kept for at least four years and must be open to inspection at all times by the comptroller and the attorney general.

(d) [(e)] A person who claims a deduction or exclusion authorized by law must keep records that substantiate the claim. When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports that verify the fire, accident, or theft.

(e) [(f)] Failure to keep adequate records. If any person who is required by this section to keep accurate records of receipts, purchases, sales, distributions, or uses of gasoline or diesel fuel, fails to keep those records, the comptroller may estimate the tax liability based on any information available.

(f) [(g)] The comptroller may suspend any permit or license the comptroller has issued to a person if the person fails to keep the records required by this section.

(g) [(h)] Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller can readily examine.

(h) [(i)] Information required.

(1) The comptroller may require any person who must hold a license or registration under Tax Code, Chapter 162, to furnish information that the comptroller needs to:

(A) identify any person who applies for a motor fuels license, uses a signed statement to purchase tax-free dyed diesel fuel, or transports motor fuel in Texas by truck, railcar, or vessel, or any person who is required to file a return;

(B) determine the amount of bond, if any, required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit, if any.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and driver's license numbers;

(H) names of gasoline and diesel fuel suppliers or distributors with whom the person will transact business; and

(I) names and last known addresses of former owners of the business.

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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TRD-201405150

Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 401, Administrative Practice and Procedure, concerning Subchapter A, General Provisions and Definitions, §401.1 Purpose and Scope, §401.3, Definitions, Subchapter C, Examination Appeals Process, §401.21, Examination Challenge, §401.23, Examination Waiver Request, Subchapter D, Disciplinary Proceedings, §401.31, Disciplinary Proceedings in Contested Cases, Subchapter E, Prehearing Proceedings, §401.41, Preliminary Staff Conference, Subchapter F, Contested Cases, §401.51, Preliminary Notice and Opportunity for Hearing, §401.53, Notice of Hearing, §401.57, Filing of Exceptions and Replies to Proposal for Decision, §401.59, Orders, §401.61, Record, §401.63, Appeals to the Commission, Subchapter G, Conduct and Decorum, Sanctions, and Penalties, §401.105, Administrative Penalties, Subchapter I, Notice and Processing Periods For Certificate Applications, §401.121, Purpose of Establishing Time Periods, §401.127, Appeal, Subchapter J, Charges For Public Records, §401.129, Charges for Public Records, and Subchapter K, Historically Underutilized Businesses, §401.131, Historically Underutilized Businesses.

The purpose of the proposed amendments is to clarify language regarding administrative practice and procedures used by the agency and in accordance with the Administrative Procedures Act (APA) and the State Office of Administrative Hearings (SOAH).

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise rules regarding agency administrative practice and procedures for regulated individuals and entities. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sec-

tions as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 37 TAC §401.1, §401.3

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

#### §401.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the ~~commission [Texas Commission on Fire Protection]~~ that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

#### (b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law in matters regulated by the commission, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, its staff, or the substantive rights of any person.

(3) This chapter shall not apply to matters related solely to the internal personnel rules and practices of this agency.

(4) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

(5) In matters referred to the State Office of Administrative Hearings (SOAH), hearings or other proceedings are governed by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH [effective January 2, 1998]. To the extent that any provision of this chapter is in conflict with SOAH Rules of Procedures, the SOAH rules shall control.

#### §401.3. Definitions.

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

(1) Advisory Committee--An advisory committee that is required to assist the commission in its rule-making function and whose members are appointed by the commission pursuant to Government Code, §419.008, or other law.

(2) Agency--Includes the commission, the executive director, and all divisions, departments, and employees thereof.

(3) APA--Government Code, Chapter 2001, The Administrative Procedure Act, as it may be amended from time to time.

(4) Applicant--A person, including the commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(5) Application--A written request seeking a license from the commission, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(6) Authorized Representative--A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate in a commission proceeding.

(7) Chairman--The commissioner who serves as presiding officer of the commission pursuant to Government Code, §419.007.

(8) Commission--The Texas Commission on Fire Protection.

(9) Commissioner--One of the appointed members of the decision-making body defined as the commission.

(10) Complainant--Any person, including the commission's legal staff, who files a signed written complaint intended to initiate a proceeding with the commission regarding any act or omission by a person subject to the commission's jurisdiction.

(11) Contested Case--A proceeding, including but not restricted to, the issuance of certificates, licenses, registrations, permits, etc., in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(12) Days--Calendar days, not working days, unless otherwise specified in this chapter or in the commission's substantive rules.

(13) Division--An administrative unit for regulation of specific activities within the commission's jurisdiction.

(14) Executive Director--The executive director appointed by the commission pursuant to Government Code, §419.009.

(15) Hearings Officer--An administrative law judge on the staff of the State Office of Administrative Hearings assigned to conduct a hearing and to issue a proposal for decision, including findings of fact and conclusions of law, in a contested case pursuant to Government Code, Chapter 2003.

(16) License--Includes the whole or part of any agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(17) Licensee--A person who holds an agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(18) Licensing--Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(19) Party--Each person or agency named or admitted as a party in a contested case.

(20) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.

(21) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

(22) Preliminary Staff Conference--A conference with commission staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case.

(23) [(22)] Presiding Officer--The chairman, the acting chairman, the executive director, or a duly authorized hearings officer.

(24) [23] Proceeding--Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

(25) [(24)] Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

(26) SOAH--State Office of Administrative Hearings.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## SUBCHAPTER C. EXAMINATION APPEALS PROCESS

### 37 TAC §401.21, §401.23

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§401.21. *Examination Challenge.*

(a) An examinee who seeks to challenge the failure of an examination must submit a written request to the executive director or his designee [for an informal conference to the Fire Service Standards and Certification division director] to discuss informal disposition of the complaint(s).

(b) An examination may be challenged only on the basis of examination content, failure to comply with commission rules by a certified training facility, or problems in the administration of the examination.

(c) The written request must identify the examinee, the specific examination taken, the date of the examination, and the basis of the appeal.

(d) An examinee who challenges the content of an examination must identify the subject matter of the question(s) challenged and is not entitled to review the examination due to the necessity of preserving test security.

(e) The request must be submitted within 30 days from the date the grade report is posted on the website.

(f) Commission staff shall schedule a preliminary staff conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the commission staff. If the examinee rejects the proposed agreement, the examinee must request in writing a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

§401.23. *Examination Waiver Request.*

(a) An individual who is required to take a commission examination may petition the commission for a waiver of the examination if the person's certificate or eligibility expired because of a good faith clerical error on the part of the individual or an employing entity.

(b) The waiver request must include a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission requirements and that failure to comply was due to circumstances beyond the control of the certificate holder or applicant.

(c) Commission staff shall schedule a preliminary staff conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the waiver request within 30 days of the request, or as soon as practical. The applicant may accept or reject the settlement recommendations of the commission staff. If the examinee rejects the proposed agreement, the applicant must request in writing a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

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## SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

### 37 TAC §401.31

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§401.31. *Disciplinary Proceedings in Contested Cases.*



(a) If the commission staff recommends administrative penalties or any other sanction [pursuant to Chapter 445 of this title (relating to Administrative Inspections and Penalties) or §401.105 of this title, (relating to Administrative Penalties)] for alleged violations of laws or rules [administered or enforced by the commission and its staff], the respondent may request a preliminary staff conference [in accordance with §401.41 of this title (relating to Preliminary Staff Conference)].

(b) Commission staff shall schedule a preliminary staff [Preliminary Staff] conference with the applicant [in accordance with §401.41 of this title to (Preliminary Staff Conference)] to discuss the alleged violations of laws or rules within 30 days of the request or as soon as practical. The respondent may accept or reject the settlement recommendations of the commission staff. If the respondent rejects the proposed agreement, the respondent must request in writing a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the notice of the staff's recommended disciplinary action.

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## SUBCHAPTER E. PREHEARING PROCEEDINGS

### 37 TAC §401.41

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

*§401.41. Preliminary Staff Conference.*

(a) General. After receipt of [preliminary] notice of alleged violations of laws or rules administered or enforced by the commission and its staff, the holder of the certificate, applicant or regulated entity may request a conference with the commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case[, pursuant to the Government Code, §419.906(e) and §2001.056].

(b) Representation. The certificate holder, applicant or regulated entity may be represented by counsel or by a representative of his or her choice. The commission shall be represented by one or more members of its staff and by commission legal counsel.

(c) Informal Proceedings. The conference shall be informal, and will not follow procedures [procedure established in Subchapter

F of this chapter (relating to Contested Cases)] for contested cases. The commission's representative(s) may prohibit or limit attendance by other persons; may prohibit or limit access to the commission's investigative file by the licensee, the licensee's representative, and the complainant, if present; and may record part or all of the staff conference. At the discretion of the commission's representative(s), the licensee, the licensee's representative, and the commission staff may question witnesses; make relevant statements; and present affidavits, reports, letters, statements of persons not in attendance, and such other evidence as may be appropriate.

(d) Settlement Conference. At the discretion of the commission's representative(s), the preliminary staff conference may be concluded, and a settlement conference initiated to discuss staff recommendations for informal resolution of the issues. Such recommendations may include any disciplinary actions authorized by law, including administrative penalties, restitution, remedial actions, or such reasonable restrictions that may be in the public interest. [Recommendations for administrative penalties or monetary forfeitures shall be made in accordance with §401.105 of this title (relating to Administrative Penalties).] These recommendations may be modified by the commission's representative(s) based on new information, a change of circumstances, or to expedite resolution in the interest of protecting the public. The commission's representative(s) may also recommend that the investigation be closed or referred for further investigation.

(e) Proposed Consent Order. The licensee may accept or reject the settlement recommendations of the commission staff. If the licensee accepts the recommendations, the licensee shall execute a settlement agreement in the form of a proposed consent order as soon thereafter as practicable. If the licensee rejects the proposed agreement, the matter may be scheduled for a hearing as described in Subchapter F of this chapter.

(f) Approval of Consent Order. Following acceptance and execution of the settlement agreement recommended by staff, said proposed agreement shall be submitted to the executive director for approval. If the order is approved, it shall be signed by the executive director. If the proposed order is not approved, the licensee shall be so informed and the matter shall be referred to the commission staff for appropriate action to include dismissal, closure, further negotiation, further investigation, or a formal hearing.

(g) Preliminary Notice. A revocation, suspension, annulment, denial, or withdrawal of a certificate or license is not effective unless, before the institution of contested case proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law.

(h) Request for Formal Hearing. Except as otherwise provided by law, if an applicant's original application or request for a certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a formal hearing, and if so requested, the formal hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

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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Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
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## SUBCHAPTER F. CONTESTED CASES

### 37 TAC §§401.51, 401.53, 401.57, 401.59, 401.61, 401.63

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

#### §401.51. *[Preliminary Notice and] Opportunity for Hearing.*

~~[(a)]~~ In general, except ~~[In General. Except]~~ as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a certificate is governed by Government Code, Chapter 2001, pertaining to Administrative Procedures and by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH ~~[effective November 26, 2008].~~

~~[(b)] Preliminary Notice. A revocation, suspension, annulment, or withdrawal of a certificate or license is not effective unless, before the institution of agency proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law, as required by Government Code, §2001.054(e)].~~

~~[(c)] Staff Conference. The holder of the certificate may request a conference with commission staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(e) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conference)].~~

~~[(d)] Request for Hearing. Except as otherwise provided by law, if an applicant's original application or request for certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a hearing, and if so requested, the formal hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.]~~

#### §401.53. *Contested Case [Notice of] Hearing.*

(a) The commission appoints SOAH to be its finder of fact in contested cases. The commission does not delegate to the hearings officer and retains for itself the right to determine the sanctions and make the final decision in a contested case. ~~[Notice in a contested case shall comply with the APA, §2001.051 and §2001.052.]~~

(b) SOAH hearings of contested cases shall be conducted in accordance with the APA by a hearings officer assigned by SOAH. Jurisdiction over the case is acquired by SOAH when the commission staff files a request to docket case. ~~[Deposit in the United States mails of a registered or certified letter, return receipt requested, containing a notice of a hearing in compliance with the requirements specified in this rule, or containing a copy of any decision or order addressed to the affected party or the attorney of record for the party at the party's last known address, shall constitute notice of the hearing or of such~~

decision or order. The date of deposit as herein provided is the date of the act, after which any designated period begins to run as provided in §401.13 of this title (relating to Computation of Time).]

(c) The commission may serve the notice of hearing on the respondent at his or her last known address as shown by commission records. The notice may be served by registered U.S. mail or by certified mail, return receipt requested.

#### §401.57. *Filing of Exceptions and Replies to Proposal for Decision.*

(a) A copy of the proposal for decision in a contested case shall be simultaneously delivered or mailed by certified mail, return receipt requested, to each party representative of record.

(b) Exceptions to the proposal for decision shall be filed within 20 ~~[ten calendar]~~ days of the date of the proposal for decision.

(c) Replies to exceptions shall be filed within 15 ~~[20]~~ calendar days after ~~[of]~~ the date of filing of the exceptions and briefs ~~[the proposal for decision].~~

~~[(d)] All disagreements with the factual finds of the proposal for decision must be made in the parties' exceptions to the proposal for decision or be waived.]~~

~~[(e)]~~ The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(e) The hearings officer will rule on all exceptions, briefs, replies, and requests for extension of time and notify the parties of decisions and any amendments to the proposal for decision.

#### §401.59. *Orders.*

After the time for filing exceptions and replies to exceptions expires, the hearings officer's proposal for decision will be considered by the executive director and either adopted or modified and adopted. ~~[An order issued by the hearings officer may be modified or vacated only for reasons of policy, with the reasons and legal basis clearly stated in writing.]~~ All final decisions or orders of the commission or the executive director shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accomplished by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by certified mail of any decision or order, and a copy of the decision or order shall be delivered or mailed to any party and to his or her authorized representative.

#### §401.61. *Record.*

(a) The record in a contested case includes the matters listed in the APA, Government Code, §2001.060.

(b) Proceedings, or any part of them, shall be transcribed on written request of any party. The party requesting the proceeding to be transcribed shall make the initial payment for the transcription. Ultimately, however, the commission or executive director has the authority to assess, in addition to an administrative penalty, the costs of transcribing the administrative hearing. ~~[bear the expense thereof in accordance with the usual and customary charges of a court reporter. Should two or more parties make such request, the cost shall be borne on a pro rata basis. This section does not limit the agency to a stenographic record of proceedings.]~~

(c) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

§401.63. Final Decision and Orders [Appeals to the Commission].

(a) Commission action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Changes stated in final order. If the hearings officer's proposed findings of fact or conclusions of law are modified, the final order shall reflect the specific reason and legal basis for each change made.

(d) [(a)] In general. Any party aggrieved of a final decision or order of the executive director in a contested case may appeal to the commission after the decision or order complained of is final. An appeal to the commission for review of action of the executive director shall be made within 30 days from the date that the writing evidencing the official action or order complained of is final and appealable, but for good cause shown, the commission may allow an appeal after that date. A motion for rehearing is not a prerequisite for an appeal to the commission.

[(b) Standard of Review. The review of decisions of the executive director by the commission shall be based on the substantial evidence rule. In reviewing any final decision or order of the executive director, the commission may consider the record in the contested case developed before the executive director or the assigned examiner, and may not consider evidence not presented to or officially noticed by the executive director or the hearings officer. A party may apply to the commission to present additional evidence. If the commission is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the executive director, the commission may order that additional evidence be taken before the assigned hearings officer on conditions set by the commission. The executive director may change his or her findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the commission.]

(e) [(e)] Oral argument. On the request of any party, the commission may allow oral argument prior to the final determination of an appeal of a decision or order of the executive director.

(f) If the executive director's final decision or order is appealed to the commission, the matter shall be set for the next available commission meeting and the commission shall take action in open session. A copy of the commission decision shall be delivered or mailed to any party and to the attorney of record.

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

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SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

37 TAC §401.105

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§401.105. Administrative Penalties.

(a) Following the hearing the administrative law judge shall issue a proposal for decision containing findings of facts and conclusions of law. While the administrative law judge may recommend a sanction, findings of fact and conclusions of law are inappropriate for sanction recommendations, and sanction recommendations in the form of findings of fact and conclusions of law are an improper application of applicable law and these rules. In all cases, the commission or executive director has the discretion to impose the sanction that best accomplishes the commission's legislatively-assigned enforcement goals. The commission or executive director is the ultimate arbiter of the proper penalty. [The commission, acting through the executive director may, after notice and hearing required by Government Code, Chapter 2001, Administrative Procedure Act, impose an order requiring payment of an administrative penalty or monetary forfeiture in an amount not to exceed \$1,000 for each violation of Government Code, Chapter 419, or rule promulgated there under, as provided by Government Code, §419.906.]

(b) In determining the amount of the administrative penalty or monetary forfeiture the commission or the executive director shall consider:

- (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited act, and the hazard or potential hazard created to the health and safety of the public;
- (2) the economic damage to property or the public's interests or confidences caused by the violation;
- (3) the history of previous violations;
- (4) any economic benefit gained through the violation;
- (5) the amount necessary to deter future violations;
- (6) the demonstrated good faith of the person, including efforts taken by the alleged violator to correct the violation;
- (7) the economic impact of imposition of the penalty or forfeiture on the person; and
- (8) any other matters that justice may require.

(c) The commission or executive director retains the right to increase or decrease the amount of an administrative penalty based on the circumstances in each case. In particular, the commission or executive director may increase the amount of administrative penalties when the respondent has committed multiple violations (e.g. some combination of different violations).

(d) Because it is the policy of the commission to pursue expeditious resolution of complaints when appropriate, administrative penalties in uncontested cases may be less than the amounts assessed in contested cases. Among other reasons, this may be because the respondent admits fault, takes steps to rectify matters, timely responds to commission concerns, or identified mitigating circumstances, and because settlements avoid additional administrative costs.

(e) The commission or executive director may impose an administrative penalty alone or in addition to other permitted sanctions.

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 October 30, 2014.

TRD-201405119

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## SUBCHAPTER I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

### 37 TAC §401.121, §401.127

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

#### §401.121. *Purpose of Establishing Time Periods.*

In order to minimize delays, this subchapter establishes time periods within which the commission [~~Texas Commission on Fire Protection~~] shall review and process certificate applications efficiently and provides for an appeal process should the agency violate these periods in accordance with the Government Code, Chapter 2005.

#### §401.127. *Appeal.*

##### (a) Hearing.

(1) Notice. An applicant who does not receive notice as to the complete or deficient status of a certificate application within the period established in this subchapter for such application may petition for a hearing to review the matter.

(2) Processing. An applicant whose permit is not approved or denied within the period established in this subchapter for such certificate may petition for a hearing to review the matter.

(3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).

(b) Petition. A petition filed under this section must be in writing and directed to the executive director. The petition shall identify the applicant, indicate the type of certificate sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the executive director.

(c) Decision. An appeal filed under this section shall be decided in the applicant's favor if the executive director finds that:

(1) the agency exceeded an established period under this subchapter; and

(2) the agency failed to establish good cause for exceeding the period.

(d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:

(1) the number of certificates to be processed exceeds by 15% or more the number of certificates processed in the same calendar quarter of the preceding year;

(2) the agency must rely on another public or private entity for all or part of its certificate processing, and the delay is caused by the other entity;

(3) the hearing and decision-making process results in reasonable delay under the circumstances;

(4) the applicant is under administrative review; or

(5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.

(e) Commission review. A permit applicant aggrieved by a final decision or order of the executive director concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with §401.63 of this title (relating to Final Decision and Orders [~~Appeals to the Commission~~]).

##### (f) Relief.

(1) Complete or deficient status. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an application shall be entitled to notice of application status.

(2) Certificate approval or denial. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a certificate shall be entitled to such approval or denial of the certificate and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

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 October 30, 2014.

TRD-201405120

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## SUBCHAPTER J. CHARGES FOR PUBLIC RECORDS

### 37 TAC §401.129

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

*§401.129. Charges for Public Records.*

(a) The commission [Texas Commission on Fire Protection] is subject to Texas Government Code, Chapter 552, Texas Public Information Act. The Act gives the public the right to request access to government information.

(b) The commission [Texas Commission on Fire Protection] adopts by reference Title 1, Part 13, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General.

(c) The executive director may waive or reduce a charge for copies when furnishing the information benefits to the general public.

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 October 30, 2014.

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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3813



## SUBCHAPTER K. HISTORICALLY UNDERUTILIZED BUSINESSES

### 37 TAC §401.131

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

*§401.131. Historically Underutilized Businesses.*

The commission [Texas Commission on Fire Protection] adopts by reference Title 34, Part 1, Chapter 20, Texas Procurement and Support Services, Subchapter B, Historically Underutilized Business Program, as promulgated by the Comptroller of Public Accounts.

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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TRD-201405122

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (the commission) proposes repeals to Chapter 401, Administrative Practice and Procedure, concerning Subchapter E, Prehearing Proceedings, §401.43, Prehearing Conferences, §401.45, Interim Order, §401.47, Appeal of an Interim Order, §401.49, Prehearing Statements, Subchapter F, Contested Cases, §401.55, Hearings Officer, §401.65, Suspension of Orders, Subchapter G, Conduct and Decorum, Sanctions, and Penalties, §401.101, Conduct and Decorum, and §401.103, Discovery Sanctions.

The purpose of the proposed repeals is to remove obsolete language regarding administrative practice and procedures used by the agency and in accordance with the Administrative Procedures Act (APA) and the State Office of Administrative Hearings (SOAH).

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit from the passage is clear and concise rules regarding agency administrative practice and procedures for regulated individuals and entities. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed repeals may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

## SUBCHAPTER E. PREHEARING PROCEEDINGS

### 37 TAC §§401.43, 401.45, 401.47, 401.49

*(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 Commission on Fire Protection or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed repeals implement Texas Government Code §419.008 and §419.032.

*§401.43. Prehearing Conferences.*

*§401.45. Interim Order.*

*§401.47. Appeal of an Interim Order.*

*§401.49. Prehearing Statements.*

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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TRD-201405145

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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## SUBCHAPTER F. CONTESTED CASES

### 37 TAC §401.55, §401.65

*(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 Commission on Fire Protection or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed repeals implement Texas Government Code §419.008 and §419.032.

§401.55. *Hearings Officer.*

§401.65. *Suspension of Orders.*

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

### 37 TAC §401.101, §401.103

*(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 Commission on Fire Protection or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed repeals implement Texas Government Code §419.008 and §419.032.

§401.101. *Conduct and Decorum.*

§401.103. *Discovery Sanctions.*

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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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3813



## CHAPTER 445. ADMINISTRATIVE INSPECTIONS AND PENALTIES

### 37 TAC §445.7, §445.9

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 445, Administrative Inspections and Penalties, concerning §445.7, Procedures, §445.9, Minor Violations, §445.11, Major Violations, §445.13, Disciplinary Hearings, and §445.15, Judicial Enforcement.

The purpose of the proposed amendments is to clarify language regarding the procedures the commission uses when findings of violations have occurred during a departmental inspection by the commission.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise rules regarding procedures for implying administrative penalties when violations are discovered during a departmental inspection. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.027, which provides the commission the authority to conduct biennial inspections of each institution or facility conducting courses for training fire protection personnel and recruits, fire departments, and each local governmental agency providing fire protection to determine compliance with commission rules; §419.047, which provides the commission the authority to enforce commission rules regarding protective clothing, self-contained breathing apparatus, personal alert safety systems, incident management systems, personnel accountability

systems, fire protection personnel operating at emergency incidents, and applicable National Fire Protection Association standards for fire protection personnel.

The proposed amendments implement Texas Government Code §419.008, §419.027, §419.047.

§445.7. *Procedures.*

(a) The inspector shall, if possible, notify the current or acting, on duty and available, department head of the inspector's presence at the department and his intention to conduct a departmental inspection.

(b) During the course of the inspection, any noncompliance with state law or commission rule shall be noted. Violations shall be determined to be either minor or major violations based upon the following guidelines.

(1) Minor violations shall be defined as those violations which the inspector determines do not pose a serious threat to personnel safety due to lack of personnel protection equipment or training, are not widespread, or are not repeat violations of the same nature for which the entity was cited within the previous five years.

(2) Major violations shall be defined as those violations which in the inspector's opinion constitute an immediate threat to personnel safety, flagrant or repeated violations in the same or similar areas, fraud, or obvious attempts to circumvent state law or commission rule. A major violation may be as follows but not limited to a deficiency or safety issue involving protective clothing, a self-contained breathing apparatus, personal alert safety systems, breathing air, or other matter that in the inspector's judgment presents an immediate and significant risk of injury.

(c) In order to determine compliance with commission requirements pertaining to a particular item, the inspector may examine as many items of protective clothing and equipment deemed necessary by the inspector.

§445.9. *Procedure for [Minor] Violations.*

(a) Findings of only minor violations. If during the course of a departmental inspection[,] the inspector determines the department has committed only minor violations, the following procedure applies. [procedures shall apply.]

(1) The inspector shall issue an inspectors report which will identify [a notice of minor violations identifying] the findings [resulting] from the compliance inspection. The inspector's report is a written summary of an inspector's findings that is given to an inspected entity after an inspection. In cases of minor violations, the inspector's report may identify deficiencies and prescribe corrective action within specific timeframes.

(2) The department then has 30 calendar days from the date the inspector's report [notice of minor violations] is received to provide the commission [Commission] with a written schedule of actions that [which] will be taken [carried out] to correct the [minor] violations. The schedule of actions will allow necessary amounts of time for such things as obtaining items through city requisitions and bid processes, when necessary. Lack of funds is not an acceptable reason for delay.

(3) If the department fails to timely provide an acceptable written schedule of actions [a plan] for obtaining compliance, the inspector or compliance officer may issue a notice of alleged violation. The notice of alleged violation is a written document that briefly summarizes the alleged violation(s), and requires the person to correct the violation(s). The notice may also prescribe a specific time period to rectify the matter and achieve compliance, and assess an administrative penalty. If an administrative penalty is assessed, the notice shall

state the amount of the penalty. The notice shall also inform the person of the person's right to an informal staff conference and that if the person fails to timely correct the alleged violation or fails to request a preliminary staff conference before the 61st day after receipt of the notice, the commission may issue a default order. In addition, the notice of alleged violation may: [within the required time frame, a hearing may be scheduled. If determined by the hearing process that violations occurred and were not corrected, the department may be:]

(A) allow [allowed] extra time to come into compliance;

(B) assess administrative penalties, [assessed appropriate penalties] which may be probated [and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees];

(C) suspend or revoke licenses or certificates; and

(D) [(C)] require [required to furnish] proof of compliance.

(b) Findings of major violations. If during the course of a departmental inspection the inspector determines the department has committed a major violation, the following procedure applies.

(1) The inspector or compliance officer shall issue a notice of alleged violation. The notice shall identify the violations and require the department or provider to correct the violation. In addition, the notice of alleged violation may:

(A) specify a time period to achieve compliance;

(B) assess administrative penalties;

(C) suspend or revoke licenses or certificates; and

(D) require proof of compliance.

(2) In addition to any of the above, the commission may also temporarily suspend a person's or regulated entity's certificate on a determination by a panel of the commission that continued activity by the person or entity would present an immediate threat to the public, regulated personnel, or fire service trainees; and seek an injunction in a district court in Travis County along with civil penalties, court costs, and attorney's fees. See *Tex. Gov't Code §419.906(a), (d).*

(c) If a fire department or training provider fails to correct the alleged violation in a timely manner or fails to request a preliminary staff conference (information settlement conference) before the 61st day after the date it receives a notice of alleged violation, the commission through its executive director may issue a default order.

(d) When determining administrative penalties for a notice of alleged violation or default order the following factors shall be considered:

(1) compliance history;

(2) seriousness of the violation;

(3) the safety threat to the public or fire personnel;

(4) any mitigating factors; and

(5) any other factors the commission considers appropriate.

(e) If the fire department or training provider timely requests a preliminary staff conference (informal settlement conference), the procedures in Chapter 401, Subchapter E apply, and if the preliminary staff conference does not result in approval of a consent order the matter shall be referred for a contested case hearing.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



### 37 TAC §§445.11, 445.13, 445.15

*(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 Commission on Fire Protection or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Commission on Fire Protection (the commission) proposes a repeal to Chapter 445, Administrative Inspections and Penalties, concerning §445.11, Major Violations, §445.13, Disciplinary Hearings, and §445.15, Judicial Enforcement.

The purpose of the proposed repeals is to delete obsolete language regarding the procedures the commission uses when findings of violations have occurred during a departmental inspection by the commission.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed repeals are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit from the passage is clear and concise rules regarding procedures for implying administrative penalties when violations are discovered during a departmental inspection. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.027, which provides the commission the authority to conduct biennial inspections of each institution or facility conducting courses for training fire protection personnel and recruits, fire departments, and each local governmental agency providing fire protection to determine compliance with commission rules; §419.047, which provides the commission the authority to enforce commission rules regarding protective clothing, self-contained breathing apparatus, personal alert safety systems, incident management systems, personnel accountability systems, fire protection personnel operating at emergency incidents, and applicable National Fire Protection Association standards for fire protection personnel.

The proposed repeal implements Texas Government Code §419.008, §419.027, §419.047.

§445.11. *Major Violations.*

§445.13. *Disciplinary Hearings.*

§445.15. *Judicial Enforcement.*

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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TRD-201405148

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.1401 - 700.1406; and new §§700.1401 - 700.1405, concerning policies regarding children in DFPS conservatorship and HIV testing and care, in its chapter governing Child Protective Services (CPS). The purpose of the repeals and new sections is to revise outdated rules regarding HIV/AIDS and children in DFPS conservatorship. The new sections address when a child in DFPS conservatorship must be tested for HIV infection; what action DFPS must take if a child in conservatorship tests positive for HIV infection; who DFPS must notify; who DFPS may notify regarding a child's HIV status or test result; and confidentiality.

DFPS last revised its rules regarding HIV testing and care for children in DFPS conservatorship who test positive for HIV antibodies in 1994. Since that time, recommended best practices and procedures for HIV testing and follow-up treatment have changed based on new research and medical knowledge, making the current rules outdated and inaccurate. DFPS is repealing Subchapter N, AIDS Policies for Children in DFPS's Conservatorship, and replacing it with new language that better reflects current medical practice, terminology, and professional roles. Existing language that is still relevant is incorporated into the new rules. Also, the title of Subchapter N is changed to "Policies Regarding Children in DFPS's Conservatorship and HIV Testing and Care."

The new procedures will continue to ensure children are tested if appropriate, but remove most of the language that required a DFPS caseworker to determine whether testing of a child in conservatorship was warranted, language that outlined how often testing should occur and who can conduct it, and details about



the medical programs a child who tests positive should be enrolled in.

With few exceptions, all children in DFPS conservatorship are automatically enrolled in the Texas STAR Health Medicaid managed healthcare program, and are required to receive a medical exam from a STAR Health participating provider within 30 days of coming into care. The child's provider is required by the Texas Medicaid Provider Procedures Manual to order any diagnostic assessment or test considered medically indicated for a child, including "laboratory tests appropriate for age and risk," including HIV testing.

Federal and state public health agencies have adopted rules, policies and guidance documents regarding recommended protocols and practices for HIV testing and treatment of children, and decisions regarding medical testing are most appropriately under the purview of the treating health-care provider. The rules require a DFPS worker to specifically request the provider order HIV testing if they are aware of any risk factors affecting the child, such as a history of sexual abuse of the child, and a child may also request a test.

The new rules retain much of the current language regarding who DFPS must notify if a child in conservatorship has HIV infection, including (in most cases) the child's legal parents, prospective or current caregivers, and the child's medical consentor. The rules also specify who may be told of the child's HIV status or test results if appropriate, including a negative test result. The rules will continue to require DFPS to ensure the child receives the treatment and medical management the child requires through the STAR Health program if the child has HIV infection.

A summary of the changes follows:

Sections 700.1401 - 700.1406 are repealed. Some of the text of the rules is contained in the new rules with the exception of §700.1406, regarding sex education and AIDS prevention. Those requirements are included in agency policy and are not needed in rule.

New §700.1401 clarifies that a child in DFPS conservatorship should be tested as directed by the Texas Health Steps Medical Checkup Periodicity Schedule or when the child's health-care provider believes it is medically indicated. The new rule requires a DFPS caseworker for a child to request that the health-care provider test the child for HIV if the child has a known risk factor such as a history of sexual abuse.

New §700.1402 clarifies that DFPS will ensure children with HIV infection receive proper treatment and healthcare from the child's Medicaid provider.

New §700.1403 outlines who DFPS must inform when a child in conservatorship has HIV infection, including the child's caregivers, medical consentor, and the legal parents (in most cases).

New §700.1404 states that DFPS may notify other parties, including the court and the child, regarding the child's HIV status or test result, including a negative test result, if they have a legitimate need to know the information in order to provide for the child's health and welfare.

New §700.1405 states that information about a child's HIV status is confidential and may not be released except as provided by this rule or other applicable law or rule.

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 children who have HIV infection will be tested and identified as soon as possible, allowing health-care providers to immediately provide medical care and treatment, possibly ameliorating long-term effects of the infection. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed 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 Denise Brady at (512) 438-3466 in DFPS's Legal Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-511, 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 N. AIDS POLICIES FOR CHILDREN IN DFPS'S CONSERVATORSHIP

### 40 TAC §§700.1401 - 700.1406

*(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 Texas Family Code §261.201 and §261.314.

§700.1401. *Testing Children in the Texas Department of Protective and Regulatory Services' (TDPRS's) Conservatorship for Human-Immunodeficiency-Virus (HIV) Antibodies.*

§700.1402. *Treatment and Medical Management.*

§700.1403. *Notification.*

§700.1404. *Confidentiality.*

§700.1405. *Caregiver Training.*

§700.1406. *Sex Education and AIDS Prevention.*

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 October 29, 2014.

TRD-201405072

Trevor Woodruff

Interim General Counsel

Department of Family and Protective Services

Proposed date of adoption: March 1, 2015

For further information, please call: (512) 438-3437



## SUBCHAPTER N. POLICIES REGARDING CHILDREN IN DFPS'S CONSERVATORSHIP AND HIV TESTING AND CARE

### 40 TAC §§700.1401 - 700.1405

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 Texas Family Code §§261.201, 261.314, 266.004, and 266.005.

§700.1401. When must a child in DFPS conservatorship be tested for HIV infection?

(a) A child in the conservatorship of DFPS should be tested for HIV infection in accordance with the Texas Health Steps Medical Checkup Periodicity Schedule, Comprehensive Health Screening, or at any other time the child's health-care provider determines the test is medically indicated.

(b) DFPS must request that the health-care provider test the child for HIV infection if the child has a history of sexual abuse or other risk factor, or if the child requests to be tested.

§700.1402. What happens if a child in DFPS conservatorship tests positive for HIV infection?

Children in the conservatorship of DFPS who have HIV infection receive counseling, treatment, and medical management through the Texas STAR Health Medicaid managed care program. DFPS will ensure that age-appropriate post-test counseling and information is provided for children with HIV infection and their caregivers in accordance with the Texas Health and Safety Code, §81.109.

§700.1403. Who must DFPS notify regarding a child's HIV infection? If a child in DFPS conservatorship has tested positive for HIV infection, DFPS must notify the following parties of the child's condition:

(1) the child's legal parents (if parental rights have not been terminated and their whereabouts are known);

(2) prospective and current foster parents, 24-hour child-care providers, prospective adoptive parents, or relatives with whom the child has been placed or with whom DFPS plans to place the child; and

(3) a person authorized to provide medical consent on the child's behalf.

§700.1404. Who may DFPS notify regarding a child's HIV status or test result?

(a) If a child in DFPS conservatorship has tested positive for HIV infection, DFPS may notify the following parties of the child's condition:

(1) a physician, nurse, or other professional who has a legitimate need to know the information in order to provide for the child's health and welfare;

(2) a court having jurisdiction of a proceeding involving the child or a proceeding involving a person suspected of abusing the child, if requested;

(3) pursuant to law or court order, any person with a legal right to obtain the information; and

(4) the child.

(b) If a child in DFPS conservatorship has tested negative for HIV infection, the parties listed in subsection (a) of this section and §700.1403 of this title (relating to Who must DFPS notify regarding a child's HIV infection?) may be notified if the party requests the information or if DFPS determines the information is needed to provide for the child's health or welfare.

§700.1405. May anyone else be told about the child's HIV status?

Information regarding a child's HIV status is confidential and should not be shared with any other individual or entity with the exception of release to the agencies, individuals or types of individuals listed in §700.1403 of this title (relating to Who must DFPS notify regarding a child's HIV infection?) and §700.1404 of this title (relating to Who may DFPS notify regarding a child's HIV status or test result?), or under other applicable law or rule.

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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Trevor Woodruff

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Department of Family and Protective Services

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For further information, please call: (512) 438-3437



## CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

### SUBCHAPTER B. PERSONNEL AND TRAINING

#### 40 TAC §743.105

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §743.105, concerning what are the background check requirements, in Chapter 743, Minimum Standards for Shelter Care. The purpose of the amendment is to (1) clarify that shelter care operations must ensure criminal background check information is kept confidential; and (2) update the rule reference.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that DFPS will be in compliance with the Human Resources Code. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment 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, 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-513, 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 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 §§40.005, 42.042, and 42.056.

§743.105. *What are the background check requirements?*

(a) - (c) (No change.)

(d) You must request required background checks based on the following rules:

(1) (No change.)

(2) §745.625 of this title (relating to When must I submit a request for an initial or renewal [a] background check?) other than §745.625(a)(7) [§745.625(a)(6)] of this title;

(3) (No change.)

(4) §745.630 of this title (relating to If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due [is a new fingerprint-based criminal history check required for that person every 24 months]?).

(e) You must ensure all information related to background checks is kept confidential as required by the Human Resources Code §40.005(d) and (e).

(f) [(e)] You may allow the person to provide direct care or have direct access to a child in care after you request a background check unless or until DFPS notifies you that the person may not be present at your operation.

(g) [(f)] Background check results will be addressed based on the rules found in the following divisions of Chapter 745, Subchapter F of this title (relating to Background Checks):

(1) Division 3 (relating to Criminal Convictions and Central Registry Findings of Child Abuse or Neglect);

(2) Division 4 (relating to Evaluation of Risk Because of a Criminal Conviction or a Central Registry Finding of Child Abuse or Neglect);

(3) Division 5 (relating to Designated and Sustained Perpetrators of Child Abuse or Neglect); and

(4) Division 6 (relating to Immediate Threat or Danger to the Health or Safety of Children).

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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Trevor Woodruff

Interim General Counsel

Department of Family and Protective Services

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## CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§745.464, 745.691, and 745.693; amendments to §§745.601, 745.625, 745.630, 745.651, and 745.8605; and the repeal of §745.616 and §745.688, concerning criminal background checks, in its Licensing chapter. The purpose of the changes is to clarify the current rules regarding criminal background checks. The changes are needed to comply with statutory background check requirements, clarify existing background check requirements, and reduce risk to children. The changes include: (1) establishing definitions for the "Centralized Background Check Unit" and "risk evaluation," and combining the definitions for "regularly" and "frequently at an operation" for clarity; (2) clarifying that parents visiting their child at a day care are not "regularly and frequently present at an operation;" (3) clarifying that Employer-Based Child Care operations must comply with Human Resources Code §40.005(d) and (e) and ensure criminal background check information is kept confidential; (4) providing flexibility for operations to submit criminal background checks on children when children (excluding clients) living in their home or operation become or are close to becoming 14 years of age; (5) clarifying that any person currently on parole for a felony offense must have an approved risk evaluation prior to being present at an operation; and (6) clarifying when conditions or restrictions may be placed on a person's presence at an operation and what happens when those conditions or restrictions are not followed.

A summary of the changes follows:

New §745.464 clarifies that Employer-Based Child Care operations must ensure criminal background check information is kept confidential.

The amendment to §745.601: (1) adds definitions for the "CBCU (Centralized Background Unit)" and "risk evaluation"; (2) combines the definitions for "regularly" and "frequently at an operation" for clarity, and clarifies that parents visiting their children at a day care are not "regularly and frequently at an operation;" and (3) renumbers the paragraphs.

Section 745.616 is repealed because it is a transitional rule that became void after September 1, 2014.

The amendment to §745.625 clarifies that a criminal background check must be submitted between 90 days before and 90 days after a child (excluding clients) living in a home or operation becomes or is close to becoming 14 years of age.

The amendment to §745.630 clarifies the language of the rule.

The amendment to §745.651 clarifies that any person currently on parole for a felony offense must have an approved risk evaluation prior to being present at the operation. Previously, there was a loophole for some crimes that were specifically enumerated in the relevant chart.

Section 745.688 is repealed and relevant information is included in new §745.691 of this title (relating to May conditions or restrictions be placed on a person's presence at an operation?).

New §745.691 clarifies the situations when the CBCU may place conditions or restrictions on a person's presence at an operation: (1) pending the outcome of a risk evaluation for an eligible criminal conviction, Central Registry finding, or crime for which the person has been arrested or charged; or (2) for an approved risk evaluation.

New §745.693 clarifies that if an operation does not follow the conditions or restrictions that have been placed on a person's presence at an operation, then: (1) Licensing will put in place a safety plan which may include prohibiting the person's presence at the operation; (2) the CBCU may amend, deny, or rescind the risk evaluation; and (3) Licensing may take remedial action against the operation.

The amendment to §745.8605 adds "failure to follow conditions or restrictions placed on a person's presence at an operation" as a basis for Licensing to take remedial action against an operation.

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: (1) DFPS will be in compliance with the Human Resources Code; (2) regulated entities will have more flexibility and a better understanding of when to submit fingerprints; and (3) there will be reduced risk to children. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to

comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new sections, amendments, and repeals 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-513, 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 D. APPLICATION PROCESS DIVISION 11. EMPLOYER-BASED CHILD CARE

### 40 TAC §745.464

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 §§40.005, 42.042, and 42.056.

*§745.464. What are my responsibilities regarding criminal background check requirements?*

In addition to meeting the requirements in Subchapter F of this chapter (relating to Background Checks), you must ensure all information related to background checks is kept confidential as required by the Human Resources Code §40.005(d) and (e).

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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Trevor Woodruff

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Department of Family and Protective Services

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## SUBCHAPTER F. BACKGROUND CHECKS DIVISION 1. DEFINITIONS

### 40 TAC §745.601

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 and §42.056.

§745.601. *What words must I know to understand this subchapter?*

These words have the following meanings:

(1) CBCU--The Centralized Background Check Unit is a division of DFPS that conducts background checks and risk evaluations for various DFPS divisions, including Licensing.

(2) [(4)] Continuous stay--Staying overnight or consecutive nights at an operation.

(3) [(2)] Direct care or direct access--Being counted in the child-to-caregiver ratio or having any responsibility that requires contact with children in care.

[(3)] Frequently present at your operation--More than two non-continuous visits at your operation in a 30-day period; one continuous stay per year at your operation and the duration of the stay exceeds seven days; or more than two continuous stays per year at your operation and the duration of each stay exceeds 48 hours. For foster homes, the following individuals are not considered frequently present at a foster home:--

[(A)] A child unrelated to a foster parent who visits the foster home unless:--

[(i)] The child is responsible for the care of foster children; or

[(ii)] There is a reason to believe that the child has a criminal history or previously abused or neglected another child; or

[(B)] An adult unrelated to a foster parent who visits the foster home unless:--

[(i)] The adult has unsupervised access to children in care; or

[(ii)] There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.--

(4) - (6) (No change.)

(7) Regularly or frequently present at an operation--The definition means: [Regularly--On a scheduled basis.]

[(A)] A person is regularly or frequently at an operation if the person is at an operation:

[(i)] On a scheduled basis;

[(ii)] For three or more non-continuous visits in a 30-day period;

[(iii)] For one continuous stay that exceeds seven days; or

[(iv)] For three or more continuous stays per year, and the duration of each stay exceeds 48 hours.

[(B)] For foster homes, the following persons are not considered to be regularly or frequently present at a foster home:

[(i)] A child unrelated to a foster parent who visits the foster home unless:

[(I)] The child is responsible for the care of a foster child; or

[(II)] There is a reason to believe that the child has a criminal history or previously abused or neglected another child; and

[(ii)] An adult unrelated to a foster parent who visits the foster home unless:

[(I)] The adult has unsupervised access to children in care; or

[(II)] There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

[(C)] For a child day-care operation, parents are not regularly or frequently present at an operation solely because they are visiting their child, which may include dropping off or picking up their child, eating lunch with their child, visiting or observing their child, or consoling their child. However, a parent may be regularly or frequently present at an operation if he or she volunteers at an operation or is otherwise present at an operation for a reason other than visiting his or her child.

(8) (No change.)

(9) Risk evaluation--A process initiated by an operation whereby the Centralized Background Check Unit (CBCU) reviews information and determines whether a person with a criminal conviction or Central Registry finding or who has been arrested or charged with a crime poses a risk to the health or safety of children in a particular operation.

(10) [(9)] Substitute employee--A person on the premises of a child-care operation for the purpose of fulfilling an employee or caregiver role in the absence of an employee or caregiver usually present at the operation.

(11) [(40)] Unsupervised access--The person is allowed to be with children without the presence of a qualified caregiver.

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. REQUESTING BACKGROUND CHECKS

### 40 TAC §745.616

*(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 and §42.056.

§745.616. *Transitional rule for submission of fingerprint-based criminal history checks required by the 83rd Texas Legislature.*

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 §745.625, §745.630

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 and §42.056.

§745.625. *When must I submit a request for an initial or renewal background check?*

(a) You must submit a request for an initial background check for each person required to have a background check under §745.615 of this title (relating to On whom must I request background checks?):

(1) - (4) (No change.)

(5) At the time a non-client resident 14 years or older moves into your home or operation;

(6) Between 90 days before and 90 days after[; ~~or~~] a non-client resident living in your home or operation becomes 14 years old; and

(7) [~~(6)~~] At the time you become aware of anyone requiring a background check under §745.615 of this title, [~~for~~] on whom you have not previously requested the required background check.

(b) (No change.)

§745.630. *If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?*

(a) At the time you submit an initial or renewal background check for a person who has previously undergone a fingerprint-based criminal history background check, you indicate that whether that person is required to undergo a fingerprint-based check as provided in subsection (b) of §745.615 of this title (relating to On whom must I request background checks?). However, a previously conducted fingerprint-based check remains valid and DFPS will waive the requirement to submit new fingerprints under the following circumstances:

(1) DFPS previously conducted a fingerprint-based check for the person[; ~~and~~]

[~~(A)~~] the [~~The~~] results of the previously completed check are still available to DFPS; and

[~~(B)~~] the [~~The~~] date on which you submit an initial or renewal background check for the person is not more than two years since the date you or another operation last submitted a name-based check for that person;

(2) An entity [~~other than DFPS~~], including but not limited to the Texas Education Agency, previously conducted a fingerprint-based criminal history check on the person, and those results:

(A) - (C) (No change.)

(3) (No change.)

(b) Notwithstanding subsection (a) of this section, a previously completed fingerprint-based criminal history check is no longer considered valid and the submission of new fingerprints will be required if: [~~a new fingerprint-based check must be conducted by DFPS if:~~]

(1) (No change.)

(2) The person moved to another state in the US [~~out-of-state~~] after the most recent fingerprint-based check was completed by DFPS or another entity; or

(3) You have reason to suspect that the person has [~~out-of-state~~] criminal history in another state in the US since the most recent fingerprint-based check was completed by DFPS or another entity.

(c) (No change.)

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

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## DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

#### 40 TAC §745.651

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 and §42.056.

*§745.651. What types of criminal convictions may affect a person's ability to be present at an operation?*

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

(c) ~~A [For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section, the] person currently on parole for a felony offense must have an approved risk evaluation prior to being present at the operation. [if:]~~

~~{(1) The person was convicted within the past 10 years for the offense; or}~~

~~{(2) The person is currently on parole for the offense.}~~

(d) ~~For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section, a person convicted within the past 10 years for the offense must have an approved risk evaluation prior to being present at the operation.~~

(e) ~~[(d) Substantially [In addition to the criminal offenses that are specifically enumerated in each chart listed in subsection (a) of this section and felony offenses described in subsection (e) of this section, substantially] similar federal offenses and offenses in other states will be treated the same as the similar Texas offense.~~

(f) ~~[(e) This rule does not apply to a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS employee or volunteer. The person's background check will be conducted under the criteria used by DFPS and the Human Resources Department of the Health and Human Services Commission.~~

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

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#### DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

#### 40 TAC §745.688

*(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 and §42.056.

*§745.688. May Licensing place conditions or restrictions on a person's presence at an operation pending the outcome of a risk evaluation?*

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 §745.691, §745.693

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 and §42.056.

*§745.691. May conditions or restrictions be placed on a person's presence at an operation?*

The CBCU may place conditions or restrictions on a person's presence at an operation as CBCU determines to be necessary to protect the health or safety of children in the following situations:

(1) Pending the outcome of a risk evaluation for an eligible criminal conviction, Central Registry finding, or crime for which the person has been arrested or charged; or

(2) For an approved risk evaluation.

*§745.693. Must I follow conditions or restrictions that have been placed on a person's presence at an operation?*

(a) Yes, you must follow conditions or restrictions that have been placed on a person's presence at an operation:

(1) Pending the outcome of a risk evaluation for an eligible criminal conviction, Central Registry finding, or crime for which the person has been arrested or charged; or

(2) For an approved risk evaluation;

(b) If any conditions or restrictions placed on a person's presence at an operation are not followed, then:

(1) Licensing will put in place a safety plan which may include prohibiting the person's presence at the operation;

(2) The CBCU may amend, deny, or rescind the risk evaluation; and

(3) Licensing may take remedial action against the operation.

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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Trevor Woodruff

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Department of Family and Protective Services

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## SUBCHAPTER L. REMEDIAL ACTIONS

### DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

#### 40 TAC §745.8605

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 and §42.056.

§745.8605. *When can Licensing take remedial action against me?*

We can impose a remedial action any time we find one of the following:

(1) - (22) (No change.)

(23) A reason set forth in Human Resources Code, §42.078; [ø]

(24) A failure to pay an administrative penalty under Human Resources Code, §42.078; or[-]

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation.

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 K. INSPECTIONS AND INVESTIGATIONS

### DIVISION 3. CONFIDENTIALITY

#### 40 TAC §§745.8481, 745.8487, 745.8491, 745.8493, 745.8495

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.8481, 745.8487, 745.8491, 745.8493, and 745.8495, concerning confidentiality, in Chapter 745, Licensing. The purpose of the amendments is to clarify the current rules regarding confidentiality. Senate Bill (SB) 1648, 83rd Regular Session, added Human Resources Code §42.004, which makes photographs (including audio or video recordings, depictions or documentations) of a child by Child Care Licensing (CCL) in the course of an inspection or investigation confidential, and allows CCL to release these items only as specified in rule or other state or federal law. These rules were effective March 1, 2014. CCL is now proposing rules to clarify the limited circumstances in which an alleged perpetrator or an operation cited for a deficiency may view but not get a copy of a child's photograph. CCL is also clarifying in two other rules that photographs of children will not be released to the general public.

Attorney General (AG) Opinion OR 2013-20006 stated that DFPS had no rules that made home screenings confidential. Because of the private nature of a home screening and in response to the AG Opinion, CCL is clarifying that foster home screenings, adoptive home screenings, and post-placement adoptive reports are generally confidential and not releasable. However, a screening or report may be released to the person being evaluated (for example, the prospective foster parent or adoptive parent), or if the DFPS Commissioner approves the release of the screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection.

Finally, CCL is clarifying that child welfare agencies from other states may obtain a CCL abuse or neglect investigation file to assist in their own child abuse and neglect investigations.

A summary of the changes follows:

The amendment to §745.8481(b) clarifies that any photographs of children in a monitoring file will not be released to the public by adding a reference to §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).



The amendment to §745.8487(b)(6) clarifies that any photographs of children in an abuse or neglect investigation will not be released to the public by adding a reference to §745.8495 of this title.

The amendment to §745.8491(a)(11) clarifies that child welfare agencies from other states may obtain copies of a Licensing abuse or neglect investigation file to assist in their own child abuse or investigations.

The amendment to §745.8493(a)(8) clarifies that foster home screenings, adoptive home screenings, and post-placement reports may not be released to anyone, unless the requester is the person being evaluated, or the DFPS Commissioner approves the release of the screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection.

The amendment to §745.8495(b) clarifies that the following are entitled to review a child's photograph: (1) an operation only if the operation was cited for a deficiency as a result of the inspection or investigation during which the photograph was taken; and (2) an alleged perpetrator of an abuse or neglect investigation during which the photograph was taken to support or verify the abuse or neglect finding.

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: (1) Licensing will be in compliance with HRC §42.004; (2) more protections for children in other states; (3) private information like a child's photograph or a foster home screening will be protected from public disclosure; and (4) a greater understanding by the public of the rules related to confidentiality. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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-510, 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 Ser-

vices 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 §42.004 and §42.042.

*§745.8481. Is information in my operation's monitoring file confidential?*

(a) (No change.)

(b) We will not release some information in your operation's monitoring file because of other state and federal laws that make the information confidential, as provided in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).

*§745.8487. What information can Licensing release to the public after the completion of the abuse or neglect investigation?*

(a) (No change.)

(b) Before releasing portions of the abuse or neglect investigation that are in the operation's monitoring file, we must remove:

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

(6) Any other information that may not be released under §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).

*§745.8491. Who can obtain information from the confidential portions of an abuse or neglect investigation file?*

(a) The following may obtain information from the confidential portions of an abuse or neglect investigation file, subject to the limitations described in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?):

(1) - (8) (No change.)

(9) An administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he:

(A) - (B) (No change.)

(C) Includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation; ~~and~~

(10) According to the Texas Family Code §162.006, a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation; ~~and~~[-]

(11) A child welfare agency from another state that is requesting the information to assist in its own child abuse or neglect investigation.

(b) - (c) (No change.)

*§745.8493. Are there any portions of Licensing records that Licensing may not release to anyone?*

(a) We may not release the following portions of Licensing records to anyone:

(1) - (6) (No change.)

(7) The identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is:

(A) - (B) (No change.)

(C) The single-source continuum contractor (SSCC) for foster care redesign when:

(i) - (ii) (No change.)

(iii) The operation was cited for a deficiency as a result of the investigation; [and]

(8) Foster home screenings, adoptive home screenings, and post-placement adoptive reports, unless:

(A) The requester is the person being evaluated; or

(B) The DFPS Commissioner approves the release of a screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection; and

(9) [(8)] Any other information confidential under state or federal law.

(b) - (c) (No change.)

§745.8495. *Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?*

(a) (No change.)

(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:

(1) (No change.)

(2) The operation cited for a deficiency as a result of the inspection or investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made;

(3) The alleged perpetrator of an abuse or neglect investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made to support or verify the abuse or neglect finding;

(4) [(3)] With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation; and

(5) [(4)] A prospective adoptive parent of the child, as provided in Texas Family Code §162.006.

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 October 28, 2014.

TRD-201405015

Trevor Woodruff

Interim General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: March 1, 2015

For further information, please call: (512) 438-3437



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

##### SUBCHAPTER A. GENERAL

###### 43 TAC §9.3

The Texas Department of Transportation (department) proposes amendments to §9.3, concerning Protest of Department Purchases under the State Purchasing and General Services Act.

###### EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act to accommodate the change of title of the Chief Procurement and Deputy Administrative Officer to Chief of Procurement and Field Support Operations.

###### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments 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.

Glenn Hagler, Statewide Procurement Director, Procurement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

###### PUBLIC BENEFIT AND COST

Mr. Hagler 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 response time will be improved for affected parties. 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.

###### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.3 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 "Proposed Amendment Changes to Section 9.3." The deadline for receipt of comments is 5:00 p.m. on December 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.

###### 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, Government Code, §2155.076, which requires each state agency to adopt rules that establish protest procedures for resolving vendor protests relating to purchasing issues.

## CROSS REFERENCE TO STATUTE

Government Code, §2155.076.

§9.3. *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) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

(4) Chief of Procurement and Field Support Operations [~~Chief Procurement and Deputy Administrative Officer~~]~~--The Chief of Procurement and Field Support Operations~~ [~~Chief Procurement and Deputy Administrative Officer~~] of the department.

(5) Statewide Procurement Director--The director of statewide procurement in the procurement division of the department, or other individual as designated by the Chief of Procurement and Field Support Operations [~~Chief Procurement and Deputy Administrative Officer~~].

(6) Division--An organizational unit in the department's Austin headquarters.

(7) Executive director--The executive director of the department.

(8) Interested party--A vendor that has submitted a bid, proposal, or other expression of interest for the purchase involved.

(9) Purchase--A procurement action for commodities or non-professional services under the Act.

(c) Filing of protest.

(1) An actual or 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 received in the office of the Chief of Procurement and Field Support Operations [~~Chief Procurement and Deputy Administrative Officer~~] 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. 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 until the executive director or his or her designee, not below the level of division director, consults with the Chief of Procurement and Field Support Operations [~~Chief Procurement and Deputy Administrative Officer~~] and makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.

(e) Informal resolution. The Statewide Procurement Director 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 Statewide Procurement Director will issue a written determination to the protesting party and interested parties which sets forth the reason for the determination. The Statewide Procurement Director may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action which may include:

(A) declaring the purchase void;

(B) reversing the award; 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 Statewide Procurement Director and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel shall review the protest, the determination, and 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 commission for its consideration at a regularly scheduled open meeting.

(5) The commission may consider oral presentations and written documents presented by the department and interested parties. The chair shall set the order and the amount of time allowed for presentation. The commission's determination of the appeal shall be adopted by minute order and reflected in the minutes of the meeting.

(6) The decision of the commission or executive director shall be final.

(h) Filing deadline. Unless the commission 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.

Filed with the Office of the Secretary of State on October 30, 2014.

TRD-201405128

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: December 14, 2014

For further information, please call: (512) 463-8683



## CHAPTER 21. RIGHT OF WAY

### SUBCHAPTER L. LEASING OF HIGHWAY ASSETS

#### 43 TAC §§21.602 - 21.604, 21.606

The Texas Department of Transportation (department) proposes amendments to §§21.602, 21.603, 21.604, and 21.606, concerning Leasing of Highway Assets.

#### EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, Chapter 202, Subchapter C, authorizes the department to lease a highway asset, part of a right of way, or airspace above or underground space below a highway that is a part of the state highways system if the department determines that the interest to be leased will not be needed for a highway purpose during the term of the lease.

The Texas Transportation Commission (commission) last adopted rules relating to leasing of highway assets in 2002. The rules establish a more efficient internal and external procedure for the leasing process, provide the department a variety of methods to award a lease, and enhance the visibility of lease opportunities by establishing a presence on the department's internet website.

Amendments to §21.602, Highway Asset to be Leased, delete verbiage to provide consistency with the statute and clarifies that a lease may be for any purpose and cannot deter the proper maintenance or operation of the highway.

Amendments to §21.603, Methods of Awarding Leases, provide the department with the ability to pair the most appropriate method of award to a specific highway asset and substitutes publication of the notice on the department's website for 30 calendar days before the date of the award for three newspaper advertisements. The change in procedures for awards and advertisement will allow the department to reach a larger audience, be more efficient and responsive to match current business practices of public and private entities. Subsection (c) is added to address the requirement that not less than fair market value be charged for leases, subject to commission authority to accept less than fair market value as authorized by statute.

Amendments to §21.604, Lease Agreement, transfer the responsibility for authorizing remedial action from the district engineer to the department in paragraphs (15) - (17). This change will provide for better centralization of the process in an effort to promote consistency and continued coordination between the multiple resources of the department.

Amendments to §21.606, Requests to Lease, provide a central repository for requests to lease a highway asset by adding submission through the department's website and deleting the requirement to submit a written request to the district engineer of the district in which the asset is located. This change will further the department's efforts to centralize and upgrade request procedures, and continue to expand collaboration between the district engineer, other district personnel and the right of way division. It will allow the department to be more efficient and responsive to these requests. Subsection (c) clarifies that the request for lease is forwarded to the executive director of the department rather than the director of the right of way division when recommendations to the commission are required.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments 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.

Mr. Roland Tilden, Director, Real Estate Management and Development Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Tilden 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 will be to further the department's mission to provide an efficient and fair process of leasing highway assets. There will be no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§21.602, 21.603, 21.604 and 21.606 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 "Leasing of Highway Assets." The deadline for receipt of comments is 5:00 p.m. on December 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.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 202, Subchapter C.

§21.602. *Highway Asset to be Leased.*

(a) The commission may authorize the lease of a highway asset if it finds that:

(1) the interest to be leased will not be needed for highway purposes during the period of the lease;

(2) the lease is for a purpose that is not inconsistent with the applicable highway use [lessee's use of the property will be consis-

tent with safety, maintenance, operation, and beautification of the state highway system]; and

(3) the lease will be economically beneficial to the department.

(b) The director may authorize the lease of a highway asset if:

(1) the director makes the findings required by subsection (a) of this section; and

(2) the term of the lease does not exceed two years, or the lease contains a cancellation clause by which the department, in its sole discretion, may terminate the lease with not more than two years notice.

*§21.603. Methods of Awarding Leases.*

(a) The department may, in its sole discretion, award a lease by any method it determines to be in its best interest. [Leases will be awarded on a sealed bid basis with the department having the right to reject all bids, except that leases for highway assets may be negotiated to be consistent with property rights owned by others than the state.]

(b) Notice of real property available for lease shall be published on the TxDOT website for at least 30 days prior to the date of the lease award. [When a lease is awarded on a sealed bid basis, notice of the proposed lease will be advertised at least 20 days prior to the bid opening. The notice will be published once a week for three consecutive weeks prior to bid opening in a newspaper of general circulation in the county in which the highway asset is located. The department will charge not less than fair market value for leases. However, if the commission finds it to be in the public interest, the commission may waive the fair market value requirement for a lease to a public utility provider or an institution of higher education as defined by Education Code, §61.003, or for social, environmental, and economic mitigation purposes.]

(c) The department will charge not less than fair market value for leases. However, if the commission finds it to be in the public interest, the commission may waive the fair market value requirement for a lease to a public utility provider or an institution of higher education as defined by Education Code, §61.003, or for social, environmental, or economic mitigation purposes.

*§21.604. Lease Agreement.*

A lease for highway assets shall be in written form approved by the director and shall include:

(1) information necessary to contact the party responsible for developing and operating the leased asset;

(2) the amount of the rent, any required deposits, the term of the lease, and the method of payment of the rental amounts or deposits;

(3) a statement of the authorized use of the leased asset;

(4) a statement that any change in the authorized use of the leased asset is subject to prior written approval of the director;

(5) a detailed description of the asset to be leased, which may be three-dimensional where vertical limits are needed;

(6) the general design for the use of the leased asset, including any improvements to be constructed, any maps, plans, or sketches necessary to set out the pertinent features in relation to any highway facility and a description of any temporary improvements to be provided by the lessee;

(7) a statement that [than] any significant revision in the design of the improvements described in subsection (d) of §21.605 of this subchapter is subject to prior written approval by the district engineer;

(8) a statement that the department shall have the right to approve all construction and plans for construction on the leased asset;

(9) permission for the employees of and any representatives authorized by the department to enter the leased asset for the purpose of inspection, maintenance, or reconstruction of highway facilities as necessary, or to determine compliance with the terms and conditions of the lease;

(10) a statement that any improvements located within the leased asset will be maintained by the lessee at the lessee's sole expense, so as to assure that any structures in the area within the highway asset will be kept in good condition, both as to safety and appearance, and that maintenance will not interfere with highway use;

(11) a statement that in the event the district engineer determines that the responsible party has failed in its maintenance obligation, the department has the right to enter the leased asset to perform such work, all at the expense and liability of the lessee;

(12) a statement requiring forfeiture of deposits, payment to the department of litigation costs, or any other expense incurred by the department due to nonperformance of the terms of the lease agreement;

(13) a performance bond when considered necessary by the department;

(14) adequate public liability insurance for the leased asset, the conduct of lessee's business, and lessee's indemnification obligations to the department set forth in the lease, to be provided by lessee at lessee's sole expense, naming the department as an additional insured and including other endorsements as determined to be necessary by the department, in an amount and form acceptable to the department for the payment of any damages occurring to the highway facility or to the public for personal injury, loss of life or property damage which may occur; except that the director may waive this requirement when the lease is with a county, city, state agency, or the federal government and when the entity has assumed the specific responsibility for payment of any related damages occurring to the highway facility or to the public for personal injury, loss of life, or property damage;

(15) a statement that the lease may be terminated when, in the sole opinion of the department [district engineer], the asset ceases to be used in accordance with the use provisions or is abandoned;

(16) a statement that the lease may be terminated by the department [district engineer] when, in the sole opinion of the department [district engineer], there is noncompliance with the terms of the lease or the conditions are violated and noncompliance or violation is not corrected within a reasonable length of time determined by the department [district engineer] after written notice of noncompliance or violation has been given and that in the event the lease is terminated and the department [district engineer] determines it necessary to request the removal of lessee improvements located within the asset, the removal shall be accomplished by the lessee in a manner prescribed by the district engineer and at no cost to the department;

(17) a statement that the lease and leased premises shall not be transferred, assigned, or conveyed to another party without prior written approval by the director [district engineer];

(18) a requirement that the lease or any improvements on the leased asset will be kept free of all liens and will not be used as security for any loan; provided however, the lessee will be allowed to mortgage or otherwise pledge or grant a security interest in the leasehold interest to secure financing for the acquisition of the leasehold and

for the construction and operation of an improvement permitted under the lease, subject to the terms and conditions contained in the lease;

- (19) a statement that the lessee assumes all risks of losses resulting from the lease;
- (20) a description of nondiscrimination requirements; and
- (21) any other provisions deemed necessary or desirable by the director.

§21.606. *Requests to Lease.*

(a) A person desiring to lease a highway asset shall submit a written request through the department's website. [~~to the district engineer of the district in which the asset is located.~~] Each request shall include:

- (1) the name and address of the person requesting the lease;
- (2) a description of the area or interest of the asset to be leased, improvements (if any) proposed to be constructed, the intended use of the proposed leased asset, and a proposed term of lease;
- (3) sketches or drawings showing the area to be leased, proposed improvements to be constructed, including utilities to serve the improvements, existing highways or other improvements, all means of proposed access to the area, and preliminary drainage plans;
- (4) adequate information to support findings to authorize leasing of the asset; and
- (5) the name, address, and telephone number of the individual authorized to furnish any additional information desired by the department regarding a request to lease.

(b) The department [~~district engineer~~] may request additional information, reports, or data of any kind deemed desirable in addition to the written request referred to in subsection (a) of this section in order to comply with the requirements of this section.

(c) The department [~~district engineer~~] will forward the request for lease to the district engineer, the right of way division for processing and, when appropriate, for preparing recommendations to the commission, the executive director, and the Federal Highway Administration.

(d) The department [~~district engineer~~] will inform the potential lessee of the actions taken on the request to lease.

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 October 30, 2014.

TRD-201405137  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Earliest possible date of adoption: December 14, 2014  
For further information, please call: (512) 463-8630



# 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 22. EXAMINING BOARDS

### PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

#### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

##### SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

###### 22 TAC §801.112, §801.114

The Texas State Board of Examiners of Marriage and Family Therapists withdraws the proposed amendments to §801.112

and §801.114 which appeared in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4889).

Filed with the Office of the Secretary of State on November 3, 2014.

TRD-201405240

Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: November 3, 2014

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



Mya Lynn Myers Rodriguez

State  
Butterflies



State  
Flower



State  
Bird



State  
Cooks



State  
Long  
Horns



State  
Armadillos





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §20.1

The Texas Ethics Commission (the commission) adopts an amendment to §20.1, relating to definitions. The amendment is adopted without changes to the proposed text as published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 6955) and will not be republished.

The amendment is being made to add paragraph (20) to define principal purpose.

The public will benefit from this amendment because there will be clarity in the law. The definition of a political committee is "a group of persons that has as a principal purpose accepting political contributions or making political expenditures." (Section 251.001(12) of the Election Code.) Questions often arise as to what is meant by the phrase "principal purpose". The rule provides clarity by defining that phrase.

Several persons submitted written comments regarding the adoption of the amendment. One person supported the adoption of the amended rule. The remaining persons were against the adoption of the amended rule. During the October public meeting, two persons spoke "on" the adoption of the rule. One person spoke "for" the adoption of the rule, and one person spoke "against" the adoption of the rule.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 October 30, 2014.

TRD-201405141

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: November 19, 2014

Proposal publication date: September 5, 2014

For further information, please call: (512) 463-5800

##### SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

###### 1 TAC §20.327

The Texas Ethics Commission (the commission) adopts an amendment to §20.327, relating to runoff reports. The amendment is adopted without changes to the proposed text as published in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7255) and will not be republished.

The amendment is being made to reflect changes made by the legislature which require a political committee involved in a runoff election to file a runoff report regardless of its involvement in the initial election.

The public benefit will be clarity in the law.

No comments were received regarding the adoption of the amended rule.

The amendment to §20.327 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 October 31, 2014.

TRD-201405153

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: November 20, 2014

Proposal publication date: September 12, 2014

For further information, please call: (512) 463-5800

##### SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

###### 1 TAC §20.427

The Texas Ethics Commission (the commission) adopts an amendment to §20.427, relating to runoff reports. The amendment is adopted without changes to the proposed text as

published in the September 12, 2014, issue of the *Texas Register* (39 TexReg 7255) and will not be republished.

The amendment is being made to reflect changes made by the legislature which require a political committee involved in a runoff election to file a runoff report regardless of its involvement in the initial election.

The public benefit will be clarity in the law.

No comments were received regarding the adoption of the amended rule.

The amendment to §20.427 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 October 31, 2014.

TRD-201405154

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

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Proposal publication date: September 12, 2014

For further information, please call: (512) 463-5800



## CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

### 1 TAC §22.6

The Texas Ethics Commission (the commission) adopts an amendment to §22.6, relating to reporting direct campaign expenditures. The amendment is adopted without changes to the proposed text as published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 6956) and will not be republished.

The amendment is being made to add a definition for the phrase "acting in concert" as used in §254.261(a) of the Election Code.

Section 254.261(a) provides that a person not acting in concert with another person who makes one or more direct campaign expenditures in an election from the person's own property shall comply with this chapter as if the person were the campaign treasurer of a general-purpose committee that does not file monthly reports under §254.155. The public benefit will be clarity in the law as it relates to the definition of "acting in concert".

A person submitted written comments stating, "I strongly encourage you [the commission] to move forward." He also stated that the proposed rule does not appear to address contributors acting in concert with those to whom they are contributing and suggested that the commission may want to consider that or propose a subsequent rule or issue an advisory opinion.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 October 30, 2014.

TRD-201405140

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: November 19, 2014

Proposal publication date: September 5, 2014

For further information, please call: (512) 463-5800



## PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

### CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

#### SUBCHAPTER E. HEARING AND PREHEARING

##### 1 TAC §159.213

The State Office of Administrative Hearings (SOAH) adopts amendments to Subchapter E, §159.213, concerning Failure to Attend Hearing and Default, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3920). The section will not be republished.

The adopted amendments clarify language and correct an error. Typically, a default would be granted after a sufficient number of days have passed since the notice of hearing was sent. The error in the current rule allows a judge to grant a default based on notice that is shorter than what is required in the Administrative Procedure Act, Texas Government Code, Chapter 2001, §2001.051 (reasonable notice of not less than 10 days). The adopted amendment will require reasonable notice before a default can be granted upon the defendant's failure to appear for the hearing.

No comments were received during the 30-day comment period.

The amendments are adopted under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH.

The amendments affect Government Code, Chapters 2001 and 2003, and Transportation Code, Chapter 524.

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 October 30, 2014.

TRD-201405127

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Effective date: November 19, 2014

Proposal publication date: May 23, 2014

For further information, please call: (512) 475-4931



## PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

### CHAPTER 255. FINANCE

#### 1 TAC §255.2, §255.3

The Commission on State Emergency Communications (CSEC) adopts new §255.2 and §255.3 concerning the collection and remittance of 9-1-1 service fees and equalization surcharge authorized in Health and Safety Code Chapter 771 and CSEC policy for considering requests by Emergency Communication Districts (ECDs) for equalization surcharge, respectively. The new sections are being adopted without changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6002).

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

The repeal and new rules resulted from CSEC's statutory review of its Chapter 255 rules. Government Code §2001.039 mandates that each state agency review and consider for repeal, re-adoption, re-adoption with amendments each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. CSEC conducts its statutory review by rule chapter.

No comments were received by CSEC on the proposed new sections.

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

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

CSEC certifies that adopted new §255.2 and §255.3 have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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 October 31, 2014.

TRD-201405161

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: November 20, 2014

Proposal publication date: August 8, 2014

For further information, please call: (512) 305-6930



#### 1 TAC §§255.5, 255.7, 255.8

The Commission on State Emergency Communications (CSEC) adopts the repeal of §255.5, *Optional Use of an Uncollectible Factor*; §255.7, *9-1-1 Service Fee and Surcharge Billing and Remittance Authorization*; and §255.8, *9-1-1 District Funding Policy*. The repeal of these sections are adopted without changes to the proposal as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6003).

#### REASONED JUSTIFICATION

##### §255.5, *Optional Use of an Uncollectible Factor*

The Comptroller of Public Accounts, rather than CSEC, has authority over the collection and remittance of fees and surcharges under Health and Safety Code Chapter 771.

##### §255.7, *9-1-1 Service Fee and Surcharge Billing and Remittance Authorization*

Repeal is necessary in order to adopt a revised and renumbered rule that is numerically consistent with the remaining rules in Chapter 255. (The adoption of new replacement §255.2 is published in this issue of the *Texas Register*.)

##### §255.8, *9-1-1 District Funding Policy*

Repeal is necessary in order to adopt a revised and renumbered rule that is numerically consistent with the remaining rules in Chapter 255. (The adoption of new replacement §255.3 is published in this issue of the *Texas Register*.)

CSEC received no comments on its proposal to repeal §§255.5, 255.7 and 255.8.

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

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

CSEC certifies that the repeal of §§255.5, 255.7 and 255.8 as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 October 31, 2014.

TRD-201405162

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: November 20, 2014

Proposal publication date: August 8, 2014

For further information, please call: (512) 305-6930



# 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) adopts amendments to §355.725, concerning Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL), without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6119). The amendments will not be republished.

#### Background and Justification

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

The Department of Aging and Disability Services (DADS), which administers various waivers under §1915(c) of the Social Security Act on HHSC's behalf, is adding transition assistance services to the HCS waiver program. This service, which is provided one time only to help a Medicaid-eligible individual residing in a facility to move into the community to receive Medicaid services, is a common service in home and community-based services waiver programs.

HHSC must add a reimbursement methodology to describe how the payment will be determined. This rule sets out the methodology by incorporating the methodology in §355.502 of this title, concerning Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers.

The amendments also update an out-of-date reference to another rule section.

#### Comments

The 30-day comment period ended September 14, 2014. During this period, HHSC received no comments regarding the proposed amendments to this rule.

#### Statutory Authority

The amendments are adopted 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 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 November 3, 2014.

TRD-201405164

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: December 1, 2014

Proposal publication date: August 15, 2014

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



## TITLE 7. BANKING AND SECURITIES

### PART 7. STATE SECURITIES BOARD

#### CHAPTER 113. REGISTRATION OF SECURITIES

##### 7 TAC §113.5

The Texas State Securities Board adopts an amendment to §113.5, concerning financial statements, without changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3651).

The amendment permits certain "small business issuers" whose previous sales of securities did not exceed \$1 million to file reviewed financial statements for a registered offering that does not exceed \$5 million. The new crowdfunding exemption contained in §139.25, which is being concurrently adopted, has been added to the list of prior securities offerings that do not disqualify an issuer from being able to file reviewed financial statements in a subsequent registered offering.

The capital raising efforts of more small business issuers will be facilitated by allowing the use of reviewed financial statements in conjunction with a registered securities offering.

No comments were received regarding adoption of the amendment.

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

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

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 October 28, 2014.

TRD-201405037

John Morgan  
Securities Commissioner  
State Securities Board  
Effective date: November 17, 2014  
Proposal publication date: May 9, 2014  
For further information, please call: (512) 305-8303



## CHAPTER 115. SECURITIES DEALERS AND AGENTS

### 7 TAC §§115.1, 115.3, 115.19

The Texas State Securities Board adopts amendments to §115.1, concerning general provisions, and §115.3, concerning examination, without changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3652). New §115.19, concerning Texas crowdfunding portal registration and activities, is adopted with changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3652).

The following changes were made to §115.19. Subsection (b) was changed to allow prospective investors to self-certify Texas residency to view securities-related offering materials. Also in subsection (b), the "condition of entry" language that a commenter found confusing was removed. A nonsubstantive change to grammar was made in subsection (d). And, in subsection (e)(2)(F), "prospective investors" was changed to "prospective purchasers."

A new restricted dealer registration category for Texas crowdfunding portals is created. The registration process and permitted activities of a Texas crowdfunding portal, including an examination waiver, is specified. A Texas crowdfunding portal would be a Texas-only dealer, able to utilize the exclusion from federal registration available to dealers whose business is exclusively intrastate. A portal's securities-related activities are limited to operating an Internet website for §139.25 exempt offerings. It cannot participate in secondary market transactions or engage in certain prohibited activities. To preserve the intrastate character of the dealer's activities and the offering, the Internet website must contain appropriate disclaimers and Texas residency confirmed before allowing access to the offering materials.

Prior to offering securities on the Internet website, the portal conducts background and regulatory checks on the issuer and its principals. Additionally, the portal must obtain affirmative acknowledgments of certain disclosures common to all crowdfunding offerings from investors before a sale can be made. A portal is required to keep records related to its limited activities rather than the more extensive records required of other securities dealers. A portal is also not required to maintain a supervisory system. But a portal's records are subject to inspection and must be furnished on request of the Securities Commissioner.

A Texas crowdfunding portal applies for registration by filing Form 133.15, which is being concurrently adopted, and by providing its organizational documents to establish its status as a Texas entity. Portals are subject to the same registration fee as other dealers registered in Texas. Portals are also subject to the post-registration reporting requirements in §115.9. Amendments to a portal's registration are filed using Form 133.15. When a portal withdraws its registration, it uses Form 133.16, which is also being concurrently adopted.

The simplified registration process and record-keeping requirements of the new rule will facilitate creation of Texas crowdfunding portals and, by extension, the capital raising efforts of small business issuers who utilize the Texas intrastate crowdfunding exemption.

No comments were received regarding adoption of the amendments to §115.1 and §115.3.

The Board received numerous comments regarding new §115.19 from attorneys and others interested in equity crowdfunding. New York-based Ellenoff Grossman & Schole LLP commented that the proposals took "an intelligent and balanced approach," and New Jersey-based StartupValley described the proposals as "well thought out and put together."

Some commenters questioned how certain aspects of the rule would work, while others recommended specific changes to text or objected to core concepts in the proposal. All comments were considered, and the Board made several changes as a result of feedback received.

The restrictions in subsection (a) of the proposal that were designed to keep portals in compliance with the federal intrastate exemption drew several comments. Staff provided explanation and background in response to the comments. The Board considered the public comments and Staff responses but made no changes to the rule text.

StartupValley asked if out-of-state portals such as itself can register in Texas if the websites are structured to facilitate offerings for Texas residents and issuers only. Staff explained that an out-of-state portal cannot register as a Texas crowdfunding portal under §115.19. An out-of-state entity can register in Texas as a general dealer to operate an Internet website for §139.25 offerings; however, such an entity would probably also have to register as a broker-dealer at the federal level due to the interstate nature of its business operations. A crowdfunding portal registered with the U.S. Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA") is restricted by the Jumpstart Our Business Startups Act ("JOBS Act") from offering securities other than those offered pursuant to §4(16) of the Securities Act of 1933 (the federal crowdfunding exemption). Securities offered pursuant to §139.25 are offered under the exemption in §4(11) of the 1933 Act, so would not be eligible to be listed on a federal crowdfunding portal. Texas crowdfunding portals handling §139.25 transactions should be physically located in Texas and operate exclusively within Texas. Since §139.25 was crafted to comply with the federal intrastate exemption from securities registration, any transmission of data as part of an offer or sale that occurs in more than one state could potentially subject the issuer to federal registration liability. Similarly, as §115.19 was crafted to comply with the federal intrastate exemption from broker-dealer registration requirements, a firm or its servers located out of state may also create a federal broker-dealer registration issue. Yet even a federally-registered broker-dealer would still face the federal intrastate securities exemption issue. In any case, since the portal is subject to onsite and unannounced inspections in the same way securities dealers and investment advisers are, a portal and its records physically located outside the state would impair the ability of the Agency to ensure compliance with the new regulations.

UrbanEquity recommended that Texas-based platforms making offers and sales of Regulation D, Rule 506(c) securities nationally be allowed to offer and sell securities pursuant to

the Texas intrastate crowdfunding exemption if registered as a Texas crowdfunding portal. Similarly, CrowdBoarders asked that Texas crowdfunding portals not be limited to intrastate offers and sales of securities and that a portal not be required to limit its activities to §139.25 securities. Staff responded that what these commenters want to do is possible only if the platform is registered as a general dealer, not as a Texas crowdfunding portal. On February 5, 2013, the SEC Division of Trading and Markets issued Frequently Asked Questions, providing guidance on the exemption from federal broker-dealer registration in Title II of the JOBS Act. The JOBS Act added §4(b) to the 1933 Act. This provision allows a person meeting certain conditions to maintain an online platform that offers and sells securities through general solicitation or advertisements in a 506(c) offering without having to register as a broker or dealer under federal law. The exemption from broker-dealer registration in the federal act, §4(b) only applies when securities are offered and sold under Rule 506 of Regulation D. Other activities by the platform that do not fall within the exemption (such as offering securities under an intrastate exemption) would appear to require such an online platform to register federally. Since the federal exemption in §4(b) does not also provide an exemption from state registration requirements, offering and selling securities pursuant to SEC Rule 506(c) on the platform to Texas residents would require registration in Texas as a general dealer. A general dealer can make intrastate offers and sales of securities pursuant to §139.25 through an Internet website. A registered Texas crowdfunding portal may engage in other non-securities business on its website, including donation- or rewards-based crowdfunding. But the portal would need to be careful not to commingle the records of its securities and non-securities business. In the event that records are commingled, the commingled records would be subject to inspection and review by representatives of the Securities Commissioner. As the exemption functions only with intrastate activities, the Board disagreed with the commenters and declined to change the text to allow offers and sales of other securities, including Rule 506(c) securities.

CapitalReady addressed the limitation on portal activities and SEC guidance in the compliance (Regulation FD) context that, in its view, allows offerings exempt under §139.25 to be advertised via social media. Staff noted that SEC Regulation FD (Fair Disclosure) requires companies to distribute material information in a manner reasonably designed to get that information out to the general public broadly and non-exclusively. It is intended to ensure that all investors have the ability to gain access to material information at the same time. The 2013 guidance CapitalReady cited specifically notes that companies can use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation FD so long as investors have been alerted about which social media will be used to disseminate such information. It is unclear how this would work in the context of promoting a crowdfunding offering when a public market in the securities being offered does not otherwise exist. Staff also noted that recently issued (October 2, 2014) SEC guidance on Rule 147 offerings (compliance with Rule 147 is required to claim the §139.25 exemption) and social media indicate that there is some risk involved with using social media in intrastate offerings using the Rule 147 exemption. According to the guidance, issuers generally use their websites and social media presence to advertise their market presence in a broad and open manner. "Although whether a particular communication is an 'offer' of securities will depend on all of the facts and circumstances, using such established Internet presence to convey

information about specific investment opportunities would likely involve offers to residents outside the particular state in which the issuer did business." The SEC went on to provide additional guidance on an issuer's use of communications and social media: "We believe, however, that issuers could implement technological measures to limit communications that are offers only to those persons whose Internet Protocol, or IP, address originates from a particular state or territory and prevent any offers to be made to persons whose IP address originates in other states or territories. Offers should include disclaimers and restrictive legends making it clear that the offering is limited to residents of the relevant state under applicable law. Issuers must comply with all other conditions of Rule 147, including that sales may only be made to residents of the same state as the issuer." In light of the caution in the SEC guidance specifically addressing Rule 147 offers, older or other SEC pronouncements on use of social media in other contexts are not persuasive and reliance on them may cause a Texas issuer or portal to violate the Rule 147 exemption. The proposal assists issuers and Texas crowdfunding portals from inadvertently violating the restrictions in the federal intrastate exemptions by restricting interstate activities and communications. For these reasons, the Board disagreed with the commenter.

Subsection (b), which covers how a Texas crowdfunding portal operates its website, received many comments. Georgia-based SparkMarket and UrbanEquity suggested that self-certification of Texas residency by prospective purchasers should be enough for portals to allow access to the securities-related offering materials on their websites. SparkMarket pointed to current SEC guidance for support, and warned that requiring proof initially would discourage participation. UrbanEquity echoed the concern that people will not want to provide personal information just to view offerings on a portal. Staff explained that the establishment of Texas residency before receiving access to securities offering materials is a safeguard to keep the issuer, registered dealer, or Texas crowdfunding portal from inadvertently making an interstate (rather than an intrastate) offering and losing both the state and federal exemptions. Although recent SEC guidance has been issued on Rule 147 securities offerings, the SEC's Division of Trading and Markets has not yet issued comparable formal guidance for the intrastate dealer side of the transaction. However, Staff anticipates that the dealer guidance will be similar, so Staff recommended to the Board that a prospective purchaser be allowed to self-certify Texas residency to gain access to the securities-related offering materials. The Board agreed with the commenters and the Staff recommendation and changed the subsection accordingly.

A comment received from CapitalReady led to another change in subsection (b). While clarifying how portals will implement specific requirements such as verifying evidence of Texas residency, CapitalReady said that the "as a condition of entry" language in published subsection (b)(2) creates confusion as to when and how frequently the portal needs to gather proof of residency. CapitalReady asked if the phrase could be removed. Staff responded that the idea behind "as a condition of entry" was that a portal website could have a homepage open to the world but protect offering materials behind a login wall. During the sign-up process, a person would affirm Texas residency to be approved to log in and see offering materials. A separate verification process would occur before a prospective investor could purchase securities, but affirming residency would not be required on every visit to the website. Therefore, Staff recommended to the Board that the "as a condition of entry" language

be removed. The Board agreed with the commenter and the Staff recommendation and revised the subsection. Additional clarification on this point will be provided in intrastate crowdfunding guidance materials that will appear on the Agency's website.

CapitalReady also asked how a portal can verify residency with general property tax records. Specifically, would viewing records on county appraisal district websites be sufficient? Staff answered yes, if the records show that the investor owns the property and has claimed a homestead exemption for it, appraisal district website records can be used to verify Texas residency.

Turning to the requirement in subsection (b)(3) of the proposal that a portal give the Securities Commissioner access to its Internet website prior to offering investment opportunities to Texas residents, CapitalReady asked if administrator-level access would be sufficient. Staff agreed that such access would satisfy the requirement but noted that the Commissioner need only be able to view all of the offerings and communications postings as an investor would. Other portal information can be obtained by a records request made pursuant to subsection (e)(5) or through an inspection pursuant to §13-1 of the Texas Securities Act.

A related question came from one individual who asked if videos made by an issuer can be included on the Internet website where the offering is made. Staff responded yes, videos can be included, and they would be part of the information required to be made available to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering. (See §139.25(h)(3)) Since all communications between the issuer, prospective purchasers, or investors must occur through the Internet website of the registered general dealer or Texas crowdfunding portal, the video could not appear elsewhere where prospective purchasers or investors could view it until after the §139.25 offering has concluded. The video would need to be kept by the portal pursuant to the recordkeeping requirements in §115.19(e)(2)(G) (for any information made available through the portal's Internet website).

The prohibited activities in subsection (c) also drew comments. One individual inquired if a Texas crowdfunding portal could give advice to an issuer on such matters as how to structure the issuer's offering or value the securities offered. The commenter also asked the Board to consider allowing a Texas crowdfunding portal to offer investment banking services to the issuer. Staff explained that if a person's securities activities include advising on or facilitating a securities offering, including, but not limited to, origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offering, that person is required to obtain either a restricted dealer registration to act as an investment banker and take the corresponding Series 79 examination-Investment Banking Representative Qualification Examination or register as a general dealer. By contrast, a person registered as a Texas crowdfunding portal (a restricted dealer registration category) is not required to take any qualification examination and the registrant's activities are limited to operating an Internet website utilized to offer and sell securities exempt from registration under §139.25. The examination waiver and limited recordkeeping required by portals were considered appropriate due to the limited nature of the activities a portal and its agents could perform. The Board would have had to reconsider the examination waiver and recordkeeping requirements if additional securities-related activities were permitted to be conducted by a portal. Since a registered Texas crowdfunding portal is required to conduct background and regulatory checks on the

issuer and its control persons and must deny access to an issuer if the portal has a reasonable basis for believing the issuer is engaging in fraud or the offering would operate as a fraud or deceit, the portal could discuss its specific findings and assessments with the issuer. A portal could also provide general information and resources to issuers but could not provide issuer- or offering-specific guidance. A registered general dealer that operates an Internet website that offers and sells securities exempt from registration under §139.25 would be able to advise an issuer on structuring and valuation of its offering and, generally, offer a wider range of securities-related services consistent with the capacity in which the general dealer is registered. Given the foregoing, the Board disagreed with the commenter but may revisit this suggestion in the future.

CapitalReady objected to the language in subsection (c)(3) that prohibits a portal from holding, managing, possessing, or otherwise handling investor funds or securities. CapitalReady noted that portals can automate transfers of investor funds, streamlining the process and providing a more comprehensive audit trail. Accordingly, the third-party escrow requirement in §139.25 is unnecessary. Staff noted that, while the escrow requirement may be inconvenient, it is consistent with the JOBS Act requirement for portals and the SEC's crowdfunding portal proposal and appears in several other states' crowdfunding provisions. That the portal would not be handling investor money or securities was a key consideration of Staff in relaxing the dealer registration requirements for portal registration. Unlike other dealers who handle money or securities, Texas crowdfunding portals are not required to provide financial statements in connection with registration. Because of the limited activity of a portal, the waiver of the examination requirements was considered appropriate in the proposal. The Board disagreed with the commenter and adopted the subsection as proposed.

UrbanEquity objected to the prohibitions in subsection (c) against a portal taking an interest or investing in the issuers listed on its Internet website. UrbanEquity thinks a portal should be able to have an affiliate put together deals that are offered and sold on the portal's internet website. Issuers under common control should not be prevented from doing concurrent offerings. Staff responded that this provision is similar to that in the SEC's crowdfunding proposal and is based on the potential for conflicts of interest arising from holding such an interest. The prohibition is designed to protect investors from the conflicts of interest that may arise when the portal facilitating a crowdfunding transaction has a financial stake in the outcome. The existence of a financial interest in an issuer may create an incentive to advance that issuer's fund-raising efforts over those of other issuers, which could potentially adversely affect investors. The promise of a financial stake in the outcome could give a portal an incentive to ensure the success of its own investment in the issuer, to the disadvantage of investors and other issuers using the portal's Internet website, particularly if the financial interest is provided to the portal on different terms than to other investors. The Board disagreed with the commenter and adopted the subsection as proposed.

Turning to the background and regulatory history checks required in subsection (d), SparkMarket and one individual commenter asked how Texas crowdfunding portals should conduct such checks. Staff explained that subsection (d) does not establish specific procedures for portals to follow, opting instead for a flexible approach where a portal can use its experience and judgment, as well as its concern for the reputational integrity of its Internet website, to design systems and processes to help

reduce the risk of fraud in securities-based crowdfunding. The portal can conduct these checks itself or contract them out to a third-party provider. If a third party is used, the portal should investigate and understand the procedures used by the third party to determine if it is reasonable to rely upon their results. Whether conducting the check itself or relying on a third party, the portal must have a reasonable basis for believing that the check was thorough enough to reveal any of the listed disqualifications or the likelihood of fraud. This requirement is similar to the one in the SEC proposal, which requires an intermediary to conduct a "background and securities enforcement regulatory history check" on issuers and the issuer's control persons. The checks should be conducted to help ensure both investor protection and the health of equity crowdfunding by aiding in fraud deterrence and detection. Suggestions for the content of or procedure for such checks will be provided in future Agency guidance.

A number of comments were made with regard to the record-keeping requirements in subsection (e). SparkMarket asked why records of portal compensation should include investor names and suggested removing "name of investor" from subsection (e)(2)(A) because it is unlikely that portals will charge users (potential investors) a fee. Staff explained that this requirement reflects its understanding that some matching services (for Rule 506 offerings under §109.15) charge their investor members (who must be accredited investors). This requirement is included in case the registered dealer or registered Texas crowdfunding portal charges a fee to the potential investors for access to the securities offerings or for verification of accredited investor status to exceed the \$5,000 investment cap. If the business model does not contemplate charging a fee to investors, there would be no corresponding recordkeeping requirement on the portal to record and document non-existent fees or compensation. The Board disagreed with the commenter and declined to remove the requirement.

SparkMarket also suggested changing "immediate" location of documents required in subsection (e)(7) to the less severe standard of "expedient." Staff responded that "immediate" location of records is the standard required of other registered dealers (See §13-1 of the Texas Securities Act and §115.5(e)(6)), so it is also appropriate for a dealer registered as a Texas crowdfunding portal. The Board agreed with Staff and declined to make the commenter's change.

CapitalReady identified a minor inconsistency in language, specifically that subsection (e)(2) referred to both "prospective purchasers" and "prospective investors." As "prospective purchaser" is the phrase used throughout the section, Staff recommended to the Board that the "prospective investors" language be changed. The Board agreed with the commenter and Staff and revised subsection (e)(2)(F) accordingly.

Texas Entrepreneur Networks asked what sort of verification an accredited investor has to provide to a portal. Staff noted that the intrastate crowdfunding exemption requires that the issuer have a reasonable basis for believing that the purchaser is an accredited investor. Since a Texas crowdfunding portal can only offer and sell securities pursuant to the §139.25 exemption (See §115.19(a)(2)), the portal should also establish that a prospective purchaser is accredited before permitting an individual investment that exceeds the \$5,000 cap in §139.25(e). The portal is required to maintain the records it uses to establish that a prospective purchaser or investor is an accredited investor. See §115.19(e)(2)(E). Guidance can be obtained by reviewing

the SEC's discussion of the "reasonable belief" standard in the discussion of "Current Practices" in SEC Release No. 33-9415, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 78 FedReg 44,771, at 44,795-44,796.

Turning to the filing requirements in subsection (f), Texas Entrepreneur Networks asked exactly what investor information must be collected and reported to the Board on a monthly basis, suggesting that a trust company or escrow agent could provide such information. Staff responded that §115.19 does not require monthly reports to the Securities Commissioner. However, there is an application filing requirement for a Texas crowdfunding portal to register with the Texas Securities Board, an annual renewal requirement, and a requirement that the information in the application be updated over time. Form 133.15, being concurrently adopted, is the form Texas crowdfunding portals will use to register and amend their registration.

Texas Entrepreneur Networks also asked if there are Customer Identification Program requirements or other anti-money laundering provisions. Staff explained that the Texas Securities Act and Board rules do not contain any anti-money laundering provisions other than the requirement that a registered securities dealer or registered investment adviser establish, maintain, and enforce written supervisory procedures to supervise the activities of its agents or representatives that are reasonably designed to achieve compliance with the Texas Securities Act, Board rules, and all applicable securities laws and regulations. See §115.10 and §116.10. It appears likely that a Texas crowdfunding portal would be carved out of the federal anti-money laundering requirements since it cannot handle funds, securities, etc. A Texas crowdfunding portal should avoid engaging in activities that would cause it to be required to register with the SEC, but if the portal is careful to conduct only intrastate activities, it should fall within the intrastate exemption from broker-dealer registration at the federal level. Whether the escrow agent is subject to the federal anti-money laundering provisions is a matter outside of the Securities Commissioner's jurisdiction. More information on the federal anti-money laundering laws can be found on the U.S. Department of Treasury's Financial Crimes Enforcement Network website (<http://www.fincen.gov/>) and on the Federal Financial Institutions Examination Council website ([http://www.ffc.gov/bsa\\_aml\\_infobase/default.htm](http://www.ffc.gov/bsa_aml_infobase/default.htm)).

Some commenters suggested changes to or raised questions regarding the proposals that went beyond the scope of the published proposal. UrbanEquity suggested that real estate crowdfunding portals be treated differently from other crowdfunding portals. Staff disagreed with the commenter on this point. Creating a special class of crowdfunding portals exempt from various provisions applicable to other Texas portals would have required substantial changes to the published proposals or separate rules altogether. More importantly, real estate investments are not without risk or volatility, so singling out this type of investment for disparate treatment does not appear justified at this time. Equity crowdfunding is a new area that does not have an established track record. The Board disagreed with the commenter and made no change to the rule text to treat real estate crowdfunding portals differently. The Board may revisit this category of offerings after there has been more experience with equity crowdfunding.

CapitalReady expressed concern that the provisions in §139.25 regarding the offering notice may constrain portals from facilitating an SEC-compliant communication. For instance, Capi-



talReady could obtain an SEC no-action letter covering social media communications but would still be constrained absent a Texas rule change. Staff responded that, depending upon the scope of such letter, individual analysis of each request or a rule change may be appropriate. Like the SEC, Texas has a no action/interpretative letter process. Rule changes can occur fairly quickly. Additionally, the Commissioner has the ability to waive or relax restrictions in Board rules if, in his opinion, the restrictions are unnecessary for the protection of investors in a particular case. This section is consistent with SEC pronouncements to date. Future changes in SEC guidance can be dealt with through the no action or interpretative letter context, through a waiver request to the Commissioner, or by amending the section at a later date. Accordingly, the Board declined to change the section in response to the comment.

CapitalReady also inquired about the effect of offering securities to non-Texas residents under the §139.25 exemption since an offeror wouldn't be entitled to damages under a §33 rescission offer. Staff explained that an offering transmitted to an out-of-state person who can't and doesn't purchase the securities would not confer a §33 rescission right on that out-of-state offeree; there was no purchase, so there are no damages to recover. The danger of offers to out-of-state persons is that they may cause the issuer to lose the exemption for the entire offering if that exemption is based on the offering being conducted within the state since the issuer will have failed to comply with the terms of the exemption. If the issuer's exemption is lost and no other exemption is available, all offers and sales by the issuer would be of unregistered securities. That would confer rights of rescission or damages upon all of the purchasers in the offering, whether or not they still own the securities (although a prior sale of the securities would enter into the recovery calculation). Additionally, by offering and selling unregistered securities, the issuer has created a disclosure item (failure to comply with blue sky laws is a material fact that must be disclosed to investors in future offerings) and created a contingent liability for the amount of the potential rescission offer. The issuer can cut off civil liability if it completes a §33 rescission offer to investors who purchased the unregistered securities. However, a rescission offer doesn't shield the issuer from a state or federal regulatory action. The dealer (including a portal) involved in the offering may also be liable for assisting or offering securities when there is no exemption for the offer and sale of those securities. This includes administrative, civil, and criminal liability. If the out-of-state offers and sales also result in the loss of a federal intrastate exemption from securities or dealer registration, remedies and liability exist under federal law as well.

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

The adopted amendments to §115.1 and §115.3 and new rule §115.19 affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

*§115.19. Texas Crowdfunding Portal Registration and Activities.*

- (a) Intrastate portal. A Texas crowdfunding portal:

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

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

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

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

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

(2) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;

(3) evidence of residency within Texas is required before a sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

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

(B) a current Texas voter registration; or

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

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

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

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

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

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

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

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

- (1) offer investment advice or recommendations;

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

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

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

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

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

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

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

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

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

(e) Recordkeeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Filings.

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

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

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

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

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

(E) the appropriate registration fee(s).

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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



## CHAPTER 133. FORMS

### 7 TAC §§133.15 - 133.17

The Texas State Securities Board adopts three new rules, §§133.15 - 133.17, concerning forms adopted by reference, with changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3655). The change to the form adopted by reference in §133.17 adds a place for the issuer to identify the bank or depository institution where the investor's funds will be held in escrow and to clarify the time when the notice filing will be made. The latter change corresponds with a change made to §139.25, which is being concurrently adopted. The remaining changes to the forms adopted by reference in §§133.15 - 133.17 are changes to punctuation.

Specifically, the State Securities Board adopts §133.15, which adopts by reference the Texas Crowdfunding Portal Registration form, and §133.16, which adopts by reference the Texas Crowdfunding Portal Withdrawal of Registration form. These forms are tailored to the limited activities performed by a portal and eliminate the need for a portal to use the more comprehensive dealer forms. The Board also adopts §133.17, which adopts by reference the Crowdfunding Exemption Notice form. Form 133.17 would be filed by an issuer claiming the exemption from securities registration afforded by §139.25, which is being concurrently adopted.

Texas crowdfunding portals will be able to use these simplified forms to register and amend their registration (Form 133.15) and to withdraw their registration (Form 133.16). Issuers will be able to claim the intrastate crowdfunding exemption in §139.25 by filing Form 133.17.

No comments were received regarding adoption of the new rules.

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

within its jurisdiction; and prescribing different requirements for different classes.

New rules §133.15 and §133.16 affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18. New rule §133.17 affects Texas Civil Statutes, Articles 581-5 and 581-7.

#### §133.15. *Texas Crowdfunding Portal Registration.*

The State Securities Board adopts by reference Form 133.15, Texas Crowdfunding Portal Registration. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at [www.ssb.state.tx.us](http://www.ssb.state.tx.us).

#### §133.16. *Texas Crowdfunding Portal Withdrawal of Registration.*

The State Securities Board adopts by reference Form 133.16, Texas Crowdfunding Portal Withdrawal of Registration. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at [www.ssb.state.tx.us](http://www.ssb.state.tx.us).

#### §133.17. *Crowdfunding Exemption Notice.*

The State Securities Board adopts by reference Form 133.17, Crowdfunding Exemption Notice. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at [www.ssb.state.tx.us](http://www.ssb.state.tx.us).

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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Securities Commissioner

State Securities Board

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## CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

### 7 TAC §139.25

The Texas State Securities Board adopts new §139.25, concerning intrastate crowdfunding exemption, with changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3655).

The following changes were made to §139.25. Subsection (b)(1) was changed to remove the requirement that the issuer be organized under the laws of Texas. This was removed as redundant since the same paragraph also requires the issuer to be an entity that has filed a certificate of formation with the Texas Secretary of State. Because commenters expressed confusion, subsection (b)(1) also reiterates that the issuer must be a Texas entity. Subsection (h)(1) was changed to allow a prospective investor to self-certify Texas residency to view securities-related offering materials. The provision requiring evidence of Texas residency before a sale can be made was retained. A nonsubstantive clarification was also made in the text of subsection (h)(3). Subsection (j) was changed to remove the reference to 21 days before offering securities and instead requires that the issuer make the notice filing with the Commissioner before use is made of any

publicly available Internet website to offer securities in reliance on the exemption. Various nonsubstantive grammatical changes were also made throughout the section.

New §139.25 provides a registration exemption for securities offered in an intrastate crowdfunding offering. Offers and sales of the exempt securities are made using an Internet website of a Texas crowdfunding portal or an Internet website of a registered general dealer. The offering must also comply with the federal intrastate offering exemption (§3(a)(11) of the Securities Act of 1933) and U.S. Securities and Exchange Commission ("SEC") Rule 147, so the securities do not have to register at the federal level.

The exemption is designed to assist small issuers conducting offerings that are local in nature where many investors are likely to be part of the company's customer base or from the surrounding community that will benefit from the growth of local businesses and the jobs they provide. Accordingly, certain issuers are excluded from the exemption, including: investment companies, SEC reporting companies, and blind pool and blank check companies. Similarly, the exemption is unavailable if the issuer or its principals are subject to bad actor disqualifications.

The offering amount is capped at \$1 million in a 12-month period. The cap is reduced by the amount received for sales of the issuer's securities occurring within six months prior to, during, or six months after the offers and sales made pursuant to this exemption. This period corresponds with the integration period identified in SEC Rule 147. An issuer cannot accept more than \$5,000 from a single purchaser unless the purchaser is an accredited investor. Funds raised must be placed in an escrow account until the minimum target offering amount specified in the disclosure statement is reached.

Information about the offering must be posted on the Internet website for a minimum of 21 days before the securities may be sold. During this time, and for the course of the offering, all communications between the issuer, prospective purchasers, or investors must occur on the Internet website. The site must provide channels so potential purchasers and investors can communicate with each other, with the issuer, and have those communications visible to others on the site.

So the issuer can alert interested persons to its offering, the issuer may distribute a limited notice stating the issuer is conducting an offering, giving the name of the general dealer or Texas crowdfunding portal, and a link to the Internet website. Distribution of the notice is restricted to within Texas and it must contain a disclaimer reflecting that the offering is limited to Texas residents and that offers and sales on the Internet website are made only to Texas residents. A similar disclaimer is required on the Internet website. The website must require self-certification of Texas residency before securities offering materials can be viewed and evidence of residency before a sale can be made. A Texas crowdfunding portal is required to obtain an affirmative acknowledgment from the purchaser before investment is permitted.

A disclosure statement must be provided to each prospective purchaser on the Internet website. Material information and risk factors must be disclosed and topics to be addressed in the disclosure statement are noted in the rule. Financial statements provided may be certified by the issuer's principal executive officer. However, if recent audited or reviewed financial statements have been prepared, they must be provided as well.

A notice on Form 133.17, which is being concurrently adopted, is filed with the Securities Commissioner to claim the exemption, along with a copy of the issuer's disclosure statement and the summary of the offering that appears on the Internet website. The notice filing is made before any publicly available Internet website can be used to offer securities in reliance on the exemption.

Payments to unregistered persons are prohibited as are certain compensation arrangements and affiliations between an issuer and the general dealer or Texas crowdfunding portal.

The exemption will spur small business development in the state by allowing entrepreneurs and start-ups to raise capital through crowdfunding using the Internet.

The Board received numerous comments regarding new §139.25 from attorneys and others interested in equity crowdfunding. New York-based Ellenoff Grossman & Schole LLP commented that the proposals took "an intelligent and balanced approach," and New Jersey-based StartupValley described the proposals as "well thought out and put together." Georgia-based SparkMarket noted the very robust recordkeeping and retention requirements of §139.25. Chris Crow & Associates commented that Texas investors and businesses would benefit greatly from the crowdfunding proposals. Arizona-based TRAKLIGHT approved of the way the proposals spell out the risks involved.

Some commenters questioned how certain aspects of the rule would work, while others recommended specific changes to text or objected to core concepts in the proposal. All comments were considered and the Board made several changes as a result of feedback received.

Several commenters asked questions about the issuer requirements in subsection (b). Staff provided clarification and explanation in response to the comments. The Board considered the public comments and staff responses but made no changes to the rule text.

SparkMarket asked which entities would be able to use the exemption, i.e. which entities file a "certificate of formation" as called for in subsection (b)(1), and recommended that nonprofits be prevented from using the exemption. Staff explained that, in Texas, a "certificate of formation" is filed by a corporation (for-profit or nonprofit), limited liability company, professional corporation, or a limited partnership. This terminology was chosen to exclude general partnerships and joint ventures, types of entities that expose investors to potential legal liabilities exceeding their initial investment and that, historically, have been used in fraudulent offerings. Nonprofits are not excluded from using crowdfunding. But, if it appears in the future that the exemption is being misused by nonprofits, an exclusion can be adopted to address the problem. The Board disagreed with the commenter and declined to change the text to exclude nonprofits.

One individual asked why an issuer formed under the law of another state but with business operations in Texas is excluded from using the exemption. Staff explained that to avoid an issuer having to register its securities with the SEC at the federal level, the Texas exemption was drafted to coordinate with the federal intrastate offering exemption (§3(a)(11) of the Securities Act of 1933) and SEC Rule 147. Section 3(a)(11) and SEC Rule 147 require that the securities be offered and sold only to persons resident within a single state where the issuer of such security is also a resident and doing business within the state. SEC Rule 147 provides that, if an issuer is a corporation or other form of business organization that is organized under state law, the is-

suer is deemed to be a resident of the state in which it is incorporated or organized. Rule 147 also contains a number of tests to determine when an issuer is doing business in a state. An issuer formed under the laws of another state could not use the federal intrastate exemption to offer securities in Texas. An offering by an out-of-state issuer would be an interstate offering and may subject both the issuer and the portal to federal registration.

TRAKLIGHT asked how the 80% in Texas revenue requirement in subsection (b)(1)(A) would be measured for online companies. The staff explained that the 80% in gross revenues requirement in the Texas exemption comes from SEC Rule 147(c)(2)(i). Rule 147 provides that this requirement is met from the issuer's operation of a business within the state; from real property located in the state; or from the rendering of services within the state. However, the provision does not apply to any issuer which has not had gross revenues in excess of \$5,000 from the sale of products or services or other conduct of its business for its most recent twelve-month fiscal period. Although no SEC guidance addressing online companies was located, the guidance in SEC Release 33-5450, 39 FedReg 2353 (01/07/1974) concerning mail order companies is helpful. The release includes an example of the applicability of Rule 147. The facts presented were: X corporation is incorporated in State A and has its only warehouse and only office in that state. X's only business is selling products throughout the United States and Canada through mail order catalogs. All orders are filled at and products shipped from X's warehouse to customers throughout the United States and Canada. X purchases the products it sells from corporations located in other states. These activities are X's sole source of revenue. The SEC's interpretative response was that X derives more than 80% of its gross revenues from the operation of a business or rendering services within State A.

Coordination of the exemption with federal securities laws is addressed specifically in subsection (c). CapitalReady suggested that a portal could host 506(c) and crowdfunding offerings concurrently for the same issuer. Staff noted that this suggestion is problematic for several reasons. First, proposed §115.19 limits portals to operating a website for §139.25 exempt offerings; a portal registered under §115.19 cannot list other types of offerings. Second, according to SEC guidance, the exemption from federal broker-dealer registration available to platforms that offer and sell securities under Rule 506 only applies if no other type of securities are offered and sold on the platform; a 506 platform could not list other types of offerings, including intrastate or §139.25 ones. A platform listing 506 securities would be required to register as a general dealer in Texas. A registered general dealer could make offers and sales of both Rule 506 and §139.25 securities through an Internet website. Third, the proposed rules were drafted to be consistent with the integration safe harbor in Rule 147 (sales that take place before the 6 months immediately preceding or after the 6 months immediately following an offer or sale). The Staff is concerned that issuers not inadvertently violate federal registration requirements. If a concurrent Rule 506(c) public offering takes place, the SEC may determine (by applying their five integration factors to the facts of the case) that the offers and sales are part of the same issue and should be integrated. This would cause the loss of the Rule 147 exemption. The Board disagreed with the commenter's suggestion and made no change to subsection (c).

CapitalReady also questioned whether there was a conflict between the 12-month period and the 6-month look back/look forward periods in subsection (d). The Staff explained that there is no conflict because the time periods relate to different things.

The 12-month period relates to the \$1 million cap on the amount that can be raised in a crowdfunding offering by an issuer using the §139.25 exemption. The 6-month look back and 6-month look forward come from the integration safe harbor in SEC Rule 147 and relate to other sales of securities by the issuer in any type of securities offering, not just other offerings under the §139.25 exemption. Subsection (c) of §139.25 makes compliance with SEC Rule 147 necessary to claim the exemption.

The \$1 million cap on the amount that can be raised in a 12-month period found in subsection (d) of the exemption was faulted for being too low by several commenters. CapitalReady suggested that the cap be set somewhere between \$3-1/2 to \$6 million. UrbanEquity proposed a \$3 million cap in real estate offerings. And Chris Crow & Associates supported a \$5 million cap. The Staff responded that the \$1 million dollar cap is consistent with the SEC's crowdfunding proposal and with what most other states have done, no state having a cap greater than \$2 million. Companies that need to raise more than \$1 million are likely larger and/or more established than the type of small business or startup meant to be the focus of the §139.25 exemption and have other options for funding both elsewhere and under other existing securities exemptions. There are a variety of other options for larger offerings, including public offerings under SEC Rule 506(c) and Regulation A and A+. Given the foregoing, and that equity crowdfunding is a new area without an established track record, the Board disagreed with the commenters and retained the \$1 million cap from the proposal. Once there is some experience with equity crowdfunding, the Board may revisit the issue and adjust the cap, if appropriate.

SparkMarket asked if sales to officers/directors of the issuer are exempt from the \$1 million cap if they invest through the crowd-funded offering. The Staff responded that it considered excluding investments by the issuer's officers and directors from the \$1 million dollar cap but rejected this approach. An issuer using crowdfunding has likely already raised the maximum possible from the people with whom it has a preexisting relationship (friends, family, officers, directors, employees, etc.) and is using crowdfunding to obtain additional money from potential customers and others. The Board made no change to the rule text in response to the question.

UrbanEquity's proposed \$3 million cap for real estate offerings is based on its larger suggestion that real estate investments be treated differently from other investments in the crowdfunding context. Staff disagreed with the commenter on this point. Real estate investments are not without risk or volatility, so singling out this type of investment for disparate treatment - with regard to the issuer cap, or otherwise - does not appear justified at this time. The Board disagreed with the commenter and made no change to the rule text to treat real estate offerings differently from other securities offerings in this context.

Chris Crow & Associates, which suggested a \$5 million cap, asked that it be waived for entities that act as a general partner or manager of an LLC, and own no more than 25% of the partnership or LLC, to facilitate each of the companies under common control raising \$5 million under the exemption. Such a change, it was argued, would encourage small oil and gas companies to use portals. Staff noted that a general partnership or joint venture is not eligible to use §139.25 since those types of entities do not file a certificate of formation with the Texas Secretary of State. An LLC or limited partnership is able to use the exemption since that type of entity does file a certificate of formation. The disqualifications in subsection (m) applicable to related entities

and entities under common control are based upon Staff's experience with such vehicles being used by promoters in fraudulent securities offerings. Oil and gas offerings can be offered under a number of other specific exemptions for the industry (§5.Q, and Board Rules §109.14 and §139.12), as well as Regulation D, which do not contain a cap on the amount that can be raised. The Board disagreed with the commenter and declined to raise the cap.

A few commenters also thought the individual investment cap of \$5,000 unless accredited in subsection (e) was too low. The Board disagreed with the commenters and retained the \$5,000 cap. Once there is additional experience with equity crowdfunding in Texas, the Board may revisit the issue and adjust the cap, if appropriate.

Chris Crow & Associates asked that the investment amount for individual unaccredited investors be capped at not more than 10% of their income. Staff explained that tying the investment cap to an individual investor's income would make the exemption more complex. Such a change would require the Texas crowdfunding portal or general dealer to verify the income for unaccredited investors and to calculate the amount of the permitted investment on an individual basis for each investor. Accredited investors are not subject to the \$5,000 investment cap. The Board disagreed with the commenter and declined to adjust the investment cap.

UrbanEquity asked that the individual investment cap be raised to \$10,000 for conservatively leveraged real estate, with less than or equal to 65% loan-to-value ("LTV") at origination. Staff noted that real estate and REIT offerings that register are subject to analysis under the North American Securities Administrators Association ("NASAA") statements of policy adopted by reference in §113.14(b)(13) and (17). Before singling out real estate offerings sold to unaccredited investors for an exemption, other investor safeguards provided in those NASAA guidelines may also be appropriate, rather than limiting the analysis solely to the LTV. The matter may be appropriate for future study, but there is inadequate information at this time to make such a substantive change. Unlike most other restricted registrations, registration as a Texas crowdfunding portal does not include any type of competency examination by the registrant. The examination waiver and limited recordkeeping required by portals were considered appropriate given the limited nature of the activities a portal and its agents can perform and would need to be reassessed in the real estate crowdfunding context proposed by the commenter, which contemplates additional services. The Board disagreed with the commenter and declined to raise the investment cap or single out real estate investments for different treatment than other securities offerings.

Texas Entrepreneur Networks asked how accredited investor status is verified. The Staff noted that subsection (e) of the intrastate crowdfunding exemption requires that the issuer have a reasonable basis for believing that the purchaser is an accredited investor. Guidance can be obtained by reviewing the SEC's discussion of the "reasonable belief" standard currently applicable to all Rule 506 offerings. See the discussion of "Current Practices" in SEC Release No. 33-9415, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 78 FedReg 44,771, at 44,795-44,796.

The escrow requirement in subsection (f) of §139.25 drew comments and questions.

Representatives of a Texas bank and affiliated trust company expressed interest in serving as an escrow agent in Texas intrastate crowdfunding offerings and asked the following questions: (1) What is a depository institution, and are trust companies included?; (2) Could the rule specify that payments be made to the escrow agent via the Automated Clearing House ("ACH") network?; (3) Are the escrow accounts required to be interest bearing?; (4) Could the escrow agent deduct a fee for returning funds to the investor by check?; (5) Would the Financial Industry Regulatory Authority ("FINRA") regulate these transactions?; and (6) Is there a prohibition against a financial institution serving as an escrow agent if one or more investors in the offering have an account with the escrow agent? Staff responded to (1) by explaining that a depository institution is an entity with the power to accept deposits under applicable law and so can hold funds deposited into an escrow account. A trust company with the power to accept deposits under Texas law could be among the Texas-chartered entities permitted to hold funds in an escrow account. Staff responded to question (2) by noting that, to give parties flexibility, the exemption does not specify the method for an investor's payment into the escrow account. The parties to the escrow agreement or contract could impose requirements or restrictions, such as requiring that all payments be made via ACH. Some portals may choose to permit purchasers to buy securities by using a credit card to make payments, rather than through money or funds transfer between financial institutions. It does not appear appropriate to limit the method of payment in the rule. However, the parties are not precluded from limiting payment methods if they so choose. Staff responded to (3) by noting that there is no requirement in the rule that the escrow account be interest bearing. In response to (4), the staff noted that §139.25 requires that, if the offering is terminated without being funded or closed, each investor receives back the full amount of his or her investment from the escrow account. There can be no deduction made from the investors' funds. Any fees collected by the escrow agent for issuing checks to investors must be paid by a party other than the investor. It is anticipated that the other party to the escrow agreement (be it the portal or the issuer) would pay any such fees charged by the escrow agent. Staff explained in response to question (5) that, since a Texas crowdfunding portal is a Texas-registered intrastate dealer, the portal would not be required to register with FINRA. The same is true of a Texas-only registered intrastate general dealer who offers §139.25 securities on an Internet website. However, a general dealer who does not limit its activities to Texas and who engages in interstate commerce would likely be an interstate dealer, and required to register with FINRA under the federal securities laws. As for question (6) posed by the bankers, the rule does not prohibit a financial institution from acting as an escrow agent for funds in a §139.25 crowdfunding securities offering when some of the funds in the escrow account come from an investor who is also a customer of the financial institution.

SparkMarket, the Georgia crowdfunding website, said it has been unable to find a Georgia depository institution willing to act as escrow agent for crowdfunding transactions. SparkMarket asked if the requirement in subsection (f) that the escrow depository institution be "located in Texas" means that it has to have a branch in Texas, even if it is not a "Texas depository institution." Staff remarked that, in addition to the Texas bank and affiliated trust company already mentioned, the Staff has been in contact with an attorney representing small Texas banks as well as representatives of the Texas Department of Banking and industry trade groups (the Independent Bankers Association of Texas and the Texas Bankers Association) con-

cerning the escrow requirement. It appears that these financial institutions are interested in acting as escrow agents for Texas intrastate crowdfunding offerings. The escrow account would need to be in a federal or Texas-chartered bank or depository institution located in Texas. An account at a Texas branch of a federal-charted bank or depository institution would be sufficient under the rule. Staff recommended not limiting account depositories to Texas-chartered banks since doing so would give fewer options to Texas crowdfunding portals, securities dealers, or issuers.

Kennedy Sutherland LLP asked that language be added to subsection (f) to clarify that in accepting the escrow, a bank is not making a recommendation regarding the securities offered and is not liable to any subscriber who participates in the offering. Staff explained that obligations of parties to an escrow agreement, and liability that attaches for failing to meet any of those obligations, are most likely governed by the terms of the escrow agreement and general contract law. The exemption gives the parties the ability to set the terms of the escrow contract, including any indemnification agreement that they deem appropriate. Accordingly, any liability arrangement is more appropriately addressed in the contract between the parties and in disclosures that may be made in connection with the limitation on liability for small business issuances that is provided for in §33.N of the Act. The Board does not have rulemaking authority, pursuant to §5.T and §28-1 of the Texas Securities Act, to alter the statutory provisions addressing civil liability. The Board declined to make the change requested by the commenter.

UrbanEquity asked that "well-established national title companies" be allowed to escrow funds. Staff responded that it considered the request and noted that there is no governmental agency that licenses title companies on a nationwide basis. In Texas, title companies are registered with the Texas Department of Insurance ("TDI") to issue title insurance policies. A title company's escrow officers are also required to be licensed by TDI. Although posting a surety bond is required, there does not appear to be anything equivalent to FDIC insurance over escrow accounts as there is with financial institutions. The commenter offered to but did not supply information on the fiduciary nature of title companies over escrow accounts. The Board disagreed with the commenter and declined to make the suggested change.

Turning to subsection (g) and communications, SparkMarket had questions regarding the subsection (g)(1) requirement that all communications between the issuer and potential purchasers be made through the Internet website. SparkMarket asked how the requirement would work in practice. Specifically, could a user "opt-out" of communications with other users? And, if communications are obscene, illegal, or inappropriate, what editorial control would the portal have? Staff responded that the subsection (g)(1) requirement is similar to the communications channel requirement in the SEC's crowdfunding proposal. While developing the proposal, Staff talked to various individuals with expertise or interest in the area who did not think this would be a problem. A prospective purchaser or investor would not be able to "opt out" but could choose not to read posts made by others on the site. An integral element of crowdfunding is communication with others to tap into the "wisdom of the crowd." Staff did not include specifics on how to structure the communications channels, other than to have the communications preserved and available to those with access to the offering materials. This was to give the registered dealer or registered portal flexibility in setting up this mechanism. Staff did not address what to do about obscene, illegal, or irrelevant communications in the rule but will

be issuing guidance to explain that a portal or dealer could establish guidelines pertaining to the length or size of individual postings in the communications channels and, in the event that communications are made that are obscene, illegal, or irrelevant, the portal or dealer would be permitted to remove the postings that include offensive or incendiary language. Any communications that are removed would need to be retained by the portal or dealer under their respective recordkeeping responsibilities. The registered dealer or registered Texas crowdfunding portal also has the option of removing or barring a user that posts obscene, illegal, or irrelevant comments.

SparkMarket and one individual asked about limitations on the issuer distributing the notice or "tombstone" permitted in subsection (g)(2). The individual commenter and CapitalReady asked what types of social media posts might be allowed under the exemption. Staff explained that the exemption requires that the issuer's notice be distributed only in Texas and contain a disclaimer that reflects that the offering is limited to Texas residents, and offers and sales are limited to persons that are Texas residents. Such notices are extremely limited and little more than a link to the issuer or portal's website with the above disclaimer. Again, Staff chose not to limit the options available to the issuer. However, an issuer can only use flyers, internet, e-mail, or social media if the notice is distributed solely in Texas, so some of these options may be, by their nature, unavailable.

Staff's concern with social media posts in particular is that they can be construed as offers and violate the intrastate exemption because they are not limited to residents of Texas (the way offers made through the portals are required to be). Recently issued (October 2, 2014) SEC guidance on Rule 147 offerings (compliance with Rule 147 is required to claim the §139.25 exemption) and social media indicate that there is some risk involved with using social media in intrastate offerings using the Rule 147 exemption. According to the guidance, issuers generally use their websites and social media presence to advertise their market presence in a broad and open manner. "Although whether a particular communication is an 'offer' of securities will depend on all of the facts and circumstances, using such established Internet presence to convey information about specific investment opportunities would likely involve offers to residents outside the particular state in which the issuer did business." The SEC went on to provide additional guidance on an issuer's use of communications and social media: "We believe, however, that issuers could implement technological measures to limit communications that are offers only to those persons whose Internet Protocol, or IP, address originates from a particular state or territory and prevent any offers to be made to persons whose IP address originates in other states or territories. Offers should include disclaimers and restrictive legends making it clear that the offering is limited to residents of the relevant state under applicable law. Issuers must comply with all other conditions of Rule 147, including that sales may only be made to residents of the same state as the issuer." In light of this SEC interpretation, there is significant risk involved in using social media in intrastate offerings in connection with Rule 147 offerings and, by extension, for an issuer using the Texas crowdfunding exemption that coordinates with SEC Rule 147.

The particular requirements regarding Internet websites operated by either Texas crowdfunding portals or registered general dealers are in subsection (h). SparkMarket noted that the restriction in subsection (h)(1)(A) (limiting access to securities offerings on a website to Texas residents) means that any platform operating outside of Texas including JOBS Act platforms would not

be able to list these deals. Staff responded that an out-of-state entity could register in Texas as a general dealer and offer and sell §139.25 offerings solely in Texas; however, such an entity would probably have to register as a broker-dealer at the federal level due to the interstate nature of its business operations. An out-of-state portal cannot register under §115.19 to be a Texas crowdfunding portal. Because §139.25 was crafted to comply with the federal intrastate exemption from securities registration, any transmission of data as part of an offer or sale that occurs in more than one state could subject the issuer to federal registration requirements and liability. Similarly, since §115.19 was crafted to comply with the federal intrastate exemption from broker-dealer registration requirements, a firm or its servers located out of state may also create a federal broker-dealer registration issue. Yet even a federally-registered broker-dealer would still face the federal intrastate securities exemption issue. In any case, since the portal would be subject to onsite and unannounced inspections in the same way securities dealers and investment advisers are now, a portal and its records physically located outside the state would impair the ability of the Agency to ensure compliance with the new rules. The Board declined to make any change to the rule in response to the comment.

SparkMarket and UrbanEquity suggested that self-certification, rather than evidence of residency as was proposed in subsection (h)(1)(B) of the exemption, should be enough to "gain entry" to the securities offerings section of these websites. SparkMarket expressed concern that requiring proof of residency beyond self-certification at the offer phase would likely have a chilling effect on users. Staff explained that the establishment of Texas residency before receiving access to securities offering materials is a safeguard to keep the issuer, registered dealer, or Texas crowdfunding portal from inadvertently making an interstate (rather than an intrastate) offering and losing both the state and federal registration exemptions. Although recent SEC guidance has been issued on Rule 147 securities offerings, the SEC's Division of Trading and Markets has not yet issued comparable formal guidance for the intrastate dealer side of the transaction. However, Staff anticipates that the dealer guidance will be similar. Accordingly, Staff recommended to the Board that a prospective purchaser be allowed to self-certify Texas residency to gain access to the securities-related offering materials. The Board agreed with the commenters and the Staff recommendation and revised the subsection accordingly.

One individual asked if an issuer can include videos on the Internet website where its offering is made. The Staff responded yes, an issuer can supplement the issuer information required by subsection (h)(2) with a video also appearing on the same Internet website on which the issuer's offering appears. To the extent that the video includes information required in the disclosure statement or the offering summary it should be treated as part of those documents and included as part of the notice filing made by the issuer with the Securities Commissioner pursuant to subsection (j). The video would be included in the information required to be made available to the Commissioner and potential investors for a minimum of 21 days before any securities are sold in the offering per subsection (h)(3). Since all communications between the issuer, prospective purchasers, or investors must occur through the Internet website of the registered general dealer or Texas crowdfunding portal, the video could not appear somewhere else where prospective purchasers or investors could view it until after the §139.25 offering has concluded.

Commenting on the 21-day before sales are made filing requirement in subsection (h)(3), SparkMarket observed that, although

it has not seen such a filing requirement before, it is a very good idea as it will allow the State (and the crowd) to evaluate unworthy offerings. It would also allow issuers to generate buzz. The Board agreed with the commenter and left the provision unchanged.

Proceeding to subsection (i) and the required disclosure statement, TRAKLIGHT and SparkMarket approved of the requirement in subsection (i)(3) that financial statements be "certified by the principal executive officer." But SparkMarket suggested a form be provided for this, and that "financial statements" be defined. It also suggested that the disclosure statement be delivered to investors rather than just made "readily available and accessible," noting that there are easy technology solutions for ensuring that potential investors are provided with copies of the offering documents. But SparkMarket also noted the very robust recordkeeping and retention requirements in the proposed rule. Staff explained that the rule requires someone at the issuer take responsibility for the issuer's financial statements, but the additional cost of having a CPA review or audit the company is avoided. Comments received by the SEC in response to their proposal indicated that the cost for a CPA review/audit would undercut the usefulness of crowdfunding as a way for small businesses to raise money. The commenters' remarks seem to agree with this analysis. Staff recommended including a description of financial statements in its website guidance rather than in the crowdfunding rule itself noting that financial statement is a defined term in §107.2. As for SparkMarket's suggestion that the disclosure statement be delivered to investors rather than just made readily available and accessible, Staff responded that it seems unnecessary for all prospective investors to receive delivery of the disclosure statements for all offerings on the Internet website. Staff believes it is sufficient that the full disclosure statement and offering summary are available to prospective investors. The Board disagreed with the commenters and made no changes to subsection (i).

Subsection (j) and the notice filing requirement drew several comments. One individual asked about the interrelation between the notice periods contained in this subsection and subsection (h)(3) and asked if they were meant to run consecutively or concurrently. Staff responded that the intent was to require an issuer to make a notice filing with the Commissioner before the offering could appear on the portal's or general dealer's Internet website. Once an issuer's disclosure statement and offering summary appeared on the Internet website, this information was to be made available online for 21 days before the issuer's securities could be sold. Staff recommended to the Board that this be clarified by adjusting the language in subsection (j), removing the reference to 21 days before offering securities, and requiring instead that the issuer make the notice filing with the Commissioner before use is made of any publicly available Internet website to offer securities in reliance on the exemption. Since the exemption requires all communications between the issuer and potential purchasers be made through the Internet website, there can be no offers made except through the website operated by the portal or general dealer. The Board agreed with Staff's proposed clarification, and the language of the subsection was changed as recommended.

Texas Entrepreneur Networks asked exactly what investor information must be collected and reported to the Board on a monthly basis, suggesting that a trust company or escrow agent could provide such information. Staff responded that the Texas intrastate crowdfunding rule proposals do not contain any requirement for monthly reports to the Securities Commissioner. As



previously discussed, issuers claiming the intrastate crowdfunding exemption are required to make a filing before any offer of securities can be made pursuant to the exemption.

Subsection (l) regarding commissions and remuneration, specifically the prohibitions therein against portals taking an interest or investing in the issuers listed on its Internet website, was objected to by UrbanEquity. It commented that a portal should be able to have an affiliate put together deals that are offered and sold on the portal's internet website. The Staff responded that this provision is similar to that in the SEC's crowdfunding proposal and is based on the potential for conflicts of interest arising from holding such an interest. The prohibition is designed to protect investors from the conflicts of interest that may arise when the portal facilitating a crowdfunding transaction has a financial stake in the outcome. The existence of a financial interest in an issuer may create an incentive to advance that issuer's fund-raising efforts over those of other issuers, which could potentially adversely affect investors. The promise of a financial stake in the outcome could give a portal an incentive to ensure the success of its own investment in the issuer, to the disadvantage of investors and other issuers using the portal's Internet website, particularly if the financial interest is provided to the portal on different terms than to other investors. The Board disagreed with the commenter and adopted the subsection as proposed.

Subsection (m), which disqualifies issuers with common control persons from using the exemption to raise more than \$1 million, received a comment from CapitalReady which expressed concern about including security holders of 20% or more of the issuer in the definition of "control person." CapitalReady posed the example of a restaurateur who operates restaurants in two cities and wishes to use crowdfunding to finance the opening of two more restaurants in two new cities. Each restaurant is set up as a separate corporation but the restaurateur owns or will own 20% or more in each of the corporations. By including security holders in the definition of control person, the restaurateur is unable to raise \$1 million for each of the new restaurant ventures under the crowdfunding proposals. Staff explained that the inclusion of 20% security holders as control persons (subject to background and regulatory checks and disclosures to investors) is consistent with other crowdfunding initiatives at the federal and state levels. The disqualifications applicable to related entities and entities under common control are based upon Staff's experience with such vehicles being used by promoters in fraudulent securities offerings. Related ventures that need to raise more than \$1 million are likely more established than the type of small business or startup meant to be the focus of the §139.25 exemption and have other options for funding both elsewhere and under other existing securities exemptions. Equity crowdfunding is a new area that does not have an established track record so Staff recommended, and the Board agreed, that the cap remain at \$1 million. Once there is some experience with equity crowdfunding, the Board may revisit the issue and adjust the cap, if appropriate. Alternatively, appropriate safeguards or attributes may be identified in the future that would help distinguish legitimate businesses from those who may seek to merely circumvent the \$1 million cap.

Other comments regarding the proposed rules were more general in nature. TRAKLIGHT stressed the importance of education for entrepreneurs and portals and supported inclusion of it in the rules. Staff responded that the rule does not mandate that the portal or issuer provide educational materials to investors. Providing educational materials to investors is

not required in connection with other Texas exemptions or registrations. It is hoped that registered Texas crowdfunding portals and general dealers offering securities exempt under the crowdfunding exemption would include investor educational information or links for their customers as part of the services they provide, but it is not required. The Agency makes investor education materials available on the Internet through its website at [www.TexasInvestorEd.org](http://www.TexasInvestorEd.org) and plans to make information specific to crowdfunding offerings available on the main agency website at [www.ssb.state.tx.us](http://www.ssb.state.tx.us). The Board disagreed with the commenter and did not add in a requirement to provide educational materials.

SparkMarket suggested a variety of nonsubstantive changes in wording and phrasing. Staff recommended making some of the changes but not others. The Board declined to make changes recommended by the commenter that were not also recommended by Staff.

CapitalReady expressed its preference that portals start with a lot of listings and concern that a slow roll out will reduce the volume of listings. CapitalReady would prefer issuers be able to do more in the beginning rather than wait until the Board expands the exemption later. Staff, again, noted that equity crowdfunding is fairly new and only very recently available to unaccredited investors. There is minimal experience with these types of offerings, so Staff is reluctant to open the flood gates. There is securities fraud in Texas and in most cases, the money is gone before the fraud can be stopped. Incidents of fraud in the new crowdfunding offerings would negatively impact the success of crowdfunding in Texas and the availability of capital to the small and startup businesses that intrastate crowdfunding is being established to help. There is a delicate balance between investor protection and access to capital. After gathering experience in how intrastate crowdfunding is operating under the new rules and identifying and studying safeguards to distinguish between legitimate and fraudulent crowd-funded offerings, the Board can revisit the rules. The Board declined to make further changes to the rule in response to this comment.

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

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

*§139.25. Intrastate Crowdfunding Exemption.*

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

(b) Issuer.

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

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

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

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

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

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

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

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

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

(c) Coordination with federal securities laws. Securities offered in reliance on the exemption provided by this section must also meet the requirements of the federal exemption for intrastate offerings in the Securities Act of 1933, §3(a)(11), 15 U.S.C. §77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR §230.147.

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

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

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

(g) Communications.

(1) All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities

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

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

(h) Internet website.

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

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

(B) an affirmative representation by a visitor to the Internet website that the visitor is a resident of Texas is required before the visitor can view securities-related offering materials on the website;

(C) evidence of residency within Texas is required before a sale may be made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a Texas resident and proof of at least one of the following would be considered sufficient evidence that the individual is a resident of this state:

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

(ii) a current Texas voter registration; or

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

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

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

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

(B) a summary of the offering, including:

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

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

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

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

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

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

- (A) general description of the issuer's business;
- (B) history of the issuer's operations and organization;
- (C) management of the company and principal stockholders;
- (D) how the proceeds from the offering will be used;
- (E) financial information about the issuer;
- (F) description of the securities being offered; and
- (G) litigation and legal proceedings.

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

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

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

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

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

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

(j) Notice filing. Before using any publicly available Internet website in an offering of securities in reliance on this section, the issuer shall file with the Securities Commissioner:

- (1) Form 133.17, Crowdfunding Exemption Notice;

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

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

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

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

(m) Disqualifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 October 28, 2014.

TRD-201405042

John Morgan

Securities Commissioner

State Securities Board

Effective date: November 17, 2014

Proposal publication date: May 9, 2014

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



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.14

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, §1.14, concerning Administrative Penalties, without changes to the proposed repeal as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3921). This repeal is adopted in connection with the adoption of new 10 TAC Chapter 2, Enforcement, which is published concurrently in this issue of the *Texas Register*.

REASONED JUSTIFICATION FOR THE REPEAL OF THE RULE. The repeal of Chapter 1, §1.14, concerning Administrative Penalties, provides for the removal of one of three separate rules that relate to Administrative Penalties, Sanctions and Project Close Out, and Chapter 60, Administrative Penalties, which jointly allows for the concurrent consolidation of those subject matters into one uniform rule in Chapter 2, which will relate to overall Department administration and is published for adoption in this issue of the *Texas Register*.

The Board approved the final order adopting the repeal on October 9, 2014.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. No public comments were received relating to the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules; §2306.0504, which authorizes the Department to debar persons; and §§2306.041 - 2306.050, which authorize the Department to assess administrative penalties.

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 October 30, 2014.

TRD-201405130

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 19, 2014

Proposal publication date: May 23, 2014

For further information, please call: (512) 475-3959



## CHAPTER 2. ENFORCEMENT

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 2, Subchapter A, §§2.101 - 2.104; Subchapter B, §2.201 and §2.202; Subchapter C, §2.301 and §2.302; and Subchapter D, §2.401, with changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3922). The new chapter concerns enforcement.

The primary changes to the chapter as proposed include administrative clarification of terminology to ensure consistent use of a term; the provision of notice in several instances being clarified as "written" notice; the provision of several clarifying edits for consistency between §2.201 and §2.202; the addition of language that provides additional process for CSBG subrecipients. The revisions also make several penalty fee adjustments for greater consistency between the Community Affairs, Multi-family and Single Family fee structures; and revise the requirement for the Department to debar from a "shall" to a "may." The adoption of the repeal of other Department rules concerning the matters contained in this new chapter are published concurrently with this adoption.

### REASONED JUSTIFICATION FOR THE RULE

The adoption of Chapter 2, concerning Enforcement, and the concurrent repeal of rules located within 10 TAC Chapters 1, 5 and 60 jointly provide for one consolidated location for program guidance relating to enforcement, sanctions and administrative penalties which facilitates program administration.

### SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS

The Department accepted public comments between May 23, 2014, through June 23, 2014. Comments regarding the proposal were accepted in writing and by email, with comments received from: (1) Texas Association of Community Action Agencies ("TACAA"), and (2) Scott Marks.

General Comment

COMMENT SUMMARY: Commenter (1) suggests that the Department should not adopt administrative penalties to the community action agencies as a "fear tactic". These nonprofits are on "fixed incomes" and have no way in most cases to pay for administrative penalties. Because many of the community action agencies are significantly federally funded, they may not have sufficient non-federal funds to cover such penalties. Commenter also indicated that the Department committed to apply this rule only for those entities that have been given ample opportunity to correct violations and have still not responded. Commenter (1) does not feel that the rule transparently reflects this.

STAFF RESPONSE: No change is recommended. As it relates to transparency all of the Department's rules are available on the Secretary of State's website and links are available through the Department's website.

#### General Comment

COMMENT SUMMARY: Commenter (1) suggests that the Department needs to transfer the procedures and timelines outlined in 10 TAC §1.14 to the new Enforcement Rule in Chapter 2.

STAFF RESPONSE: Staff agrees with this comment and is repealing 10 TAC §1.14 concurrently with this adoption.

#### General Comment

COMMENT SUMMARY: Commenter (1) suggests that the enforcement rule as it pertains to Community Affairs should be left in Chapter 5 resulting in an easy and user-friendly reference point specific to programs in the Community Affairs realm.

STAFF RESPONSE: Staff disagrees with this comment and recommends no change. The rule as adopted ensures greater consistency in Department rules and operations.

#### General Comment

COMMENT SUMMARY: Commenter (1) does not agree with the posted preamble for the proposed rule that there are no foreseeable changes related to costs or revenues to the state or local government.

STAFF RESPONSE: Staff does not agree with this comment. The commenter suggests that added costs are generated for Department staff time to clarify the rules and for training and technical assistance by TDHCA staff. The considerations identified in new Chapter 2 are now inclusive of what had previously been §1.14, which staff had already been implementing. No additional training is needed; subrecipients that are operating consistently with their state and federal rules will not prompt applicability of this rule. In the rare cases that they do, staff will engage with subrecipients as they have been - personally and with clear guidance on what next steps need to be taken. This work is at no additional expense to the subrecipient. No change is made in response to this comment.

#### Subchapter B, General Comment

COMMENT SUMMARY: Commenter (1) believes that this rule provides for an unbalanced use of authority in which the Department singles out Community Affairs Subrecipients and applies a more rigorous standard than to housing administrators, particularly relating to Sanctions and Modified Cost Reimbursement. This comment is repeated several times throughout the commenter's letter, but is summarized and responded to only once, in this paragraph. The commenter suggests that all penalties and rules should apply to its programs equitably.

STAFF RESPONSE: Staff disagrees. The rule as proposed applies sanctions that are germane to each program type. Equalizing sanctions between housing and non-housing programs does not take into account the distinct differences between these types of activities. For instance, modified cost reimbursement is only germane for programs in which funds are advanced and in which there is a need to have costs more thoroughly reviewed prior to a subsequent advance. Alternatively, housing programs do not advance funds and only have access to funds on a reimbursement basis. So the opportunity to obtain advances is a benefit of the community affairs programs, but a correlated sanction needs to be provided for. To apply this standard equitably would essentially need to be administered in the same fashion and require no longer having advances as a funding method. Staff does not believe this is what was intended of the commenter. Staff recommends no changes in response to this comment.

#### §2.101, Policy and Purpose

COMMENT SUMMARY: Commenter (1) believes that the reference in subsection (e) of this section does not correlate to other similar rules in TAC which should be "exhausted" before implementation of the new rule.

STAFF RESPONSE: Staff does not agree. These referenced rules will be coordinated, amended and/or repealed as the Department deems necessary and appropriate.

#### §2.102(b), Definitions

COMMENT SUMMARY: Commenter (1) suggests that the list of definitions is too limited and provides several suggested definitions. Commenter suggests that the membership of the Enforcement Committee should be tripartite with membership comprised of 1/3 administration members, 1/3 housing members and 1/3 Community Affairs members and that any substitutions should be approved by the Executive Director, not only designated by the committee member. As it relates to terms and definitions, Commenter (1) noted that throughout the rule, the terms Compliance Monitoring Division and Compliance Division, Enforcement Committee and Committee, Subrecipient, subrecipient, administrator and Administrator are used and suggested that the terms be revised for consistency.

STAFF RESPONSE: Staff does not agree that the suggested additional definitions are needed within the list of definitions. The Executive Director retains the role of approving persons to the Committee that will serve in the appropriate capacity. Staff will make the changes needed for consistency in term usage but makes no other changes to the rule.

#### §2.103, General

COMMENT SUMMARY: Commenter (1) suggests adding the term "written" prior to "notice" in subsection (d) of this section relating to the prompting of a compliance violation.

STAFF RESPONSE: Staff agrees and the change is reflected in the rule as adopted.

#### §2.104, Enforcement Mechanisms

COMMENT SUMMARY: Commenter (1) suggests that for clarity all enforcement mechanisms should be referenced in Subchapter A.

STAFF RESPONSE: Staff does not agree; the rule is crafted in reasonable and logical order and mechanisms which vary by

program type are covered in different subchapters. No change is made in response to this comment.

#### §2.201, Full or Partial Cost Reimbursement

COMMENT SUMMARY: Commenter (1) suggests that the words "full or partial cost reimbursement" be replaced with "modified cost reimbursement" and made several other grammatical suggestions.

STAFF RESPONSE: Staff agrees and finds these edits reasonable. Changes have been made in response to comment.

#### §2.202, Sanctions and Contract Close Out

COMMENT SUMMARY: Commenter (1) suggests edits that create consistency with §5.206 concerning Termination and Reduction of Funding. Commenter also suggests that the word "possible" be stricken from the section in which sanctions may be applied to possible fraud, waste, and abuse.

STAFF RESPONSE: Staff disagrees with the change relative to §5.206 because this section will no longer be applicable. The striking of the term "possible" is not appropriate because the use of the word possible is appropriate in the context of the rule. No change is made in response to comment.

#### §2.202(c)(1) and (6), Sanctions and Contract Close Out

COMMENT SUMMARY: Commenter (1) suggests changes relating to the due process clause of the CSBG Act; clarification on the Single Audit language; and reducing the time in which the Department will gather files in the case of termination.

STAFF RESPONSE: Staff agrees and made the following changes in response to comment.

(1) The Department will issue a termination letter to the *subrecipient* [Subrecipient] no less than thirty (30) days prior to terminating the contract. If the entity is an *Eligible Entity* [eligible entity] under the CSBG Act the Department, *after the rights and due processes of the CSBG Act have been followed* will simultaneously initiate proceedings to terminate the *Eligible Entity* [eligible entity] status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another provider; establish a Modified Cost Reimbursement plan for closeout proceedings, or provide instructions to the to prepare a proposed budget and written plan of action that supports the closeout of the contract. The plan must identify the name and current job titles of staff that will perform the close-out and an estimated dollar amount to be incurred. *The plan must identify the CPA firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.*

#### §2.302, Penalty Table for Multifamily Violations

COMMENT SUMMARY: Commenter (2) suggested that the non-compliance event "Development is not available to the general public because of leasing issues" be revised to indicate that instead of leasing issues, the language state "because of fair housing violations."

STAFF RESPONSE: Staff does not agree with this comment because there are other types of leasing issues other than fair housing violations. The item is intended to capture any type of instance so no change is made in response to comment.

#### §2.302, Penalty Table for Community Affairs Violations

COMMENT SUMMARY: Commenter (1) suggests that the assessment of penalties for Community Affairs' programs are severely unbalanced and biased. Commenter recommends removing the penalty table for Community Affairs Programs because: (1) the Department's penalty structure across various programs is inconsistent; (2) the Department has not disclosed, as requested, the methodology used to determine the penalties; and (3) it is unnecessary to itemize every violation because noncompliance of Program Agreement provisions as reflected in §2.101(c) and §2.102(4) encompasses federal and state laws and contractual obligations, and §2.103(a) already requires compliance with all applicable Legal Requirements of a Responsible Party.

STAFF RESPONSE: Staff does not agree with removal of the penalty table. In response to each comment: 1) staff does not believe that the penalty structure is inconsistent but rather is specifically designed to address penalties relating to their relative program impact across programs that are in fact quite different; 2) the methodology applied is that the Department took into consideration the limit of no more than \$1,000 per day which was then also evaluated based upon the severity of the violation; and 3) the itemization of possible violations help the Board, the Committee and staff have clarity in their evaluation of violations, and provides the transparency of putting the subrecipients on notice of such considerations. However, the Department agrees that the rule should be consistent and has added penalties for fair housing violations.

#### §2.302(c), Administrative Penalty Process

COMMENT SUMMARY: Commenter (1) suggests that a repeat violation should be reduced to writing and should have a timeline to limit difficulty in determining if a violation is a repeat violation.

STAFF RESPONSE: Staff does not agree because the determination of whether a violation is a repeat violation is made prior to referral to the Enforcement committee. No change is made in response to comment.

#### §2.302(e), Administrative Penalty Process

COMMENT SUMMARY: Commenter (1) suggests that Executive Director Involvement occur during the period of the informal meeting and a preliminary period of agreement. Commenter also suggests that later steps including referral to the Committee for debarment be reported to the Executive Director as well as other actions the Committee may deem appropriate.

STAFF RESPONSE: Staff does not agree that the Executive Director be involved prior to attempts for staff resolution and does not recommend changes to paragraphs (2) through (4) of subsection (d) of this section. Staff agrees with the other changes in paragraphs (6) and (7) of subsection (d) of this section and the rule has been changed in response to comment as shown below:

(6) A determination that the Responsible Party should be referred for debarment, in which case the Responsible Party will be offered another opportunity to appear before the Committee, *shall be reported to the Executive Director; or*

(7) Other action as the Committee deems appropriate, *shall be reported to the Executive Director.*

#### §2.302, Administrative Penalty Table

COMMENT SUMMARY: Commenter (1) provides an evolution of their penalty table in comparison to that of Single and Multifamily penalties and suggests an unbalanced and unfair applicability of

penalties. Several changes were suggested for violations of procurement requirements, timely submittal of the audit certification form, lack of providing requested documentation, failure to timely respond to report, noncompliance with record retention, providing assistance to income or SAVE eligible applicants, completing required program documents, noncompliance with a Chapter 5 process, other noncompliance with a contract requirement, and noncompliance with a material installation standards manual.

STAFF RESPONSE: Staff agrees with the penalty fee changes for greater consistency for: violations of procurement requirements, timely submittal of the audit certification form, lack of providing requested documentation, failure to timely respond to report, noncompliance with record retention, and providing assistance to income or SAVE eligible applicants and changes have been made in response to comment. The following items do not apply across single and multifamily items and are not recommended for change: completing required program documents, noncompliance with a Chapter 5 process, other noncompliance with a contract requirement, and noncompliance with a material installation standards manual.

Subchapter D, §2.401, General

COMMENT SUMMARY: Commenter (2) suggests in subsection (a)(2) revising the cite in the statement to add a (1) and that the word "Applications" be stricken. Commenter (1) suggests clarifying wording in (a)(1) from full or partial cost reimbursement to modified cost reimbursement; adjusting a "shall" to a "may" relating to debarment authority in (c); proposing a clarification in (f); and clarifying word tense in (g).

STAFF RESPONSE: Staff agrees with the striking of the word "Applications" in subsection (a)(2) and the rule has been changed. Staff does not agree with the addition of a (1) to the citation and no change has been made. Staff agrees with the changes in (a)(1), (c) and (g) and the rule has been changed accordingly. Staff does not concur with the comment regarding (f) as it does not provide clarity.

Subchapter D, §2.401(e), General

COMMENT SUMMARY: Commenter (2) suggested changes to paragraphs (3) and (5) of subsection (e) and a new paragraph (7) as follows:

(3) Development failed to provide *any* supportive services *if services are* required by the LURA;

(5) Utility allowance not properly calculated cited for failure to update or failure to request permission to switch methodologies or miscalculation *and such error* causes overcharge of rents

(7) *Refusal to honor a Right of First Refusal if required by a Land Use Restriction Agreement*

STAFF RESPONSE: Staff does not agree with the commenter's comments. The commenter suggested that an owner should be referred for debarment only if they are not providing any services. The rule provides for a referral for debarment if the specific services required are not being provided. For example, if a property is required to provide onsite daycare and they repeatedly fail to do so, staff recommends consideration for debarment. The suggested change would exclude this situation for debarment consideration if the property was at least providing a movie night as opposed to the required onsite daycare. Additionally the commenter suggested that debarment should only be considered if the failure to update a utility allowance resulted in an overcharge of rent. The requirement to update utility allowances is a funda-

mental requirement of the program which ensures that rents are restricted. If an owner repeatedly fails to update their utility allowance and only does so in response to an onsite review conducted by the department, staff considers that grounds for debarment consideration. Lastly the commenter suggested a new paragraph (7) be added that would provide for debarment in the event of a refusal to honor a Right of First Refusal if required by a Land Use Restriction Agreement. The rule already suggests debarment consideration for transfer of ownership without regard for the right of first refusal required by the LURA. No changes have been made in response to comment.

§2.401(f)(5), General

COMMENT SUMMARY: Commenter (2) suggested that changes to paragraph (5) of subsection (f) should only apply if procurement rules apply to the violation.

STAFF RESPONSE: Staff concurs and the rule has been changed in response to comment.

§2.401(f)(7), General

COMMENT SUMMARY: Commenter (2) suggested that all of paragraph (7), relating to violations of the Uniform Relocation Act (URA) requirements, be deleted.

STAFF RESPONSE: Staff does not agree with this deletion. URA violations are serious violations that have the potential to have financial burden on the Department. No changes have been made in response to comment.

§2.401(f)(11), General

COMMENT SUMMARY: Commenter (2) suggested that in paragraph (11), which relates to violations regarding Conflicts of Interest, limit the violation to actual activities of Conflict of Interest and striking the term "or giving the appearance of."

STAFF RESPONSE: Staff does not agree with this comment. "Giving the appearance of" needs to be affirmed as a possible instance deserving of a sanction or debarment. No change is made in response to comment.

§2.401(g), General

COMMENT SUMMARY: Commenter (1) also notes that they do not believe the instances in §2.401(g) correlate to Texas Government Code §2306.042(b) and that the structure in the penalty table does not relate accordingly to these eight items, for instance one of the eight has a \$500 fine, while 5 of the others have a \$1,000 fine, and notably two of the eight are not even on the penalty table. Commenter (1) recommends that the Department not move forward with the rule in the condition proposed.

STAFF RESPONSE: Section 2306.042 Texas Government Code concerns administrative penalties; however, this section relates to debarment. No change is made in response to comment.

§2.401(h), General

COMMENT SUMMARY: Commenter (2) suggested that in the introductory language of subsection (h), revisions be made that expand the applicable parties subject to possible debarment from only those "Responsible Parties" to "any party," indicate the party is required to cure the violation within 90 days, and also remove consultants or vendors from such instances of debarment unless it is contractual between the party and the vendor/consultant.

STAFF RESPONSE: Staff agrees with the referenced changed relating to the applicable party and to the 90 days cure period

and changes have been made. Staff does not agree with the exclusion of vendors and consultants. The Department will not become involved in the contractual relationships and concerns between two outside parties.

## SUBCHAPTER A. GENERAL

### 10 TAC §§2.101 -2.104

**STATUTORY AUTHORITY.** The new subchapter is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504, which authorizes the Department to debar persons, §§2306.041 - 2306.050, which authorizes the Department to assess administrative penalties, and §2306.6719, which provides for a corrective action period.

The new subchapter affects no other statutory provisions.

#### §2.101. *Policy and Purpose.*

(a) In accordance with authority conferred on the Department by Texas Government Code, Chapters 2105 and 2306 and under applicable provisions of federal law the Department has a range of measures it is able to take to address identified instances of noncompliance. In some instances these measures may also require compliance with or adherence to additional federal or state requirements.

(b) It is the overarching intent and guiding principle of these rules that full compliance is required, and the enforcement mechanisms provided for herein are intended to be used in a manner which:

(1) Promotes full compliance;

(2) Uses compliance assistance methods and, where needed, enforcement mechanisms, to obtain compliance and to deter noncompliance;

(3) Takes appropriate enforcement action against those who fail to take the necessary and appropriate measures to comply; and

(4) Provides for the exclusion or removal from Department programs, of persons who have demonstrated that they are either unable or unwilling to comply.

(c) Any person or entity that enters into a commitment or contract with the Department directly or with a subrecipient of Department financial assistance, setting forth the terms and conditions under which housing tax credits, loans, grants, or any other source of funds or financial assistance from the Department will be made available (collectively the "Program Agreements") is required to comply with all provisions of their respective Program Agreements. Requirements in Program Agreements include requirements to comply with applicable federal or state laws. The failure to comply with any provision of a Program Agreement is, in addition to a breach of such Program Agreement, a violation of this rule.

(d) This chapter sets forth the mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and to ensure that persons who have established, through egregious and/or repetitive noncompliance behavior that they are either unwilling to behave in a compliance manner or are unable to do so.

(e) Refer to Chapter 10, Subchapter F of this title (relating to Compliance Monitoring) and/or Chapter 5, Subchapter L of this title (relating to Compliance Monitoring) for detailed information about the monitoring process and remedies available to Persons who disagree with the Department's assessment of their compliance status.

#### §2.102. *Definitions.*

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

(1) **Consultant**--One who provides services or advice for a fee and not as an employee.

(2) **Enforcement Committee (Committee)**--A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no more than nine (9). The Executive Director may designate certain members as ex officio and non-voting. Legal Services and Compliance will each designate persons to attend meetings and advise the Committee, but not be members of the Committee. A Legal Services designee will also serve as Secretary to the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.

(3) **Legal Requirements**--All requirements of state, federal, or local statute, rule, regulation, ordinance, order, court order, official interpretation, policy issuance, OMB Circulars, representations to secure awards, or any similar memorialization of requirement including a requirement of a purely contractual nature, no matter how designated, applicable to a matter.

(4) **Program Agreements** include:

(A) agreements between the Department and a person setting forth Legal Requirements; and

(B) agreements between a person subject to a Program Agreement and a third party to carry out one or more of those Legal Requirements as the agent, consultant, partner, contractor, subcontractor, or otherwise for a person described in paragraph (1) of this section.

(5) **Responsible Party**--Any Person subject to a Program Agreement.

(6) **Vendor**--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

#### §2.103. *General.*

(a) A Responsible Party must comply with all applicable Legal Requirements.

(b) A failure by the Department to identify, address, or take action with respect to any one or more instances of noncompliance does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable requirements.

(c) **Record keeping.** The Compliance Division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all instances of identified noncompliance, whether the noncompliance was correctable or not, and, if correctable, whether the noncompliance was corrected within the time afforded for corrective action.

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded written notice and a reasonable period to correct identified instances of noncompliance that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, corrective action, or notice period(s) prior to referral of any matter to the Committee under this chapter. Matters should not be referred to the Committee until such cure, corrective action, or notice periods have been completed or expired.

#### §2.104. *Enforcement Mechanisms.*

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be ob-



tained in any particular circumstance. In addition to Department action, enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low income housing tax credit program, if an identified instance of noncompliance is required by the Internal Revenue Service ("IRS") to be reported to the IRS, it will be reported to the IRS by the Compliance Division on Form 8823.

(b) Enforcement mechanisms available to the Department include but are not limited to:

(1) Enforcement of contractual provisions, including but not limited to, rights of suspension or termination and placement on a cost reimbursement status, as described in Subchapter B of this chapter (relating to Enforcement Regarding Community Affairs Contract Subrecipients);

(2) Assessment of Administrative Penalties, as described in Subchapter C of this chapter (relating to Administrative Penalties); or

(3) Debarment, as described in Subchapter D of this chapter (relating to Debarment).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-3959



## SUBCHAPTER B. ENFORCEMENT REGARDING COMMUNITY AFFAIRS CONTRACT SUBRECIPIENTS

### 10 TAC §2.201, §2.202

STATUTORY AUTHORITY. The new subchapter is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504, which authorizes the Department to debar persons, §§2306.041 - 2306.050, which authorizes the Department to assess administrative penalties, and §2306.6719, which provides for a corrective action period.

The new subchapter affects no other statutory provisions.

#### §2.201. *Modified Reimbursement.*

(a) Modified cost reimbursement may be in the form of Full or Partial cost reimbursement.

(1) Full cost reimbursement requires that the Department, acting through or by oversight of the Compliance Division, review any item and supporting documentation and backup before approving it for payment.

(2) Partial cost reimbursement enables the Department, acting through or by oversight of the Compliance Division, to establish a tailored protocol to review only a portion of requests for reim-

bursement and, based on that review, to allow for advances subject to reasonable and appropriate limitations.

(b) The Department through its Compliance Division may place on Modified Cost Reimbursement any entity administering a Department program allowing for funds to be advanced prior to documentation of expenditure where there has been identified a significant pattern of compliance violations indicating a material failure to adopt and adhere to policies and procedures to ensure compliant activity.

(c) An entity placed on Modified Cost Reimbursement must, within ninety (90) days of written notice by the Department, unless extended as provided for herein, either be restored to advance status or have proceedings for termination of their contract and/or eligible entity status and/or debarment commenced. Restoration to advance status will require the entity to develop a comprehensive plan, which, if the entity is an eligible entity under the CSBG Act, will constitute a Quality Improvement Plan as provided for in the CSBG Act, to address its issues. The plan must be reviewed and acceptable to the Department after a review by the Compliance Division and the Community Affairs Division. Extensions of up to an additional ninety (90) days may be approved by the Executive Director for good cause including but not limited to additional time to comply with procurement requirements or additional time for the Department to review submittals.

#### §2.202. *Sanctions and Contract Closeout.*

(a) Subrecipients that enter into a contract with the Department to administer programs are required to follow all Legal Requirements governing these programs.

(b) If a subrecipient fails to comply with program and contract requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material deficiencies in performance, or if the Subrecipient fails to correct any deficiency within the time allowed by federal or state law, the Department may apply one or more of the sanctions described in paragraphs (1) - (5) of this subsection:

(1) Deny the subrecipient's requests for advances and place it on a Modified Cost Reimbursement method of payment until proof of compliance with the rules and regulations are received by the Department:

(A) Subrecipients placed on a Modified Cost Reimbursement method of payment must comply with the reporting requirements outlined in §5.211 of this title (relating to Subrecipient Reporting Requirements); §5.406 of this title (relating to subrecipient Reporting Requirements); §5.506 of this title (relating to subrecipient Reporting Requirements); §5.1006 of this title (relating to Performance and Expenditure Benchmarks); and §5.2007 of this title (relating to Reporting), as applicable;

(B) Subrecipients on a Modified Cost Reimbursement method must provide all supporting documentation to the Department no later than seven (7) days after the reporting due date;

(C) If subrecipient has not submitted documentation required for cost reimbursement review in accordance with reporting deadlines, Subrecipient may be required to enter a monthly report containing zero amounts and submit documentation required for the review as part of the next's month reporting;

(D) Subrecipients reporting a monthly report containing zero amounts throughout the program year shall submit all required support documentation to the Department for review by the last regular monthly report (before the final report); and/or

(E) The Department will review and assess supporting documentation submitted by subrecipient no later than the seventh (7th) day of the following month.

(2) Withhold all payments from the Subrecipient (both reimbursements and advances) until acceptable confirmation of compliance with the rules and regulations are received by the Department, reduce the allocation of funds (with the exception of Community Services Block Grant ("CSBG")) to Eligible Entities as described in §5.206 of this title (relating to Termination and Reduction of Funding) and as limited for LIHEAP funds as outlined in Texas Government Code, Chapter 2105 or impose sanctions as deemed appropriate by the Department's Executive Director, at any time, if the Department identifies possible instances of fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the subrecipient's performance;

(3) Suspend performance of the contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for contract termination;

(4) If possible, elect not to provide future grant funds to the Subrecipient until appropriate actions are taken to ensure compliance; or

(5) Terminate the contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to, fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the Subrecipient's performance. For CSBG contract termination procedures, please refer to §5.206 of this title.

(c) Contract Closeout. When the Department moves to terminate a contract and such termination takes effect, the procedures described in paragraphs (1) - (12) of this subsection will be implemented.

(1) The Department will issue a termination letter to the subrecipient no less than thirty (30) days prior to terminating the contract. If the entity is an Eligible Entity under the CSBG Act the Department, after the rights and due processes of the CSBG Act have been followed will simultaneously initiate proceedings to terminate the Eligible Entity status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another provider; establish a Modified Cost Reimbursement plan for closeout proceedings, or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) If the Department determines that a Modified Cost Reimbursement is an appropriate method of providing funds to accomplish closeout, the subrecipient will submit backup documentation for all current expenditures associated with the closeout. The required documentation will include, but not be limited to, the chart of accounts, detailed general ledger, revenue and expenditure statements, time sheets, payment vouchers and/or receipts, and bank reconciliations.

(3) No later than thirty (30) days after the contract is terminated, the subrecipient will take a physical inventory of client files, including case management files, and will submit to the Department an inventory of equipment with a unit acquisition cost of \$5,000 or greater or having a useful life of more than one year.

(4) The terminated subrecipient will have thirty (30) days from the date of the physical inventory to copy all current client files. Client files must be boxed by county of origin. Current and active case management files also must be copied, inventoried, and boxed by county of origin.

(5) Within thirty (30) days following the subrecipient due date for copying and boxing client files, Department staff will retrieve copied client files.

(6) The terminated subrecipient will prepare and submit no later than thirty (30) days from the date the Department retrieves copied client files, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the closeout period must be received by the Department no later than sixty (60) days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The subrecipient will submit to the Department no later than sixty (60) days after the termination of the contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the contract.

(9) The Department may transfer title to equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or greater or having a useful life of more than one year, to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove equipment covered by this paragraph within ninety (90) days following termination of the contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, equipment.

(11) As required by any OMB circular or other circulars and standards as applicable to the contract, as amended from time to time, a current year Single Audit must be performed for all agencies that have exceeded the federal expenditure threshold under OMB Circular A-133 or the State expenditure threshold under Uniform Grant Management Standards. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. The terminated subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than sixty (60) days from the date the Department determines the closeout is complete.

(12) Subrecipients shall submit within sixty (60) days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the sixty (60) day contractual requirement of submitting all referenced reports and documentation to the Department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. ADMINISTRATIVE PENALTIES

### 10 TAC §2.301, §2.302

**STATUTORY AUTHORITY.** The new subchapter is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504, which authorizes the Department to debar persons, §§2306.041 - 2306.050, which authorizes the Department to assess administrative penalties, and §2306.6719, which provides for a corrective action period.

The new subchapter affects no other statutory provisions.

#### §2.301. *General.*

The Compliance Division will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapter 2306 of the Texas Government Code or a rule or order adopted under Chapter 2306 of the Texas Government Code and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, the Compliance Division may recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations even if corrected within the applicable corrective action periods.

#### §2.302. *Administrative Penalty Process.*

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) The Compliance Division will recommend the initiation of administrative penalty proceedings to the Committee by referral of a compliance monitoring matter to the secretary of the Committee.

(c) The secretary of the Committee shall promptly contact the Responsible Party describing the violations involved. If the secretary is able to facilitate closure of the matter without further action by the Committee, the secretary will report back to the Compliance Division. Should the secretary and Responsible Party fail to come to closure, the matter will be presented to the Committee for possible action.

(d) The Committee will first offer to hold an informal meeting with the Responsible Party to attempt to reach an agreed resolution. If any such meeting is held:

(1) Statements made in the meeting shall not be used as evidence in any proceedings if agreed resolution is not reached. This does not preclude establishing such matters through the introduction of proper evidence;

(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;

(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues; and

(4) In order to facilitate candid dialogue, informal meetings will not be open to the public; however, the Committee may include

such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(e) An informal meeting may result in:

(1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;

(2) A Compliance Assistance Notice issued by the Committee, available for Responsible Parties appearing for the first time before the committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on specific notice with regard to possible future violations;

(3) An agreement to resolve the matter through corrective action without penalty. In this circumstance, the agreement shall be reported to the Executive Director;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as agreements to obtain training. In this circumstance, a proposed agreed order and draft report will be prepared and presented to Board for approval;

(5) A recommendation by the Committee to the Executive Director regarding the issuance of a report to the Board and issuance of a Notice of Violation to the Responsible Party seeking the assessment of administrative penalties;

(6) A determination that the Responsible Party should be referred for debarment, in which case the Responsible Party will be offered another opportunity to appear before the Committee, shall be reported to the Executive Director; or

(7) Other action as the Committee deems appropriate, shall be reported to the Executive Director.

(f) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty, the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(g) Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) a summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) a statement informing the Responsible Party of the right to a hearing before the State Office of Administrative Hearings ("SOAH"), if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) any other matters deemed relevant; and

(4) the amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration whether the Responsible Party has timely taken appropriate actions within their control, the amount of penalty necessary to deter future violations, and, in the instance of a proceeding to assess administrative penalties against a Responsible Party administering CSBG, CEAP, ESG or HHSP, whether

the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). He or she shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs or other matters giving rise to financial exposure to the Department.

(h) The amount of recommended penalty will be determined with reference to a penalty schedule shown in the tables in subsection (j) of this section.

(i) Not later than twenty (20) days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the determination and recommended penalty or request a hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with Chapter 1, §1.13 of this title (relating to Adjudicative Hearing Procedures).

Figure 1: 10 TAC §2.302(j)

Figure 2: 10 TAC §2.302(j)

Figure 3: 10 TAC §2.302(j)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

### 10 TAC §2.401

**STATUTORY AUTHORITY.** The new subchapter is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504, which authorizes the Department to debar persons, §§2306.041 - 2306.050, which authorizes the Department to assess administrative penalties, and §2306.6719, which provides for a corrective action period.

The new subchapter affects no other statutory provisions.

#### §2.401. *General.*

(a) The Committee may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor is subject to debarment for, but not limited to the following:

(1) The Responsible Party has been placed on Modified Cost Reimbursement and failed to provide the Compliance Division with an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program; or

(2) The Responsible Party, Consultant or Vendor meets any of the ineligibility criteria referenced in §10.202 of this title (relating to Ineligible Applicants).

(3) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department.

(b) Debarment of an Eligible Entity under the CSBG Act, for CSBG funds, shall not take effect until and unless proceedings to terminate Eligible Entity status have concluded and no right of appeal or review remains.

(c) The Department may debar any Responsible Party who has:

(1) Materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation; or

(2) Is debarred from participation in any program administered by the United States Government.

(d) Material violations of a LURA. In general LURAs entered into between Responsible parties and the Department require owners to maintain property in a manner that is suitable for occupancy and in accordance with State and Federal regulations. To determine compliance with this requirement, in accordance with Treasury Regulations, the Department uses the Uniform Physical Condition Standards protocol. A person will be considered to have materially violated a Land Use Restriction Agreement if they control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection, transfers a Development without regard for a Right of First Refusal requirement, refused to allow a monitoring visit, or refuses to reduce rents to less than the highest allowed under the LURA.

(e) Repeated Violations of a LURA that shall be considered grounds for Debarment. A person shall be recommended for debarment if they control a Development that during two sequential monitoring visits are found to be out of compliance with the following events of noncompliance:

(1) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(2) Development failed to meet additional state required rent and occupancy restrictions;

(3) Development failed to provide supportive services required by LURA;

(4) Development failed to provide housing to the elderly as promised at application;

(5) Utility allowance not properly calculated cited for failure to update or failure to request permission to switch methodologies or miscalculation causes overcharge of rents; or

(6) Owner failed to execute required lease provisions, including language required by §10.613 of this title (relating to Lease Requirements) or exclude prohibited language.

(f) Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Single Family subrecipients, Contractors, multifamily applicants, and related parties shall be referred to the Committee for con-

sideration for sanctions or debarment for material or repeated violations including but not limited to:

- (1) Excessive loan defaults in the first 12 months of the loan agreement;
- (2) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);
- (3) Disallowed costs that are not repaid;
- (4) Substandard construction and repeated failure to conduct required inspections;
- (5) Repeatedly participating in procurement violations;
- (6) Davis Bacon Act Violations including but not limited to:

(A) Failure to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Failure to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(7) Uniform Relocation Act and §104(d) Violations including but not limited to:

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203 and 24 CFR §92.353, Displacement.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203 and 24 CFR §92.353.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203 and 24 CFR §92.353.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203 and 24 CFR §92.353.

(G) Failure to properly provide Uniform Relocation Act or 104(d) assistance. 49 CFR §24.203, 24 CFR §92.353 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR 42.

(8) Repeated failure to serve income eligible households;

(9) Repeated failure to provide eligible match. 24 CFR §92.220 and 24 CFR §576.201;

(10) Repeated failure to report program income. 24 CFR §570.500, 24 CFR §576.407(c) and OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 10 TAC §20.9;

(11) Participating in activities leading to or giving the appearance of "Conflict of Interest". OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 24 CFRs §84.42, §92.356 (if applicable) 10 TAC §20.9;

(12) Repeated material financial system deficiencies. 24 CFR §§84.21, 84.43, 85.20, 85.22, 85.36, 92.205, 92.206, 92.350,

92.505, and 92.508 (if applicable), OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), 10 TAC §20.9 and Uniform Grant Management Standards (if applicable).

(g) Material or repeated violations of conditions imposed in connection with the administration of Community Affairs Programs administered by the Department. Community Affairs subrecipients, Contractors and related parties shall be referred to the Committee for consideration for debarment for material or repeated violations including but not limited to:

(1) Instance of Fraud, Waste and/or Abuse;

(2) Commingling of funds, Misapplication of funds;

(3) Failure to timely submit a required Single Audit or other programmatic audit;

(4) Failure to provide requested documentation/item(s) for monitoring;

(5) Failure to timely respond to Report/provide required correspondence;

(6) Failure to reimburse excess cash on hand;

(7) Failure to reimburse disallowed expenditures; and/or

(8) Failure to meet Board of Director Requirements.

(h) Before any Party is recommended for debarment that Party shall be given written notice of the matter, setting forth the facts and circumstances justifying debarment. That Party shall then be offered the opportunity to attend an Informal Conference with the Committee to discuss resolution of the matter and if they have not already been provided a ninety day corrective action period.

(i) An Informal Conference may result in:

(1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;

(2) An agreement to resolve the matter through corrective action without debarment which will then be reported to the Executive Director;

(3) An Agreed debarment which will then be reported to the Executive Director and presented to the Board for approval. A CSBG eligible entity that enters into an Agreed debarment must also voluntarily relinquish their eligible entity status;

(4) A recommendation by the Committee to the Executive Director for debarment; or

(5) Other action as the Committee deems appropriate.

(j) The Committee's recommendation to the Executive Director regarding debarment shall include a recommended period of debarment. Recommended periods of debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, and presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of debarment if based upon HUD debarment, shall be for the period of the remaining HUD debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the debarment recommendation by the Committee and shall provide written notice to the Responsible Party of his determination, and an ex-

planation of his determination if different than the Committee's recommendation, including the period of debarment, if any. Not later than the twentieth (20th) day after the date the Responsible Party receives the notice, the Responsible Party may appeal the debarment determination in writing to the Board.

(l) The debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed debarment of an eligible entity under the CSBG Act will not become final until and unless proceedings to terminate eligible entity status have occurred, resulting in such termination and all rights of appeal or review have run or eligible entity status has been voluntarily relinquished.

(m) Any person who has been debarred is prohibited from participation in programs administered by the Department for the term of their debarment unless by its terms the order of debarment permits continuing activity in one or more specified programs. The Board will not consider modifying the terms of the debarment after the issuance of a final order of debarment.

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 October 30, 2014.

TRD-201405136

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 23, 2014

For further information, please call: (512) 475-3959



## CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 10 TAC §5.17

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, §5.17, concerning Sanctions and Contract Close Out, without changes to the proposed repeal as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3929). This rule is repealed in connection with the adoption of new 10 TAC Chapter 2, Enforcement, which is published concurrently in this issue of the *Texas Register*.

REASONED JUSTIFICATION FOR THE REPEAL OF THE RULE. The repeal of Chapter 5, §5.17, concerning Sanctions and Contract Close Out, provides for the removal of one of three separate rules that have related to Administrative Penalties, Sanctions and Project Close Out, and Chapter 60, Administrative Penalties, which jointly allow for the concurrent consolidation of those subject matters into one uniform rule in Chapter 2, which will relate to overall Department administration and is published for adoption in this issue of the *Texas Register*.

The Board approved the final order adopting the repeal on October 9, 2014.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. No public comments were received relating to the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules; §2306.0504, which authorizes the Department to debar persons; and §§2306.041 - 2306.050, which authorize the Department to assess administrative penalties.

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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## CHAPTER 60. COMPLIANCE ADMINISTRATION

### SUBCHAPTER C. ADMINISTRATIVE PENALTIES

#### 10 TAC §§60.307 - 60.309

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 60, §§60.307 - 60.309, concerning Administrative Penalties, without changes to the proposed repeal as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3929). This repeal is adopted in connection with the adoption of new 10 TAC Chapter 2, Enforcement, which is published concurrently in this issue of the *Texas Register*.

REASONED JUSTIFICATION FOR THE REPEAL OF THE RULE. The repeal of Chapter 60, §§60.307 - 60.309, concerning Administrative Penalties, provides for the removal of one of three separate rules that have related to Administrative Penalties, Sanctions and Project Close Out, and Chapter 60, Administrative Penalties, which jointly allows for the concurrent consolidation of those subject matters into one uniform rule in Chapter 2, which will relate to overall Department administration and is published for adoption in this issue of the *Texas Register*.

The Board approved the final order adopting the repeal on October 9, 2014.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS. No public comments were received relating to the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules; §2306.0504, which authorizes the De-

partment to debar persons; and §§2306.041 - 2306.050, which authorize the Department to assess administrative penalties.

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

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For further information, please call: (512) 475-3959



## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 13. ADMINISTRATION OF THE STATE FRANCHISE TAX CREDITS FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

##### 13 TAC §13.1

The Texas Historical Commission adopts amendments to 13 TAC §13.1, Definitions, with changes to the proposed text as published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 6967). These amendments affect paragraph (18) and are needed to clarify the type of entities that may apply for the franchise tax credit for rehabilitation of a historic building.

The amendments include a provision that specifies that non-profit and governmental entities may apply for the credit as well as entities that are subject to the Franchise Tax. This determination is based on Attorney General Opinion No. GA-1045 (2014), which stated that entities not subject to the franchise tax are eligible for the credit. In addition, in response to comments, the amendment has been revised to allow for separate ownership of the land and the structure on it, and certain leaseholds in the structure, to reflect similar standards for eligibility of projects under the federal rehabilitation tax credit program.

Comments were received from Stonehenge Capital, who commented that, under some circumstances, the federal law, which is adopted for the determination of the Texas tax credit, does allow leaseholders to claim a rehabilitation tax credit. The THC agrees with the comment and has made changes to the proposed amendment that reflect this comment.

A comment was received from Brian Wishneff and Associates, concerning the eligibility of leaseholds for the tax credit. The THC agrees with the comment and has made changes to the proposed amendment that reflect this comment.

The amendments are adopted under the Texas Government Code §442.005 and Texas Tax Code §171.909 which provide the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

##### §13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows: Attached Graphic Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the Owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. §1.48-12(c), incurred during the project.

(16) Federal rehabilitation tax credit--A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, or other entity holding a legal or equitable interest in a Property or Structure, which can include a full or partial ownership interest.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation,

future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. §67.7.

(25) Structure--A building; see also certified historic structure.

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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Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 20, 2014

Proposal publication date: September 5, 2014

For further information, please call: (512) 463-2192



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.9, §3.46

The Railroad Commission of Texas (Commission) adopts amendments to §3.9 and §3.46, relating to Disposal Wells, and Fluid Injection into Productive Reservoirs, with changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6775). The adopted amendments incorporate requirements related to seismic events in connection with disposal well permits, monitoring and reporting.

#### SUMMARY OF CHANGES FROM THE PROPOSAL LANGUAGE



As proposed, the Commission would have required that applicants for disposal well permits provide with the application the results of a calculation of the estimated five pounds per square inch (psi), 10-year pressure front boundary and use that area to determine whether or not there has been historic seismic activity. In response to comments, the Commission agrees that, in many instances, the assumptions and approximations used by applicants in such calculations would be highly interpretive and difficult for many operators to obtain, particularly for applicants proposing to dispose into non-productive formations. As a result, the results from such calculations could be non-uniform and misleading. Therefore, the Commission is adopting a simpler and more consistent method of determining the area to be surveyed. The Commission is now requiring that an applicant for a disposal well permit include with the permit application a printed copy or screenshot showing the results of a survey review of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location. The language regarding calculation of a pressure front boundary around a proposed disposal well location has been moved to §3.9(3)(C) and §3.46(b)(1)(D) and such calculation will be required only in certain limited circumstances where additional information is necessary to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval.

Also in response to comments, the Commission has revised the proposed language in §3.9(6)(A)(vi) and §3.46(d)(1)(F) relating to modification, suspension, and termination of a permit to replace the phrase "if injection is suspected of or shown to be causing seismic activity" with the phrase "if injection is likely to be or determined to be causing seismic activity."

The Commission adopts a minor clarifying change in §3.9(11)(A) and (B), and §3.46(i).

#### COMMENTS

The Commission received 36 comments on the proposed amendments. The Commission appreciates the interest shown by the public in this rulemaking effort. The Commission received timely-filed comments from 20 entities, 10 of which were from groups or associations: Environmental Defense Fund ("EDF"); Neighborhoods of East Fort Worth; Sierra Club, Lone Star Chapter ("Sierra Club"); Texas Alliance of Energy Producers (the "Alliance"); Texas Energy Services Coalition; and a workgroup comprised of the following associations: Texas Oil and Gas Association, the Texas Independent Producers & Royalty Owners Association; the Texas Alliance of Energy Producers, the Permian Basin Petroleum Association, and the Association of Energy Service Companies (the "Workgroup"). The Commission received comments from four groundwater conservation districts (collectively, the "GCDs"): Lone Star Groundwater Conservation District ("Lone Star GCD"); North Texas Groundwater Conservation District ("North Texas GCD"); Prairielands Groundwater Conservation District ("Prairielands GCD"); and Upper Trinity Groundwater Conservation District ("Upper Trinity GCD"). The Commission received timely-filed comments from three other governmental entities: United States Environmental Protection Agency ("EPA"); the City of Southlake; and the United States Geological Survey ("USGS"). The Commission received timely-filed comments from three companies: Chevron USA Inc. ("Chevron"); CrownQuest Operating, LLC ("CrownQuest"); and Pioneer Natural Resources ("Pioneer"). The Commission

received 23 comments from individuals. After the September 29, 2014, comment deadline, the Commission received late-filed comments from two companies (Apache Corporation and Newfield Exploration Company ("Apache/Newfield")) and one governmental entity (Frio County Commissioners Court).

Four commenters expressed support for the proposed rule amendments. Neighborhoods of East Fort Worth provided a resolution in support of the proposed amendments. One commenter expressed support for the provisions for §3.9(6) to permit the Commission to respond to an appearance of seismic activity without conclusive evidence that the activity is triggered or induced by a particular well. This commenter also expressed support for the proposed amendments in §3.9(11) to allow the Commission to require closer monitoring and reporting of injection pressure and rate. The Commission appreciates these comments. The Commission made no change in response to these comments.

Three commenters expressed opposition to hydraulic fracturing in Texas. One expressed opposition to fossil fuels. Another commenter expressed support for limiting hydraulic fracturing. These comments are beyond the scope of this rulemaking. The Commission made no change in response to these comments.

One commenter stated that the proposed amendments lack a methodology to catalogue quakes and relate them in proximity to existing wells, and that the proposal does not require operators to report quake events in proximity to their wells.

The Commission notes that seismic activity is reported by the USGS and that Commission staff is monitoring seismic activity in the state in relation to proximity to existing wells. The Commission made no change in response to this comment.

Two commenters expressed concern with individual property rights, seismic activity associated with hydraulic fracturing, and decreased property values. These commenters recommended that the Commission amend the rules to provide further protection for property owners in areas in which drilling is to occur. One commenter stated that the commenter's home has been damaged by the earthquakes in the Azle/Reno area and recommended stronger laws and rules and permits governing the gas industry. One commenter recommended that the Commission require operators to buy earthquake insurance.

A review of the numerous studies of seismic activity in areas with oil and/or gas exploration and production indicates that seismic activity induced by hydraulic fracturing is not very likely. In addition, the Commission has no statutory authority to require an operator to purchase insurance. The Commission made no change in response to these comments.

USGS commented that the Commission was incorrect in stating that the USGS has the ability to detect and locate all seismic events larger than magnitude 2.0 throughout the continental United States. USGS went on to state that it is currently capable of detecting and locating all Texas earthquakes with magnitudes of about 3.0 and larger and can detect smaller earthquakes in regions with better seismic station coverage. The Commission acknowledges the correction, but no change to the rules is necessary.

Two commenters noted that USGS earthquake locations in Texas are not sufficiently accurate to retrieve data regarding the locations of historical seismic events within an the estimated 10-year, five psi pressure front boundary.

The Commission agrees with the statement concerning USGS earthquake location accuracy; the Commission is simply using the reported earthquake locations as a screening tool for disposal well applications. However, the Commission finds that it is appropriate to require permit applicants to access the USGS database and adopts a change to require a circular survey area of 100 square miles centered on the proposed disposal well location.

Five seismologists (Brian Stump, Heather DeShon, Matthew J. Hornbach, Maria Beatrice Magnini, and Christopher T. Hayward) (Stump et al.) jointly filed comments concerning the proposed fluid calculations, concluding that pressure front predictions will likely be subject to large uncertainties in predicting where the pressure front is located as a function of time.

The Commission agrees with the comments concerning the proposed fluid calculations, concluding that pressure front predictions will likely be subject to large uncertainties in predicting where the pressure front is located as a function of time. The Commission adopts a change to require that applicants for a disposal well permit review a defined survey area, and has moved the language regarding pressure front boundaries to the list of additional information that may be required of an applicant subsequent to a determination of the existence of complex geology, proximity of the basement rock to the injection interval, transmissive faults, and/or a history of seismic events in the survey area.

Stump et al. questioned the motivation for choosing a five psi pressure front over 10 years, as the critical pressure number or time and recommended that the Commission require that an applicant for a disposal well permit avoid any pressure development near a major fault system that is active or appears critically stressed.

The Commission proposed five psi as a pressure differential on the lower side of the 1.4 to 14 psi range mentioned by the commenters as a conservative number. The Commission chose to compute the pressure front boundary after 10 years of operation at the proposed maximum daily disposal volume to represent an operational maximum value for fluid injected, because few operators operate disposal wells at the maximum daily allowed volume over extended periods of time, and large volume disposal wells are considered to have a lifespan of approximately 10 years. The Commission made no change in response to this comment.

Stump et al. recommended that the Commission consider situations where the reported pressures downhole are significantly in excess of five psi due to overpressure as industry studies already suggest that overpressures sometimes exist in some of the injection formations, and may exceed tens of psi.

The Commission agrees with the comment; however, no change is necessary for calculating the pressure front boundary as described because of the adopted changes. The Commission made no change in response to this comment.

Stump et al. noted that the "injected fluids may well stay confined in the injection interval but the pressure perturbation induced by the injections fluids can have farther reaching effects." These commenters further stated that the perturbation may be more important in locally changing stress in a manner sufficient to allow earthquakes along pre-existing fault structures. These commenters noted that there are a number of other critical data sets related to the fluids and the rock properties that control fluid migration, including, but not limited to downhole pressures in

the injector, static pressures at injection depth, permeability and fault locations including their connection to layers above and below the injection interval. These commenters recommended that the Commission consider requiring annual measurement and reporting of bottom hole shut-in pressures to determine if injected fluids are having far-reaching effects on subsurface stress.

The Commission agrees with the comments, but disagrees that requiring industry to measure and report annually bottom hole shut-in pressures at all disposal wells is warranted. The language of the proposed rule would allow the Commission to add such a condition in reservoirs for which such monitoring and reporting might be warranted. The Commission made no change in response to this comment.

Stump et al. noted that many of the earthquake sequences in Texas, such as those in Azle, DFW and Cleburne, only began after the injectors began operating in the area, and that searching for earthquakes before the injection process begins may not be sufficient. These commenters further stated that any information on the locations of subsurface faults and their orientation relative to the in-situ stress field might provide more effective permitting criteria based on some of the historical earthquake data. These commenters pointed out that imaging and location of subsurface faults may be problematic. Even small offset faults at the limit of high-quality 3D seismic data may generate small magnitude earthquakes based on data analysis in Azle.

The Commission disagrees that these changes are necessary. Because the recurrence rate for these types of sequences is unknown, one cannot with any confidence correlate the onset of an earthquake sequence with any measureable impact of injection well operation. The Commission made no change in response to this comment.

Stump et al. noted that a characteristic radius for the search might be a better approach rather than one estimated from a model run because: (1) the earthquake locations based on regional observations have a characteristic error in latitude and longitude of approximately 10 kilometers which may be larger than estimated radius; (2) few details are described in models and an assessment of the errors in the calculation may necessitate a larger radius (e.g., the bottom hole pressures and permeability used can greatly influence the estimate radius); and (3) model runs can be influenced by inclusion of faults.

The Commission agrees that a characteristic radius will provide a more straightforward review of historical earthquake occurrence and adopts a circular survey area of 100 square miles centered on the proposed disposal well location in §3.9(3)(B) and §3.46(b)(1)(C).

Stump et al. noted that the "magnitude threshold for the USGS catalog should be checked with the USGS." Chevron pointed to the preamble reference to magnitude 2.0 events as the USGS framework of reference and stated that magnitude 2.5 is a more appropriate threshold for references to USGS given the current seismic monitoring network in Texas. Chevron commented that it is important that seismic monitoring be consistent in both space and time such that a threshold magnitude event can be detected no matter where it occurs in Texas and that an increase in detected threshold events over time as the monitoring network improves is not misinterpreted as an increase in seismic events. Chevron recommended that the Commission lower the threshold once an expanded seismic network is in place. Similarly, Pioneer recommended that the Commission revise the proposed rule language to include the following: "the results of a review

of information from the USGS threshold of 2.5 magnitude on the Richter Scale." Pioneer stated that such language would provide clarity and certainty should specific seismic monitoring of a particular area use technology that would allow measurements to a lower threshold. One commenter stated that the preamble reference to magnitude 2.0 events as the USGS frame of reference is incorrect and suggested that magnitude 2.5 is more appropriate given the current monitoring capability.

One commenter stated that defining a numerical seismic magnitude threshold would provide precise clarity in the rule and prevent the need to readdress this issue in the future as technology changes in Texas or in other parts of the country.

Based on these comments submitted by the USGS, Stump et al., Chevron, Pioneer and two others, the Commission agrees with comments regarding the capability of the USGS monitoring in Texas. Nonetheless, the Commission retains the option to consider any earthquake reported on the USGS database. The suggested numerical seismic magnitude threshold would preclude including smaller earthquakes that might be reported in the future where denser monitoring could detect smaller earthquakes. Further, earthquakes with magnitudes well below magnitude 2.0 are being used to delineate basement seated faults in the Reno, Texas, area. The Commission made no change in response to these comments.

One commenter recommended that the Commission defer action on the requirements proposed for §3.9(3)(C) and §3.46(b)(1)(D) to require submission of additional information with permit applications because, given the current state of the science, the information proposed to be requested of an applicant would not allow the Commission to predict seismic activity and "science is not yet ready to inform the correct rules." This commenter recommended that the Commission determine whether the changes in the proposed amendments can be applied to past situations to gather proposed information, and determine that it would have been of some predictive value and applied to a variety of likely situations to verify that reliable and consistent collection and reporting is feasible and practical. This commenter also recommended that the Commission measure the actual cost of compliance. Apache/Newfield also expressed concern that the apparent simplicity of a statewide, one-size-fits-all regulation may not be in the best interest of the state or the public, because the natural geologic and land-use variability that occurs across Texas results in different risk profiles. Consequently, Apache/Newfield recommended that the Commission consider requiring different actions in different areas of the state based on seismic risk. Chevron echoed that comment by stating that, because seismicity that appears to be associated with disposal wells in Texas is concentrated in a limited number of localities, seismicity would be better addressed through field rules. Chevron stated that addressing seismicity in statewide rules that need only apply in a few areas would be detrimental to resource development.

The Commission agrees with the commenters that the science is not exact and more study of natural and induced seismic events is needed. However, the Commission has amended the rules based on the best information from current science. These rule amendments address disposal wells located in new areas, or more or higher volume disposal wells located in areas with existing oil and gas activity. In addition, the rule language is sufficiently broad to allow the Commission to require information based on advancing science. The Commission made no change in response to this comment.

The Alliance recommended that the Commission consider the basic roles of injection pressure, depth of injection, and volume of injected fluid, which play a significant role in injection permitting. Lower injection pressure generally results in lower volumes of fluids being disposed. These lower volume, lower pressure wells will consistently have a smaller zone of influence on subsurface pore pressure over time. This smaller zone of influence means less risk of induced seismicity. Therefore, the Alliance recommended that the Commission revise the rule to exempt disposal wells with an injection volume of 5,000 barrels per day or less, unless the well falls within 20 circular square miles (2.5 mile radius) of the radius survey area of an historic seismic event of a magnitude of 2.5 or higher. The Alliance recommended for higher volume wells (greater than 5,000 barrels per day) a survey area of 40 circular square miles (approximate four-mile radius).

The Commission agrees that injection pressure, depth of injection, and volume of injected fluid play a significant role in injection permitting. However, the survey area addressed in this rulemaking is intended to address increased pressure that could trigger movement of existing stressed faults. No one knows where all faults are, whether they are under stress, or how much of an increased reservoir pressure would trigger movement of an existing stressed fault. In addition, the increased impact of several "small volume" disposal wells in one area could have the same impact as one "large volume" disposal well. However, as previously discussed, the Commission adopts a more appropriate method for surveying the area surrounding the location of a proposed disposal well, requiring the applicant to survey a reasonably conservative area around the proposed disposal well location for historic seismic activity as indicated by USGS. The Commission has determined that a reasonably conservative area for such a survey is a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location. Such review places minimal burden on an applicant. The Commission made no change in response to the request for a survey area based on volume.

One commenter recommended that the Commission combine the proposed changes in §3.9(3)(C) and (D) and §3.46(b)(1)(C) and (D) so that all requirements are included in one amendment. This commenter expressed concern that earthquakes can occur in areas without historic seismic activity. Just because an area has had no prior earthquake activity does not mean that it will not occur when a well is put into operation. This commenter also recommended that the Commission revise the proposed language in §3.9(3)(C) and (D) and §3.46(b)(1)(C) and (D) to substitute the word "will" for the word "may."

The Commission selected the word "may" to indicate that the Commission may require the applicant to provide some or all of the additional information. Commission staff will review the particular well and well location to determine what additional information may be needed. The Commission disagrees that it must require all of the information in every case. The Commission made no change in response to this comment.

One commenter expressed concern about the potential cost to applicants and stated that earthquakes from salt water disposal ("SWD") injection wells are not common to all areas and injection intervals. This commenter recommended that the Commission form a new unit (similar to the Commission's Groundwater Advisory Unit) to advise on the potential for historic earthquakes at the proposed disposal well location. This commenter stated that the cost of seismic lines for each new location is prohibitive and will increase the cost of disposal considerably, as well as result

in time delays. The presence of nearby faults at the disposal well location also could be part of the Commission responsibility by subscribing to the GeoMap mapping service on a statewide basis.

The Commission disagrees with this comment. The Commission's Underground Injection Control regulations appropriately place the burden on the applicant to provide the Commission with the information to justify issuance of a permit. In addition, the rule amendments do not require the placement of seismic lines at every proposed disposal well location. The Commission made no change in response to this comment.

Apache/Newfield recommended that the Commission and the industry focus in the short-term on better understanding seismicity issues. This commenter recommended that the Commission undertake a thorough analysis of known cases where disposal by injection is believed to be coincident with seismicity. Rather than place the complete burden on one operator to perform the necessary technical work and possibly collect confidential business information from other operators, the commenter recommended that the Commission identify specific areas of interest across the state and request funding from the State Legislature for comprehensive integrated subsurface geological, geophysical, and fluid modeling studies by Texas institutions of higher learning, with input from industry, for the purpose of creating maps. This commenter recommended that the Commission consider rule amendments after these studies.

Although the Commission agrees that additional study is warranted, the Commission does not agree that this rulemaking effort should be postponed. The recommended studies would require vast amounts of funding and time. Meanwhile, Texas has experienced seismic activity over the past few years. The Commission made no change in response to this comment.

The Workgroup commended the Commission for being proactive in responding to seismic activity, including the hiring of a seismologist and proposing reasoned requirements to address the risk of seismic activity related to disposal well operations. The Workgroup found the following provisions acceptable: (1) using the USGS database as the source for historic seismic activity; (2) amending §3.9(6)(A)(vi) and §3.46(d)(1)(F) to include disposal that is shown to be causing seismic activity to the list of reasons for which the Commission may modify, suspend, or terminate a disposal well permit for just cause and after opportunity for hearing; (3) requiring operators to collect disposal volumes and pressures as requested by the Commission for submittal; and (4) requiring additional technical data such as logs and geologic cross-sections where conditions exist that may increase the risk that fluids will not be confined to the injection interval or being possibly connected to seismic events nearby. Chevron, Pioneer, and Apache/Newfield expressed support for the Workgroup comments. The Commission appreciates these comments.

The Workgroup commented, however, that, while pressure front calculations can be an appropriate part of a robust technical review and risk assessment where there have been seismic events in close proximity to a proposed new disposal well, the Workgroup questioned using five psi pressure front calculations as a tool simply to delineate an area for assessing historic seismic activity. The Workgroup expressed concern that the number of poorly constrained variables that go into such a calculation may lead to underestimating or overestimating the location of the pressure front boundary, thereby rendering a common and consistent review of historic seismic events in a given area un-

likely. Further, the Workgroup stated that the methodology and results would not be transparent to all stakeholders, and would also place a substantial burden on small operators by requiring them to retain additional technical resources to perform calculations solely to obtain information on historic seismicity. The Workgroup and Chevron stated that a more transparent, repeatable and risk-appropriate approach would be to require a review of USGS historic seismic activity within a circular area of 40 square miles centered around the proposed location for large disposal wells. The Workgroup recommended that shallow, low volume disposal wells be exempted from this requirement or that the Commission require the use of a smaller area for referencing historic seismic events. The Texas Energy Services Coalition echoed these concerns, but recommended survey of a circular area of 20 square miles centered around the proposed disposal well location.

Chevron commented that the proposed rule does not state any guidelines for the input data or parameters, or calculation method(s) for determining the pressure front, making the rule somewhat ambiguous and problematic in its application. Without specific guidance regarding verification of the input parameters (some of which are rarely measured and can vary by orders of magnitude) and calculation method, the confidence level in the calculation would be low and the uncertainty high. This commenter stated that the actual pressure front that would be induced in the subsurface would be complicated by the actual injection history, faults, injection horizon parameters, and interaction with other wells.

The Commission agrees that, in many instances, the assumptions and approximations used by applicants in such calculations would be highly interpretive and difficult for many operators to obtain, particularly for applicants proposing to dispose into non-productive formations. As a result, the results from such calculations could be non-uniform and misleading. Therefore, the Commission adopts a simpler and more consistent method of determining the area to be surveyed. The Commission will require that an applicant for a disposal well permit include with the permit application a printed copy or screenshot showing the results of a survey review of information from the USGS regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location.

The Workgroup recommended that the Commission move the language regarding pressure front calculations to §3.9(3)(C) and §3.46(b)(1)(D) as part of the additional information that may be required by the Commission. Chevron commented that, if pressure front calculation requirement is retained, it should be placed in §3.9(3)(C) and §3.46(b)(1)(D), as data that may be required on a case-by-case basis. The Commission agrees with these comments and has made the recommended change.

One commenter stated that he had trouble using the USGS Earthquake Archive Search & URL Builder site. The Commission contacted this person to assist with navigating the USGS website. The Commission made no change in response to this comment.

The GCDs commended the Commission on proposal of the rule and, in general, expressed support for the proposed changes to the rules and the Commission's efforts to ensure fluids from disposal wells are confined to the injection interval and not at risk of migrating to freshwater resources. The Commission appreciates these comments.

The GCDs recommended that the Commission require disposal well applicants to include their calculations for determining pressure front boundary and area of influence for fluid migration in the disposal well application, so that the values they use as parameters for the equations and their calculations can be reviewed by Commission staff and third parties.

The Commission agrees in part with this comment. In cases where the Commission requires the performance of pressure front boundary calculations, the actual input parameters and calculations also would be required. The Commission made no change in response to this comment.

Upper Trinity GCD also suggests that the Commission amend the proposed language to require that all disposal well permit applicants provide the Commission with the additional information, such as logs, geologic cross-sections, and/or structural maps, to demonstrate fluid confinement to the injection interval, rather than leaving this as a permissive option for the Commission staff to review on a case-by-case basis. The GCD recommended that §3.9(3)(C) be changed so that the Commission will require each applicant to submit the information, rather than leaving it as optional. The GCD also noted that the term "baserock" should be "basement rock."

The Commission disagrees with the first recommended change. The existing requirements for disposal well permit applications are adequate to make such a determination in most instances. The Commission will require the additional information in §3.9(3)(C) to address instances in which additional information is necessary to make such a determination. The Commission agrees that the term "basement rock" is more correct than the term "baserock" originally proposed, and adopts the recommended change.

Pioneer requested clarification that the additional data that could be requested by the Commission under §3.9(3)(C) or §3.46(b)(1)(D) would be existing data.

Although existing data will be adequate in most cases, the possibility exists where sufficient information would not allow the Commission to adequately assess seismic threat. Therefore, if the applicant wishes to pursue a disposal well permit application in such circumstances, new data may be necessary. The Commission made no change in response to this comment.

Pioneer also requested clarification that in order to comply with the rule amendments, operators will not be responsible for purchasing and/or installing seismographs, geophones or other monitors designed to detect seismic activity.

The Commission did not propose the requirement for an operator to purchase and/or install seismographs, geophones, or other monitors designed to detect seismic activity. However, there could be an unusual case where an operator would elect to use this equipment. The Commission made no changes in response to this comment.

The GCDs recommended that the Commission consider providing additional definitional guidance through the proposed rules on what it will consider to constitute "complex geology" for the purposes of requiring additional information from permit applicants to demonstrate confinement of fluids.

The Commission declines to define "complex geology" in the rule because an all-inclusive definition is not possible. However, some examples might include heterogeneity, varying permeability and porosity, faulting and folding, high stress, unconformities,

tilted or rotated fault blocks, and cross-stratification. The Commission made no change in response to this comment.

The GCDs requested that the Commission continue to take the necessary steps to protect not only freshwater resources, but brackish water as well, in the regulation of disposal wells and potential sources of contamination.

This comment is beyond the scope of this rulemaking. Texas Natural Resources Code, §91.101, relating to rules and orders, requires the Railroad Commission to adopt and enforce rules and orders and issue permits relating to "the production of oil and gas, including activities associated with the drilling of injection water source wells which penetrate the base of useable quality water." The Commission provides letters of recommendation concerning groundwater protection. For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the Commission provides geologic interpretation identifying the base of usable-quality water (generally less than 3,000 milligrams per liter (mg/L) total dissolved solids (TDS), but may include higher levels of TDS if identified as currently being used or identified by the Texas Water Development Board (TWDB) as a source of water for desalination). The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable quality water. For recommendations related to injection into a non-producing zone, the Commission provides geologic interpretation of the base of the underground sources of drinking water (USDW). USDW is defined as an aquifer or its portions which supplies drinking water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter TDS; and which is not an exempted aquifer. The Commission's UIC program prohibits injection into (unless the EPA has approved an aquifer exemption) or contamination of USDWs. The Commission's Groundwater Advisory Unit coordinates with the TWDB with respect to desalination projects and water use. The Commission also is a member of the Texas Groundwater Protection Committee. The Commission made no change in response to this comment.

The Lone Star GCD stated that §3.9 and §3.46 currently require an applicant for an injection well permit to review an area of a fixed radius of 1/4 mile for abandoned, unplugged, or improperly plugged wells that could serve as a conduit for migration of injectate to freshwater (area of review). The Lone Star GCD recommended that the Commission amend the rules to require that an applicant calculate a site-specific area of review for all injection wells.

The commenter appears to be confusing the "area of review" requirement in the rules and the area to be surveyed for historic seismicity. When the federal Underground Injection Control (UIC) regulations were promulgated in 1980 under the Safe Drinking Water Act (SDWA), they required that a review of wells within a 1/4 mile radius of the proposed injection well be conducted to ensure that surrounding wells would not serve as a conduit for injected fluids to enter USDWs. This requirement is known as the area-of-review or AOR requirement. Sections 3.9 and 3.46, adopted in 1981, require a 1/4 mile AOR unless an applicant shows by computation that a lesser area will be affected by pressure increases. The "area of review" with respect to the underground injection program is the area surrounding an injection well that is reviewed during the permitting process to determine if flow between aquifers will be induced by the injection operation. The area of review defines the area where the injection reservoir pressure under the influence of injection ac-

tivity could cause fluid to move into a USDW. The area of review is determined based on the location at which fluids from the injection zone would rise in a hypothetical well at a given location. The Commission's UIC program was approved with a fixed radius of 1/4 mile. The information is used to determine whether corrective action is necessary.

In most cases, the Commission's AOR review involves a review of the map of wells within a 1/4 mile radius of the proposed injection or disposal well and the corresponding "Table of Wells" indicating the status of all wells within the 1/4 mile radius to verify that the operator has indicated that the wells are active, have an exception to §3.14 of this title (relating to Plugging), or are properly plugged. For applications in selected problem areas, the Commission's UIC staff performs the more detailed review. The more detailed AOR reviews are performed for applications for wells located in areas of highly pressured formations, highly corrosive formation waters, public concern over injection wells, or where unplugged abandoned wells are a real or perceived problem. The more detailed review involves pulling and reviewing all completion and plugging reports for all wells within the 1/4 mile radius to verify that the wells are properly completed and/or plugged. In addition, in certain areas, such as areas in which the reservoir pressure is elevated, the Commission has determined that a larger area of review is warranted.

The survey area in this rulemaking is intended to address increased pressure that could trigger movement of existing stressed faults. In any event, this comment is beyond the scope of the proposed rulemaking, which is limited to seismicity associated with disposal wells. The Commission made no change in response to this comment.

The EDF and the Sierra Club expressed general support for the proposed amendments. The Commission appreciates these comments. The Commission made no change in response to these comments.

The Sierra Club also recommended more research efforts and appropriate regulation to encourage operators to move away from underground injection to prevent contamination, and to provide a potential, available water resource for Texas.

The Commission agrees that produced fluids are a potential source of available water for Texas, but finds that this comment is beyond the scope of this rulemaking. The Commission encourages the re-use of these produced fluids when possible, particularly through the Commission's current rules relating to recycling of these fluids (in §3.8 of this title, relating to Water Protection, and in Chapter 4, Subchapter B, of this title, relating to Commercial Recycling.) However, current technology, as well as the storage and transportation costs, with respect to use of these fluids as a potential fresh water source is not yet economical in all instances. In addition, EPA estimates that there are 144,000 Class II injection wells in the United States, and the Commission has permitted over 50,000 Class II injection wells in Texas since the 1930s, with relatively few problems. The Commission made no changes in response to this comment.

The EDF encouraged the Commission to continue to study the issue and develop protocols for responding to future seismic events. The Sierra Club recommended that the Commission include in the rule: (1) a discussion of the types of information needed, including but not limited to a discussion of radioactive tracer or spinner surveys, well logs, and geological investigation of potential faulting; (2) a requirement for a seismic monitoring plan, such as pre- and post-monitoring of the region for

earthquakes; (3) a requirement for monitoring before injection and testing and recording of original bottomhole injection interval pressure; and (4) a requirement for a shut-off device on the injection pump set to allow the maximum allowable injection pressure so that the Commission and operators can assure safe disposal. The Sierra Club also recommended that the Commission develop a seismic monitoring plan for assessing induced seismicity that may be or could be associated with existing permits.

Commission efforts to study issues related to seismic events are ongoing. Commission staff, including the Commission's seismologist, are participating in the Induced Seismicity by Injection Work Group of the State Oil and Gas Regulatory Exchange established by the Interstate Oil & Gas Compact Commission and the national Ground Water Protection Council, which includes representatives from state regulatory agencies and geological surveys across the country. State agencies participating in this work group are collaborating and sharing science, research, and practical experience to equip the states with the best decision making tools to evaluate the possible connections between seismic events and injection wells, minimize risk, and enhance appropriate readiness when seismic events occur. The State Oil and Gas Regulatory Exchange initiative is part of a larger state-led effort called States First, through which state oil and gas regulatory agencies are collaborating and communicating with one another in an ongoing effort to keep current with rapidly changing technology, as well as to share the very best and innovative practices, procedures, and protocols from state to state. The Commission made no changes in response to these comments.

The Sierra Club expressed support for the ability of the Commission to modify, suspend or terminate a permit, but recommended that the Commission include additional details in the rule, such as the right of the Commission to implement graduated maximum allowable injection pressure.

Language regarding the Commission's ability to modify, suspend or terminate an injection well permit has been included in §3.9 and §3.46 since their initial adoption. The procedure is basically the same no matter the cause. In addition, the Commission did not enumerate the details with regard to how the Commission might modify a permit because such modifications would be based on site-specific conditions. The Commission made no changes in response to this comment.

The Sierra Club recommended that the Commission include certain draft amendments considered by the Commission in 2013 regarding various issues such as public notice, integrity testing, and casing and cementing.

The Commission did circulate for informal comment in 2013 certain draft amendments to both §3.9 and §3.46 relating to issues such as public notice, integrity testing, and casing and cementing. However, the Commission has suspended work on those proposed amendments in order to address the issue of seismic activity. The Commission may revisit the issues raised in those earlier draft amendments at a later date. The Commission made no change in response to this comment.

The Sierra Club recommended that the Commission revise the rule to increase the disposal well permit application fee to cover the additional work required of Commission staff.

The Commission disagrees with this recommendation, as its application fees are established by the Texas Legislature in the statutes. The Commission made no change in response to this comment.

The EPA stated that the proposed regulations were reviewed by multiple Ground Water/Underground Injection Control program engineers and scientists, all of which applaud the Commission's efforts to ensure it has sufficient regulatory authority to respond to any event of this type where concerns may arise. The Commission appreciates this comment.

The EPA further commented that the proposed regulations require the permit applicant to calculate the estimated location of a five psi pressure front boundary after 10 years of injection, which would be used to define the area to be reviewed for information on seismic events on the USGS website as part of the application process. While the proposal preamble indicated this estimation is to be calculated using injection at the maximum requested permit injection volume, this is not stated in the proposed regulations. The EPA recommended that the Commission consider adding that requirement in §3.9(3)(B) and §3.46(b)(1)(C). As previously discussed, the Commission adopts wording changes that render this comment moot. The Commission made no change in response to this comment.

The EPA also expressed concern that the type of information necessary to conduct the pressure front boundary calculation may not be readily available, because it is difficult to reliably estimate the pressure front without an in situ measurement of transmissibility (generally a falloff test), and a static pressure measurement. EPA commented that, in areas where new oil and gas activity creates the need for new disposal wells, this type of information may not be well documented. If the pressure front is not realistically estimated, the search area for seismic events might be very small and, given the uncertainties in the USGS event locations (i.e., +/- 10 miles) this approach would be of limited utility. EPA recommended that the Commission consider whether more detail needs to be provided on how to conduct this estimation, or consider establishing a minimum distance to be reviewed (e.g., 10 miles) which the applicant could opt to use if the formation information is not readily available.

The Sierra Club expressed agreement that the actual available information may not be sufficient and the distance assumed in the analysis may be too small.

One commenter expressed appreciation for the proposed rule amendments as a first step but was not convinced of their efficacy. Specifically, the commenter was concerned with calculation of the "10-year five pounds per square inch pressure front boundary," stating that assumptions and approximations used by permit applicants can be highly interpretative in nature and difficult for some operators to obtain and therefore would yield non-uniform and possibly misleading results. The commenter supports the requirement for reporting historical earthquake activity, the authority to request timely, detailed pressure and volume information for specific injection wells, and clarification of the ability of the Commission to modify injection permits. This commenter proposed changes to the proposed rules that would provide detailed methodology of calculation of the "10-year five pounds per square inch pressure front boundary" or require a simple, fixed distance search criteria for historical earthquakes, and detail how the Commission will use specified "additional data" in determination of earthquake risk.

The Commission appreciates these comments. As previously discussed, the Commission adopts changes to the rules that address some of the commenters' concerns. Specifically, the Commission agrees that the 10-year, five pounds per square inch pressure front boundary calculation may be onerous for some disposal well permit applicants and further agrees that a simpler,

fixed-size circular survey centered on the proposed injection well location will be adequate for the purpose of performing a survey for historical earthquake occurrence. The Commission adopts changes to require applicants to conduct a survey of the USGS historical earthquake database in a circular area of 100 square miles centered on the location of the proposed injection well.

One commenter recommended that the Commission revise the rule to require monthly reporting of injection volumes and pressures along with maintaining daily injection volumes and pressures that may be requested at any time; clarify that the Commission may, as the result of an emergency hearing, require an operator to suspend operations pending further study; and indicate the Commission's commitment to continue to engage in, support, and review further scientific and engineering studies.

The Commission's rules already require that a permitted disposal well operator monitor the injection pressure and injection rate of each disposal well on at least a monthly basis and report the results of the monitoring to the Commission annually. However, the disposal well operator must typically monitor injection pressure and volume on a daily basis to ensure compliance with the limits on injection pressure and volume in the operator's permit. In addition, the Commission has the authority to require an operator to provide the records for injection pressure and volume to the Commission upon request. With respect to the recommendation that the Commission clarify that, as the result of an emergency hearing, the Commission may require an operator to suspend operations pending further study, the language regarding modification, suspension, and termination of a disposal well permit after notice and opportunity for hearing is sufficiently clear. With respect to the last recommendation of this commenter, the Commission presently plans to engage in, support, and review further scientific and engineering studies; however, such a statement is unnecessary in the rule language. The Commission made no change in response to these comments.

The City of Southlake recommended that the Commission revise the rule to provide for: (1) adequate public notice to elicit public comment and to engage public involvement through the permitting process; (2) accompanying hearing procedures; (3) and earnest appeals procedures for property owners who do not agree with or who are otherwise impacted by the Commission's permit determination in any case.

The Commission finds these comments are beyond the scope of this rulemaking and made no change in response to this comment.

With respect to the amendments in §3.9(6)(A)(vi) and §3.46(d)(1)(F), relating to modification, suspension or termination of a permit based on increased seismic activity, Chevron recommended that the Commission establish an appeals provision to allow an operator to present evidence to the Commission.

The Commission's regulations in Chapter 1 of this title (relating to Practice and Procedure), allow for "appeals" using the Commission's current hearing process and Commission decision, as well as the existing avenues through the court system. The Commission made no change in response to this comment.

CrownQuest and an individual expressed concerns with the proposed rule amendments with the calculation of the "10-year five pounds per square inch pressure front boundary", stating that assumptions and approximations used by permit applicants can be highly interpretative in nature and difficult for some operators to obtain and therefore would yield non-uniform and possibly misleading results. The commenters find the parameters used by

the Commission to be arbitrary and not founded in sound science and engineering.

The Commission disagrees with the comment that the "10-year five pounds per square inch pressure front boundary" is arbitrary and not founded in sound science and engineering practice. Published research indicates that inducing earthquakes on preferentially oriented faults requires positive pressure differentials of as little as one pound per square inch to as much as 75 pounds per square inch. The Commission proposed five pounds per square inch as a conservative number. Further, calculation of the pressure front boundary after 10 years of injection at the maximum permitted injection rate was considered to be a reasonable measure of the lifetime amount of volume injected for a typical disposal well. Also, while understanding the wide range of possible values for real reservoir characteristics, the Commission expected operators would enter realistic values in the calculation to yield a first-order scientific and engineering calculation. Nonetheless, as previously discussed, the Commission adopts other changes to this wording; the language regarding calculation of a pressure front boundary around a proposed disposal well location has been moved to §3.9(3)(C) and §3.46(b)(1)(D) and will be required only in certain limited circumstances where additional information is necessary to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval.

CrownQuest suggested that in §3.9(3)(C) and §3.46(b)(1)(D) the word "may" be deleted and replaced with the words "will significantly" in the phrase "may increase the risk that fluids will be confined to the injection interval."

EPA commented that the transmission of pressure in the subsurface due to the injection of fluids affects a much greater area than the actual migration of the injected fluids, and expressed concern that not including language recognizing this pressure influence (which is the primary concern in induced seismicity events) may inadvertently limit the applicability of these changes.

The Commission agrees with the statement that transmission of pressure in the subsurface due to the injection of fluids affects a much greater area than the actual migration of the injected fluids, which is why the Commission originally proposed a pressure front calculation. However, due to other changes previously discussed, the Commission made no change with regard to these comments.

CrownQuest and Pioneer recommended that the Commission delete the phrase "suspected of or shown to be" in §3.9(6)(A)(vi) and §3.46(d)(1)(F) and replace it with "demonstrated by reliable scientific and engineering data" in the phrase "injection is suspected of or shown to be causing seismic activity."

The Commission disagrees with the suggested wording change for §3.9(6)(A)(vi) and §3.46(d)(1)(F); however, the Commission adopts language to clarify that the trigger for the Commission to consider modification, suspension, or termination of a permit will be based on injection "likely to be or determined to be contributing to seismic activity."

CrownQuest commented that generally, disposal wells should be treated differently based on their proximity to population centers or the number of homes within the pressure front boundary.

The Commission disagrees with this comment; the Commission is concerned with the safety of all Texans, including those who

live in low population areas. The Commission made no changes in response to this comment.

In a letter signed by the Honorable Judge Carlos Garcia, the Frio County Commissioners Court commented that the capacity of disposal into disposal wells is "exceeding environmental boundaries" and expressed concern that in the future, such disposal will result in well overflows or leaks. The Commissioners Court requested that the Commission review the Frio County area, in which the Commissioners Court stated are located wells permitted to dispose into shallow oil and gas producing formations which contain brackish water. The Commissioners Court also expressed concern with public safety and spills on roads in the county as well as pipelines, fractionation facilities, and other ancillary facilities, and referenced Chapter 361 of the Texas Health and Safety Code, regarding development of solid waste plans to protect and promote water, health, and public safety.

The Commission finds that these comments are beyond the scope of this rulemaking or outside the Commission's statutory authority. In determining whether to permit a disposal well, the Commission considers disposal capacity of an area, including the need for such disposal capacity and the existing pressure status of the interval into which the injection is proposed. The Commission also considers the presence of abandoned, unplugged or improperly plugged wells within the area of a proposed disposal well. The Commission does not permit injection into an underground source of drinking water as defined by the EPA and §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)). Section 3.30 defines an underground source of drinking water as "an aquifer or its portions which supplies drinking water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer." Such definition includes water defined as brackish. No disposal well in Frio County is permitted to inject into a USDW. The Commission made no changes in response to these comments.

#### DESCRIPTION OF RULE AS ADOPTED

As stated in the proposal preamble, the EPA estimates that there are 144,000 Class II injection wells in the United States. The Commission has permitted over 50,000 Class II injection wells in Texas since the 1930s. While few earthquakes have been documented over the past several decades relative to the large number of disposal wells in operation, seismic events have infrequently occurred in areas where there is coincident oil and gas activity. Therefore, the Commission adopts these rule amendments in order to require additional information in support of a permit application regarding historical seismic events in the vicinity of a proposed disposal well's location, as well as certain other information in the event the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. The USGS maintains an online, accessible data base of seismic events in the United States from 1973 to the present. Applicants for a disposal well permit under §3.9 or §3.46 as amended will be required to access the USGS earthquake search tool at <http://earthquake.usgs.gov/earthquakes/search/> in order to retrieve data regarding the locations of historical seismic events within a specified area around the proposed disposal well location. The Commission also adopts these amendments to clarify that it has the authority to modify, suspend, or terminate a permit for just cause after notice and opportunity for hearing if injection is likely



to be or determined to be contributing to seismic activity. Finally, the Commission adopts these rule amendments to authorize more frequent monitoring and reporting by operators of disposal well injection pressures and injection rates in the event certain conditions are present that may increase the risk that fluids will not be confined to the injection interval.

The Commission adopts amendments to §3.9(3) to add new subparagraph (B), with changes previously discussed, to state that the applicant shall include with the application for a disposal well permit under this section a printed copy or screenshot showing the results of a survey of information from the USGS indicating the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location.

The Commission adopts new §3.9(3)(C), with changes previously discussed, to state that the Commission may require an applicant for a disposal well permit to provide the Commission with additional information, such as logs, geologic cross-sections, pressure front boundary calculations, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Conditions that may increase the risk that fluids will not be confined to the injection interval may include, but are not limited to, complex geology, proximity of the basement rock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS required in §3.9(3)(B).

The Commission amends §3.9(6)(A)(vi), with changes previously discussed, to include injection that is likely to be or determined to be contributing to seismic activity to the list of reasons for which the Commission may modify, suspend, or terminate a permit for saltwater or other oil and gas waste disposal for just cause after notice and opportunity for hearing.

The Commission amends §3.9(11)(A) and §3.9(11)(B) to state that the Commission may require more frequent monitoring and monitoring reporting to the Commission of the injection pressure and injection rate in the event that conditions described in §3.9(3)(C) and §3.46(b)(1)(D) exist which may increase the risk that fluids will not be confined to the injection interval. The Commission also amends §3.9(11)(B) to correct a typographical error in the existing rule.

The Commission amends §3.46 to incorporate similar language for disposal wells that are permitted under §3.46. Under §3.46, the Commission regulates injection into productive formations for either enhanced recovery or for disposal. The new language relating to seismic activity would apply only to those wells permitted under §3.46 for disposal purposes.

The Commission amends §3.46(b)(1) to add new subparagraphs (C) and (D). New subparagraph (C), adopted with changes previously discussed, requires the applicant to include with the permit application for injection for the purpose of disposal under this section a printed copy or screenshot showing the results of a survey of information from the USGS indicating the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location.

New §3.46(b)(1)(D), adopted with changes previously discussed, states that the Commission may require an applicant for a disposal well permit under this section to provide the Commission with additional information such as logs, geologic

cross-sections, pressure front boundary calculations, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the basement rock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS required in §3.46(b)(1)(C).

The Commission amends §3.46(d)(1)(F), with changes previously discussed, to include injection that is likely to be or determined to be contributing to seismic activity to the list of reasons for which the Commission may modify, suspend, or terminate a permit for just cause after notice and opportunity for hearing.

The Commission amends §3.46(i)(1) and (2) to state that the Commission may require more frequent monitoring and monitoring reporting to the Commission of the injection pressure and injection rate.

The Commission adopts amendments to §3.9 and §3.46, pursuant to Texas Water Code, §26.131, which gives the Commission jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.042(b), which provides the Commission with the authority to, when necessary, make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property; Texas Natural Resources Code, §85.201, which authorizes the Commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the Commission to adopt rules to prevent waste of oil and gas in drilling and producing operations; Texas Natural Resources Code, §91.101, which authorizes the Commission, in order to prevent pollution of surface water or subsurface water in the state, to adopt rules relating to the various oilfield operations, including activities associated with the drilling of injection water source wells which penetrate the base of usable quality water, and the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code, §91.602, which authorizes the Commission, in order to protect human health and the environment, to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the adopted amendments.

Statutory authority: Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas, on October 28, 2014.

### §3.9. Disposal Wells.

Any person who disposes of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section, Texas Water Code, Chapter 27, and Title 3 of the Natural Resources Code.

(1) General. Saltwater or other oil and gas waste, as that term is defined in the Texas Water Code, Chapter 27, may be disposed of, upon application to and approval by the commission, by injection into nonproducing zones of oil, gas, or geothermal resources bearing formations that contain water mineralized by processes of nature to such a degree that the water is unfit for domestic, stock, irrigation, or other general uses. Every applicant who proposes to dispose of saltwater or other oil and gas waste into a formation not productive of oil, gas, or geothermal resources must obtain a permit from the commission authorizing the disposal in accordance with this section. Permits from the commission issued before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission.

(2) Geological requirements. Before such formations are approved for disposal use, the applicant shall show that the formations are separated from freshwater formations by impervious beds which will give adequate protection to such freshwater formations. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division stating that the use of such formation will not endanger the freshwater strata in that area and that the formations to be used for disposal are not freshwater-bearing.

#### (3) Application.

(A) The application to dispose of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be filed with the commission in Austin accompanied by the prescribed fee. On the same date, one copy shall be filed with the appropriate district office.

(B) The applicant for a disposal well permit under this section shall include with the permit application a printed copy or screenshot showing the results of a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location.

(C) The commission may require an applicant for a disposal well permit under this section to provide the commission with additional information such as logs, geologic cross-sections, pressure front boundary calculations, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the basement rock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS.

(4) Commercial disposal well. An applicant for a permit to dispose of oil and gas waste in a commercial disposal well shall clearly indicate on the application and in the published notice of application that the application is for a commercial disposal well permit. For the purposes of this rule, "commercial disposal well" means a well whose owner or operator receives compensation from others for the disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the well, and the primary business purpose for the well is to provide these services for compensation.

#### (5) Notice and opportunity for hearing.

(A) The applicant shall give notice by mailing or delivering a copy of the application to affected persons who include the owner of record of the surface tract on which the well is located; each commission-designated operator of any well located within one-half mile of the proposed disposal well; the county clerk of the county in which the well is located; and the city clerk or other appropriate city official of any city where the well is located within the municipal boundaries of the city, on or before the date the application is mailed to or filed with the commission. For the purposes of this section, the term "of record" means recorded in the real property or probate records of the county in which the property is located.

(B) In addition to the requirements of subsection (a)(5)(A) of this section, a commercial disposal well permit applicant shall give notice to owners of record of each surface tract that adjoins the proposed disposal tract by mailing or delivering a copy of the application to each such surface owner.

(C) If, in connection with a particular application, the commission or its delegate determines that another class of persons should receive notice of the application, the commission or its delegate may require the applicant to mail or deliver a copy of the application to members of that class. Such classes of persons could include adjacent surface owners or underground water districts.

(D) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the commission or its delegate. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

#### (E) Protested applications:

(i) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, whichever is later, or if the commission or its delegate determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(ii) For purposes of this section, "affected person" means a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public or as a competitor, and includes surface owners of property on which the well is located and commission-designated operators of wells located within one-half mile of the proposed disposal well.

(F) If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the commission's delegate denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

#### (6) Subsequent commission action.

(A) A permit for saltwater or other oil and gas waste disposal may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing, if:

(i) a material change of conditions occurs in the operation or completion of the disposal well, or there are material changes in the information originally furnished;

(ii) freshwater is likely to be polluted as a result of continued operation of the well;

(iii) there are substantial violations of the terms and provisions of the permit or of commission rules;

(iv) the applicant has misrepresented any material facts during the permit issuance process;

(v) injected fluids are escaping from the permitted disposal zone;

(vi) injection is likely to be or determined to be contributing to seismic activity; or

(vii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations.

(B) A disposal well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on Commission records.

(C) Voluntary permit suspension.

(i) An operator may apply to temporarily suspend its injection authority by filing a written request for permit suspension with the commission in Austin, and attaching to the written request the results of an MIT test performed during the previous three-month period in accordance with the provisions of paragraph (12)(D) of this section. The provisions of this subparagraph shall not apply to any well that is permitted as a commercial disposal well.

(ii) The commission or its delegate may grant the permit suspension upon determining that the results of the MIT test submitted under clause (i) of this subparagraph indicate that the well meets the performance standards of paragraph (12)(D) of this section.

(iii) During the period of permit suspension, the operator shall not use the well for injection or disposal purposes.

(iv) During the period of permit suspension, the operator shall comply with all applicable well testing requirements of §3.14 of this title (relating to plugging, and commonly referred to as Statewide Rule 14) but need not perform the MIT test that would otherwise be required under the provisions of paragraph (12)(D) of this section or the permit. Further, during the period of permit suspension, the provisions of paragraph (11)(A) - (C) of this section shall not apply.

(v) The operator may reinstate injection authority under a suspended permit by filing a written notification with the commission in Austin. The written notification shall be accompanied by an MIT test performed during the three-month period prior to the date notice of reinstatement is filed. The MIT test shall have been performed in accordance with the provisions and standards of paragraph (12)(D) of this section.

(7) Area of Review.

(A) Except as otherwise provided in this paragraph, the applicant shall review the date of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(B) The commission or its delegate may grant a variance from the area-of-review requirements of subparagraph (A) of this paragraph upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically

and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

(i) the area affected by pressure increases resulting from injection operations;

(ii) the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or

(iii) other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.

(C) Persons applying for a variance from the area-of-review requirements of subparagraph (A) of this paragraph on the basis of factors set out in subparagraph (B)(ii) or (iii) of this paragraph for an individual well shall provide notice of the application to those persons given notice under the provisions of paragraph (5)(A) of this subsection. The provisions of paragraph (5)(D) and (E) shall apply in the case of an application for a variance from the area-of-review requirements for an individual well.

(D) Notice of an application for an areal variance from the area-of-review requirements under subparagraph (A) of this paragraph shall be given on or before the date the application is filed with the commission:

(i) by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;

(ii) by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date of the application is filed with the commission, to the following:

(I) the manager of each underground water conservation district(s) in which the variance would apply, if any;

(II) the city clerk or other appropriate official of each incorporated city in which the variance would apply, if any;

(III) the county clerk of each county in which the variance would apply; and

(IV) any other person or persons that the commission or its delegate determine should receive notice of the application.

(E) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing

the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(F) An areal variance granted under the provisions of this paragraph may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of hearing is given must include the area-of-review information required under subparagraph (A) of this paragraph pending issuance of a final order.

(8) Casing. Disposal wells shall be cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements) in such a manner that the injected fluids will not endanger oil, gas, geothermal resources, or freshwater resources.

(9) Special equipment.

(A) Tubing and packer. Wells drilled or converted for disposal shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 100 feet above the top of the permitted interval. For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.

(B) Pressure valve. The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well.

(C) Exceptions. The director may grant an exception to any provision of this paragraph upon proof of good cause. If the director denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(10) Well record. Within 30 days after the completion or conversion of a disposal well, the operator shall file in duplicate in the district office a complete record of the well on the appropriate form which shows the current completion.

(11) Monitoring and reporting.

(A) The operator shall monitor the injection pressure and injection rate of each disposal well on at least a monthly basis, or on a more frequent basis as required by the commission under conditions described in paragraph (3)(C) of this section.

(B) The results of the monitoring shall be reported annually to the commission on the prescribed form, or on a more frequent basis as required by the commission under conditions described in paragraph (3)(C) of this section.

(C) All monitoring records shall be retained by the operator for at least five years.

(D) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(12) Testing.

(A) Purpose. The mechanical integrity of a disposal well shall be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical

integrity to meet the performance standards of this rule, or by alternative testing methods under subparagraph (E) of this paragraph.

(B) Applicability. Mechanical integrity of each disposal well shall be demonstrated in accordance with provisions of subparagraph (D) and subparagraph (E) of this paragraph prior to initial use. In addition, mechanical integrity shall be tested periodically thereafter as described in subparagraph (C) of this paragraph.

(C) Frequency.

(i) Each disposal well completed with surface casing set and cemented through the entire interval of protected usable-quality water shall be tested for mechanical integrity at least once every five years.

(ii) In addition to testing required under clause (i), each disposal well shall be tested for mechanical integrity after every workover of the well.

(iii) A disposal well that is completed without surface casing set and cemented through the entire interval of protected usable-quality ground water shall be tested at the frequency prescribed in the disposal well permit.

(iv) The commission or its delegate may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with the requirements in clauses (i) and (ii) of this subparagraph. Such testing schedule shall not apply to a disposal well for which a disposal well permit has been issued but the well has not been drilled or converted to disposal.

(D) Pressure tests.

(i) Test pressure.

(I) The test pressure for wells equipped to dispose through tubing and packer shall equal the maximum authorized injection pressure or 500 psig, whichever is less, but shall be at least 200 psig.

(II) The test pressure for wells that are permitted for disposal through casing shall equal the maximum permitted injection pressure or 200 psig, whichever is greater.

(ii) Pressure stabilization. The test pressure shall stabilize within 10% of the test pressure required in clause (i) of this subparagraph prior to commencement of the test.

(iii) Pressure differential. A pressure differential of at least 200 psig shall be maintained between the test pressure on the tubing-casing annulus and the tubing pressure.

(iv) Test duration. A pressure test shall be conducted for a duration of 30 minutes when the test medium is liquid or for 60 minutes when the test medium is air or gas.

(v) Pressure recorder. Except for tests witnessed by a commission representative or wells permitted for disposal through casing, a pressure recorder shall be used to monitor and record the tubing-casing annulus pressure during the test. The recorder clock shall not exceed 24 hours. The recorder scale shall be set so that the test pressure is 30 to 70% of full scale, unless otherwise authorized by the commission or its delegate.

(vi) Test fluid.

(I) The tubing-casing annulus fluid used in a pressure test shall be liquid for wells that inject liquid unless the commission or its delegate authorizes the use of a different test fluid for good cause.

(II) The tubing-casing annulus fluid used in a pressure test shall contain no additives that may affect the sensitivity or otherwise reduce the effectiveness of the test.

(vii) Pressure test results. The commission or its delegate will consider, in evaluating the results of a test, the level of pollution risk that loss of well integrity would cause. Factors that may be taken into account in assessing pollution risk include injection pressure, frequency of testing and monitoring, and whether there is sufficient surface casing to cover all zones containing usable-quality water. A pressure test may be rejected by the commission or its delegate after consideration of the following factors:

(I) the degree of pressure change during the test, if any;

(II) the level of risk to usable-quality water if mechanical integrity of the well is lost; and

(III) whether circumstances surrounding the administration of the test make the test inconclusive.

(E) Alternative testing methods.

(i) As an alternative to the testing required in subparagraph (B) of this paragraph, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by paragraph (11) of this section, with the authorization of the commission or its delegate and provided that there is no indication of problems with the well. Wells that are approved for tubing-casing annulus monitoring under this paragraph shall be tested in the manner provided under subparagraph (B) of this paragraph at least once every ten years after January 1, 1990.

(ii) The commission or its delegate may grant an exception for viable alternative tests or surveys or may require alternative tests or surveys as a permit condition.

(F) The operator shall notify the appropriate district office at least 48 hours prior to the testing. Testing shall not commence before the end of the 48-hour period unless authorized by the district office.

(G) A complete record of all tests shall be filed in duplicate in the district office on the appropriate form within 30 days after the testing.

(H) In the case of permits issued under this section prior to the effective date of this amendment which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission shall consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(13) Plugging. Disposal wells shall be plugged upon abandonment in accordance with §3.14 of this title (relating to Plugging).

(14) Penalties.

(A) Violations of this section may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title 3.

(B) The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certification of Compliance; Severance) for violation of this section.

§3.46. *Fluid Injection into Productive Reservoirs.*

(a) Permit required. Any person who engages in fluid injection operations in reservoirs productive of oil, gas, or geothermal resources must obtain a permit from the commission. Permits may be issued when the injection will not endanger oil, gas, or geothermal resources or cause the pollution of freshwater strata unproductive of oil, gas, or geothermal resources. Permits from the commission issued before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission.

(b) Filing of application.

(1) Application.

(A) An application to conduct fluid injection operations in a reservoir productive of oil, gas, or geothermal resources shall be filed in Austin on the form prescribed by the commission accompanied by the prescribed fee. On the same date, one copy shall be filed with the appropriate district office. The form shall be executed by a party having knowledge of the facts entered on the form.

(B) The applicant shall file the freshwater injection data form if fresh water is to be injected.

(C) The applicant for a disposal well permit under this section shall include with the permit application a printed copy or screenshot showing the results of a survey of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within a circular area of 100 square miles (a circle with a radius of 9.08 kilometers) centered around the proposed disposal well location.

(D) The commission may require an applicant for a disposal well permit under this section to provide the commission with additional information such as logs, geologic cross-sections, pressure front boundary calculations, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the basement rock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS.

(2) Commercial disposal well. An applicant for a permit to dispose of oil and gas waste in a commercial disposal well shall clearly indicate on the application and in the notice of application that the application is for a commercial disposal well permit. For the purposes of this rule, "commercial disposal well" means a well whose owner or operator receives compensation from others for the disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the well, and the primary business purpose for the well is to provide these services for compensation.

(c) Notice and opportunity for hearing.

(1) The applicant shall give notice by mailing or delivering a copy of the application to affected persons who include the owner of record of the surface tract on which the well is located; each commission-designated operator of any well located within one half mile of the proposed injection well; the county clerk of the county in which the well is located; and the city clerk or other appropriate city official of any city where the well is located within the corporate limits of the city, on or before the date the application is mailed to or filed with the commission. For the purposes of this section, the term "of record" means recorded in the real property or probate records of the county in which the property is located.

(2) In addition to the requirements of subsection (c)(1), a commercial disposal well permit applicant shall give notice to owners of record of each surface tract that adjoins the proposed injection tract

by mailing or delivering a copy of the application to each such surface owner.

(3) If, in connection with a particular application, the commission or its delegate determines that another class of persons should receive notice of the application, the commission or its delegate may require the applicant to mail or deliver a copy of the application to members of that class. Such classes of persons could include adjacent surface owners or underground water conservation districts.

(4) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the commission or its delegate. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(5) Protested applications:

(A) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, whichever is later, or if the commission or its delegate determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(B) For purposes of this section, "affected person" means a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public or as a competitor, and includes surface owners of property on which the well is located and commission-designated operators of wells located within one-half mile of the proposed disposal well.

(6) If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the commission's delegate denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(d) Subsequent commission action.

(1) An injection well permit may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing, if:

(A) a material change of conditions occurs in the operation or completion of the injection well, or there are material changes in the information originally furnished;

(B) fresh water is likely to be polluted as a result of continued operation of the well;

(C) there are substantial violations of the terms and provisions of the permit or of commission rules;

(D) the applicant has misrepresented any material facts during the permit issuance process;

(E) injected fluids are escaping from the permitted injection zone;

(F) for a disposal well permit under this section, injection is likely to be or determined to be contributing to seismic activity; or

(G) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations.

(2) An injection well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on commission records.

(3) Voluntary permit suspension.

(A) An operator may apply to temporarily suspend its injection authority by filing a written request for permit suspension with the commission in Austin, and attaching to the written request the results of an MIT test performed during the previous three-month period in accordance with the provisions of subsection (j)(4) of this section. The provisions of this paragraph shall not apply to any well that is permitted as a commercial injection well.

(B) The commission or its delegate may grant the permit suspension upon determining that the results of the MIT test submitted under subparagraph (A) of this paragraph indicate that the well meets the performance standards of subsection (j)(4) of this section.

(C) During the period of permit suspension, the operator shall not use the well for injection or disposal purposes.

(D) During the period of permit suspension, the operator shall comply with all applicable well testing requirements of §3.14 of this title (relating to plugging, and commonly referred to as Statewide Rule 14) but need not perform the MIT test that would otherwise be required under the provisions of subsection (j)(4) of this section or the permit. Further, during the period of permit suspension, the provisions of subsection (i)(1) - (3) of this section shall not apply.

(E) The operator may reinstate injection authority under a suspended permit by filing a written notification with the commission in Austin. The written notification shall be accompanied by an MIT test performed during the three-month period prior to the date notice of reinstatement is filed. The MIT test shall have been performed in accordance with the provisions and standards of subsection (j)(4) of this section.

(e) Area of Review.

(1) Except as otherwise provided in this subsection, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(2) The commission or its delegate may grant a variance from the area-of-review requirements of paragraph (1) of this subsection upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

(A) the area affected by pressure increases resulting from injection operations;

(B) the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or

(C) other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.

(3) Persons applying for a variance from the area-of-review requirements of paragraph (1) of this subsection on the basis of factors set out in paragraph (2)(B) or (C) of this subsection for an individual well shall provide notice of the application to those persons given notice under the provisions of subsection (c)(1) of this section. The provisions of subsection (c) of this section shall apply in the case of an application for a variance from the area-of-review requirements for an individual well.

(4) Notice of an application for an areal variance from the area-of-review requirements under paragraph (1) of this subsection shall be given on or before the date the application is filed with the commission:

(A) by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;

(B) by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission, to the following:

(i) the manager of each underground water conservation district in which the variance would apply, if any;

(ii) the city clerk or other appropriate official of each incorporated city in which the variance would apply, if any;

(iii) the county clerk of each county in which the variance would apply; and

(iv) any other person or persons that the commission or its delegate determines should receive notice of the application.

(5) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(6) An areal variance granted under the provisions of this subsection may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of hearing is given must include the area-of-review information required under paragraph (1) of this subsection pending issuance of a final order.

(f) Casing. Injection wells shall be cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements) in such a manner that the injected fluids will not endanger oil, gas, or geothermal resources and will not endanger freshwater formations not productive of oil, gas, or geothermal resources.

(g) Special equipment.

(1) Tubing and packer. Wells drilled or converted for injection shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 200 feet below the known top of cement behind the long string casing but in no case higher than 150 feet below the base of usable quality water. For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.

(2) Pressure valve. The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well.

(3) Exceptions. The commission or its delegate may grant an exception to any provision of this paragraph upon proof of good cause. If the commission or its delegate denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(h) Well record. Within 30 days after the completion or conversion of an injection well, the operator shall file in duplicate in the district office a complete record of the well on the appropriate form which shows the current completion.

(i) Monitoring and reporting.

(1) The operator shall monitor the injection pressure and injection rate of each injection well on at least a monthly basis, or on a more frequent basis for a disposal well permitted under this section as required by the commission under conditions described in subsection (b)(1)(D) of this section.

(2) The results of the monitoring shall be reported annually, or on a more frequent basis for a disposal well permitted under this section as required by the commission under conditions described in subsection (b)(1)(D) of this section, to the commission on the prescribed form.

(3) All monitoring records shall be retained by the operator for at least five years.

(4) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(j) Testing.

(1) Purpose. The mechanical integrity of an injection well shall be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of this rule, or by alternative testing methods under paragraph (5) of this subsection.

(2) Applicability. Mechanical integrity of each injection well shall be demonstrated in accordance with provisions of paragraphs (4) and (5) of this subsection prior to initial use. In addition, mechanical integrity shall be tested periodically thereafter as described in paragraph (3) of this subsection.

(3) Frequency.

(A) Each injection well completed with surface casing set and cemented through the entire interval of protected usable-quality water shall be tested for mechanical integrity at least once every five years.

(B) In addition to testing required under subparagraph (A), each injection well shall be tested for mechanical integrity after every workover of the well.

(C) An injection well that is completed without surface casing set and cemented through the entire interval of protected usable-quality ground water shall be tested at the frequency prescribed in the injection permit.

(D) The commission or its delegate may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with the requirements in subparagraph (A) and subparagraph (B) of this paragraph. Such testing schedule shall not apply to an injection well for which an injection well permit has been issued but the well has not been drilled or converted to injection.

(4) Pressure tests.

(A) Test pressure.

(i) The test pressure for wells equipped to inject through tubing and packer shall equal the maximum authorized injection pressure or 500 psig, whichever is less, but shall be at least 200 psig.

(ii) The test pressure for wells that are permitted for injection through casing shall equal the maximum permitted injection pressure or 200 psig, whichever is greater.

(B) Pressure stabilization. The test pressure shall stabilize within 10% of the test pressure required in subparagraph (A) of this paragraph prior to commencement of the test.

(C) Pressure differential. A pressure differential of at least 200 psig shall be maintained between the test pressure on the tubing-casing annulus and the tubing pressure.

(D) Test duration. A pressure test shall be conducted for a duration of 30 minutes when the test medium is liquid or for 60 minutes when the test medium is air or gas.

(E) Pressure recorder. Except for tests witnessed by a commission representative or wells permitted for injection through casing, a pressure recorder shall be used to monitor and record the tubing-casing annulus pressure during the test. The recorder clock shall not exceed 24 hours. The recorder scale shall be set so that the test pressure is 30 to 70% of full scale, unless otherwise authorized by the commission or its delegate.

(F) Test fluid.

(i) The tubing-casing annulus fluid used in a pressure test shall be liquid for wells that inject liquid unless the commission or its delegate authorizes use of a different test fluid for good cause.

(ii) The tubing-casing annulus fluid used in a pressure test shall contain no additives that may affect the sensitivity or otherwise reduce the effectiveness of the test.

(G) Pressure test results. The commission or its delegate will consider, in evaluating the results of a test, the level of pollution risk that loss of well integrity would cause. Factors that may be taken into account in assessing pollution risk include injection pressure, frequency of testing and monitoring, and whether there is sufficient surface casing to cover all zones containing usable-quality water. A pressure test may be rejected by the commission or its delegate after consideration of the following factors:

(i) the degree of pressure change during the test, if any;

(ii) the level of risk to usable-quality water if mechanical integrity of the well is lost; and

(iii) whether circumstances surrounding the administration of the test make the test inconclusive.

(5) Alternative testing methods.

(A) As an alternative to the testing required in paragraph (2) of this subsection, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by subsection (i) of this section, with the authorization of the commission or its delegate and provided that there is no indication of problems with the well. Wells that are approved for tubing-casing annulus monitoring under this paragraph shall be tested in the manner provided under paragraph (3) of this subsection at least once every ten years after January 1, 1990.

(B) The commission or its delegate grant an exception for viable alternative tests or surveys or may require alternative tests or surveys as a permit condition.

(6) The operator shall notify the appropriate district office at least 48 hours prior to the testing. Testing shall not commence before the end of the 48-hour period unless authorized by the district office.

(7) A complete record of all tests shall be filed in duplicate in the district office within 30 days after the testing.

(8) In the case of permits issued under this section prior to the effective date of this amendment which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission shall consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(k) Area Permits. A person may apply for an area permit that authorizes injection into new or converted wells located within the area specified in the area permit. For purposes of this subsection, the term "permit area" shall mean the area covered or proposed to be covered by an area permit. Except as specifically provided in this subsection, the provisions of subsections (a) - (j) of this section shall apply in the case of an area permit and all injection wells converted, completed, operated, or maintained in accordance with that permit. Except as otherwise specified in the area permit, once an area permit has been issued, the operator may apply to operate individual wells within the permit area as injection wells as specified in paragraph (3) of this subsection.

(1) An application for an area permit must be accompanied by an application for at least one injection well. The applicant must:

(A) identify the maximum number of injection wells that will be operated within the permit area;

(B) identify the depth(s) of usable-quality water within the permit area, as determined by the Groundwater Advisory Unit of the Oil and Gas Division;

(C) for each existing well in the permit area that may be converted to injection under the area permit, provide a wellbore diagram that specifies the casing and liner sizes and depths, packer setting depth, types and volumes of cement, and the cement tops for the well. A single wellbore diagram may be submitted for multiple wells that have the same configuration, provided that each well with that type of configuration is identified on the wellbore diagram and the diagram



identifies the deepest cement top for each string of casing among all the wells covered by that diagram.

(D) provide a wellbore diagram(s) showing the type(s) of completion(s) that will be used for injection wells drilled after the date the application for the area permit is filed, including casing and liner sizes and depths and a statement indicating that such wells will be cemented in accordance with the cementing requirements of §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements) (Statewide Rule 13);

(E) identify the type or types of fluids that are proposed to be injected into any well within the permit area;

(F) identify the depths from top to bottom of the injection interval throughout the permit area;

(G) specify the maximum surface injection pressure for any well in the permit area covered by the area permit;

(H) specify the maximum amount of fluid that will be injected daily into any individual well within the permit area as well as the maximum cumulative amount of fluid that will be injected daily in the permit area;

(I) in lieu of the area-of-review required under subsection (e) of this section and subject to the area-of-review variance provisions of subsection (e) of this section, review the data of public record for wells that penetrate the proposed injection interval within the permit area and the area 1/4 mile beyond the outer boundary of the permit area to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the injection interval into freshwater strata. The applicant shall identify in the application the wells which appear from the review of such public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has knowledge. The applicant shall also identify in the application the date of plugging of each abandoned well within the permit area and the area 1/4 mile beyond the outer boundary of the permit area; and

(J) furnish a map showing the location of each existing well that may be converted to injection under the area permit and the location of each well that the operator intends, at the time of application, to drill within the permit area for use for injection. The map shall be keyed to identify the configuration of all such wells as described in subparagraphs (C) and (D) of this paragraph.

(2) In lieu of the notice required under subsection (c)(1) of this section, notice of an area permit shall be given by providing a copy of the area permit application to each surface owner of record within the permit area; each commission-designated operator of a well located within one-half mile of the permit area; the county clerk of each county in which all or part of the permit area is located; and the city clerk or other appropriate city official of any incorporated city which is located wholly or partially within the permit area, on or before the date the application is mailed to or filed with the commission. Notice of an application for an area permit shall also be given in accordance with the requirements of subsection (c)(2). If, in connection with a particular application, the commission or its delegate determines that another class of persons, such as adjacent surface owners or an appropriate underground water conservation district, should receive notice of the application, the commission or its delegate may require the applicant to mail or deliver a copy of the application to members of that class.

(3) Once an area permit has been issued and except as otherwise provided in the permit, no notice shall be required when an application for an individual injection well permit for any well covered by the area permit is filed.

(4) Prior to commencement of injection operations in any well within the permit area, the operator shall file an application for an individual well permit with the commission in Austin. The individual well permit application shall include the following:

(A) the well identification and, for a new well, a location plat;

(B) the location of any well drilled within 1/4 mile of the injection well after the date of application for the area permit and the status of any well located within 1/4 mile of the injection well that has been abandoned since the date the area permit was issued, including the plugging date if such well has been plugged;

(C) a description of the well configuration, including casing and liner sizes and setting depths, the type and amount of cement used to cement each casing string, depth of cement tops, and tubing and packer setting depths;

(D) an application fee in the amount of \$100 per well; and

(E) any other information required by the area permit.

(5) An individual well permit may be issued by the commission or its delegate in writing or, if no objection to the application is made by the commission or its delegate within 20 days of receipt of the application, the individual well permit shall be deemed issued.

(6) All individual injection wells covered by an area permit must be permitted in accordance with the requirements of this subsection and converted or completed, operated, maintained, and plugged in accordance with the requirements of this section and the area permit.

(l) Gas storage operations. Storage of gas in productive or depleted reservoirs shall be subject to the provisions of §3.96 of this title (relating to Underground Storage of Gas in Productive or Depleted Reservoirs).

(m) Plugging. Injection wells shall be plugged upon abandonment in accordance with §3.14 of this title (relating to Plugging).

(n) Penalties.

(1) Violations of this section may subject the operator to penalties and remedies specified in Title 3 of the Natural Resources Code and any other statutes administered by the commission.

(2) The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) for violation of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## TITLE 22. EXAMINING BOARDS

# PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners adopts amendments to §1.22, concerning Registration by Reciprocal Transfer; §1.43, concerning Reexamination; §1.69, concerning Education Requirements; §1.144, concerning Dishonest Practice; §1.147, concerning Professional Services Procurement Act, §1.232, concerning Board Responsibilities; and new §1.29, concerning Credit for Military Service, without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7504) and will not be republished.

The amendment to §1.22 and new §1.29 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and veterans credit for military education, training and experience toward licensure.

The amendment to §1.43 allows the board to grant an extension to the 5-year deadline for passing all parts of the architectural registration examination. The amendment would allow one or more extensions for a serious medical condition and for the commencement of active duty service in the United States military. The extension would be for the full period of the medical condition or active duty service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The amendment to §1.69 waives the continuing education requirement for initially registered and reinstated architects through December 31st of the year during which initial or reinstated registration is issued. The amendment would aid in the implementation of a recently adopted modification to the continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. The amendment would allow an exemption for Architects when renewing registration after the initial period of registration or a reinstated registration because they may not have been registered and completing continuing education during much or any of the preceding calendar year.

The amendments to §1.144 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term "intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage in the conduct or to bring about the reasonable result of the conduct. The amendment would specify that an architect's actions are "knowing" or "with knowledge" when circumstances indicate a reasonably prudent architect would be aware of the nature of the conduct or that the circumstances exist. The term is defined for purposes of a prohibition upon architects giving testimony with actual knowledge it is false. The definitions of both terms are derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The rule would also amend a provision which forbids architects from giving a good or service of significant value to a governmental entity in response to a request for proposals, a request for qualifications or otherwise during the process for selecting an architect. The amendment would define the term "significant value" as the amount or extent of value which would affect the procurement process or create the appearance of obli-

gation or bias in favor of the architect who provided the good or service.

The amendments to §1.147 define the term "competitive bid" to implement the Professional Services Procurement Act which prohibits governmental entities from selecting a provider of architectural services on the basis of competitive bid. As amended, the rule would prohibit an architect from providing any fee data or any data from which the architect's fee could be extrapolated or indirectly derived, during the qualifications-based selection stage of the process for procuring architectural services.

The amendments to §1.232 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

No comments were received regarding adoption of the rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §1.22, §1.29

The amendments and new rule are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. Sections 1.22 and 1.29 are adopted pursuant to §55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

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 November 3, 2014.

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Cathy L. Hendricks, RID, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-9040



## SUBCHAPTER C. EXAMINATION

### 22 TAC §1.43

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §1.69

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.69 are proposed pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

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 H. PROFESSIONAL CONDUCT

### 22 TAC §1.144, §1.147

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.144 are adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders. The amendments to §1.147 are adopted pursuant to §1051.203(c), Texas Occupations Code, which requires the board to adopt rules to prohibit its certificate holders from submitting a competitive bid to or soliciting a competitive bid on behalf of a governmental entity which may not make a selection or award a contract on the basis of competitive bids under the Professional Services Procurement Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER L. HEARINGS--CONTESTED CASES

### 22 TAC §1.232

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §1.232 are adopted pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

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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Cathy L. Hendricks, RID, ASID/IIDA  
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## CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners adopts amendments to §3.22, concerning Registration by Reciprocal Transfer; §3.43, concerning Reexamination; §3.69, concerning Continuing Education Requirements; §3.144, concerning Dishonest Practice; §3.232, concerning Board Responsibilities; new §3.29, concerning Credit for Military Service; and the repeal of §3.147, concerning Professional Services Procurement Act, without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7509) and will not be republished.

The amendment to §3.22 and new §3.29 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and veterans credit for military education, training and experience toward the education and experience prerequisites for licensure.

The amendment to §3.43 allows the board to grant extensions to the 5-year deadline for passing all parts of the landscape architecture registration examination. The amendment would allow one or more extensions for a serious medical condition and for active duty service in the United States military. The extension would be for the full period of the medical condition or active duty

service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The amendment to §3.69 waives the continuing education requirement for initially registered and reinstated landscape architects through the end of the calendar year of initial registration or reinstatement. The amendment would aid in the implementation of a recently adopted modified continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. A landscape architect who renews registration after the initial period of registration or after reinstatement of registration may not have been registered during much or any of the preceding calendar year and therefore would not have been fulfilling continuing education requirements during that calendar year.

The amendments to §3.144 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term "intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage in the conduct or to bring about the reasonable result of the conduct. The definition of the term is derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The amendments also modifies a provision which prohibits landscape architects from giving a good or service of significant value to a governmental entity in response to a request for proposals, a request for qualifications or otherwise during the process for selecting a landscape architect. The amendment would define the term "significant value" for purposes of the prohibition as a level or amount of value adequate to affect the procurement process or to create the appearance of obligation or bias to select the landscape architect who provided the good or service.

The board adopts the repeal of §3.147 because the qualification-based selection process applicable to architects in the Professional Services Procurement Act does not apply to landscape architects.

The amendments to §3.232 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

No comments were received regarding adoption of the rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §3.22, §3.29

The amendments and new rule are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendment to §3.22 and new §3.29 are adopted pursuant to §55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. EXAMINATION

### 22 TAC §3.43

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §3.69

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §3.69 are adopted pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

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 H. PROFESSIONAL CONDUCT

### 22 TAC §3.144

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §3.144 are adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders.

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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Executive Director  
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### 22 TAC §3.147

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The repeal of §3.147 is adopted pursuant to §2254.004, Texas Government Code, the Professional Services Procurement Act, which is limited in its application to architectural, engineering and land surveying services but not landscape architecture.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER K. HEARINGS--CONTESTED CASES

### 22 TAC §3.232

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement

chapter 1051, Texas Occupations Code. The amendments to §3.232 are adopted pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

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 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners adopts amendments to §5.32, concerning Registration by Reciprocal Transfer; §5.53, concerning Reexamination; §5.79, concerning Continuing Education Requirements; §5.154, concerning Dishonest Practice; §5.242, concerning Board Responsibilities; and new §5.39, concerning Credit for Military Service, without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7514) and will not be republished.

The amendments to §5.32 and new §5.39 implement Chapter 55, Texas Occupations Code, which requires regulatory boards to adopt rules giving priority to the processing of applications for reciprocal licensure to spouses of military personnel and requires regulatory boards to give military service members and veterans credit for military education, training and experience toward the education and experience prerequisites for licensure.

The amendments to §5.53 allows the board to grant extensions to the 5-year deadline for passing all parts of the NCIDQ examination. The amendment would allow one or more extensions for a serious medical condition and for active duty service in the United States military. The extension would be for the full period of the medical condition or active duty service. Currently, the rule allows one 6-month extension for the birth or adoption of a child.

The amendments to §5.79 waives the continuing education requirement for initially registered and reinstated registered interior designers through the calendar year of initial registration or reinstatement. The amendment would aid in the implementation of a recently adopted modified continuing education reporting schedule which requires reporting on compliance over the course of the previous calendar year. A registered interior designer who renews registration after the initial period of registration or after reinstatement of registration may not have been registered during much or any of the preceding calendar year and therefore would not have been fulfilling continuing education requirements during that calendar year.

The amendments to §5.154 define the term "intent" for purposes of prohibitions upon acting or refraining to act with the intent to defraud, mislead or create a misleading impression. The term

"intent" is defined as engaging in conduct of a nature which demonstrates a conscious objective or desire to engage in the conduct or to bring about the reasonable result of the conduct. The definition of the term is derived from Chapter 6 of the Texas Penal Code which defines culpable mental states for purposes of describing criminal responsibility. The amendment also defines the term "significant value" for purposes of a prohibition on giving goods or services of significant value to a governmental entity during the governmental entity's process to procure interior design services. The term "significant value" is defined as such value as to affect the procurement process or create the appearance of obligation or bias to select the registered interior designer who provided the good or service.

The amendments to §5.242 update the table of recommended sanctions to specify penalties for listed violations of laws enforced by the board, to clarify the description of the violations, to list offenses which had not previously been listed on the table, and to correct cross-references to rules listed in the table.

No comments were received regarding adoption of the rules.

## SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §5.32, §5.39

The amendments and new rule are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendment to §5.32 and new §5.39 are adopted pursuant to §§55.006 and §55.007, Texas Occupations Code, which require state agencies to adopt rules to implement provisions relating to the reciprocal licensure of military spouses and the licensure of military personnel and veterans.

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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Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-9040



## SUBCHAPTER C. EXAMINATION

### 22 TAC §5.53

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §5.79

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.79 are adopted pursuant to §1051.356, Texas Occupations Code, which requires the board to administer continuing education programs for its certificate holders.

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 H. PROFESSIONAL CONDUCT

### 22 TAC §5.154

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.154 are adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for its certificate holders.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER K. HEARINGS--CONTESTED CASES

### 22 TAC §5.242

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendments to §5.242 are adopted pursuant to §1051.252(a), Texas Occupations Code, which requires the board to establish a comprehensive procedure for adjudicating complaints, including sanctions.

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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## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.2, 801.42, 801.44, 801.52, 801.53, 801.113, 801.142, 801.143, 801.204 and 801.236, concerning the licensing and regulation of marriage and family therapists. The amendment to §801.44 is adopted with changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4886). The amendments to §§801.2, 801.42, 801.52, 801.53, 801.113, 801.142, 801.143, 801.204 and 801.236 are adopted without changes and, therefore, the sections will not be republished.

The proposed amendments to §801.112 and §801.114, published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4886) are withdrawn, and are repropose for publication in this issue of the *Texas Register*.

#### BACKGROUND AND PURPOSE

The amendments clarify several definitions and specify who may provide sex offender treatment. The amendments indicate certain required forms and procedures to better assist clients. The amendments specify proper license certificate display and acceptable advertising and announcements. The amendments specify academic requirements and also include new requirements for applicants beginning a graduate degree program in marriage and family therapy on or after August 1, 2017. The amendments increase the frequency of supervision for licensed marriage and family therapist associates and increase the number of associates supervisors may supervise. The amendments also implement Senate Bill 162 and House Bill 2254 of the 83rd Legislature, Regular Session, 2013, which amend 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. Finally, the proposal specifies new requirements for a licensee desiring an inactive status.

#### SECTION-BY-SECTION SUMMARY

The following amendments are adopted concerning Subchapter A (relating to the Introduction).

The amendments to §801.2 clarify the appropriate terminology for Associate and Supervisor. Additional amendments to §801.2 increase a supervision hour from 45 to 50 minutes.

The following amendments are adopted concerning Subchapter C (relating to Guidelines for Professional Therapeutic Services and Code of Ethics).

Amendments to §801.42 clarify that sex therapy does not include the treatment for sex offenses.

Amendments to §801.44 add the requirement that licensees must provide written notification to clients of the important aspects to treatment and confidentiality. Amendments to §801.44 also add the requirement that licensees should obtain and review custody agreements of court orders prior to the commencement of therapy services to minor clients. Also, the word "counseling" was replaced with the word "therapy" as a non-substantive clarifying change for accuracy and consistency.

Amendments to §801.52 add language that allows licensees to display true and accurate copies of their original board-issued license certificate.

Amendments to §801.53 clarify the appropriate terminology a licensee may use when advertising.

The following amendments are adopted concerning Subchapter F (relating to Academic Requirements for Examination and Licensure).

Amendments to §801.113 add language to designate acceptable degrees and specify the date on which increased number of required semester hours will be implemented.

The following amendments are adopted concerning Subchapter G (relating to Experience Requirements for Licensure).

Amendments to §801.142 change the terminology from "supervision contract" to "Supervisory Agreement Form."

Amendments to §801.143 increase, from eight to twelve, the number of supervisees a supervisor may supervise at one time.

The following amendments are adopted concerning Subchapter I (relating to Licensing).

Amendments to §801.204 add new language to identify the 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). The amendments also establish the standards for licensing under this section and modify existing language for clarity and organization.

The following amendments are adopted concerning Subchapter J (relating to License Renewal and Inactive Status).

Amendments to §801.236 clarify that inactive status requests must be submitted in writing on a board-approved Inactive License Status Request Form.

#### COMMENTS

The board received many comments to the proposed rules and prepared responses to the comments received. The commenters included individuals and the following associations, organizations and universities: Texas Counseling Association, American Association for Marriage and Family Therapy, Texas Medical Association, the Federation of Texas Psychiatry, Capella University and Northcentral University. Commenters were generally in favor of the rules; however, some commenters suggested recommendations for change as discussed in the summary of comments. One commenter opposed the rules in their entirety.

COMMENT: Regarding the proposed rules as a whole, one commenter disagreed with all of the proposed changes, opining that additional requirements and added work were unnecessary.

RESPONSE: The board disagrees with the comment because the comment is too global, vague and lacks specificity. The board is open to considering changes and will refer the comment to the Rules Committee.

COMMENT: Regarding the rules as proposed, the Texas Counseling Association endorsed the changes made in §801.2(5), (14) and (28); §801.42(2); §801.44(b), (c) and (d); §801.52(a) and (c); §801.53(d) and (f); §801.112(a); §801.113(c); §801.114(b)(10) and (10)(A); §801.142(1)(A)(iii)(v), (1)(D); §801.143(f)(3); §801.204; and §801.236(a).

RESPONSE: The board appreciates the support. No changes were made as a result of the comment.

COMMENT: Concerning §801.44(c), one commenter partially supported the rule as proposed but also suggested that the board consider adding language to ensure that the parent signing for consent for a minor has an independent right to consent for the minor's treatment.

RESPONSE: The board appreciates the support. No changes were made to the proposed language as a result of this comment; the board will forward the comments to the Rules Committee for further consideration.

COMMENT: Regarding the proposed changes to §801.112(a), which removed a tiered system with a preference for schools accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), one commenter supported the change because the previous rules placed graduates of non-accredited programs at a disadvantage when applying for licensure.

RESPONSE: The board has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding the proposed changes to §801.112(a), which removed a tiered system with a preference to COAMFTE accredited schools, a total of 5 commenters were against the proposed change, asserting the changes did not protect the public and unnecessarily departed from the national standard. The commenters requested that the board retain the current tiered system in the existing rules.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Concerning §801.112(a), a total of 20 commenters, Capella University, and 19 individuals, opposed the changes to the rules and argued the board should maintain a tiered system and should include COAMFTE and the Counsel for Accreditation of Counseling and Related Educational Programs (CACREP) accredited programs to help maintain quality and protect the public.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Concerning §801.112(a), one commenter requested that the rules specify the minimum number of hours required for a practicum and allow graduates who exceed the minimum number to receive credit for those hours as post-graduate experience.

RESPONSE: The board disagrees because the rules as proposed do include the commenter's requested language at §801.114(b)(10). No change was made as a result of the comment.

COMMENT: Concerning §801.112(a), three commenters requested that the clinical practicum include both 12 months and 9 semester hours, or at the least require a full 12 months.

RESPONSE: The board disagrees with the comments because it creates an undue burden on the universities to provide 12 month long internships. No changes were made as a result of the comments.

COMMENT: Concerning §801.112(a), Capella University, Northcentral University, and 14 individuals commented that the proposed rule would unfairly require students currently enrolled in an accredited marriage and family therapy program to pay for and complete additional coursework in order to become licensed. The commenters requested that the board add a "grandfathering" provision for students currently enrolled in a program.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Concerning §801.112(a), Capella University and Northcentral University requested that the board include language from the existing rules which allowed a Licensed Marriage and Family Therapist Associate to make up a pre-graduation practicum deficit during post-graduate supervision.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.



COMMENT: Concerning §801.113(c), six commenters supported the change from 45 to 60 hours for those applicants starting August 1, 2017, because requiring 60 hours would make it easier for Texas graduates to gain licensure in other states and would allow licensed marriage and family therapists in Texas to remain competitive with licensed professional counselors.

RESPONSE: The board appreciates the comments. No change was made as a result of the comments.

COMMENT: Concerning §801.113(c), one commenter opposed the change from 45 to 60 hours citing that no study exists that demonstrates a necessity for this increase.

RESPONSE: The board disagrees with the comment. The board asserts that the proposed changes provide for a higher and more appropriate standard of education. No change was made as a result of the comment.

COMMENT: Regarding §801.114(b), one commenter requested that the board allow the required course content to be covered in more than just one course.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.114(b), one commenter asked if the proposed new courses would impede licensure in the State of Texas.

RESPONSE: Although technically not a comment, but rather a question, the board replies that it does not foresee any such impediments as a result of these courses.

COMMENT: Regarding §801.114(b)(4), the Texas Medical Association and the Federation of Texas Psychiatry stated that the proposed requirement for the course "psychopathology--including but is not limited to traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders (3 semester hours)" should be deleted because it appears to infer that licensed marriage and family therapists can diagnose mental disorders, which these commenters allege is protected in Texas as the practice of medicine, and therefore the commenters allege the proposed rule as written appears to create confusion regarding the proper scope of a licensed marriage and family therapist's practice.

RESPONSE: The board appreciates the comment but disagrees. The board asserts that the proposed changes provide for a higher and more appropriate standard of education. No changes were made as a result of the comments.

COMMENT: Regarding §801.114(b)(7), one commenter stated that the proposed requirement for the course "treatment of addictions and knowledge of psychopharmacology" should be subsumed under other courses and not required as a separate course because the change would require a course to meet two different standards, one for Texas and one for COAMFTE.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.114(b)(7), one commenter asserted that the proposed requirement for the course "treatment of addictions and knowledge of psychopharmacology" was poorly worded, not appropriate for marriage and family therapy students and opined addictions and psychopharmacology are

not related fields. The commenter requested that this requirement be completely removed.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.114(b)(8), the American Association for Marriage and Family Therapy, Capella University, Northcentral University, and eight individual commenters asserted that the proposed requirement for the course "therapy in community settings" would make it more difficult for marriage and family therapists trained in other states to become licensed in Texas, because this course is not commonly a part of the Marriage and Family Therapists curriculum, nor is it included in the licensure requirements in other states. The commenters suggest that inclusion of such a course should be optional and not mandatory, or could be subsumed under other courses.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.114(b)(9) the American Association for Marriage and Family Therapy, Capella University, Northcentral University, and ten individual commenters asserted that the proposed requirement for the course "management of crisis situations" would make it more difficult for marriage and family therapists trained in other states to become licensed in Texas, because this course is not commonly a part of the MFT curriculum, nor is it included in the licensure requirements in other states. The commenters suggested that inclusion of such a course should be optional and not mandatory, or could be subsumed under other courses.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.114(b)(10), one commenter opposed the reduction in direct client contact hours.

RESPONSE: The board disagrees because the rules as proposed will not result in a reduction of client contact hours. The board asserts that the proposed rule creates minimum requirements. No changes were made as a result of the comments.

COMMENT: Regarding §801.114(b)(10), one commenter opposed the increase in hours required for the practicum, citing that no study exists that demonstrates the increase.

RESPONSE: The board agrees that they are not aware of a study demonstrating the need for an increase in practicum hours. The board is not required to have empirical evidence. No changes were made as a result of the comment.

COMMENT: Regarding §801.114(b)(10), one commenter opposed the change to 75 hours of direct contact with couples and families due to the difficulty in obtaining these hours, and proposed that the board instead change the requirement to 60 hours.

RESPONSE: The board disagrees with the comment. The board asserts that the proposed minimum requirement provides an appropriate amount of direct experience. No change was made as a result of the comment.

COMMENT: Regarding §801.114(c), the Texas Counseling Association requested that the board delete the phrase "shall be courses related primarily to systemic marriage and family ther-

apy" on the grounds that the rule as written would have the unintended consequence of disallowing other courses that support clinicians' skills working with individuals and groups, such as psychodrama, grief/loss, sand tray and supervision.

RESPONSE: The board agrees in part and has withdrawn this rule. The rule will be repropounded in the *Texas Register* with modified language for a 30-day comment period.

COMMENT: Regarding §801.142(1)(A)(iii)(V), three commenters requested that the board either explicitly define "good cause" or explicitly assign the determination of good cause to the supervisor.

RESPONSE: The board disagrees with the commenters. The rules as proposed do appropriately leave "good cause" to the discretion of the supervisor. No changes were made as a result of the comments.

COMMENT: Regarding §801.142(1)(A)(iii)(V), two commenters opposed the proposed change that supervisors meet with supervisees every week, suggesting this requirement would prohibit flexibility and variations in schedules and make-up hours.

RESPONSE: The board disagrees with the comments. The board asserts that the proposed changes are appropriate for the level of independent practice afforded to Licensed Marriage and Family Therapist Associates under the rules. No changes were made as a result of the comments.

COMMENT: Regarding §801.142(1)(A)(iii)(V), one commenter opposed the proposed change as extreme and too costly for individuals attempting to simultaneously complete supervision hours for both marriage and family therapy and professional counseling, and requested that the board withdraw the proposed change and retain the current standard in the existing rules.

RESPONSE: The board disagrees with the commenter. The board asserts that the proposed changes are appropriate for the level of independent practice afforded to Licensed Marriage and Family Therapist Associates under the rules. Any additional cost incurred by licensees would be offset by the improved services to consumers. No changes were made as a result of the comment.

COMMENT: Regarding §801.204, the American Association for Marriage and Family Therapy and one commenter supported the amendments as proposed.

RESPONSE: The board appreciates the support. No change was made as a result of the comments.

Concerning §801.44(c), the word "counseling" was replaced with the word "therapy" as a non-substantive clarifying change for accuracy and consistency, in response to a board comment.

## SUBCHAPTER A. INTRODUCTION

### 22 TAC §801.2

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

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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Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

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## SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

### 22 TAC §§801.42, 801.44, 801.52, 801.53

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

#### §801.44. *Relationships with Clients.*

(a) A licensee shall provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee shall make known in writing to a prospective client the important aspects of the professional relationship, including but not limited to, the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Prior to the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee shall maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

(d) A licensee shall make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration shall be given or received by a licensee for the referral of clients

for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law regarding illegal remuneration.

(f) A licensee shall not exploit his/her position of trust with a client or former client.

(g) A licensee shall not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee shall not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee shall set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee shall make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a non-therapeutic relationship arises.

(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.

(o) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to in writing.

(p) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(q) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone, electronic communication, or mail, and must adhere to all other provisions of this chapter.

(r) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(s) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(t) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(u) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

(v) A licensee shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(w) A licensee shall refrain from providing services while impaired by medication, drugs, or alcohol.

(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee shall not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice.

(z) A licensee shall not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

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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Michael Puhl

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## SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

### 22 TAC §801.113

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

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



## SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

### 22 TAC §801.142, §801.143

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

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 November 3, 2014.

TRD-201405229

Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: November 23, 2014

Proposal publication date: June 27, 2014

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



## SUBCHAPTER I. LICENSING

### 22 TAC §801.204

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

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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Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

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



## SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

### 22 TAC §801.236

#### STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter; Texas Occupations Code, and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

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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Michael Puhl

Board Chair

Texas State Board of Examiners of Marriage and Family Therapists

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



## 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, adopts an amendment to §831.25, concerning the licensing of military service members, military veterans, and military spouses, without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6145) and, therefore, the section will not be republished.

## 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.

## COMMENTS

The board did not receive any comments regarding the proposed rule during the comment period.

## 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 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 November 3, 2014.

TRD-201405170

Meredith Rentz-Cook  
Chair

Texas Midwifery Board

Effective date: November 23, 2014

Proposal publication date: August 15, 2014

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



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 221. MEAT SAFETY ASSURANCE SUBCHAPTER B. MEAT AND POULTRY INSPECTION

## 25 TAC §221.11

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §221.11, concerning federal regulations on meat and poultry inspection, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4118). The section will not be republished.

## BACKGROUND AND PURPOSE

Health and Safety Code, §433.071 requires the department to ensure that department rules are at least equal to the federal regulations administered by the United States Department of Agriculture (USDA) Food Safety Inspection Service.

USDA adopted 9 CFR Parts 418 and 442. 9 CFR Part 418 requires establishments to prepare and maintain written recall procedures and to notify the department within 24 hours of learning or determining that adulterated meat products entered commerce. 9 CFR Part 442 prescribes the requirements for measuring and labeling content weight for meat products. 9 CFR 442 does not create new requirements but instead updates and consolidates language from 9 CFR 317 and 9 CFR 381, which the department had previously adopted in §221.11.

The adopted amendment is necessary to ensure department rules are at least equal to USDA's federal regulations, in accordance with Health and Safety Code, §433.071.

## SECTION-BY-SECTION SUMMARY

Amendment to §221.11(a)(1) updates the title of 9 CFR (Code of Federal Regulations), Part 301. The title "Terminology; Adulteration and Misbranding Standards" replaces the title "Definitions."

Amendment to §221.11(a)(26) corrects a grammatical error to maintain consistency with the current wording of 9 CFR, Part 350. The title "Special Services Relating to Meat and Other Products" replaces "Special services relation to meat and other products."

Amendment to §221.11(a)(27) updates the title of 9 CFR, Part 352. The title "Exotic Animals and Horses; Voluntary Inspection" replaces "Exotic animals; voluntary inspection."

New §221.11(a)(34) adopts by reference "9 CFR, Part 418, Recalls." 9 CFR, Part 418, requires establishments to prepare and maintain written recall procedures and to notify the department within 24 hours of learning or determining that adulterated meat products entered commerce.

The amendments to §221.11(a)(34) - (36) renumbers the paragraphs to (a)(35) - (37).

New §221.11(a)(38) adopts by reference 9 CFR, Part 442, "Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights." 9 CFR, 442 prescribes the requirements for measuring and labeling content weight for meat products and also updates and consolidates language from 9 CFR 317 and 9 CFR 381, which had been previously adopted in §221.11.

The amendments to §221.11(a)(2) - (25) and (28) - (33) revise the text for grammar and other technical form.

Amendment to §221.11(b) updates the Internet website link from "<http://www.tdh.state.tx.us/bfds/msa/meatinsp.html>" to "<http://www.dshs.state.tx.us/msa/>."

## COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendment is adopted under the Health and Safety Code, Chapter 433, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt and use federal rules, regulations, and procedures for meat and poultry inspection; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2014.

TRD-201405212

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: November 23, 2014

Proposal publication date: May 30, 2014

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



## CHAPTER 229. FOOD AND DRUG SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

### 25 TAC §229.434

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §229.434, concerning the licensing of device distributors and manufacturers, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4120). The section will not be republished.

#### BACKGROUND AND PURPOSE

The amendment implements House Bill 1395, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, §431.273, exempting persons from licensing as device distributors or manufacturers if the person holds a registration certificate issued under Occupations Code, Chapter 266, Regulation of Dental Laboratories, and engages only in conduct within the scope of that registration.

#### SECTION-BY-SECTION SUMMARY

The amendment to §229.434 adds subsection (b) to define new statutory licensing exemption requirements for device distribu-

tors and manufacturers. The amendment also renumbers existing subsection (b) as subsection (c) and corrects citations and grammar.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §431.241, which provides the department with authority to adopt rules to enforce the Texas Food, Drug and Cosmetic Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration and enforcement of the Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2014.

TRD-201405190

Lisa Hernandez  
General Counsel

Department of State Health Services

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Proposal publication date: May 30, 2014

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER F. GROUP HEALTH

##### INSURANCE MANDATORY CONVERSION

##### PRIVILEGE

### 28 TAC §§3.501 - 3.520

The commissioner of insurance adopts the repeal of 28 TAC Chapter 3, Subchapter F, concerning Group Health Insurance Mandatory Conversion Privilege. The repeal is adopted without changes to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5077).

REASONED JUSTIFICATION. Adoption of the repeal will eliminate rules replaced by the proposed new 28 TAC Chapter 21,

Subchapter SS. The repeal of 28 TAC Chapter 3, Subchapter F; its replacement by the proposed new 28 TAC Chapter 21, Subchapter SS; and concurrently proposed amendments to 28 TAC Chapter 11, Subchapter F; are necessary to conform TDI's continuation and conversion rules to statutory changes, including HB 710, 75th Legislature, Regular Session (1997) and SB 1771, 81st Legislature, Regular Session (2009), and to consolidate the rules for insured and HMO products to enhance consistency in the market to the extent possible. The repealed, amended, and new rules will conserve agency resources by reducing the need for multiple rule projects resulting from future changes in continuation or conversion laws.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** TDI received no comments on the published proposal for repeal.

**STATUTORY AUTHORITY.** TDI adopts the repeal under Insurance Code §§36.001, 843.051(b)(3), 1251.008, 1251.251, 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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.

Section 843.051(b)(3) states, "(b) A health maintenance organization is subject to...(3) Subchapter G, Chapter 1251, and Section 1551.064."

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251 states, "(a) An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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 October 28, 2014.

TRD-201405046

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: November 17, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 463-6326



## SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

### 28 TAC §3.3602

The commissioner of insurance adopts the repeal of 28 TAC Chapter 3, Subchapter F, §3.3602, concerning Group Health Insurance Mandatory Conversion Privilege. The commissioner adopts the repeal without changes to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5078). The repeal is related to the separate adoption of a new 28 TAC Chapter 21, Subchapter SS, and the adoption of amendments to 28 TAC Chapter 11, Subchapter F, both published in this issue of the *Texas Register*.

**REASONED JUSTIFICATION.** As the 1993 adoption of amendments to §3.3602 notes, the section was amended to apply only to coverage issued for delivery or renewed before January 1, 1994, as a result of statutory changes and because the rule was replaced by the rules in Chapter 3, Subchapter F, which govern policies issued or renewed after that date. Because policies are renewed yearly, the rule no longer applies to any policies and can safely be repealed.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** TDI received no comments on the published proposal for repeal.

**STATUTORY AUTHORITY.** TDI adopts this repeal under Insurance Code §§36.001, 1251.008, 1251.251, 1251.253, 1251.258, and 1251.260.

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.

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251 states, "(a) An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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 October 28, 2014.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6326



## SUBCHAPTER QQ. PROVIDER NETWORK CONTRACT REGISTRATION

### 28 TAC §§3.9801 - 3.9805

The Texas Department of Insurance adopts Subchapter QQ and 28 TAC §§3.9801 - 3.9805 to implement Insurance Code Chapter 1458 enacted under SB 822, 83rd Legislature, Regular Session, 2013. Sections 3.9801 - 3.9805 are adopted with changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4625).

REASONED JUSTIFICATION. The adopted sections: (1) instruct contracting entities on the information required to be submitted and adopt a Provider Network Contracting Entity Registration Form and a Provider Network Contracting Entity

Exemption of Affiliates Form for contracting entities to use; (2) clarify certain submission requirements; (3) establish an initial registration fee; and (4) clarify the express authority requirement for contracts. In response to written comments on the published proposal, TDI has adopted changes to the proposed text in §§3.9801 - 3.9803 and 3.9805. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice in the proposal. TDI has also made nonsubstantive changes to the proposed text to reflect *Texas Register* style guidelines. The following discussion provides the reasoned justification for the adopted sections.

§3.9801. Definitions and General Provisions. This section incorporates the definitions established in Insurance Code Chapter 1458, including both general definitions under Insurance Code §1458.001 and the definition of a health benefit plan under Insurance Code §1458.002. TDI has also defined terms used in Insurance Code Chapter 1458 in this proposal and provided clarification for some of the definitions. The term "TDI" has also been added as a definition.

The statutorily defined term "affiliate" is clarified to include each person that is an affiliate under Insurance Code Chapter 823. The clarification is consistent with Insurance Code Chapter 1458 because the definition of affiliate under Insurance Code §1458.001(1) is the same as that used in Insurance Code §823.003(a). In addition, Insurance Code §1458.001(6) defines "person" as having the same meaning as Insurance Code §823.002, and Insurance Code §1458.055(a)(1) provides that the affiliate cannot be subject to a disclaimer of affiliation under Chapter 823. This clarification will assist persons required to comply with these rules by providing them with a known basis for determining if a person is an affiliate.

TDI has added "fee schedule" as a defined term based on a comment. Fee schedule is used several times in Insurance Code §1458.101(e) and also in Section 2(b) of SB 822 in reference to lines of business in the provider network contract. The phrase "payment or reimbursement terms" is used only in Insurance Code §1458.101(b) in reference to the provider network contract. TDI considers both to apply to the same subject. TDI has determined that it is best to clarify this usage by adding a definition for fee schedule in §3.9801 as "includes payment or reimbursement terms of the provider network contract." The defined term will apply to all references to fee schedule in §3.9805.

The section defines the terms "other provider network," "subsidiary provider network," and "primary provider network" to provide guidance to contracting entities when submitting information, and to ensure consistency in disclosure and that all network relationships are disclosed. Insurance Code §1458.052(b)(2) requires contracting entities to disclose "the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks." Insurance Code §1458.055(a)(2) creates a similar requirement for contracting entities claiming an exemption for affiliates to disclose the "relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks." Insurance Code Chapter 1458 does not define the subsidiary or other networks.

The requirements §1458.052(b)(2) and §1458.055(a)(2) to disclose relationships with affiliates and the statement "including subsidiary or other networks" indicate that the legislature intended that those networks were to be included in addition to some other type of network of the contracting entity. Insurance Code Chapter 1458 does not define this network.



TDI proposed definitions for these terms based in part on the coverage each provided. Commenters indicated that the proposed definitions were not standard in the industry and were confusing. To address the comments, the adopted definitions have been changed to be based on the contracting entity and the relationship between the submitting entity and the contracting entity.

The term "primary network" has been revised to mean a provider network in which the contracting entity submitting the form is the contracting entity for the network. The term "subsidiary network" has been revised to mean a provider network in which the contracting entity or entities for the provider network are an affiliate of the contracting entity submitting the form, except for a provider network that also qualifies as a primary provider network. The exception means the network need only be disclosed as a primary provider network. The term "other provider network" has been revised to mean a provider network that may be accessed by the contracting entity submitting the form or the submitting entity's affiliate, but in which the contracting entity for the provider network is not an affiliate of the entity submitting the form. As defined, these terms should involve less subjective judgment in determining the type of network while still providing for the disclosure of provider network relationships.

Section 3.9801(c) clarifies three matters related to contracting entities. Subsection (c)(1) provides that the term "provider network contracting entity" has the same meaning as "contracting entity" in this subchapter. This definition is based on Insurance Code Chapter 1458, which refers to Provider Network Contract Arrangements and defines "contracting entity" to mean "a person who...in the ordinary course of business establishes a provider network or networks for access by another party."

Section 3.9801(c)(2) clarifies that a person begins to act as a contracting entity when the person enters into or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals to create a provider network or networks to be accessed by another party. It is at that point the payment or reimbursement terms of the provider network contract must be known and it is the provider network contract, not the access by other parties that triggers the responsibilities of a contracting entity under Insurance Code Chapter 1458, Subchapter C.

Subsection (c)(3) clarifies that access to a provider network or networks by another party includes access by an affiliate because, as it is defined in Insurance Code §1458.001, an affiliate is a separate person from the contracting entity. This also clarifies that a contracting entity exists even if it only allows affiliates to access its provider network or networks and denies access to nonaffiliates.

§3.9802. Provider Network Contracting Entity Registration Form Required. The purpose of the submission requirements in Insurance Code §1458.051 and §1458.055 is the identification of provider network contracting entities and affiliates. This includes health maintenance organizations (HMOs) and other persons holding a certificate of authority issued by TDI to engage in the business of insurance in this state, and other persons that operate as provider network contracting entities. The identification process involves submitting either the Provider Network Contracting Entity Registration Form or the Provider Network Contracting Entity Exemption of Affiliates Form under §3.9802 or §3.9803.

Section 3.9802(a) adopts the Provider Network Contracting Entity Registration Form by reference. The form is authorized under Insurance Code §1458.053. The disclosures required by the form are specified in Insurance Code §1458.052.

The adopted form has been changed from the proposal to include the disclosures required under Insurance Code §1458.052(b). These requirements were not printed in the original proposed form; however, they are required by statute. The proposal noticed in its preamble that the form would require disclosures specified under Insurance Code §1458.052. This is not a new requirement or cost of the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information. Although authorized under Insurance Code §1458.052(a)(4), the adopted form does not require information in addition to the statutory disclosures.

Section 3.9802(b) requires contracting entities not described in §3.9802(c) to submit the registration form and the required fee within 30 days of beginning to act as a contracting entity to comply with Insurance Code §1458.051(a) and §1458.054. Subsection (b) also provides existing contracting entities until December 1, 2014, to submit the registration form as a reasonable period following the adoption of these rules to comply with the submission requirement. This compliance date only applies to the submission of the required form and not the statute as a whole.

Section 3.9802(c) describes contracting entities that are not required to register under this section. The entities listed in this subsection have not changed from the proposed text. These entities include contracting HMOs operating under Insurance Code Chapter 843 or other persons holding a certificate of authority that are required to register under §3.9803 and do not have an affiliates or are not requesting an affiliate exemption under §3.9803.

In response to comments, TDI has modified §3.9802(c)(3), to clarify that affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 must have been granted an exemption by the commissioner before they are exempt from the submission requirements under this section. The affiliate entities are listed here because the exemption under Insurance Code §1458.051(b) applies not only to affiliated contracting entities that are HMOs or that hold a certificate of authority, but also to those affiliates that would otherwise be required to register under Insurance Code §1458.051(a). The submission requirements and exemptions applicable to the entities described in §3.9802(c) are further addressed in the discussion of §3.9803.

Section 3.9802(d) requires contracting entities submitting the Provider Network Contracting Entity Registration Form to report any changes to the information submitted in the form no later than the 30th day after the day the change takes effect. This requirement is necessary for TDI to have current name and contact information for the contracting entity, which is required under Insurance Code §1458.052. A 30-day period for updating contact information should be reasonable for the contracting entity to perform this task.

Under subsection (e), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address TDI will provide on the form. This is consistent with the requirement in Insurance Code §1548.053.

§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form Required. TDI adopts the Provider Network Contract-

ing Entity Exemption of Affiliates Form by reference in subsection (a). The form is authorized under Insurance Code §1458.053.

Insurance Code §1458.055 requires an HMO or other person holding a certificate of authority issued by TDI to engage in the business of insurance to disclose the information requested under questions 6 and 7 of the Provider Network Contracting Entity Exemption of Affiliates Form. The disclosures required under questions 1 - 5 are adopted under the commissioner's general authority to adopt rules to implement this chapter under Insurance Code §1458.004. Questions 1 - 5 require the submitting entity to disclose basic identification and contact information and are similar disclosures to those required of contracting entities submitting the Provider Network Contracting Entity Registration Form under §3.9802 and listed in Insurance Code §1458.052.

Section 3.9803(b) requires an HMO or other person holding a certificate of authority issued by TDI to engage in the business of insurance in this state to submit the Provider Network Contracting Entity Exemption of Affiliates Form to comply with Insurance Code §1458.051(b). Based on comments, the adoption changes subsection (b) to indicate that affiliates that have been granted an exemption under this section are not required submit a separate form.

TDI has not changed the requirement for an HMO or other person holding a certificate of authority to submit the form even if they have no affiliates. Insurance Code §1458.051 establishes the requirement for contracting entities to register. Insurance Code §1458.051(a) applies to contracting entities that are not HMOs or that do not hold a certificate of authority. Insurance Code §1458.051(b) specifically applies to contracting entities that are HMOs or that hold a certificate of authority.

Insurance Code §1458.051(b) requires contracting entities that are HMOs or that hold a certificate of authority to submit "an application for exemption from registration under which the affiliates may access the contracting entity's network." Insurance Code §1458.051(b) does not exempt contracting entities that are HMOs or that hold a certificate of authority from Insurance Code §1458.051(a), because subsection (a) does not apply to or place any requirements on contracting entities that are HMOs or that hold a certificate of authority. The subsection does reference Insurance Code §1458.055, which addresses the procedure and requirements for the commissioner to "grant an exemption for affiliates of a contracting entity..." When read together, the exemption provided in Insurance Code §1458.051(b) and §1458.055 applies not to the contracting entity submitting the application, but to its affiliates.

Insurance Code §1458.051(b) also states that it is to be read "notwithstanding" Insurance Code §1458.051(a). That means Insurance Code §1458.051(b) creates an exception for contracting entities covered by Insurance Code §1458.051(a). Because Insurance Code §1458.051(b) allows for an affiliate exemption, the exception created by the "notwithstanding" statement is that affiliates of HMOs or other entities that hold a certificate of authority and that would otherwise be required to register under Insurance Code §1458.051(a), may be exempt under Insurance Code §1458.051(b). Insurance Code §1458.051(b) allows for the exemption of all affiliates of an HMO or other entity that holds a certificate of authority that meet the requirements of Insurance Code §1458.055.

In addition, Insurance Code §1458.051(b) places the application submission requirement on the "contracting entity that holds a certificate of authority issued by TDI to engage in the business

of insurance in this state or is a health maintenance organization." The subsection does not limit the requirement to contracting entities that have affiliates. Insurance Code §1458.051(b) is permissive concerning the exemption of affiliates providing only that, in conjunction with Insurance Code §1458.055, the affiliates accessing the contracting entity's network may be exempt from registration.

TDI considers the purpose of the Insurance Code §1458.051 and §1458.055 to be the identification of provider network contracting entities and network relationships. The requirement in §3.9803(b) is consistent with that purpose. For example, under §3.9803(b) an insurer with multiple network accessing affiliates, which may or may not be contracting entities, need only submit one form detailing the organization's network relationships under Insurance Code §1458.051(b) and §1458.055. Likewise, a third party administrator contracting entity with no accessing affiliates cannot avoid identifying its participation in the market, but must submit the application required of contracting entities with a certificate of authority under Insurance Code §1458.051.

Insurance Code §1458.054 authorizes TDI to establish and collect a fee for the submission of forms in the registration process. TDI considers submission of the form under this section to be part of the registration process under Insurance Code Chapter 1458. No additional fee is required for affiliates listed in the submission.

The period for making the submission is necessary so contracting entities will know when the action must be completed, and is reasonable based on the 30-day period established for other contracting entity registrants under Insurance Code §1458.051(a). Subsection (b) also provides existing contracting entities until December 1, 2014, as a reasonable period to comply with the submission requirement. This compliance date only applies to the submission of the required form under this section and not to the statute as a whole.

Section 3.9803(c)(1) provides that each contracting entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form must list each affiliate of the contracting entity that will access the provider networks disclosed in the submission, or the contracting entity must state that it has no affiliates. Insurance Code §1458.051 and §1458.055 require this procedure. Insurance Code §1458.051(c) provides that a contracting entity submitting the form required under Insurance Code §1458.051(b) must list its affiliates. Insurance Code §1458.055 provides that the commissioner will grant an exemption for the qualifying affiliates of the contracting entity. Because the exemption applies only to those affiliates that will access the contracting entity's network, the contracting entity must only list those affiliates that will need access to the networks, including subsidiary and other networks and the affiliate contracting entities.

As previously addressed in the discussion of this section, §3.9803(c)(1) provides that a contracting entity that is an HMO or other entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state must submit an application under §3.9803(b) even if the HMO or authorized entity has no affiliates or intends that no affiliates will access its network.

To comply with the disclosure requirements under §1458.055, §3.9803(c)(2) describes the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person that must be disclosed. Subsection (c)(2) provides that the contracting entity must also disclose if it

or an affiliate allows nonaffiliated third parties to use one or more of the disclosed networks. The disclosure must state whether the contracting entity or the affiliate provided access to a third party.

Section 3.9803(d) provides that the commissioner must grant the exemption required under Insurance Code §1458.055(b) in writing before the exemption will be effective. Requiring a written record of the exemption will provide a definite record of the exemption for all concerned parties.

Section 3.9803(e) establishes the date for the annual update of the list of the contracting entities' affiliates as required under Insurance Code §1458.051(c). Based on comments, TDI has changed the annual update requirement from January 31 of each year to August 1 of each year. Under §3.9803(f), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address TDI will provide in the Provider Network Contracting Entity Registration Form. This provision is consistent with the requirement in Insurance Code §1458.053

§3.9804. Required Fees. This section establishes a \$1,000 fee for submitting a Provider Network Contracting Entity Registration Form under §3.9802 or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803. Fees are not required for updating submissions, including a submission that lists new affiliates under a previously submitted Provider Network Contracting Entity Exemption of Affiliates Form. The one-time fee is based on other similar licensing structures and applies to the cost of recording the initial registration, recording annual updates, reviewing and granting exemptions, and maintaining the database over the duration of the program.

A contracting entity that submits a Provider Network Contracting Entity Exemption of Affiliates Form must submit the registration fee even if the contracting entity has no affiliates. The costs will be similar to those of an entity registering under §3.9802 or §3.9803, and the one-time fee will apply to the consideration and approval of any affiliates for which the entity may seek exemptions in the future.

§3.9805. Express Authority. The purpose of §3.9805 is to identify the exception to the express authority by restating Section 2(b) of SB 822, because enacting language of the bill will not always be published with the statutory provisions of Insurance Code Chapter 1458. Section 3.9805(a) provided that express authority cannot be presumed except for the exception listed in §3.9805(c). TDI considers this to be a general requirement of Insurance Code §1458.101. Based on comments, TDI removed the term "negotiated" and defined the term "fee schedule" in §3.9801. Section 3.9805(b) requires the contracting entity to notify the provider about all fee schedules applicable to that provider. It is a business decision of the contracting entity to determine how to comply with the requirements of Insurance Code §1458.101(b). Subsection (b) is not intended to limit the means of obtaining the provider's express authority or the contracting entity's ability to establish contractual requirements.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

##### General

Comment: A commenter expresses appreciation for TDI's informal rule process and TDI's willingness to seek and consider stakeholder input and revise draft rules based on that input during the rule making process.

Agency Response: TDI appreciates the commenter's and other commenters' and stakeholders' participation in TDI's informal and formal rule drafting processes.

Comment: A commenter notes that, based on its experience working to develop the National Conference of Insurance Legislators' Rental Network Contract Arrangements model Act and working with several states to implement Silent Preferred Provider Organization legislation, some corrections or changes may be needed over time to assure transparency while allowing the group health market to function efficiently.

Agency Response: TDI will consider the effect of any future legislation on these rules and welcomes stakeholder input in that process.

##### Section 3.9801(b)

Comment: Several commenters suggest that the proposed definitions of "primary network," "subsidiary network," and "other network":

- (1) seem circular;
- (2) are internally vague, inconsistent, and unnecessary;
- (3) are relative to each other and not specific enough to readily categorize the networks;
- (4) do not provide a reasonable means to label or categorize various network relationships;
- (5) raise questions on determining the primary and subsidiary network when a holding company has multiple insurance entities in the state and those entities manage multiple networks that each could meet the definition of primary or subsidiary;
- (6) do not define what is meant by "specific limited coverage, provider types, or geographic regions" in the definition of a subsidiary network; and
- (7) are unnecessary because the rule could simply require that the applicant disclose the contracted provider network relationships between it and its affiliates.

A commenter further states that it could identify which entities do contracting, but that it was not clear how the entities fit into the proposed definitions. Commenters request clarity on what the terms "primary," "subsidiary," and "other" mean.

Agency Response: TDI appreciates the comments and has revised these definitions. TDI considers the terms necessary because Insurance Code §1458.052 and §1458.055 specifically uses the terms "subsidiary" and "other" networks. The requirements in §1458.052(b)(2) and §1458.055(a)(2) to disclose relationships with affiliates and the statement, "including subsidiary or other networks," indicates that the Legislature intended that those networks be included, in addition to some other type of network of the contracting entity. These networks are not defined in Insurance Code Chapter 1458.

As demonstrated by the example in the proposal and the comments, these terms may have different meanings to different persons. However, defining the terms provides some guidance to contracting entities when submitting information and results in consistency in disclosures.

TDI acknowledges, based on the comments, that the proposed definitions could be confusing. TDI agrees with the comment that the submitting entity should be able to identify the contracting entity. The adopted definitions have been changed to be based on

the person contracting for the provider network and the relationship between the submitting entity and the contracting entity.

The term "primary network" has been revised to mean a provider contracting network in which the contracting entity submitting the form is the contracting entity for the network. The term "subsidiary network" has been revised to mean a provider network in which the contracting entity or entities for the provider network are an affiliate of the contracting entity submitting the form, except for a provider network that also qualifies as a primary provider network. The exception means the network need only be disclosed as a primary provider network. The term "other provider network" has been revised to mean a provider network that may be accessed by the contracting entity submitting the form or the submitting entity's affiliate, but in which the contracting entity for the provider network is not an affiliate of the entity submitting the form. As defined, these terms should involve less subjective judgment in determining the type of network while still providing for the disclosure of provider network relationships.

Comment: A commenter recommends that TDI modify the definition of a "primary provider network" to track the language of the other incorporated defined terms within the definition.

Agency Response: TDI agrees with the comment and has revised the definitions. TDI has also revised §3.9803(c)(2) to reference the defined terms.

Comment: A commenter states that the definitions are only used in the proposed affiliate exemption form and do not apply to persons registering under Insurance Code §1458.051(a).

Agency Response: TDI disagrees with the comment. The terms are also used for contracting entities registering under Insurance Code §1458.051(a) and submitting information under Insurance Code §1458.052(b). TDI did not include the terms in the proposed Provider Network Contracting Entity Registration Form, but statute requires them.

The adopted form has been changed from the proposal to include the disclosures required under Insurance Code §1458.052(b). TDI noted in the proposal that the form would require disclosures specified under Insurance Code §1458.052. Listing the disclosures in the form is not a new requirement and does not result in additional costs not identified in the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information. Although authorized under Insurance Code §1458.052(a)(4), the adopted form does not require information in addition to the statutory disclosures.

#### Section 3.9801(c)(2)

Comment: Two commenters support the proposed text stating that the triggering event for operating as a contracting entity begins when contracts are offered. The commenters state that it requires the building of the network to be consistent with the requirements of the law and ensures compliance with the registration process and the time frames that flow from contracting entity status.

Agency Response: TDI agrees with the commenters that establishing a point when a person becomes a contracting entity is necessary for uniform compliance and enforcement of the rule and statute.

#### Section 3.9802(a)

Comment: A commenter suggests that the Provider Network Contracting Entity Registration Form more closely track with In-

surance Code §1458.052 and require the registrant to submit the names under which it intends to engage or has engaged in business in Texas, because a registering contracting entity may not be engaged in the business of insurance.

Agency Response: TDI agrees and has removed the reference limiting the requirement to entities engaged in the business of insurance in Texas.

Comment: A commenter suggests that TDI change the Provider Network Contracting Entity Registration Form to require the contracting entity to provide its mailing address and main telephone number of the contracting entity's headquarters, consistent with Insurance Code §1458.052(a)(2) and (3).

Agency Response: TDI agrees with the comment and has made the change.

Comment: A commenter strongly recommends that TDI include a section at the end of the Provider Network Contracting Entity Registration Form titled "Statutorily Required Attachments," which would list the requirements stated in Insurance Code §1458.052(b). The commenter expresses concern that without the inclusion of the above-recommended language, these contracting entities may not be aware of the need to submit additional attachments to satisfy statutory registration requirements and that TDI will have to expend significant time and effort requesting the information.

Agency Response: TDI agrees and has changed the Provider Network Contracting Entity Registration Form to list the requirements, with a reference to Insurance Code §1458.052(b). As stated in a prior response to comments, TDI noted in the proposal that the form would require disclosures specified under Insurance Code §1458.052. Listing the disclosures in the form is not a new requirement and does not result in additional costs not identified in the proposal, because persons submitting a registration required by §1458.051(a) are required by statute to disclose the information.

#### Section 3.9802(b) and §3.9803(b)

Comment: A commenter suggests that TDI require contracting entities to submit the Provider Network Contracting Entity Registration Form and the Provider Network Contracting Entity Exemption of Affiliates Form not later than 60 days from the effective date of rules.

Agency response: TDI agrees that contracting entities should have a reasonable period to complete and submit the required forms. TDI also notes that the statute was enacted in June 2013, and the proposed rules were published in June 2014, giving contracting entities significant notice that the requirement was coming. In addition, the information required to be disclosed is known to the entities. TDI agrees that establishing a specific date for completion of the requirement will also avoid confusion about when the submissions are due. TDI considers the December 1, 2014, deadline adequate time for contracting entities to complete and submit the forms.

#### Section 3.9802(c)(1)

Comment: A commenter requests that TDI change this provision to "health maintenance organization operated under Insurance Code Chapter 843." The commenter states that the change would be consistent with the terminology in Insurance Code Chapter 1458 and would recognize the basic nature of HMOs as prepaid healthcare and not insurance.

Agency Response: TDI agrees to make the requested change in this instance. The terminology is used in the exclusion under Insurance Code §1458.051(a). HMOs, without reference to Insurance Code Chapter 843, are specifically included in Insurance Code §1458.051(b) and §1458.055(a).

HMOs operate under a certificate of authority issued by TDI under Insurance Code §843.071. The reference to entities holding a certificate of authority issued by TDI to engage in the business of insurance in this state includes insurers, third party administrators, and possibly other entities within the scope of other potential contracting entities required to submit information under Insurance Code §1458.051(b). TDI generally uses the phrase "HMO or other entity holding a certificate of authority" in this adoption to reference the entities described in Insurance Code §1458.051(b) and §1458.055(a).

#### Section 3.9802(c)(3)

Comment: A commenter supports the presumed intent of proposed §3.9802(c)(3), which the commenter interprets as continuing to require an affiliate who has not been named on the exemption form and granted an exemption to submit its own registration as a contracting entity. The commenter suggests that the provision does not entirely reflect the statute, because the statement includes both prerequisite elements of the exemption. The entity must be named on the submitted exemption form and be granted an exemption by the commissioner in writing. The commenter requests TDI revise the statement.

Agency Response: TDI agrees with the comment and has revised the statement. The revised statement specifies that the affiliate must be "named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 of this title and granted an exemption by the commissioner in writing under §3.9803(d) of this title."

#### Section 3.9802(d)

Comment: A commenter strongly supports the requirement for a registrant to report any changes to the information submitted in the Provider Network Contracting Entity Registration Form no later than 30 days after the date on which the change takes effect.

Agency Response: TDI appreciates the comment.

#### Section 3.9803(a)

Comment: A commenter recommends that questions 1 through 3 of the Provider Network Contracting Entity Exemption of Affiliates Form be changed to require the same information required in the Provider Network Contracting Entity Registration Form, including names used by the contracting entity engaged in other than the business of insurance and the address and phone number of the contracting entity's headquarters.

Agency Response: TDI disagrees that the forms need to be the same and declines to make the recommended changes. Insurance Code §1458.051 establishes the requirement for contracting entities to identify themselves by submitting a registration under Insurance Code §1458.051(a) or application under Insurance Code §1458.051(b). While both subsections result in registration of the contracting entity and are part of the registration process under Insurance Code §1458.054, only contracting entities under Insurance Code §1458.051(a) are required to register for the purpose of complying with the disclosure requirements under Insurance Code §1458.052.

Section 3.9802(a) adopts the Provider Network Contracting Entity Exemption of Affiliates Form for the registration under Insurance Code §1458.051(a). Section 3.9803(a) adopts the Provider Network Contracting Entity Exemption of Affiliates Form as the application under Insurance Code §1458.051(b). Entities submitting the form under §3.9803 must be an HMO or otherwise have a certificate of authority from TDI, which means the entity is sufficiently known by TDI to grant licensure.

TDI must determine that an entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803 is an HMO or otherwise has a certificate of authority from TDI. The disclosures required in questions 1 through 3 of the Provider Network Contracting Entity Exemption of Affiliates Form are sufficient to provide identification information needed to make that determination.

Comment: A commenter suggests that the terms used in question 6 of the Provider Network Contracting Entity Exemption of Affiliates Form should match the terms used in §3.9801.

Agency Response. TDI agrees and revised the question to list primary provider networks, subsidiary provider networks, and other provider networks.

#### Section 3.9803(b)

Comment: A commenter states that the requirement for a contracting entity holding a certificate of authority issued by TDI to engage in the business of insurance or an HMO operating under Insurance Code Chapter 843 to submit a form even if it has no affiliates does not comport with the statutes adopted in SB 822. The commenter points to Insurance Code §1458.051(b), which requires contracting entities to submit "an application for exemption from registration under which the affiliates may access the contracting entity's network."

Agency Response: TDI disagrees with the commenter and declines to make a change. Insurance Code §1458.051 establishes the requirement for contracting entities to identify themselves by submitting a registration or application. Insurance Code §1458.051(a) applies to contracting entities that are not HMOs or that do not hold a certificate of authority. Insurance Code §1458.051(b) specifically applies to contracting entities that are HMOs or that hold a certificate of authority.

As the commenter quotes, Insurance Code §1458.051(b) requires contracting that are HMOs or that hold a certificate of authority to submit "an application for exemption from registration under which the affiliates may access the contracting entity's network." Insurance Code §1458.051(b) does not exempt contracting entities that are HMOs or that hold a certificate of authority from Insurance Code §1458.051(a), because subsection (a) does not apply to or place any requirements on contracting entities that are HMOs or that hold a certificate of authority. The subsection references Insurance Code §1458.055, which addresses the procedure and requirements for the commissioner to "grant an exemption for affiliates of a contracting entity...." When read together, the exemption provided in Insurance Code §1458.051(b) and §1458.055 applies not to the contract entity submitting the application, but to its affiliates.

Insurance Code §1458.051(b) also states that it is to be read "notwithstanding" Insurance Code §1458.051(a). That means Insurance Code §1458.051(b) creates an exception for contracting entities covered by Insurance Code §1458.051(a). Because Insurance Code §1458.051(b) allows for an affiliate exemption, the exception created by the "notwithstanding" statement is that

affiliates of HMOs or other entities that hold a certificate of authority and that would otherwise be required to register under Insurance Code §1458.051(a), may be exempt under Insurance Code §1458.051(b). Insurance Code §1458.051(b) allows for the exemption of all affiliates of an HMO or other entity that holds a certificate of authority that meet the requirements of Insurance Code §1458.055.

In addition, Insurance Code §1458.051(b) places the application submission requirement on the "contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization...." The subsection does not limit the requirement to contracting entities that have affiliates. Insurance Code §1458.051(b) is permissive concerning the exemption of affiliates providing only that, in conjunction with Insurance Code §1458.055, the affiliates accessing the contracting entity's network may be exempt from registration.

TDI considers the purpose of the Insurance Code §1458.051 and §1458.055 to be the identification of provider network contracting entities and network relationships. The requirement in §3.9803(b) is consistent with that purpose. For example, under §3.9803(b) an insurer with multiple network accessing affiliates, which may or may not be contracting entities, need only submit one form detailing the organization's network relationships under Insurance Code §1458.051(b) and §1458.055. Likewise, a third party administrator contracting entity with no accessing affiliates cannot avoid identifying its participation in the market, but must submit the application required of contracting entities with a certificate of authority under Insurance Code §1458.051.

Comment: A commenter requests that TDI clarify the rules to state whether a registration or affiliate exemption form is required, if the contracting entity is an affiliate of an authorized person.

Agency Response: TDI agrees with the commenter that the scope of the exemption and the requirement to submit a registration or affiliate exemption must be definite. TDI has addressed the statutory basis and scope of the exemption in previous responses to comments. The Insurance Code §1458.051(b) exemption not only applies to affiliated contracting entities that are HMOs or that hold a certificate of authority, but also to those affiliates that would otherwise be required to register under Insurance Code §1458.051(a). Affiliates that have been granted an exemption are not required to submit a form under §3.9802 or §3.9803.

Three types of contracting entities exist under Insurance Code Chapter 1458. The contracting entities may be: (1) HMOs, (2) other entities holding a certificate of authority, or (3) affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 and granted an exemption by the commissioner in writing under §3.9803(d). As previously addressed, contracting entities that are HMOs and other entities holding a certificate of authority are not subject to Insurance Code §1458.051(a) or the submission requirement in §3.9802. The listing of exempt affiliates named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 is needed to clarify that affiliates that do not hold a certificate of authority are not required to submit a separate registration under §3.9802 if they have been granted an exemption.

Comment: Two commenters request that TDI clarify that a single insurer may submit a consolidated affiliate exemption for all

affiliated contracting entities. The commenters state that requiring separate forms for affiliates would result in submission of redundant information and unnecessary administrative work and costs.

Agency Response: TDI agrees with the commenters and considers the comments consistent with the intent of Insurance Code §1458.051(b) and §1458.055 and TDI's proposal. To clarify the intent in these rules, TDI has modified §3.9803(b) and revised the definitions of primary, subsidiary, and other networks in §3.9801(b). The submission must comply with Insurance Code §1458.055, but as discussed in response to a prior comment, under §3.9803(b) an insurer with multiple affiliates that are contracting entities need only submit one Provider Network Contracting Entity Exemption of Affiliates Form.

The affiliate exemption provision applies only to affiliates of contracting entities that are HMOs or that hold a certificate of authority and submit an application under Insurance Code §1458.051(b) and §3.9803. Affiliated contracting entities registering under Insurance Code §1458.051(a) and §3.9802 do not have a similar affiliate exemption provision and must register independently.

Comment: A commenter states that the requirement to list all affiliates under proposed §3.9803(c) is overly broad and burdensome. The commenter requests that the requirement be revised to list only those affiliates that will access the contracting entity's provider networks.

Agency Response: TDI agrees with the comment and revised the requirement. Insurance Code §1458.051(b) provides for an exemption under which the affiliates may access the contracting entity's network. This does not diminish the disclosure requirements. Insurance Code §1458.055(a)(2) requires disclosure of the "relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks." Exempt affiliate entities may have their own subsidiary networks that need to be disclosed. TDI has changed the requirement to "list each affiliate of the contracting entity that will access the provider networks disclosed in the submission...."

Comment: A commenter states that the requirement to disclose "the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks" under Insurance Code §1458.052 applies only to insurers required to register under Insurance Code §1458.051 and not to contracting entities applying for exemption from the registration requirement. The commenter requests that TDI rules not impose this additional requirement on contracting entities subject to the affiliate exemption.

Agency Response: TDI does not agree with the commenter's assertions. The disclosure requirement in Provider Network Contracting Entity Exemption of Affiliates Form is based on Insurance Code §1458.055(a)(2), not Insurance Code §1458.052. To apply for an affiliate exemption under Insurance Code §1458.051(b), the contracting entity must disclose under Insurance Code §1458.055(a)(2) "the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks." TDI declines to make the requested change.

Section 3.9803(c)(1)

Comment: A commenter supports inclusion of the requirement that the contracting entity submitting the Provider Network Con-

tracting Entity Exemption Affiliate Form must list each affiliate of the contracting entity that will access the provider networks, or state that the contracting entity has no affiliates.

Agency Response: TDI appreciates the comment. The rationale for including the requirement was addressed in other comment responses.

#### Section 3.9803(d)

Comment: A commenter expresses concern that §3.9803(d), providing that an affiliate exemption is not effective until granted in writing by the commissioner, does not state a deadline for TDI action. To ensure a useful and orderly application and exemption process, the commenter suggests that the rules include a provision that the exemption is "deemed" approved within 60 days of receipt if no action has been taken.

Agency Response: TDI disagrees and declines to make the requested change. Insurance Code §1458.051(b) allows for an "exemption from registration under which the affiliates may access the contracting entity's network." Insurance Code §1458.055(a) requires the commissioner to grant the affiliate exemption. Taken together, these sections mean that an affiliate may not access the contracting entity's network until the exception is granted. Section 3.9803(d) states this for clarity. Chapter 1458 does not provide for or specifically authorize TDI to create a "deemer" provision.

Section 3.9803(d) also establishes that the commissioner must grant an exemption in writing. A written record of the exemption will provide a definite record for all concerned parties. TDI does not consider that Insurance Code §1458.051(b) and §1458.055(a) require separate approval or disapproval documents for each affiliate. TDI expects to issue approvals by application, listing any affiliates that were not approved as exceptions to the approval.

TDI does not believe the review process will be time intensive. The review requirement in Insurance Code §1458.055(a) is intended to determine whether the affiliate is subject to a disclaimer of affiliation under Insurance Code §823.010 and to determine if the affiliate's relationship in the contracting entity's network has been disclosed. Section 3.9803, the adopted Provider Network Contracting Entity Exemption of Affiliates Form, and statute do not ask for proof of the relationship, but TDI may consider the submission in future examinations.

Comment: Two commenters suggest that TDI should create an appeal process for exemption disapprovals.

Agency response: TDI disagrees with the comment and declines to make the requested change. Chapter 1458 does not create or reference a specific administrative appeal process for an exemption disapproval. While TDI will consider and discuss matters related to a disapproval and will work to achieve compliance or remedy any miscommunication or misunderstanding, a person whose application has been denied may seek judicial review under Insurance Code Chapter 36, Subchapter D. TDI considers an additional administrative structure unnecessary.

Comment: A commenter questions whether an "all or none" approval process would be better than having individual approvals. The commenter is concerned that it would be burdensome to keep track of which affiliates are approved and which are not.

Agency Response. TDI disagrees with the comment. As addressed in a prior response to comments TDI does not interpret Insurance Code §1458.051(b) and §1458.055(a) to require

a separate approval or disapproval document for each affiliate. TDI expects to issue approvals by application, listing any affiliates that were not approved as exceptions to the approval. In addition, TDI does not believe that it is reasonable to deny an entire organization's application because one or two affiliate relationships have been included in error or not been adequately disclosed. To clarify that the subsection does require TDI to deny the entire application if the denial should apply to less than all affiliates, TDI has changed the denial phrase to "deny the requested exemption for one or more affiliates."

Comment: A commenter supports proposed §3.9803(d). The commenter states that the section is consistent with Insurance Code §1458.055 because an affiliate exemption is not effective until the commissioner determines that the affiliate is not subject to a disclaimer of affiliation under Chapter 823 and that the relationships have been disclosed and clearly defined on the exemption form. The commenter further states that the subsection clarifies the exemption procedure by stating that the commissioner may grant the requested exemption to all listed affiliates, grant the exemption to some listed affiliates, or deny the requested exemption.

Agency Response: TDI appreciates the comment. The rationale for including the requirement has been previously addressed in other comment responses.

#### Section 3.9803(e)

Comment: Two commenters suggest that the annual update submission not be set during the first calendar quarter of the year, because of the amount of regulatory reports already due in that period. A commenter suggested as an example that the submission be due on August 1.

Agency Response: TDI agrees to change the date of the annual update submission. TDI recognizes that significant reporting occurs in the first quarter of year and Insurance Code §1458.051(c) does not require adding to the first quarter regulatory load. TDI agrees to August 1 because it is not in the first quarter and not at the end of a calendar quarter.

Comment: A commenter supports the requirement to update the form no later than January 31 of each year after the year in which the exemption was granted. The commenter believes the provision is not unduly burdensome, provides ample time for updating, and is consistent with the underlying law.

Agency Response: TDI appreciates the comment. As addressed in the response to the prior comment, Insurance Code §1458.051(c) does not specify the timing of the annual report. TDI will require the update by August 1 of each year.

#### Section 3.9805

Comment: A commenter suggests that to avoid possible retroactive application of the adopted section, TDI should not enforce the rules for at least 60 days following the adoption date.

Agency Response: TDI disagrees with the comment. As previously stated in response to comments, TDI has established a reasonable period for contracting entities to make required submissions. Beyond those specific deadlines, the adopted rules will become effective 20 days after the date the adoption order is filed with the secretary of state, as provided by Government Code §2001.036. The adoption of rules does not change the effective date of statutory provisions and requirements.

Comment: A commenter suggests that §3.9805 attempts to operationalize the SB 822 language regarding presumption of ex-

press authority and Insurance Code §1458.101 without repeating Insurance Code §1458.101. To enhance compliance, the commenter suggests that TDI clarify the language in §3.9805 by setting out the general rule in Insurance Code §1458.101(b) that mandates obtaining express authority in a revised subsection (a) before setting out the exception to the general rule in a redesignated subsection (b).

Agency Response: TDI disagrees with the comment. It is unnecessary to repeat Insurance Code §1458.101 to give it effect. In addition, as stated in the proposal, the purpose of §3.9805 is to identify the exception to the express authority by restating Section 2(b) of SB 822 because enacting language of the bill will not always be published with the statutory provisions of Insurance Code Chapter 1458. Section 3.9805(a) provides that express authority cannot be presumed except for the exception listed in §3.9805(c). TDI considers this to be a general requirement of Insurance Code §1458.101. TDI has not made a change based on this comment.

Comment: A commenter asks how "evergreen contracts" are to be handled.

Agency response: TDI declines to address evergreen contracts separately in these rules. TDI will consider evergreen contracts within the scope of Insurance Code Chapter 1458 and the enacting provisions in Section 2(a) of SB 822, which provides "provider network contract entered into or renewed on or after September 1, 2013. A provider network contract entered into or renewed before September 1, 2013, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose."

#### Section 3.9805(a)

Comment: A commenter requests that TDI replace the reference to "negotiated fee schedules" with a reference to "payment or reimbursement terms," which is the language used in Insurance Code §1458.101.

Agency Response: TDI disagrees with the comment, but agrees to define the term "fee schedule." Fee schedule is used several times in Insurance Code §1458.101(e) and also in Section 2(b) of SB 822 in reference to lines of business in the provider network contract. The phrase "payment or reimbursement terms" is used only in Insurance Code §1458.101(b) in reference to the provider network contract. TDI considers both to apply to the same subject. TDI has determined that it is best to clarify this usage by adding a definition for fee schedule in §3.9801 as "includes payment or reimbursement terms of the provider network contract." The defined term will apply to all references to fee schedule in §3.9805. TDI has removed the term "negotiated" so that the references to fee schedule will be consistent.

#### Section 3.9805(a)

Comment: A commenter requests that TDI clarify whether the requirement to notify the provider about all applicable fee schedules means only those fee schedules applicable to that provider.

Agency Response: TDI agrees with the commenter that the requirement to notify the provider about all applicable fee schedules means only those fee schedules applicable to that provider. However, the provider network contractor must always be in compliance with Insurance Code Chapter 1458, including the express authority and adequate notice requirements under §1458.101(b). TDI has changed the requirement to "The contracting entity must notify the provider about all fee schedules applicable to the provider."

#### NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For: American Association of Preferred Provider Organizations.

For with changes: Cigna, Texas Association of Health Plans, Texas Medical Association.

STATUTORY AUTHORITY. TDI adopts the sections under Insurance Code §§1458.004, 1458.052, 1458.053, 1458.054, 1458.055, 1458.101, and 36.001. Insurance Code §1458.004 authorizes the commissioner to adopt rules to implement this chapter.

Insurance Code §1458.051(a) requires contracting entities, except persons holding a certificate of authority issued by TDI to engage in the business of insurance in this state or operate a health maintenance organization under Chapter 843, to register with TDI not later than the 30th day after the date the person begins acting as a contracting entity in this state. Insurance Code §1458.051(b) requires a contracting entity that holds a certificate of authority issued by TDI to engage in the business of insurance in this state or is a health maintenance organization to submit to the commissioner an application for exemption from registration under which the contracting entity's affiliates may access the contracting entity's network. Insurance Code §1458.051(c) requires a contracting entity submitting a form under Insurance Code §1458.051(b) to list its affiliates and update the list on an annual basis.

Insurance Code §1458.052 lists the information that must be disclosed by a contracting entity registering under Insurance Code §1458.052. Insurance Code §1458.053 allows information to be submitted in a written or electronic format. Insurance Code §1458.054 authorizes the commissioner to set a reasonable fee necessary to administer the registration process. Insurance Code §1458.101 establishes the requirement for obtaining the provider's express authority in provider network contracts. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this adoption: Sections 3.9801 - 3.9805 implement and affect Insurance Code, Chapter 1458, including §§1458.001, 1458.051 - 1458.055, and 1458.101.

#### §3.9801. *Definitions and General Provisions.*

(a) Terms in this subchapter have the same meaning as defined and used in Insurance Code Chapter 1458.

(b) The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise:

(1) Affiliate--Includes each person that is an affiliate under Insurance Code Chapter 823.

(2) Fee schedule--Includes payment or reimbursement terms of the provider network contract.

(3) Primary provider network--A provider network in which the contracting entity submitting the form is the contracting entity for the provider network.

(4) Other provider network--A provider network that may be accessed by the contracting entity submitting the form or the submitting entity's affiliate, but in which the contracting entity for the provider network is not an affiliate of the entity submitting the form.



(5) **Subsidiary provider network**--A provider network in which the contracting entity or entities for the provider network are an affiliate of the entity submitting the form, except for provider networks that also qualify as a primary provider network.

(6) **TDI**--Texas Department of Insurance.

(c) In this subchapter:

(1) the term "provider network contracting entity" has the same meaning as contracting entity;

(2) a person begins acting as a contracting entity in this state when the person enters into or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals that serve to create a provider network or networks to be accessed by another party; and

(3) access to a provider network or networks by another party includes access by an affiliate.

*§3.9802. Provider Network Contracting Entity Registration Form Required.*

(a) TDI adopts the Provider Network Contracting Entity Registration Form by reference.

(b) Except as provided in subsection (c) of this section, each person operating as a contracting entity must submit to TDI a fully completed Provider Network Contracting Entity Registration Form with the required fee established under §3.9804 of this title before the later of:

(1) the 30th day after the date on which the person begins acting as a contracting entity in this state; or

(2) December 1, 2014.

(c) The following contracting entities are not required to register under this section:

(1) a health maintenance organization operating under Insurance Code Chapter 843;

(2) an entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state; or

(3) an affiliate named on the Provider Network Contracting Entity Exemption of Affiliates Form submitted under §3.9803 of this title and granted an exemption by the commissioner in writing under §3.9803(d) of this title.

(d) A contracting entity registered under this section must report any changes to the information submitted in the Provider Network Contracting Entity Registration Form submitted under subsection (b) of this section not later than the 30th day after the date on which the change takes effect.

(e) The contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format at the address TDI will provide on the Provider Network Contracting Entity Registration Form.

*§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form Required.*

(a) TDI adopts the Provider Network Contracting Entity Exemption of Affiliates Form by reference.

(b) Unless the commissioner has granted an affiliate exemption to the contracting entity under this section, each contracting entity that is a health maintenance organization or other entity holding a certificate of authority issued by TDI to engage in the business of insurance in this state must submit to TDI a fully completed Provider Network Contracting Entity Exemption of Affiliates Form and the required fee established under §3.9804 of this title before the later of:

(1) the 30th day after the date on which the submitting person begins acting as a contracting entity in this state; or

(2) December 1, 2014.

(c) The person submitting the Provider Network Contracting Entity Exemption of Affiliates Form must:

(1) list each affiliate of the contracting entity that will access the provider networks disclosed in the submission or state that the contracting entity has no affiliates;

(2) disclose the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person, including:

(A) primary provider networks and the affiliates that have access to the primary provider networks;

(B) subsidiary provider networks and the affiliates that have access to the subsidiary provider networks; and

(C) other provider networks and the affiliates that have access to the other provider networks;

(3) disclose if the contracting entity or an affiliate allows a nonaffiliate to access any network of the contracting entity or affiliate and the name of the contracting entity or affiliate allowing such access.

(d) An affiliate exemption under this section is not effective until the commissioner grants the exemption in writing. The commissioner may grant the requested exemption to all listed affiliates, grant the exemption to some listed affiliates, or deny the requested exemption for one or more affiliates.

(e) Not later than August 1 of each year, a contracting entity that has submitted the Provider Network Contracting Entity Exemption of Affiliates Form under this section must report to the commissioner any changes to the information the contracting entity provided in its Provider Network Contracting Entity Exemption of Affiliates Form or subsequent annual reports, including the addition or removal of any affiliates.

(f) A contracting entity must submit the Provider Network Contracting Entity Exemption of Affiliates Form and subsequent annual reports in a written or electronic format to the address TDI will provide on the Provider Network Contracting Entity Exemption of Affiliates Form.

*§3.9804. Required Fees.*

(a) A Provider Network Contracting Entity Registration Form under §3.9802 of this title or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803 of this title must be accompanied by the required fee of \$1,000.

(b) No fee is required for submitting a change in information under §3.9802 of this title or the annual registration update under §3.9803 of this title.

*§3.9805. Express Authority.*

(a) Except as provided in subsection (c) of this section, the grant of express authority of a provider for access to their fee schedules cannot be presumed for any line of business for the purposes of compliance with Insurance Code §1458.101.

(b) The contracting entity must notify the provider about all applicable fee schedules, but such notification is not to be, and must not be, construed as:

(1) prohibiting a provider network contracting entity from only contracting with providers who agree to all fee schedules; or

(2) requiring providers to agree to all fee schedules.

(c) For purposes of compliance with Insurance Code §1458.101, a provider's express authority is presumed if:

(1) the provider network contract is in existence before September 1, 2013;

(2) on the first renewal after September 1, 2013, the contracting entity sends a written renewal notice by United States mail to the provider;

(3) the notice described by paragraph (2) of this subsection:

(A) contains a statement that failure to timely respond serves as assent to the renewal;

(B) contains separate signature lines for each line of business applicable to the contract; and

(C) specifies the separate fee schedule for each line of business applicable to the contract, described in any reasonable manner and which may be provided electronically; and

(4) the provider fails to respond within 60 days of receipt of the notice and has not objected to the renewal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2014.

TRD-201405089

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: November 19, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 463-6326



## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

#### 28 TAC §5.9003

The commissioner of insurance adopts amendments to Subchapter J, §5.9003, concerning the payment of annual fees by persons operating amusement rides. The amendments are adopted without changes to the proposed text published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6371).

**REASONED JUSTIFICATION.** These amendments to §5.9003 provide the option of paying required fees online through the Texas OnLine Project. The Texas OnLine Project is the common electronic infrastructure established by Government Code §2054.252 for state agencies and local governments, including licensing entities. The new language specifies that the department authorizes online or electronic transactions and persons must pay the fee associated with the transaction as directed by the department or the Texas OnLine Authority. The website for payment is [www.texas.gov](http://www.texas.gov). The amendments also allow amusement ride owners and operators to remit fees by personal check,

in addition to a cashier's check. Finally, the amendments also clarify that fees are nonrefundable and nontransferable.

The public benefit anticipated as a result of the amendments is the more efficient administration of Occupations Code Chapter 2151 and increased access to state government over the Internet for the public. Owners and operators of amusement rides electing to use the optional electronic transaction available online at [www.texas.gov](http://www.texas.gov) must pay an additional \$2 plus an additional 2.25 percent for each transaction. Owners and operators of amusement rides are not required to pay online, and the amendments do not impose other new requirements. The department anticipates that the amendments will not substantively affect persons who do not choose to use the optional online payment method.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The department did not receive any comments on the published proposal.

**STATUTORY AUTHORITY.** The department adopts these amendments to 28 TAC §5.9003 under Title 13, Occupations Code, Chapter 2151 and Insurance Code §36.001. Occupations Code §2151.052 provides that the commissioner may establish reasonable and necessary fees, in an amount not to exceed \$40 per year, for each amusement ride covered by this chapter. 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. Government Code §2054.252(g) requires the department to increase licensing fees in an amount sufficient to cover the department's Texas OnLine Project subscription fee cost.

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 October 27, 2014.

TRD-201405010

Sara Waitt

General Counsel

Texas Department of Insurance

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Proposal publication date: August 22, 2014

For further information, please call: (512) 463-6326



## CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

### SUBCHAPTER F. EVIDENCE OF COVERAGE

#### 28 TAC §§11.506, 11.508, 11.511

The commissioner of insurance adopts amendments to 28 TAC Chapter 11, Subchapter F, §§11.506, 11.508, and 11.511. The amendments are adopted with nonsubstantive changes to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5081). The amendments are related to the separate adoption of a new 28 TAC Chapter 21, Subchapter SS, and the repeal of 28 TAC Chapter 3, Subchapter F, both published in this issue of the *Texas Register*.

**REASONED JUSTIFICATION.** The repeal of 28 TAC Chapter 3, Subchapter F; its replacement by the proposed new 28

TAC Chapter 21, Subchapter SS; and concurrently proposed amendments to 28 TAC Chapter 11, Subchapter F; are necessary to conform TDI's continuation and conversion rules to statutory changes that have occurred over time, including HB 710, 75th Legislature, Regular Session (1997) and SB 1771, 81st Legislature, Regular Session (2009), and to consolidate the rules for insured and HMO products to enhance consistency in the market to the extent possible. The repealed, amended, and new rules will conserve agency resources by reducing the need for multiple rule projects resulting from future changes in continuation or conversion laws. TDI's original proposal made no changes to §11.506(1) - (5). However, renumbering of other paragraphs of §11.506 requires changes to references to those paragraphs in §11.506(3)(A)(ii), §11.506(3)(B)(i), and §11.506(3)(D)(i) and (ii). Those changes have been made. Nonsubstantive editorial changes to conform to TDI usage and style guidelines have also been made to the proposed rules.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** TDI received no comments on the published proposal for the amendments.

**STATUTORY AUTHORITY.** TDI adopts the amendments under Insurance Code §§36.001, 843.051(b)(3), 1251.008, 1251.251(a), 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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.

Section 843.051(b)(3) states, "A health maintenance organization is subject to...Subchapter G, Chapter 1251, and Section 1551.064."

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251(a) states, "An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or

dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

*§11.506. Mandatory Contractual Provisions: Group, Individual, and Conversion Agreement and Group Certificate.*

Each enrollee residing in this state is entitled to an evidence of coverage under a health care plan. By agreement between the issuer of the evidence of coverage and the enrollee, the evidence of coverage approved under this subchapter and required by this section may be delivered electronically. Each group, individual, and conversion contract and group certificate must contain the following provisions:

(1) Name, address, and phone number of the HMO--The toll-free number referred to in Insurance Code §521.102, where applicable, must appear on the face page.

(A) The face page of an agreement is the first page that contains any written material.

(B) If the agreements or certificates are in booklet form the first page inside the cover is considered the face page.

(C) The HMO must provide the information regarding the toll-free number referred to in Insurance Code Chapter 521, Subchapter C, in compliance with §1.601 of this title.

(2) Benefits--A schedule of all health care services that are available to enrollees under the basic, limited, or single health care service plan, including any copayments or deductibles and a description of where and how to obtain services. An HMO may use a variable copayment or deductible schedule. The copayment schedule must clearly indicate the benefit to which it applies.

(A) Copayments. An HMO may require copayments to supplement payment for health care services. Each basic service HMO may establish one or more reasonable copayment options. A reasonable copayment option may not exceed 50 percent of the total cost of services provided. A basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. This limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year. The HMO must state the copayment in the group, individual or conversion agreement and group certificate.

(B) Deductibles. A deductible must be for a specific dollar amount of the cost of the basic, limited, or single health care service. An HMO may charge a deductible only for services performed out of the HMO's service area or for services performed by a physician or provider who is not in the HMO's delivery network.

(C) Immunizations. An HMO may not charge a copayment or deductible for immunizations as described in Insurance Code Chapter 1367, Subchapter B for a child from birth through the date the

child is six years of age, except that a small employer health benefit plan, as defined by Insurance Code §1501.002, that covers such immunizations may charge a copayment or deductible.

(3) Cancellation and nonrenewal--A statement specifying the following grounds for cancellation and nonrenewal of coverage and the minimum notice period that will apply.

(A) An HMO may cancel a subscriber in a group and subscriber's enrolled dependents under circumstances described in clauses (i) - (vii) of this subparagraph, so long as the circumstances do not include health status related factors:

(i) For nonpayment of amounts due under the contract, coverage may be canceled after not less than 30 days written notice, except no written notice will be required for failure to pay premium.

(ii) In the case of fraud or intentional misrepresentation of a material fact, except as described in paragraph (13) of this section, coverage may be canceled after not less than 15 days written notice.

(iii) In the case of fraud in the use of services or facilities, coverage may be canceled after not less than 15 days' written notice.

(iv) For failure to meet eligibility requirements other than the requirement that the subscriber reside, live, or work in the service area, coverage may be canceled immediately, subject to continuation of coverage and conversion privilege provisions, if applicable.

(v) In the case of misconduct detrimental to safe plan operations and the delivery of services, coverage may be canceled immediately.

(vi) For failure of the enrollee and a plan physician to establish a satisfactory patient-physician relationship if it is shown that the HMO has, in good faith, provided the enrollee with the opportunity to select an alternative plan physician, the enrollee is notified in writing at least 30 days in advance that the HMO considers the patient-physician relationship to be unsatisfactory and specifies the changes that are necessary in order to avoid termination, and the enrollee has failed to make such changes, coverage may be canceled at the end of the 30 days.

(vii) Where the subscriber neither resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if the HMO terminates coverage uniformly without regard to any health status-related factor of enrollees, coverage may be canceled after 30 days' written notice. An HMO may not cancel coverage for a child who is the subject of a medical support order because the child does not reside, live, or work in the service area.

(B) An HMO may cancel a group under circumstances described in clauses (i) - (vi) of this subparagraph:

(i) For nonpayment of premium, all coverage may be canceled at the end of the grace period as described in paragraph (12) of this section.

(ii) In the case of fraud on the part of the group, coverage may be canceled after 15 days' written notice.

(iii) For employer groups, violation of participation or contribution rules, coverage may be canceled in compliance with §26.8(h) and §26.303(j) of this title (relating to Guaranteed Issue; Contribution and Participation Requirements and Coverage Requirements).

(iv) For employer groups, in compliance with §26.16 and §26.309 of this title (relating to Refusal to Renew and

Application to Reenter Small Employer Market and Refusal to Renew and Application to Reenter Large Employer Market), coverage may be canceled upon discontinuance of:

(I) each of its small or large employer coverages; or

(II) a particular type of small or large employer coverage.

(v) Where no enrollee resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if the coverage is terminated uniformly without regard to any health status-related factor of enrollees, the HMO may cancel the coverage after 30 days written notice.

(vi) If membership of an employer in an association ceases, and if coverage is terminated uniformly without regard to the health status of an enrollee, the HMO may cancel the coverage after 30 days' written notice.

(C) In the case of a material change by the HMO to any provisions required to be disclosed to contract holders or enrollees pursuant to this chapter or other law, a group or individual contract holder may cancel the contract after not less than 30 days written notice to the HMO.

(D) An HMO may cancel an individual contract under circumstances described in clauses (i) - (vi) of this subparagraph.

(i) For nonpayment of premiums in compliance with the terms of the contract, including any timeliness provisions, coverage may be canceled without written notice, subject to paragraph (12) of this section.

(ii) In the case of fraud or intentional material misrepresentation, except as described in paragraph (13) of this section, the HMO may cancel coverage after not less than 15 days' written notice.

(iii) In the case of fraud in the use of services or facilities, the HMO may cancel coverage after not less than 15 days' written notice.

(iv) Where the subscriber neither resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if coverage is terminated uniformly without regard to any health status-related factor of enrollees, coverage may be canceled after 30 days' written notice. An HMO may not cancel the coverage for a child who is the subject of a medical support order because the child does not reside, live, or work in the service area.

(v) In case of termination by discontinuance of a particular type of individual coverage by the HMO in that service area, but only if coverage is discontinued uniformly without regard to health status-related factors of enrollees and dependents of enrollees who may become eligible for coverage, the HMO may cancel coverage after 90 days' written notice, in which case the HMO must offer to each enrollee on a guaranteed-issue basis any other individual basic health care coverage offered by the HMO in that service area.

(vi) In case of termination by discontinuance of all individual basic health care coverage by the HMO in that service area, but only if coverage is discontinued uniformly without regard to health status-related factors of enrollees and dependents of enrollees who may become eligible for coverage, the HMO may cancel coverage after 180 days' written notice to the commissioner and the enrollees, in which case the HMO may not re-enter the individual market in that service area for five years beginning on the date of discontinuance at the last coverage not renewed.

(4) Claim payment procedure--A provision that sets forth the procedure for paying claims, including any time frame for payment of claims that must comply with Insurance Code Chapter 542, Subchapter B and §1271.005 and the applicable rules.

(5) Complaint and appeal procedures--A description of the HMO's complaint and appeal process available to complainants.

(6) Definitions--A provision defining any words in the evidence of coverage that have other than the usual meaning. Definitions must be in alphabetical order.

(7) Effective date--A statement of the effective date requirements of various kinds of enrollees.

(8) Eligibility--A statement of the eligibility requirements for membership, including:

(A) that the subscriber must reside, live, or work in the service area and the legal residence of any enrolled dependents must be the same as the subscriber, or the subscriber must reside, live, or work in the service area and the residence of any enrolled dependents must be:

(i) in the service area with the person having temporary or permanent conservatorship or guardianship of the dependents, including adoptees or children who have become the subject of a suit for adoption by the enrollee, where the subscriber has legal responsibility for the health care of the dependents;

(ii) in the service area under other circumstances where the subscriber is legally responsible for the health care of the dependents;

(iii) in the service area with the subscriber's spouse;

or

(iv) anywhere in the United States for a child whose coverage under a plan is required by a medical support order.

(B) the conditions under which dependent enrollees may be added to those originally covered;

(C) any limiting age for subscriber and dependents;

(D) a clear statement regarding the coverage of newborn children:

(i) No evidence of coverage may contain any provision excluding or limiting coverage for a newborn child of the subscriber or the subscriber's spouse.

(ii) Congenital defects must be treated the same as any other illness or injury for which coverage is provided.

(iii) The HMO may require that the subscriber notify the HMO during the initial 31 days after the birth of the child and pay any premium required to continue coverage for the newborn child.

(iv) An HMO may not require that a newborn child receive health care services only from network physicians or providers after the birth if the newborn child is born outside the HMO service area due to an emergency, or born in a non-network facility to a mother who does not have HMO coverage. The HMO may require that the newborn be transferred to a network facility at the HMO's expense and, if applicable, to a network provider when the transfer is medically appropriate, as determined by the newborn's treating physician.

(v) A newborn child of the subscriber or subscriber's spouse is entitled to coverage during the initial 31 days following birth. The HMO must allow an enrollee 31 days after the birth of the child to notify the HMO, either verbally or in writing, of the addition of the newborn as a covered dependent.

(E) A clear statement regarding the coverage of the enrollee's grandchildren up to the age of 25 under the conditions by which the coverage is required by Insurance Code §1201.062 and §1271.006.

(9) Emergency services--A description of how to obtain services in emergency situations including:

(A) what to do in case of an emergency occurring outside or inside the service area;

(B) a statement of any restrictions or limitations on out-of-area services;

(C) a statement that the HMO will provide for any medical screening examination or other evaluation required by state or federal law that is necessary to determine whether an emergency medical condition exists in a hospital emergency facility or comparable facility;

(D) a statement that necessary emergency care services will be provided, including the treatment and stabilization of an emergency medical condition; and

(E) a statement that where stabilization of an emergency condition originated in a hospital emergency facility or comparable facility, as defined in subparagraph (F) of this paragraph, treatment subject to stabilization must be provided to enrollees as approved by the HMO, provided that the HMO must approve or deny coverage of poststabilization care as requested by a treating physician or provider. An HMO must approve or deny the treatment within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case may approval or denial exceed one hour from the time of the request.

(F) For purposes of this paragraph, "comparable facility" includes the following:

(i) any stationary or mobile facility, including, but not limited to, Level V Trauma Facilities and Rural Health Clinics that have licensed or certified personnel and equipment to provide Advanced Cardiac Life Support consistent with American Heart Association and American Trauma Society standards of care;

(ii) for purposes of emergency care related to mental illness, a mental health facility that can provide 24-hour residential and psychiatric services and is:

(I) a facility operated by the Texas Department of State Health Services;

(II) a private mental hospital licensed by the Texas Department of State Health Services;

(III) a community center as defined by Texas Health and Safety Code §534.001;

(IV) a facility operated by a community center or other entity the Texas Department of State Health Services designates to provide mental health services;

(V) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of State Health Services; or

(VI) a hospital operated by a federal agency.

(10) Entire contract, amendments--A provision stating that the form, applications, if any, and any attachments constitute the entire contract between the parties and that, to be valid, any change in the form must be approved by an officer of the HMO and attached to the affected form and that no agent has the authority to change the form or waive any of the provisions.

(11) Exclusions and limitations--A provision setting forth any exclusions and limitations on basic, limited, or single health care services.

(12) Grace period--A provision for a grace period of at least 30 days for the payment of any premium falling due after the first premium during which the coverage remains in effect. An HMO may add a charge to the premium for late payments received within the grace period. If an HMO does not receive payment within the 30 days, the HMO may cancel coverage after the 30th day and may hold the terminated members liable for the cost of services received during the grace period, if this requirement is disclosed in the agreement.

(13) Incontestability:

(A) All statements made by the subscriber on the enrollment application are considered representations and not warranties. The statements are considered truthful and made to the best of the subscriber's knowledge and belief. A statement may not be used in a contest to void, cancel, or nonrenew an enrollee's coverage or reduce benefits unless:

(i) it is in a written enrollment application signed by the subscriber; and

(ii) a signed copy of the enrollment application is or has been furnished to the subscriber or the subscriber's personal representative.

(B) An individual contract or group certificate may only be contested because of fraud or intentional misrepresentation of material fact made on the enrollment application. For small employer coverage, the misrepresentation must be other than a misrepresentation related to health status.

(C) For a group contract or certificate, the HMO may increase its premium to the appropriate level if the HMO determines that the subscriber made a material misrepresentation of health status on the application. The HMO must provide the contract holder 31 days' prior written notice of any premium rate change.

(14) Out-of-network services--Each contract between an HMO and a contract holder must provide that if medically necessary covered services are not available through network physicians or providers, the HMO must, on the request of a network physician or provider, within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no event to exceed five business days after receipt of reasonably requested documentation, allow a referral to a non-network physician or provider and must fully reimburse the non-network provider at the usual and customary or an agreed rate.

(A) For purposes of determining whether medically necessary covered services are available through network physicians or providers, the HMO must offer its entire network, rather than limited provider networks within the HMO delivery network.

(B) The HMO may not require the enrollee to change his or her primary care physician or specialist providers to receive medically necessary covered services that are not available within the limited provider network.

(C) Each contract must further provide for a review by a specialist of the same or similar specialty as the type of physician or provider to whom a referral is requested before the HMO may deny a referral.

(15) Schedule of charges--A statement that discloses the HMO's right to change the rate charged with 60 days' written notice under Insurance Code Chapter 1254.

(16) Service area--A description and a map of the service area, with key and scale, that identifies the county, or counties, or portions of counties, to be served, indicating primary care physicians, hospitals, and emergency care sites. A ZIP code map and a provider list may be used to meet the requirement.

(17) Termination due to attaining limiting age--A provision that a child's attainment of a limiting age does not operate to terminate the child's coverage while that child is incapable of self-sustaining employment due to mental retardation or physical disability, and chiefly dependent on the subscriber for support and maintenance. The HMO may require the subscriber to furnish proof of incapacity and dependency within 31 days of the child's attainment of the limiting age and subsequently as required, but not more frequently than annually following the child's attainment of the limiting age.

(18) Termination due to student dependent's change in status--Each group agreement and certificate that conditions dependent coverage for a child twenty-five years of age or older on the child's being a full-time student at an educational institution must contain a provision complying with Insurance Code Chapter 1503.

(19) Conformity with state law--A provision that if the agreement or certificate contains any provision not in conformity with Insurance Code Chapter 1271 or other applicable laws, it must not be rendered invalid but must be construed and applied as if it were in full compliance with Insurance Code Chapter 1271 and other applicable laws.

(20) Conformity with Medicare supplement minimum standards and long-term care minimum standards--Each group, individual, and conversion agreement and group certificate must comply with Chapter 3, Subchapter T of this title, referred to in this paragraph as Medicare supplement rules, and Chapter 3, Subchapter Y of this title, referred to in this paragraph as long-term care rules, where applicable. If there is a conflict between the Medicare supplement or long-term care rules and the HMO rules, the Medicare supplement or long-term care rules will govern to the exclusion of the conflicting provisions of the HMO rules. Where there is no conflict, an HMO must follow the Medicare supplement and long-term care rules and the HMO rules where applicable.

(21) Nonprimary care physician specialist as primary care physician--A provision that allows enrollees with chronic, disabling, or life threatening illnesses to apply to the HMO's medical director to use a nonprimary care physician specialist as a primary care physician as set out in Insurance Code §1271.201.

(22) Selected obstetrician or gynecologist--Individual, conversion, and group agreements and certificates, except small employer plans as defined by Insurance Code §1501.002, must contain a provision that permits an enrollee to select, in addition to a primary care physician, an obstetrician or gynecologist to provide health care services within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist, and subject to the provisions of Insurance Code Chapter 1451, Subchapter F. An HMO must not prevent an enrollee from selecting a family physician, internal medicine physician, or other qualified physician to provide obstetrical or gynecological care.

(A) An HMO must permit an enrollee who selects an obstetrician or gynecologist direct access to the health care services of the selected obstetrician or gynecologist without a referral by the enrollee's primary care physician or prior authorization or precertification from the HMO.

(B) Access to the health care services of an obstetrician or gynecologist includes:

- (i) one well-woman examination per year;
- (ii) care related to pregnancy;
- (iii) care for all active gynecological conditions; and
- (iv) diagnosis, treatment, and referral to a specialist within the HMO's network for any disease or condition within the scope of the selected professional practice of a properly credentialed obstetrician or gynecologist, including treatment of medical conditions concerning breasts.

(C) An HMO may require an enrollee who selects an obstetrician or gynecologist to select the obstetrician or gynecologist from within the limited provider network to which the enrollee's primary care physician belongs.

(D) An HMO may require a selected obstetrician or gynecologist to forward information concerning the medical care of the patient to the primary care physician. However, the HMO must not impose any penalty, financial or otherwise, on the obstetrician or gynecologist by the HMO for failure to provide this information if the obstetrician or gynecologist has made a reasonable and good faith effort to provide the information to the primary care physician.

(E) An HMO may limit an enrollee in the plan to self-referral to one participating obstetrician and gynecologist for both gynecological care and obstetrical care. The limitation must not affect the right of the enrollee to select the physician who provides that care.

(F) An HMO must include in its enrollment form a space in which an enrollee may select an obstetrician or gynecologist as set forth in Insurance Code Chapter 1451, Subchapter F. The enrollment form must specify that the enrollee is not required to select an obstetrician or gynecologist, but may instead receive obstetrical or gynecological services from her primary care physician or primary care provider. The enrollee must have the right at all times to select or change a selected obstetrician or gynecologist. An HMO may limit an enrollee's request to change an obstetrician or gynecologist to no more than four changes in any 12-month period.

(G) An enrollee who elects to receive obstetrical or gynecological services from a primary care physician (i.e., a family physician, internal medicine physician, or other qualified physician) must adhere to the HMO's standard referral protocol when accessing other specialty obstetrical or gynecological services.

(23) Diagnosis of Alzheimer's disease--An HMO that provides for the treatment of Alzheimer's disease must provide that a clinical diagnosis of Alzheimer's disease under Insurance Code Chapter 1354 by a physician licensed in this state satisfies any requirement for demonstrable proof of organic disease.

(24) Drug Formulary--A group agreement and certificate, except small employer plans as defined by Insurance Code §1501.002, that covers prescription drugs and uses one or more formularies must comply with Insurance Code Chapter 1369, Subchapter B and Chapter 21, Subchapter V of this title.

(25) Inpatient care by non primary care physician--If an HMO or limited provider network provides for an enrollee's care by a physician other than the enrollee's primary care physician while the enrollee is in an inpatient facility (e.g., hospital or skilled nursing facility), a provision that on admission to the inpatient facility a physician other than the primary care physician may direct and oversee the enrollee's care.

§11.508. *Mandatory Benefit Standards: Group, Individual, and Conversion Agreements.*

(a) Each evidence of coverage providing basic health care services must provide the following basic health care services when they are provided by network physicians or providers, or by non-network physicians and providers as set out in §11.506(9) or (14) of this title:

(1) Outpatient services, including the following:

- (A) primary care and specialist physician services;
- (B) outpatient services by other providers;
- (C) diagnostic services, including laboratory, imaging, and radiologic services;
- (D) therapeutic radiology services;
- (E) prenatal services, if maternity benefits are covered;
- (F) outpatient rehabilitation therapies including physical therapy, speech therapy, and occupational therapy;
- (G) home health services, as prescribed or directed by the responsible physician or other authority designated by the HMO;
- (H) preventive services, including:

(i) periodic health examinations for adults as required by Insurance Code §1271.153;

(ii) immunizations for children as required by Insurance Code §1367.053;

(iii) well-child care from birth as required by Insurance Code §1271.154;

(iv) cancer screenings as required by Insurance Code Chapter 1356 relating to mammography;

(v) cancer screenings as required by Insurance Code Chapter 1362 relating to screening for prostate cancer;

(vi) cancer screenings as required by Insurance Code Chapter 1363 relating to screening for colorectal cancer;

(vii) eye and ear examinations for children through age 17, to determine the need for vision and hearing correction complying with established medical guidelines; and

(viii) immunizations for adults under the United States Department of Health and Human Services Centers for Disease Control Recommended Adult Immunization Schedule by Age Group and Medical Conditions, or its successor.

(I) no less than 20 outpatient mental health visits per enrollee per year as may be necessary and appropriate for short-term evaluative or crisis stabilization services, which must have the same cost-sharing and benefit maximum provisions as any physical health services; and

(J) emergency services as required by Insurance Code §1271.155.

(2) Inpatient hospital services, including room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, use of intensive care unit and services, X-ray services, laboratory and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, radiation therapy, inhalation therapy, administration of whole blood and blood plasma, and short-term rehabilitation therapy services in the acute hospital setting.

(3) Inpatient physician care services, including services performed, prescribed, or supervised by physicians or other health professionals, including diagnostic, therapeutic, medical, surgical, preventive, referral, and consultative health care services.

(4) Outpatient hospital services, including treatment services; ambulatory surgery services; diagnostic services, including laboratory, radiology, and imaging services; rehabilitation therapy; and radiation therapy.

(b) In addition to the basic health care services in subsection (a) of this section, each evidence of coverage must include coverage for services as follows:

(1) breast reconstruction as required by federal law if the plan provides coverage for mastectomy. Breast reconstruction is subject to the same deductible or copayment applicable to mastectomy. Breast reconstruction may not be denied because the mastectomy occurred prior to the effective date of coverage;

(2) prenatal services, delivery, and postdelivery care for an enrollee and her newborn child as required by federal law, if the plan provides maternity benefits; and

(3) diabetes self-management training, equipment, and supplies as required in Insurance Code Chapter 1358, Subchapter B.

(c) Benefits described in this section that do not apply to small employer plans are not required to be included in those plans.

(d) A state-mandated health benefit plan defined in §11.2(b) of this title must provide coverage for the basic health care services as described in subsection (a) of this section, as well as all state-mandated benefits as described in §§21.3516 - 21.3518 of this title, and must provide the services without limitation as to time and cost, other than those limitations specifically prescribed in this subchapter.

(e) Nothing in this title requires an HMO, physician, or provider to recommend, offer advice concerning, pay for, provide, assist in, perform, arrange, or participate in providing or performing any health care service that violates its religious convictions. An HMO that limits or denies health care services under this subsection must set out such limitations in its evidence of coverage.

#### §11.511. *Optional Provisions.*

Group, individual, and conversion certificates may contain optional provisions, including, but not limited to, the following:

(1) Coordination of benefits. Plans may contain a provision that the value of any benefits or services provided by the HMO may be coordinated with any other type of insurance plan or coverage under governmental programs so no more than 100 percent of eligible expenses incurred is paid. The coordination of benefits provision applies to the plan when an enrollee has health care coverage under more than one plan. This provision will only apply for the duration of the enrollee's coverage in a plan.

(A) If benefits are covered by more than one plan, any plan or plans that do not have a coordination of benefits provision are primary.

(B) Group plans issued or renewed on or before March 25, 2014, may not coordinate benefits with any type of individual or conversion plan.

(C) Group plans issued or renewed on or after March 25, 2014, may coordinate benefits with other plans subject to the requirements of Insurance Code Chapter 1203 and Chapter 3, Subchapter V of this title.

(2) Subrogation. A provision that the HMO receives any rights of recovery allowed by Texas law acquired by an enrollee against any person or organization for negligence or any willful act resulting in illness or injury covered by HMO benefits, but only to the extent of the cost to the HMO of providing the covered services. On receiving the services from the HMO, the enrollee is considered to have assigned

the rights of recovery to the HMO and to have agreed to give the HMO any reasonable help required to secure the recovery. The provision may include a statement that the HMO may recover its share of attorney's fees and court costs only if the HMO aids in the collection of damages from a third party.

(3) Sale of substitutes to Workers' Compensation Insurance. If the HMO chooses to market a product that provides coverage for on-the-job injuries or illness, it must comply with §5.6302 of this title.

(4) Conversion privilege. Group agreements and certificates for an HMO may, at the HMO's option, contain a conversion privilege. If the HMO elects to offer a conversion privilege, it must provide that, on termination of coverage, each enrollee who resides, lives, or works in the service area who has been covered under the group contract for a period of at least three months, or in the case of a court-ordered dependent, lives outside the service area, but within the United States, has the right to convert within 31 days to a conversion agreement without presenting evidence of insurability. A single service or limited service HMO must offer a conversion contract without requiring evidence of insurability. Charges for individuals must comply with §11.704 of this title.

(5) Arbitration. A statement of any required arbitration procedure. If enrollee complaints and grievances are resolved through a specified arbitration agreement, the arbitration must be conducted under Texas Civil Practice and Remedies Code Chapter 171.

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 21. TRADE PRACTICES SUBCHAPTER SS. CONTINUATION AND CONVERSION PROVISIONS

The Texas Department of Insurance adopts new 28 TAC Chapter 21, Subchapter SS, §§21.5301, 21.5302, 21.5310 - 21.5314, and 21.5320 - 21.5322, concerning Continuation and Conversion Provisions. Sections 21.5310 - 21.5313 are adopted with changes, and §§21.5301, 21.5302, 21.5314, and 21.5320 - 21.5322 are adopted without changes, to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5086).

REASONED JUSTIFICATION. The repeal of 28 TAC Chapter 3, Subchapter F; its replacement by the new 28 TAC Chapter 21, Subchapter SS; and the concurrently adopted amendments to 28 TAC Chapter 11, Subchapter F; are necessary to conform TDI's continuation and conversion rules to statutory changes, including HB 710, 75th Legislature, Regular Session (1997) and SB 1771, 81st Legislature, Regular Session (2009), and to con-



solidate the rules for insured and HMO products to enhance consistency in the market to the extent possible. The repealed, amended, and new rules will conserve agency resources by reducing the need for multiple rule projects resulting from future changes in continuation or conversion laws.

To clarify the proposed rule, TDI has added qualifying language to §21.5310(a)(2) to make it clear that the requirements of Insurance Code Chapter 1251, Subchapter G and Insurance Code Chapter 1271, Subchapter G are not affected by general exceptions in the rule for insurers. To allow time to implement any necessary changes in notices, TDI has added §21.5310(e) to allow until January 1, 2015, for implementation of changes required under the adopted rule. In response to comments, TDI eliminated the word "group" from §21.5310(d)(4) because Insurance Code §1251.255(a)(5) and §1271.304(3) do not expressly condition termination of coverage by a group plan or program, and TDI eliminated §21.5311(b)(3)(H) because the availability of the member handbook and materials under Insurance Code §843.205 and §11.1602 of this title should suffice to provide notice of how to contact TDI. TDI has also made several nonsubstantive editorial changes to §§21.5311 - 21.5313.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

In general:

Comment: One commenter voiced support for TDI's proposed application of the rules to small and micro business carriers, and was concerned that any exemption would be in conflict with the statute's intention of making continuous coverage options available and would leave some consumers, depending solely on the number of employees their carrier has, with fewer coverage options and consumer protections.

Agency Response: TDI appreciates the support for its position.

Comment: One commenter stated that if TDI adopts the proposed rules, the law will be more convoluted and confusing than it ever was.

Agency Response: TDI disagrees. The adopted rules are both necessary and useful, and are likely to result in a regulatory environment that is less convoluted and more transparent because the rules will conform TDI's rules to statutory changes and consolidate continuation and conversion rules for insured and HMO products to enhance consistency in the market to the extent possible.

Comment: One commenter stated that the proposed rules would have a devastating financial impact on its third party administrator practice.

Agency Response: TDI disagrees. The commenter apparently believes that the clarification of notice requirements will damage the business of third party administrators. TDI notes that no other commenter has raised this concern in reaction to either the informal publication of the rule or the publication of the proposed rule in the *Texas Register*. TDI further observes that notice requirements are one of many duties assumed by third party administrators in their business, and notes that the adopted rules comply with most current practice and allow carriers to delegate notice functions to group policyholders who may still contract with third party administrators to perform this function. The adopted rules do not constitute a substantial change from the requirements of the prior rule and so should not require major adjustments.

Comment: One commenter argued any mention of federal COBRA in the rules is a real reach for TDI, because COBRA is an

employer law, not an insurance company law, and asked why TDI delves into something over which it has no authority whatsoever.

Agency Response: TDI disagrees. References to COBRA in the adopted rules are consistent with longstanding references in the rules they replace, and deal with definitional matters, duration of and timing for state continuation coverage, and their interplay with COBRA coverage. The references are necessary and consistent with statutory coordination with COBRA found in Insurance Code §1251.255 and §1271.304, for example. It is important to continue to regulate the interplay of state notices with COBRA coverage, and TDI does not regulate COBRA coverage in these rules.

#### §21.5310(d)(4)

Comment: One commenter noted that existing rules and Insurance Code §1251.255 do not limit termination of continuation coverage in §21.5310(d)(4) to actual coverage by group plans or programs only, but allow termination based on other types of coverage.

Agency Response: TDI agrees, and notes that Insurance Code §1251.255(a)(5) and §1271.304(3) do not expressly condition termination on coverage by a group plan or program. TDI has made a change to §21.5310(d)(4) by removing the word "group."

#### §21.5310(d)(5)

Comment: One commenter said that it was not clear why the proposal included a separate subsection (d)(5), incorporating subsections (d)(1) - (4) by reference (addressing "group continuation"), and separately listing additional bases for termination of continuation coverage "for a person covered under a group policy of accident, health, or accident and health insurance, including a group contract issued by a group hospital service corporation." The commenter did not see a distinction between the applicability of subsections (d)(1) - (4) and subsection (d)(5) and suggested that the conditions listed in (d)(5)(A) - (D) follow and be included in one list with the other bases allowing termination of continuation coverage, as in Insurance Code §1251.255 and the current rule.

Agency Response: TDI disagrees and declines to make the suggested change. The difference between the subsections is that some apply to HMOs but not other carriers. As the rule notes, limits are imposed by Insurance Code §1251.255 and §1271.304. Adopted §21.5310(d)(1) - (4) are derived from Insurance Code §1271.304, which applies to HMOs, and generally requires actual coverage. Adopted §21.5310(d)(5) is derived from Insurance Code §1251.255 and the existing 28 TAC §3.504(b), which apply to other carriers and are more generally couched in terms of eligibility for coverage, rather than actual coverage. Thus, two lists of reasons for termination were needed in the existing rules and are still needed in the adopted rules.

#### §21.5310(d)(5)(D)

Comment: One commenter voiced support for TDI's construction of §21.5310(d)(5)(D) as not including the availability of guaranteed-issue coverage under the Patient Protection and Affordable Care Act (PPACA) as a basis for termination of continuation coverage, and said that this construction was consistent with past interpretation, which did not allow for the termination of continuation coverage because of the availability of guaranteed issue coverage in the Texas Health Insurance Pool.

Agency Response: TDI appreciates the support for its construction of the rule.

Comment: One commenter objected to TDI's construction of §21.5310(d)(5)(D), noting that it strongly believes that the availability of guaranteed-issue coverage under PPACA would provide a basis for termination of continuation coverage under proposed (d)(5)(D). The commenter argued that such coverage falls squarely within "similar benefits... provided or available to the insured under any state or federal law," thus providing a basis for termination under §21.5310 and Insurance Code §1251.255.

Agency Response: TDI disagrees, and declines to make the suggested change to its construction. The availability of guaranteed-issue individual coverage under PPACA is analogous to the availability of guaranteed issue individual coverage in the Texas Health Insurance Pool under Insurance Code Chapter 1506. Since 1998, guaranteed-issue individual coverage has been available to Texans through the Pool. TDI has never held that this availability was a basis for terminating - indeed, preventing - state continuation coverage. When Texas created and funded the Pool, it could have amended Chapter 1251 to delete continuation requirements that would have been unnecessary under the commenter's reasoning. Since legislation has not passed to delete those requirements since the enactment of the Pool, the only way to prevent nullification of the provisions of §1251.255 is to continue to construe it as permitting termination when an individual is eligible for a state or federally funded program such as Medicare or Medicaid. Given the statutory language and the importance of this consumer protection, TDI is reluctant to eliminate the protection without legislative clarification. TDI notes that federal regulations do not permit termination of COBRA coverage due to eligibility for other coverage. Despite the existence of guaranteed issue coverage, federal law still requires the offer of COBRA coverage, and TDI is unaware of any state eliminating the continuation of coverage requirements.

§21.5311(a) and §21.5311(d)

Comment: One commenter stated that §21.5311(a) places a difficult and onerous burden on carriers by requiring timely offers of continuation and providing that while carriers may delegate the notice function to a group policyholder, the carrier retains ultimate responsibility. The commenter stated that Insurance Code §1251.260 provides that, "[a]n employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination." The commenter stated that this places the responsibility directly on the group policyholder, and not the carrier, and argued that the statute does not authorize TDI to transfer this obligation to the carrier. The commenter made the same argument in relation to the termination of COBRA coverage under §21.5311(d).

Agency Response: TDI disagrees, and declines to make the suggested changes. This argument was raised at the original adoption of the predecessor to §23.5311 as §3.504(b) in 1993 (see 18 *TexReg* 9759) and again at its amendment in 1996 as §3.506 (see 21 *TexReg* 5857). In both cases, TDI concluded that the notice function could and should be placed on carriers, noting in 1996 that the statute expressly states that insurers must offer conversion to the insured, and that the agency only regulates insurers, not employers (see 18 *TexReg* at 9760, 21 *TexReg* at 5859). TDI still maintains that position. As with the previous

rules, the adopted rule allows notice responsibilities to be satisfied by insurer or employer.

§21.5311(b) and §21.5311(d)

Comment: One commenter noted that §21.5311(b) specifies that timely notice may be presumed if it is given at least 30 days and no more than 60 days prior to the scheduled termination of coverage; and if the employer, group policy or contract holder, or carrier becomes aware less than 30 days before actual termination that coverage will terminate, notification must be given within five business days. The commenter stated that these timelines are unworkable in practice, when placed on the carrier. The commenter maintained that while carriers rely on group policyholders for notice of terminations of coverage and employment; the latter often do not provide such notice until after termination occurs. The commenter stated that requiring 30-60 days' advance notice from carriers is not reasonable. The commenter stated that requiring that notice not be provided more than 60 days in advance prevents the practice of providing the notice in the certificate or annual notices, as allowed by Insurance Code §1251.307. The commenter stated that while it opposed placing the notice obligation on carriers in contravention of the Insurance Code, if TDI was going to do so, the commenter recommended that the notice date be tied to the carrier's receipt of notice from the policyholder of the termination of coverage or employment that triggers the continuation privilege, since five business days is not reasonably sufficient time to prepare and send such notices. The commenter made essentially the same arguments with regard to the termination of COBRA coverage under §21.5311(d), contending that §21.5311(d) provides that if an individual is eligible for COBRA, the continuation notice must be given at the initial termination of coverage, and, if COBRA coverage is elected, again 30-60 days prior to termination of COBRA coverage (or if the carrier becomes aware less than 30 days before actual termination that COBRA continuation coverage will terminate, notification must be given within five business days). The commenter stated that for the reasons stated above with regard to the initial notice requirements being placed on the carrier rather than the responsible group policyholder, such a requirement is not authorized, and more practically, is unworkable and not reasonable.

Agency Response: TDI does not agree that the timelines are unreasonable or unworkable in practice, and declines to make the suggested changes. The 30 day requirement is reasonable in light of employees' need for timely notice of termination and the likelihood of employer and carrier access to the required information. TDI notes that the current §3.506 has required 30 days' notice since it was first adopted in 1993 as §3.504. TDI stated then that "the time limit was a compromise of recommendations made by representatives of interested parties." (See 18 *Texas Register* at 9760). Given the lack of complaints through the years about the timelines and the lack of comments from carriers on the informal publication of this rule and stakeholder meeting in March 2014, the timelines appear to have worked for the almost 21 years that the rule has been in effect, and TDI declines to change them at this time. With regard to the requirement that notice be given not more than 60 days in advance, TDI notes that the current §3.506 requires "timely notice." TDI concludes that a notice in the certificate or annual notice more than 60 days in advance of termination is not timely or likely to be of help in advising an employee of the need to secure other coverage. TDI also notes that while Insurance Code §1251.307 requires notice at the time of issuance, it does not preclude other notices, and the rule does not prevent the §1251.307 issuance notices. With regard to the 5-business-day requirement where the employer,

group policy or contract holder, or carrier becomes aware less than 30 days from actual termination that coverage will terminate, TDI again notes the lack of complaints and lack of comments; and notes that the adopted rule actually lengthens this period from the requirement that notice be given "immediately" in the former §3.506(b)(1). TDI also notes that requiring five business days' notice where the employer, group policy or contract holder, or carrier becomes aware less than 30 days from actual termination should obviate the requested requirement that the time run from receipt of notice from the policyholder. TDI notes that where state continuation coverage is not initially elected, requiring a continuation notice under §21.5311(d) at both the initial termination of coverage and again at the termination of COBRA coverage is entirely consistent with ensuring that the employee, member, dependent, or enrollee is advised in a timely manner of the availability of continuation coverage.

#### §21.5311(b)(3)(C)

Comment: One commenter noted that §21.5311(b)(3)(C) requires that the termination notice include, "the date on which the employer or other group policy or contract holder must receive the employee's, member's, dependent's, or enrollee's written election to continue coverage and the first premium contribution..." The commenter noted that the carrier often does not know this information because of employer decisions about cost sharing; it is not reasonable to require the carrier to provide this information.

Agency Response: TDI disagrees and declines to make the suggested changes. This notice requirement is derived from identical language in the current §3.506(c)(2)(C), amended in 1996, and essentially identical language in the original §3.504(c)(2)(C), adopted in 1993. Again, TDI notes the lack of comments on the informal publication of the rule and during the stakeholder meeting, and the fact that the timelines appear to have worked for the almost 21 years that the rule has been in effect.

#### §21.5311(b)(3)(G) and §21.5321

Comment: One commenter applauded TDI's inclusion in §21.5311(b)(3)(G) of a link to a specific TDI web page that has consumer information on losing job-based coverage. The commenter recommends: 1) keeping that link in the continuation notice, 2) adding the link to conversion notices required in §21.5321, and 3) updating the information on the linked TDI web page to provide a more complete picture of options available when job-based coverage is lost. The commenter also provided recommendations for information to be added to the TDI website.

Agency Response: TDI appreciates the support for §21.5311(b)(3)(G) and the suggestions for website language, but concludes that additional language is not necessary in conversion notices in §21.5321, as it would be duplicative of the notices regarding continuation coverage that anyone losing employer coverage will also receive. TDI will carefully consider revisions to the website text separately from this rule package.

Comment: One commenter recommended that TDI require that both continuation and conversion notices provide basic, concise information on the marketplace, including its website and toll-free number, as well as a statement about the availability of financial help for eligible consumers to lower monthly premiums, deductibles, and co-pays. The commenter recommended the addition of language to English and Spanish language notices in §21.5311(b)(3)(G) and §21.5321.

Agency Response: TDI disagrees, and declines to make the requested changes. While TDI appreciates the utility of information on the federal marketplace and is making changes to its website, providing extensive information about the marketplace is not a duty imposed on carriers under the Texas statutes, which are implemented by the rules. The modification to the notice that TDI has proposed and is adopting informs consumers that additional coverage options may be available and refers them to TDI's website. This allows TDI to easily update information on its website in order to accommodate changes in the market.

#### §21.5311(b)(3)(H)

Comment: One commenter noted that §21.5311(b)(3)(H) adds a requirement that for HMOs with an enrollee population in which 10 percent or more of the enrollees speak a language other than English or Spanish as their primary language, the translation of the required statement about how to contact the carrier or TDI with questions regarding continuation, must be in that other language, in addition to English and Spanish. The commenter stated that this places an additional and unnecessary burden on the carrier and should not be included.

Agency Response: TDI agrees in part, and makes the suggested change. While the wording of the proposed rule was consistent with the requirement for a member handbook and materials relating to the complaint and appeals process in the languages of the major populations of the enrolled population in Insurance Code §843.205 and §11.1602 of this title, the availability of the member handbook and materials should suffice to provide notice of how to contact TDI.

§21.5312 Comment: One commenter stated that it supports the notice requirements for employees, members, and dependents of the election of continuation coverage to the group policyholder.

Agency Response: TDI appreciates the support for its position.

#### §21.5313

Comment: One commenter stated that §21.5313 extends the deadline for payment of the initial premium from 31 days after the termination of coverage or notice (current rule 3.507) to not later than the 45th day after the date of the initial election for coverage. It also provides that a payment must be considered timely if made on or before the 30th day after the date on which the payment is due. The commenter stated that it is opposed to both changes, as they are extreme changes to the current rules and not supported by the Insurance Code. The commenter argued that extending the initial enrollment period and providing for a new premium "grace period" place expensive new administrative burdens on carriers.

Agency Response: TDI disagrees, and declines to make the suggested changes. TDI is revising the rules to conform them to statutory changes since 1996. This rule is derived in part from Insurance Code §1251.254, amended in 2009, which mandates both the 45 day period for initial payment and the 30 day grace period. Because the standards repeated in the rule have applied to carriers since 2009, TDI believes that carriers are in compliance, and new administrative burdens should not result.

#### §21.5320

Comment: One commenter stated that it supports §21.5320, which confirms that the offer of a conversion policy is optional and not mandatory for an insurance policy that is delivered, issued for delivery, or renewed on or after July 1, 1997, and for HMO coverage.

Agency Response: TDI appreciates the support for its position.

## NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, with changes: Center for Public Policy Priorities and Texas Association of Health Plans.

Against: TCO Integrated Solutions, Inc.

## DIVISION 1. GENERAL PROVISIONS

### 28 TAC §§21.5301, §21.5302

STATUTORY AUTHORITY. TDI adopts the new sections under Insurance Code §§36.001, 843.051(b)(3), 843.151, 1251.008, 1251.251, 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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.

Section 843.051(b)(3) states, "(b) A health maintenance organization is subject to (3) Subchapter G, Chapter 1251, and Section 1551.064."

Section 843.151 states, "The commissioner may adopt reasonable rules as necessary and proper to: (1) implement this chapter and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to: (A) prescribe authorized investments for a health maintenance organization for all investments not otherwise addressed in this chapter; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations."

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251(a) states, "An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that

includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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 October 28, 2014.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6326



## DIVISION 2. GROUP CONTINUATION PROVISIONS

### 28 TAC §§21.5310 - 21.5314

STATUTORY AUTHORITY. TDI adopts the new sections under Insurance Code §§36.001, 843.051(b)(3), 843.151, 1251.008, 1251.251, 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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.

Section 843.051(b)(3) states, "(b) A health maintenance organization is subject to (3) Subchapter G, Chapter 1251, and Section 1551.064."

Section 843.151 states, "The commissioner may adopt reasonable rules as necessary and proper to: (1) implement this chapter and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to: (A) prescribe authorized investments for a health maintenance organization for all investments not otherwise addressed in this chapter; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and

maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations."

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251(a) states, "An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

*§21.5310. Mandatory Group Continuation Privilege.*

(a) Applicability.

(1) The provisions of this section apply to:

(A) an insurer or a group hospital service corporation subject to Insurance Code Chapter 842 that issues policies providing hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense-incurred basis;

(B) an HMO subject to Insurance Code Chapter 1271.

(2) Except as otherwise required by Insurance Code Chapter 1251, Subchapter G, or Insurance Code Chapter 1271, Subchapter G, the provisions of this section do not apply to policies providing benefits for:

(A) a specified disease or diseases only;

(B) accident only;

(C) group Medicare supplement insurance; or

(D) group TRICARE supplement insurance.

(b) Eligibility for continuation of group coverage. Each employee, member, enrollee, or dependent whose group coverage is terminated has the right to continuation of the group coverage provided under and subject to the conditions of Insurance Code §§1251.251, 1251.252, and 1271.301.

(c) Replacement of group coverage. Any person who elects to continue group coverage under applicable state law must be included under any group coverage that replaces the existing group coverage. Coverage under the replacing coverage must be continued until the completion of the state continuation coverage period.

(d) Termination of continued coverage. Under Insurance Code §1251.255 and §1271.304, group continuation coverage may not terminate until the earliest of:

(1) the date the maximum state continuation coverage period provided by law would end, which is:

(A) for any employee, member, dependent, or enrollee not eligible for COBRA continuation coverage, nine months after the date the employee, member, dependent, or enrollee elects to continue the group coverage; or

(B) for any employee, member, enrollee, or dependent, eligible for COBRA continuation coverage, six additional months following any period of COBRA continuation coverage;

(2) the date failure to make timely payments would terminate the group coverage;

(3) the date the group coverage terminates in its entirety;

(4) the date the insured or enrollee is covered for similar benefits by another plan or program, including a hospital, surgical, medical, or major medical expense insurance policy, a hospital or medical service subscriber contract, or a medical practice or other prepayment plan; or

(5) for a person covered under a group policy of accident, health, or accident and health insurance, including a group contract issued by a group hospital service corporation, the earliest of:

(A) any date in paragraph (1) - (4) of this subsection;

(B) the date the insured is or could be covered under Medicare;

(C) the date the insured is eligible for similar benefits, whether or not covered for those benefits, under any arrangement of coverage for people in a group, whether on an insured or uninsured basis; or

(D) the date similar benefits are provided or available to the insured under any state or federal law other than COBRA continuation coverage.

(e) Coverage after COBRA. Any insured person or enrollee who elects to continue group coverage under COBRA may elect state continuation coverage under Insurance Code §§1251.251, 1251.252, and 1271.301 following the period of COBRA continuation coverage, provided the insured or enrollee is otherwise eligible under subsection (b) of this section.

(f) Coverage for Certain Family Members and Dependents. A group policy or contract delivered, issued for delivery, renewed, amended, or extended in this state, including a group contract issued by

a group hospital service corporation, that provides insurance for hospital, surgical, or medical expenses incurred as a result of accident or sickness, or an evidence of coverage under Insurance Code Chapter 843, must include the options for continuation of group coverage for certain family members and dependents prescribed in Insurance Code Chapter 1251, Subchapter G.

*§21.5311. Notification Requirement of Insurers, Employer and Group Policyholders, and HMOs.*

(a) Each carrier to which this subchapter applies is responsible for the timely offer of state continuation coverage options and must provide the notice for that coverage described in subsections (b) - (e) of this section. If the carrier delegates the responsibility of providing continuation notices to an employer or other group policyholder, the carrier remains responsible if the employer or other group policy or contract holder does not provide notice in compliance with this section. The carrier must provide timely notice of continuation privileges available to each employee, member, dependent, or enrollee whose coverage is terminating.

(b) For purposes of this section, notice is presumed timely if it is given at least 30 days and no more than 60 days prior to the scheduled termination of coverage.

(1) If the employer, group policy or contract holder, or carrier becomes aware, less than 30 days before actual termination, that coverage will terminate, notification must be given to the affected employee, member, dependent, or enrollee within five business days.

(2) The time limits required by this subsection in no way affect or limit notice requirements specified in Insurance Code §1251.307 and §1251.308. When a group policyholder must give notice of continuation under Insurance Code Chapter 1251, Subchapter G, on receipt of written notification of an event triggering the election of a continuation option, the statutory time limits referenced in subsection (e) of this section prevail.

(3) The notice must include:

(A) the time period allocated for making the election to continue coverage prescribed in Insurance Code §§1251.253, 1251.254, and 1271.302;

(B) the premium amount that an employee, member, dependent, or enrollee electing continuation of coverage must pay to the employer or other group policy or contract holder on a monthly basis;

(C) the date on which the employer or other group policy or contract holder must receive the employee's, member's, dependent's, or enrollee's written election to continue coverage and the first premium contribution;

(D) the length of time the eligible employee, member, dependent, or enrollee may continue coverage;

(E) notice of a conversion option, if offered, as required under §21.5321 of this title;

(F) an enrollment/election form and signature line;

(G) the following English and Spanish statement at the end of the notice: "If you have questions regarding your rights for continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number, or other telephone number if no toll-free number is available). If you have additional questions about continuation or other coverage options that might be available to you, you may contact the Texas Department of Insurance, toll-free, at (800) 252-3439 or visit this Internet site: <http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing>."

"Si usted tiene preguntas sobre sus derechos para continuar con su seguro de salud, comuníquese con (insert name of insurance company) al (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Si usted tiene preguntas adicionales sobre la continuación del seguro u otras opciones de cobertura que podrían estar disponibles para usted, puede comunicarse con el Departamento de Seguros de Texas al número de teléfono gratuito (800) 252-3439 o visite este sitio de Internet: <http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing>. Se habla español."; and

(c) If an employee, member, dependent, or enrollee is eligible for both COBRA continuation coverage and state continuation coverage, as permitted under §21.5310(e) of this title, the carrier may send the notice for state continuation coverage with the COBRA continuation notice. If the carrier sends both notices simultaneously, the carrier must allow the employee, member, dependent, or enrollee to elect both COBRA continuation coverage and state continuation coverage, which will be effective at the expiration of COBRA continuation coverage as described in §21.5310(e) of this title. A person's election of only COBRA continuation coverage does not waive the person's right to elect or waive state continuation coverage at a later date, provided the election is made within the statutory time frame under Insurance Code §1251.253 and §1271.302.

(d) If an employee, member, dependent, or enrollee is eligible for both COBRA and state continuation coverage but only elects COBRA continuation coverage, the carrier must provide a notice of state continuation coverage eligibility at least 30 days and no more than 60 days prior to termination of COBRA continuation coverage. If the employer, group policy or contract holder, or carrier becomes aware less than 30 days before actual termination that COBRA continuation coverage will terminate, notification must be given to the affected employee, member, dependent, or enrollee within five business days.

(e) The written notice of state continuation coverage privileges required by this subsection must also comply with the requirements of Insurance Code Chapter 1251, Subchapter G, and Chapter 1271, Subchapter G.

(f) Except as otherwise provided by this chapter, the requirements of this section apply only on or after February 1, 2015. Before that date, §3.506 of this title as it existed immediately before the effective date of this chapter applies, and is continued in effect through January 31, 2014, for that purpose.

*§21.5312. Continuation Election and Effective Dates.*

(a) An employee, member, dependent, or enrollee electing state continuation coverage under §21.5310 of this title must make a written election to the employer or group policy or contract holder not later than the 60th day after the later of:

(1) the date of the termination of coverage under the group policy or contract; or

(2) the date the person is given notice of the right to continuation of group coverage.

(b) A dependent under a group insurance policy electing state continuation coverage under Insurance Code Chapter 1251, Subchapter G, must give written notice to the group policyholder or contract holder of the person's desire to exercise the continuation option not later than the 60th day after the date of the:

(1) severance of the family relationship; or

(2) retirement or death of the group employee, member, or enrollee.

(c) Each eligible employee, member, dependent, or enrollee has the right to elect continuation, and such election is not contingent on an identical election of any other family member.

§21.5313. *Continuation Premium.*

(a) Under Insurance Code §1251.254 and §1271.303, the premium for state continuation coverage elected under §21.5310 of this title must be the same premium charged for active employees, members, dependents, or enrollees, including any amount contributed by the employer or group policy or contract holder, plus 2 percent.

(b) The employee, member, dependent, or enrollee electing state continuation coverage under §21.5312 of this title must pay the initial premium not later than the 45th day after the date of the initial election for coverage.

(c) After the first payment following the initial election for coverage under §21.5312 of this title, the employee, member, dependent, or enrollee must pay the premium on the due date of each payment. However, a payment under this subsection must be considered timely if made on or before the 30th day after the date on which the payment is due.

(d) The premium for state continuation coverage elected under Insurance Code Chapter 1251, Subchapter G, may not be more than the premium charged under the group policy or contract for the person had the family relationship not been severed, except as provided by Insurance Code §1551.064. Under Insurance Code §1251.306, the group policyholder or contract holder may require the person to pay a monthly fee of not more than \$5 for administrative costs.

(e) A person covered under state continuation coverage elected under Insurance Code Chapter 1251, Subchapter G, must pay the premium for the coverage directly to the group policyholder or contract holder.

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 October 28, 2014.

TRD-201405050

Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6326



### DIVISION 3. GROUP CONVERSION PROVISIONS

#### 28 TAC §§21.5320 - 21.5322

STATUTORY AUTHORITY. TDI adopts the new sections under Insurance Code §§36.001, 843.051(b)(3), 843.151, 1251.008, 1251.251, 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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.

Section 843.051(b)(3) states, "(b) A health maintenance organization is subject to (3) Subchapter G, Chapter 1251, and Section 1551.064."

Section 843.151 states, "The commissioner may adopt reasonable rules as necessary and proper to: (1) implement this chapter and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to: (A) prescribe authorized investments for a health maintenance organization for all investments not otherwise addressed in this chapter; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations."

Section 1251.008 states, "The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201."

Section 1251.251(a) states, "An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, "An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6326



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 51. EXECUTIVE

##### SUBCHAPTER O. ADVISORY COMMITTEES

###### 31 TAC §§51.606 - 51.611, 51.631, 51.671, 51.672

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 21, 2014 adopted amendments to §§51.606 - 51.611, 51.631, 51.671, and 51.672, concerning advisory committees, without changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5546).

The amendments establish an expiration date of October 1, 2018 for the following advisory committees: White-tailed Deer Advisory Committee (WTDAC), Migratory Game Bird Advisory Committee (MGBAC), Upland Game Bird Advisory Committee (UGBAC), Private Lands Advisory Committee (PLAC), Bighorn Sheep Advisory Committee (BSAC), Wildlife Diversity Advisory Committee (WDAC), Freshwater Fisheries Advisory Committee (FFAC), State Parks Advisory Committee (SPAC), and Coastal Resources Advisory Committee (CRAC). The department believes that these advisory committees continue to perform a valuable service for the department. Therefore, the department wishes to continue these advisory committees for another four years.

The amendments also remove the rule division designations currently in effect. The department's advisory committee rules are located in Chapter 51, Subchapter O of the Texas Administrative Code. Subchapter O is further currently divided into divisions based on the type of advisory committee. However, as a result of changes to the advisory committee structure over the years, the department has determined that these designations are no longer necessary and that the sections can simply be listed in consecutive order.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules

must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute.

The department received no comments opposing adoption of the proposed amendments.

The department received five comments supporting adoption of the proposed amendments.

No groups or associations commented on the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, §11.0162, and Government Code, §2110.005 and §2110.008.

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 October 30, 2014.

TRD-201405090

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 21, 2014 adopted amendments to §65.107 and §65.109, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (Triple T permit); §65.131 and §65.132, concerning Deer Management Permit (DMP); §65.603 and §65.608, concerning Deer Breeder's Permits; and new §§65.701 - 65.704, concerning Authority to Refuse to Issue or Renew Permit. Section 65.704 is adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5299). The amendments to §§65.107, 65.109, 65.131, 65.132, 65.603, and 65.608 and new §§65.701 - 65.703 are adopted without changes and will not be republished.

The change to §65.704, concerning Review of Department Decision to Refuse Permit Issuance or Renewal, requires the department to conduct a review within 30 days of receiving a request for review or as may be established by mutual agreement.

Under various provisions of Parks and Wildlife Code, Chapter 43, the department is authorized to issue permits governing certain activities involving live deer. The various types of Triple T permits allow a permittee to trap and move live game animals and game birds (Parks and Wildlife Code, Chapter 43, Subchapter E). Similarly, a DMP allows a permittee to temporarily retain white-tailed deer in an enclosure for the purpose of propagation (Texas Parks and Wildlife Code, Chapter 43, Subchapter R). A deer breeder permit allows a permittee to possess, purchase, and sell breeder deer (Texas Parks and Wildlife Code, Chapter 43, Subchapter L).



Under current rules governing Triple T, DMP, and deer breeder permits, the department may refuse to issue or renew a permit to any person who has been convicted of, pleaded *nolo contendere* to, or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or a violation of Parks and Wildlife Code, §63.002. Additionally, the department may refuse to issue or renew a permit to any person who has been convicted of, pleaded *nolo contendere* to, received deferred adjudication or pretrial diversion for, or has been assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act). Department rules further specify that the department may prohibit any person from acting as an agent of or surrogate for any permittee if the person is described by any of the previously mentioned criteria regarding criminal behavior. Department rules also provide for the review of an agency decision to refuse permit issuance or renewal.

The rules were adopted in 2010 because the department believed it was necessary to create a mechanism for preventing persons with an adjudicated disregard for laws intended to protect the state's wildlife resources from enjoying (for an appropriate period of time) the privilege of a permit that authorizes the possession of live wildlife resources. At the time the rules were promulgated, the department noted that a denial of issuance or renewal of a permit under these criteria would not be automatic, but within the discretion of the department. The department noted that factors to be considered would include, but not be limited to the seriousness of the offense, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

In 2013, the 83rd Texas Legislature (Regular Session) enacted Senate Bill (S.B.) 820, which amended Parks and Wildlife Code, Chapters 12 and 43, to address issues relating to the management, breeding, and destruction of deer held under Triple T, DMP, and deer breeder permits and the process of reviewing an agency decision to deny permit issuance or renewal.

Senate Bill 820 amended Parks and Wildlife Code, Chapter 12, by adding new Subchapter G to prescribe the criteria used by the department to refuse issuance or renewal of a Triple T, DMP, or deer breeder permit. The effect of the legislation is to codify in statute the department's current rules regarding refusal to issue or renew a permit on the basis of the applicant's criminal history, as well as the department's discretionary guidelines for making such a determination. Accordingly, the amendments to §§65.107, 65.109, 65.131, 65.132, and 65.603 remove regulatory language that is duplicative of the new statutory provisions.

The provisions of S.B. 820 require the commission to adopt by rule procedures consistent with Subchapter G for the department's review of a refusal to issue or renew a permit. Rather than promulgating duplicate provisions in each of the three subchapters of Chapter 65 of the Texas Administrative Code, Title 31, the department instead adopts new §§65.701 - 65.704, designated as new Subchapter U, which would locate all provisions regarding permit/renewal refusal and review of refusal of Triple T, DMP, and deer breeder permit issuance or renewal in a single place to facilitate ease of reference.

New §65.701, concerning Applicability, clearly states that the subchapter applies only to Triple T, DMP and deer breeder per-

mits. New §65.702, concerning Authority to Refuse to Issue or Renew Permit, stipulates that department decisions to refuse permit issuance or renewal will be made in compliance with the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G. New §65.703, concerning Proscription of Certain Agents and Surrogates, relocates the current provisions concerning agents and surrogates in a single section for ease of reference. New §65.704, concerning Review of Department Decision to Refuse Permit Issuance or Renewal, requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The new rule also requires the department to conduct the review within 30 days of receiving a request for review, unless another date is established by mutual agreement. In addition, the new rule replaces the current delineation of department personnel constituting the review panel. The current rule requires the review panel to be composed of the Deputy Executive Director for Operations (or his or her designee), the Director of the Wildlife Division, and the Big Game Program Director. In practice, the department has discovered that it is difficult to schedule meetings of the review panel within the timeframe required by the rule, primarily because senior-level managers have statewide duties and are infrequently in the same place at the same time. Additionally, the department believes that the panel should not include the individual who refused to issue or renew the permit, and current rule does not afford the latitude to avoid such a conflict. Therefore, the new rule replaces the current delineation with the requirement that the review panel consist of three department managers with expertise in deer management, appointed or approved by the executive director or designee. In this fashion, the review process can be expedited.

In addition, the new rule eliminates the requirement that the number and disposition of all reviews be reported to the department's White-tailed Deer Advisory Committee on an annual basis. Although the department intends to continue to make such a report to the White-tailed Deer Advisory Committee, such reports would be at the request of the Chair of the White-tailed Deer Advisory Committee.

The amendment to §65.608, concerning Annual Reports and Records, corrects an inadvertent oversight. In a rulemaking adopted last year, the department implemented mandatory electronic reporting for deer breeder permit holders, which included the implementation of a single reduced fee for deer breeder permit renewals. Prior to the rulemaking, permit holders who reported electronically were entitled to a 50% reduction in the renewal fee. With mandatory electronic reporting, all permittees receive a reduced fee for renewal; however, the rulemaking did not eliminate the provisions of §65.608 that are now irrelevant.

The department received no comments opposing adoption of the proposed amendments and new rules.

The department received nine comments supporting adoption of the proposed amendments and new rules.

The Texas Deer Association commented in support of the proposed amendments and new rules.

## SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

### 31 TAC §65.107, §65.109

The amendments are adopted under the authority of Parks and Wildlife Code, §§43.061, 43.6011 and 43.6012, which require the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter E, and 12.605, which authorizes the commission to adopt procedures for the department's review of a refusal to issue or renew a permit issued under Parks and Wildlife Code, §§43.061, 43.6011 and 43.6012.

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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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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## SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

### 31 TAC §§65.131, §65.132

The amendments are adopted under the authority of Parks and Wildlife Code, §43.603, which authorizes the commission to establish the conditions under which deer may be held under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter R, and Parks and Wildlife Code, §12.605, which authorizes the commission to adopt procedures for the department's review of a refusal to issue or renew a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter R.

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## SUBCHAPTER T. DEER BREEDER PERMITS

### 31 TAC §§65.603, §65.608

The amendments are adopted under the authority of Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer

held under a permit issued pursuant to the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, and Parks and Wildlife Code, §12.605, which authorizes the commission to adopt procedures for the department's review of a refusal to issue or renew a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter L.

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## SUBCHAPTER U. AUTHORITY TO REFUSE TO ISSUE OR RENEW PERMIT

### 31 TAC §§65.701 - 65.704

The new sections are adopted under the authority of Parks and Wildlife Code, §§43.061, 43.6011 and 43.6012, which require the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter E, §43.603, which authorizes the commission to establish the conditions under which deer may be held under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter R, §43.357, which authorizes the commission to make regulations governing the possession of breeder deer held under a permit issued pursuant to the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, and §12.605, which requires the commission to adopt procedures by rule that are consistent with Parks and Wildlife Code, Chapter 12, Subchapter G, for the department's review of a refusal to issue or renew certain permits.

*§65.704. Review of Department Decision to Refuse Permit Issuance or Renewal.*

An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(1) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 of receipt of the request required by paragraph (2) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in deer management, appointed or approved by the executive director, or designee.

(5) The decision of the review panel is final.

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 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER S. MOTOR FUEL TAX

##### 34 TAC §3.432

The Comptroller of Public Accounts adopts an amendment to §3.432, concerning refunds on gasoline and diesel tax, with changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5719). The title of §3.432 is adopted to be changed to "Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes."

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

Subsections (b), (d), (e), and (f), concerning refunds for off-highway or nonhighway use, are amended to delete references to credits or refunds on dyed or undyed diesel fuel. The refund or credit for dyed or undyed diesel fuel used for off-highway purposes, by a lessor of off-highway equipment or in a motor vehicle operated exclusively off-highway, expired on January 1, 2005. In addition, subsection (b)(2) is deleted due to the information and 2004 date no longer being relevant.

In addition, subsections are amended and new subsections are added to implement House Bill 2148, 83rd Legislature, 2013. Subsections (a), (b)(2), (f), (h)(2), and (m) are amended to include compressed natural gas and liquefied natural gas. Subsection (b) is amended to include a reference to new Tax Code, §162.369, concerning when compressed natural gas or liquefied natural gas tax refund or credit may be filed. In addition,

subsection (h) is amended to add new paragraph (3) to address refunds of tax paid on compressed natural gas or liquefied natural gas purchased by a Texas county, pursuant to new Tax Code, §162.365, concerning refund or credit for certain taxes paid.

Subsection (c)(4)(D) is amended to change the word "signature" to "identity" to better accommodate electronic as well as manual distribution logs. This subsection is also amended to add the word "the" in front of "identity."

Subsection (g)(2) is amended to clarify that the paragraph describes the fixed percentage method of determining the amount of refund or credit for state fuel tax paid on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. Subsection (g)(5) is amended to clarify that the paragraph describes the fixed 5.0% method. Subsection (g)(8) is deleted due to the information and 2003 date no longer being relevant.

Subsection (h)(2) is amended to correct punctuation to remove the comma after "subsection."

Subsection (i)(3) is amended to remove the effective date as the 2004 date is no longer relevant. A reference to a permissive supplier is also being removed as a permissive supplier does not make export sales from a Texas terminal.

Subsection (j)(2)(B) is amended to change the word "next" to "immediately" for readability.

New subsection (o) is added to addresses refunds of tax on compressed natural gas or liquefied natural gas sold on Indian reservations. This new subsection mirrors the provisions of subsection (n), addressing refunds of tax on gasoline and diesel fuel sold on Indian reservations.

Subsection (p)(1) is amended to correct the tense of "meet" to "meets."

Finally, non-substantive changes are made throughout the section to correct grammatical errors and to improve readability. For example, the term "state fuel tax" is now used consistently throughout the section to make clear that the tax being refunded is state motor fuel tax and not another state tax.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§162.125 (Refund or Credit For Certain Taxes Paid), 162.127 (Claims For Refunds), 162.128 (When Gasoline Tax Refund or Credit May Be Filed), 162.227 (Refund or Credit For Certain Taxes Paid), 162.229 (Claims For Refund), 162.230 (When Diesel Fuel Tax Refund or Credit May Be Filed), 162.365 (Refund or Credit for Certain Taxes Paid), 162.367 (Claims For Refunds), and 162.369 (When Compressed Natural Gas or Liquefied Natural Gas Tax Refund or Credit May Be Filed).

§3.432. *Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes.*

(a) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used off the highway, for certain resale, for export from Texas, for loss

caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(b) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §§162.128, 162.230, and 162.369:

(1) one year from the first day of the calendar month that follows:

- (A) purchase;
- (B) tax exempt sale;
- (C) use, if withdrawn from one's own storage for one's own use;
- (D) export from Texas; or
- (E) loss by fire, theft, or accident; or

(2) four years from the due and payable date for a tax return on which an overpayment of state fuel tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer must establish the credit by filing an amended state fuel tax return for the period in which the error occurred and tax payment was made to the comptroller.

(c) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (b) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the state fuel tax amount paid or a written statement that the price included state fuel tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state fuel tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used; and

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

- (A) the date the fuel was removed;
- (B) the number of gallons removed;
- (C) the type of fuel removed;
- (D) the identity of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubometer reading, or description of other off-highway use.

(d) Refund or credit for state fuel tax on gasoline used solely for off-highway purposes. A claim for refund or credit for state fuel tax on gasoline used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (c)(4) of this section.

(e) Refund or credit for state fuel tax on gasoline used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state fuel tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (c)(4) of this section of the number of gallons of gasoline used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state fuel tax.

(f) Refund or credit for state fuel tax on gasoline, compressed natural gas, or liquefied natural gas used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline, compressed natural gas, or liquefied natural gas in motor vehicles incidentally on the highway, when the incidental travel on the highway was infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(g) Refund or credit for state fuel tax on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for state fuel tax on gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determining the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for state fuel tax on gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

- (A) the miles driven as shown by any type of odometer or hubometer;
- (B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device;

(2) fixed 30% method for gasoline-powered ready mix concrete trucks and solid waste refuse trucks. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubometer and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The state fuel tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not-for-highway use must be made on invoices;

(5) fixed 5.0% method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund of the state fuel tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped; or

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval; and

(7) accurate mileage records must be kept regardless of the method used.

(h) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for state fuel tax paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094;

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel fuel is used exclusively to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates; or

(E) a Texas volunteer fire department when the purchase is for its exclusive use.

(2) An exempt entity enumerated in paragraph (1)(A) - (E) of this subsection may claim a refund of state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas purchased for its exclusive use.

(3) A Texas county may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased for its exclusive use.

(i) Refund or credit for state fuel tax on gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for state fuel tax paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transportation Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported.

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) A licensed supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(j) Refund or credit for state fuel tax on gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on 100 or more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (b)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) a separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory immediately preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(k) Refund or credit for state fuel tax on gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for state fuel tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered terminal.

(l) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for state fuel tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(m) Refund or credit for state fuel tax on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used outside of Texas by a licensed interstate trucker. A licensed interstate trucker may take a credit on a tax return for state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first;

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on a return or claimed as a refund before the prescribed deadline expires.

(n) Refund for state fuel tax on gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of state fuel tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state fuel tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state fuel tax was collected or that it was a tax-free sale.

(o) Refund of state fuel tax on compressed natural gas or liquefied natural gas sold on Indian reservations. Tribal entities and tribal members may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased from a compressed natural gas and liquefied natural gas dealer located on an Indian reservation recognized by the United States government. The refund claim must be supported with original purchase invoices that show the state fuel tax was paid and that include:

- (1) the name and address of the seller;
- (2) the name of the purchaser;
- (3) the date of the sale;
- (4) the number of diesel gallon equivalents or gasoline gallon equivalents purchased;
- (5) the type of fuel purchased; and
- (6) the rate and amount of tax, separately stated from the selling price.

(p) Refund or credit for state fuel tax paid on diesel fuel used in moveable specialized equipment operated exclusively in oil field well servicing.

(1) A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if the person or license holder has received or is eligible to receive a federal diesel fuel tax refund under Internal Revenue Code, Title 26, and the moveable specialized equipment meets the following specific design-base and use-base tests.

(A) Design-base test.

(i) The chassis has permanently mounted to it (by welding, bolting, riveting, or other means) machinery or equipment to perform oil well servicing operations if the operation of the machinery or equipment is unrelated to transportation on or off the highways;

(ii) the chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation; and

(iii) the chassis could not, because of its special design, be used as part of a vehicle designed to carry any other load without substantial structural modification. A chassis that can be used for a variety of uses and body types (such as a dump truck, flat bed, or box truck) is a highway chassis and would not qualify as a specially designed chassis.

(B) Use-base test. The use-based test is satisfied if the vehicle travels less than 7,500 miles on highways during a calendar year.

(2) Documentation requirements. In addition to the documentation requirements in Tax Code, §162.229, the person or license holder must maintain:

(A) a mileage or trip log for each moveable specialized equipment on an individual-vehicle basis consisting of:

(i) total miles traveled, evidenced by odometer or hubometer readings;

(ii) date of each trip on the public highways of this state and out of this state (starting and ending);

(iii) beginning and ending odometer or hubometer readings of each trip on the public highway;

(iv) odometer or hubometer readings entering Texas, and odometer or hubometer readings leaving Texas;

(v) power unit number or vehicle identification number or license plate number; or

(vi) vehicles that are not licensed under the International Fuel Tax Agreement may use the Texas Department of Transportation Quarterly Hubometer Permit report in lieu of the records re-

quired in clauses (i) - (v) of this subparagraph to document incidental highway travel.

(B) Internal Revenue Service form 4136, if refund of federal excise tax claimed;

(C) verification that limited sales tax was paid on the movable specialized equipment, if purchased in Texas; and

(D) verification that an oversize/overweight permit is used to travel on the highways of this state.

(3) Computation of refund. One-fourth of one gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(4) Moveable specialized equipment licensed under the International Fuel Tax Agreement (IFTA). An IFTA licensee may only request a refund for state fuel tax paid on diesel fuel used in moveable specialized equipment licensed under the IFTA directly from the comptroller and separately from the IFTA tax return. A refund claim must be supported with purchase invoice(s) and trip or mileage logs described in paragraph (2) of this subsection.

(5) Recovery of refund. If a refund has been issued for movable specialized equipment for a partial calendar year, and it is determined that the movable specialized equipment traveled 7,500 miles or more on the highways in that calendar year then the taxes previously refunded for that vehicle must be repaid to the comptroller.

(q) Refund of state fuel tax paid on diesel fuel used in a medium to remove drill cuttings from a well bore in the production of oil or gas. A refund must be supported with purchase invoice(s) and distribution log described in Tax Code, §162.229.

(r) Refund of state fuel tax paid on diesel fuel used as a feedstock in manufacturing. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel used as a feedstock in the manufacturing of tangible personal property for resale, but not as a motor fuel. A refund claim must be supported with purchase invoice(s), records showing the amount of diesel fuel used as feedstock and a description of the tangible personal property manufactured.

(s) The right to receive a refund or take a credit under this section is not assignable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



**34 TAC §3.448**

The Comptroller of Public Accounts adopts an amendment to §3.448, concerning transportation services for Texas public school districts, without changes to the proposed text as pub-

lished in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5724).

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section. The title to subsection (a) is amended to "affidavit" from "application" to better describe its contents.

In addition, this section is amended to implement House Bill 2148, 83rd Legislature, 2013. Subsections (b), (c), (f), and (g) are amended to add a reference to compressed natural gas and liquefied natural gas. Subsection (b) is amended to define an unmanned compressed natural gas or liquefied natural gas retail location and to make clear that an unmanned compressed natural gas or liquefied natural gas dealer location cannot accept an exception letter. Subsection (d) is amended to clarify that "fuel" means gasoline or diesel fuel. This subsection is also amended to require a commercial transportation company that forfeits the right to purchase tax-free gasoline and diesel fuel to return its letter of exception to the comptroller. Subsection (f) is amended to specify that "fuel" means gasoline and diesel fuel. The attached graphic for subsection (g)(2)(C) is amended to delete references to gasoline and diesel fuel.

Subsection (g)(2)(A)(vi) is amended to include reference to records required and when claiming a refund of state motor fuel tax paid on compressed natural gas and liquefied natural gas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§162.356 (Exemptions), 162.363 (Records), 162.365 (Refund or Credit for Certain Taxes Paid), and 162.368 (Refund for Certain Metropolitan Rapid Transit Authorities).

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 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 adopts, 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 its Minimum Standards for General Residential Operations. The amendment to §748.61 and new §§748.4751, 748.4755, and 748.4759 are adopted with changes to the proposed text published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6160). 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, 748.4753, 748.4757, 748.4761, 748.4763, 748.4765, and 748.4767 are adopted without changes to the proposed text and will not be republished. The new sections are adopted 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 Crime Victims Services Program of the Department of Public Safety. 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 caregivers 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 adopted 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.

The sections will function by improving the quality of care for victims of trafficking by strengthening minimum standards related

to general residential operations when trafficking victim services are provided to a base number of children.

During the public comment period, DFPS received comments from one operation that owns both a general residential operation and a child-placing agency. A summary of the comments and DFPS's responses follow:

Comment concerning §748.61(2)(E): There was a concern that "significant risk of becoming a trafficking victim" and factors that place a child at a significant risk were not defined, and could result in inconsistent application. There was concern that labeling a child at risk of becoming a trafficking victim as a trafficking victim would be harmful. The commenter also stated that a trafficking victim and a child at risk of becoming a trafficking victim didn't need the same level of services.

Response: DFPS agrees with the commenter that there are concerns with equating a child that is a trafficking victim with a child that is at a significant risk of becoming a trafficking victim. DFPS has removed the "significant risk of becoming a trafficking victim" language from the treatment service definition.

Comment concerning §748.4551: The commenter stated additional policies for running away were not necessary for this population, because this is an issue that is already addressed in residential care policies.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, note the high incidence of running away for trafficking victims and the necessity of a heightened focus on this issue with trafficking victims. DFPS is adopting this section without change.

Comment concerning §748.4553: The commenter stated that safety and security measures should be applied to all children in care, not just trafficking victims. The commenter stated that there are already policies in place for communication and visitors. The commenter also had questions and concerns about limiting a child's right to mail, telephone conversations, and visitors, and whether trafficking victims will be treated differently.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, note the necessity of addressing safety and security measures because of the nature of trafficking victim services, including an inclination for trafficking victims to run away, the dangerous environment from which many of these victims came from, the dangers that still exist from previous perpetrators, and the possibility of recruitment. These concerns require more clearly laid out policies to address communication between employees and plans for dealing with visitors who may be dangerous or otherwise unwelcome.

An operation must comply with the minimum standards relating to a child's rights, but the standards do discuss restrictions that can be put in place in certain circumstances by the treatment director, service planning team, etc. For trafficking victims, a service planning team may put such restrictions in place for the protection of the child. These restrictions would have to be documented as required by the applicable standard. DFPS is adopting this section without change.

Comment concerning §748.4555: The commenter stated that all children have the right to confidentiality; the address of the GRO is publicly available; and the requirement for visitor policies is duplicative.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, note that the possibility of re-victimization from a previous perpetrator makes a trafficking victim's confidentiality of heightened importance. Also, House Bill No. 2725 of the 83rd Regular Session made the address of GROs providing trafficking victim services confidential, and the addresses are not noted on the website. Finally, the discussion of visitors in this section is in relation to confidentiality policies, the discussion of visitors in §748.4553 relates to safety and security policies. DFPS is adopting this section without change.

Comment concerning §748.4653: The commenter stated that five hours of pre-service training and four hours of annual training regarding complex trauma experienced by trafficking victims may be appropriate for treating actual victims, but is excessive for treating children at risk of becoming a trafficking victim.

Response: The "children at risk of becoming a trafficking victim" language has been removed from §748.61, so this comment is no longer applicable. DFPS is adopting this section without change.

Comment concerning §748.4657: The commenter stated that five hours of pre-service training and four hours of annual training regarding complex trauma experienced by trafficking victims may be appropriate for treating actual victims, but is excessive for treating children at risk of becoming a trafficking victim.

Response: The "children at risk of becoming a trafficking victim" language has been removed from §748.61, so this comment is no longer applicable. DFPS is adopting this section without change.

Comment concerning §748.4701: The commenter stated that these required ratios are unfunded. While GROs will not be affected unless they choose to serve trafficking victims, the unfunded impact may be that GROs will turn away from serving trafficking victims.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, strongly recommended that a lower child/caregiver ratio is needed to address the heightened risks for trafficking victims. Without a lower ratio, the trafficking victims would not get the services they need. It is also estimated that the two GROs currently providing trafficking victim services are already meeting these ratios. DFPS is adopting this section without change.

Comment concerning §748.4703: The commenter stated that these required ratios are unfunded. While GROs will not be affected unless they choose to serve trafficking victims, the unfunded impact may be that GROs will turn away from serving trafficking victims.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, strongly recommended that a lower child/caregiver ratio is needed to address the heightened risks for trafficking victims. Without a lower ratio, the trafficking victims would not get the services they need. It is also estimated that the two GROs currently providing trafficking victim services are already meeting these ratios. DFPS is adopting this section without change.

Comment concerning §748.4751: The commenter stated that when a screening indicated a need for further testing or medical treatment, "'promptly' obtaining further testing or treatment" needs to be further defined. The commenter also wanted to know if there isn't a need for an immediate medical examination,

is the current standard (medical examination required within 30 days) still applicable?

Response: DFPS agrees with the commenter that "promptly" can be further clarified and is changing to the language of the rule to clarify the wording and to state the GRO must obtain the medical examination and/or tests within five days. As the rule states, the current medical examination requirements under §748.1223 still must be met.

Comment concerning §748.4755: The commenter recommended timeline requirements to be defined to prevent inconsistent application of the standard.

Response: DFPS agrees with the commenter and has changed the standard to indicate that the alcohol and substance abuse professional assessment must be scheduled within 14 days.

Comment concerning §748.4759: The commenter noted that the wrong licensing entity was listed for social workers, and recommended adding Licensed Professional Counselors to the list of professional service providers.

Response: DFPS agrees with the commenter and has corrected the entity that licenses social workers and added Licensed Professional Counselors to the list of professional service providers.

Also, based on a comment received regarding the proposed minimum standards relating to "child safety, including treatment services for children with primary medical needs," DFPS is adding "a master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health" to the list of professional service providers to increase clarity and to remind GROs that this resource exists.

Comment concerning §748.4761: The commenter stated that the current service plan requirements for a child's "immediate treatment and care needs" should already cover these new requirements for safety needs and behavioral health needs.

Response: The workgroup of advocates and providers in this field, as well as published articles from advocates and experts, note the necessity of specifically addressing safety and behavioral health issues. DFPS is adopting this section without change.

Comment concerning §748.4763: The commenter stated that the minimum standard did not indicate financial responsibility and wanted to know what the expectations were.

Response: There are no financial requirements to pay for legal representation or expenses. However, a trafficking victim may be involved in a criminal case or an immigration case, and the expectation is that the operation will work with the child to navigate the legal system. DFPS is adopting this section without change.

## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 2. SERVICES

#### 40 TAC §748.61

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.

*§748.61. What types of services does Licensing regulate?*

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) A Global Assessment Functioning of 50 or below;

(ii) A current DSM diagnosis;

(iii) Major self-injurious actions, including recent suicide attempts;

(iv) Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(v) A primary diagnosis of substance abuse or dependency and severe impairment because of the substance abuse;

(B) With Intellectual Disabilities, 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) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(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) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities including sensory impairments;

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of life-threatening conditions, including:

(i) The inability to maintain an open airway without assistance. This does not include the use of inhalers for asthma;

(ii) The inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(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

(iii) Determined by the operation to be 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;

(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) Additional Programmatic Services, which include:

(A) Emergency Care Services--A specialized type of child-care services designed and offered to provide short-term child care to children who, upon admission, are in an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring;

(B) Transitional Living Program--A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living. A transitional living program includes basic life skills training and the opportunity for children to practice those skills. A transitional living program is not an independent living program;

(C) Assessment Services Program--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained in order to facilitate service planning;

(D) Therapeutic Camp Services--A camping program to augment an operation's treatment services with an experiential curriculum exclusively for a child with an emotional disorder who has difficulty functioning in his home, school, or community. Therapeutic camp services are only available to children 13 years old and older; and

(E) Respite Child-Care Services--See §748.73 of this title (relating to What are respite child-care services?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Department of Family and Protective Services

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For further information, please call: (512) 438-3437



## 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 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 sections 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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### DIVISION 2. POLICIES AND PROCEDURES

#### 40 TAC §§748.4551, 748.4553, 748.4555

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; 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.

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. PERSONNEL

#### 40 TAC §748.4601, §748.4603

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### DIVISION 4. TRAINING

#### 40 TAC §§748.4651, 748.4653, 748.4655, 748.4657, 748.4659

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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### DIVISION 5. CHILD/CAREGIVER RATIOS

#### 40 TAC §748.4701, §748.4703

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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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 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 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 an immediate need for a medical examination or medical tests, you must obtain the medical examination and/or medical tests within five days.

§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) Within 14 days, 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.

§748.4759. *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 Social Work Examiners;

(4) A professional counselor licensed by the Texas State Board of Examiners and Professional Counselors;

(5) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; or

(6) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

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 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 §§749.43, 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 its Minimum Standards for Child-Placing Agencies chapter. The amendments to §749.43 and §749.1311 are adopted with changes to the proposed text published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6170). The amendments to §§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, 749.1313, 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 are adopted without changes to the proposed text and will not be republished. The justification for 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 DFPS 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. 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 adopted 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 (e.g. face-to-face, video conference, or teleconference) 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 adopted 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.

The sections will function by improving the safety of children in foster care and the quality of their care by strengthening minimum standards related to children with primary medical needs, normalcy, and child safety, including integrating trauma informed care into the minimum standards.

During the public comment period, DFPS received comments from a nurse advocacy group and a CPA. A summary of the comments and DFPS's responses follow:

Comment concerning §749.43(30): A commenter suggested replacing "nurse practitioner" with "advanced practice registered nurse", which is the correct terminology and will better reflect the intent of the definition without narrowing the definition or inadvertently excluding appropriately licensed advanced practice registered nurses who are not exclusively nurse practitioners.

Response: DFPS agrees with the commenter and has replaced the wording as suggested.

Comment concerning §749.43(50): A commenter suggested adding Psychiatric Mental Health Advanced Practice Registered Nurses (PMH APRN) to the list of professional service providers to increase clarity and to remind CPAs that this resource exists.

Response: DFPS agrees with the commenter and has added PMH APRN to the list of professional service providers.

Comment concerning §749.353: A commenter wanted to know if there would be guidance regarding minimum age for each type of provider, experience levels, training, and reference and background information. The commenter stated leaving these decisions to individual CPAs may lead to inconsistency in care, and RCCL representatives may apply standards inconsistently.

Response: Many areas of the Licensing minimum standards allow for flexibility, so a CPA may develop the requirements that are the most appropriate for their program. In this instance, the policies a CPA develops are the policies that the CPA must follow. In addition, these changes only add overnight care providers to the current requirements and clarify that this policy must address both in-home and out-of-home care. DFPS is adopting this section without change.



Comment concerning §749.941: A commenter supported the application of a reasonable and prudent parent standard for a foster child's participation in childhood activities.

Response: DFPS appreciates the comment and is adopting this section without change.

Comment concerning §749.1311: The commenter stated that the addition of "meet to discuss" for a service planning team implies a face-to-face meeting, and wondered if other meeting methods like teleconference are acceptable.

Response: The impetus of the rule is to have as much input into the service planning process as possible, before the finalization of the service plan. DFPS does understand that there cannot always be face-to-face meetings, and video conferences and teleconferences are acceptable. DFPS is adopting this section with change.

## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 1. DEFINITIONS

#### 40 TAC §749.43

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DFPS; 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 DFPS.

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) Accredited college or university--An institution of higher education accredited by one of the following:

(A) Southern Association of Colleges and Schools, Commission on Colleges;

(B) Middle States Association of Colleges and Schools, Commission on Higher Education;

(C) New England Association of Schools and Colleges, Commission on Institutions of Higher Education;

(D) North Central Association of Colleges and Schools, The Higher Learning Commission;

(E) Northwest Commission on Colleges and Universities;

(F) Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; or

(G) Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.

(4) Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.

(5) Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parent(s);

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(6) Adult--A person 18 years old or older.

(7) Babysitting--Temporarily caring for a child in foster care for no more than 12 consecutive hours.

(8) 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:

(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) Certified fire inspector--Person certified by the Texas Commission on Fire Protection to conduct fire inspections.

(10) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) 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 is considered a child in care.

(12) 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) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to ar-

ticulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(14) Days--Calendar days, unless otherwise stated.

(15) 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) Department--The Department of Family and Protective Services (DFPS).

(17) 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) 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) Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(20) 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) 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) Food service--The preparation or serving of meals or snacks.

(23) 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) 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) Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(26) 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) Foster parent--A person who provides foster care services in the foster home.

(28) Full-time--At least 30 hours per week.

(29) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(30) Health-care professional--A licensed physician, advanced practice registered nurse, physician's assistant, licensed vocational nurse (LVN), registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(31) 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) 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) 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 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) Infant--A child from birth through 17 months.

(35) Livestock--An animal raised for human consumption or an equine animal.

(36) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(37) Long-term placement--A placement intended to last for more than 90 days.

(38) 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) 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) 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) Parent--A person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(44) 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) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(46) 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) 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) Pre-adoptive home screening--See adoptive home screening.

(49) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(50) 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;

(G) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health; and

(H) 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) 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) Regularly--On a recurring, scheduled basis.

(53) 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) 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) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(56) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(57) 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) 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) 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) 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) 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) 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) Volunteer--A person who provides:

(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) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(68) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted under 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 DFPS; 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 DFPS.

The amendments implement HRC §42.042.

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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 adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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#### 40 TAC §749.743

The repeal is adopted under 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 DFPS; 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 DFPS.

The repeal implements HRC §42.042.

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## SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

### DIVISION 4. GENERAL PRE-SERVICE TRAINING

#### 40 TAC §749.881

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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## DIVISION 6. ANNUAL TRAINING

#### 40 TAC §749.931, §749.941

The amendments are adopted under 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 DFPS; 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 DFPS.

The amendments implement HRC §42.042.

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## SUBCHAPTER G. CHILDREN'S RIGHTS

#### 40 TAC §749.1003

The amendment is adopted under 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 DFPS; 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 DFPS.

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## SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT

### DIVISION 2. ADMISSION ASSESSMENT

#### 40 TAC §749.1135

The amendment is adopted under 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 DFPS; 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 DFPS.

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## DIVISION 4. EMERGENCY ADMISSION

### 40 TAC §749.1187

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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## DIVISION 7. POST-PLACEMENT CONTACT

### 40 TAC §749.1291

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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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 adopted under 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 DFPS; 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 DFPS.

The amendments implement HRC §42.042.

§749.1311. *Who must be involved in developing an initial service plan?*

(a) A service planning team must meet (e.g. face-to-face, video conference, or teleconference) to discuss and develop the service plan. The team must consist of:

- (1) At least one of the child's current caregivers;
- (2) At least one professional service provider who provides direct services to the child; and
- (3) If you are providing treatment services to the child, at least two of the following professionals:
  - (A) A licensed professional counselor;
  - (B) A psychologist;
  - (C) A psychiatrist or physician;
  - (D) A licensed registered nurse;
  - (E) A licensed master's level social worker;
  - (F) A licensed or registered occupational therapist; or
  - (G) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(b) The child, as appropriate, the parents, and the foster parents must be invited to the service planning meeting, and should participate and provide input into the development of the service plan.

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## SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 5. RECREATIONAL SERVICES

### 40 TAC §749.1927

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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## SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION DIVISION 1. DEFINITIONS

### 40 TAC §749.2001

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §42.042.

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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 adopted under 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 DFPS; 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 DFPS.

The new sections and amendments implement HRC §§42.042, 42.0535, and 42.0536.

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## DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

### 40 TAC §§749.2550, 749.2551, 749.2566

The new sections are adopted under 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 DFPS; 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 DFPS.

The new sections implement HRC §42.042.

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### 40 TAC §749.2551, §749.2561

The repeals are adopted under 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 DFPS; 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 DFPS.

The repeals implement HRC §42.042.

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## DIVISION 6. SUPERVISION

### 40 TAC §749.2593, §749.2594

The amendment and new section are adopted under 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 DFPS; 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 DFPS.

The amendment and new section implement HRC §42.042.

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## DIVISION 7. RESPITE CHILD-CARE SERVICES

### 40 TAC §749.2625, §749.2635

The amendments are adopted under 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 DFPS; 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 DFPS.

The amendments implement HRC §42.042.

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## SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION



#### 40 TAC §749.2801

The amendment is adopted under 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 DFPS; 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 DFPS.

The amendment implements HRC §§42.042, 42.0448, and 42.0449.

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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 adopted under 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 DFPS; 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 DFPS.

The new section implements HRC §42.042.

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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), 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 its Minimum Standards for Child-Placing Agencies chapter. The amendment to §749.61 and new §§749.4251, 749.4255, and 749.4259 are adopted with changes to the proposed text published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6188). 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, 749.4253, 749.4257, 749.4261, 749.4263, 749.4265, and 749.4267 are adopted without changes to the proposed text and will not be republished. The new sections are adopted 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 Crime Victims Services Program of the Department of Public Safety. 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 workgroup 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 adopted 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.

The sections will function by improving that the quality of care for victims of trafficking by strengthening minimum standards related to child-placing agencies (CPA) when trafficking victim services are provided to a base number of children.

During the public comment period, DFPS received comments from one operation that owns both a GRO and a CPA. A summary of the comments and DFPS's responses follow:

Comment concerning §749.61(2)(E): There was a concern that "significant risk of becoming a trafficking victim" and factors that place a child at a significant risk were not defined, and could result in inconsistent application. There was concern that labeling a child as a trafficking victim would be harmful. The commenter also stated that a trafficking victim and a child at risk of becoming a trafficking victim didn't need the same level of services.

Response: DFPS agrees with the commenter that there are concerns with equating a child that is a trafficking victim with a child at a significant risk of becoming a trafficking victim. DFPS has removed the "significant risk of becoming a trafficking victim" language from the treatment service definition.

Comment concerning §749.4051: The commenter wanted guidance on how to prevent a child from running away from a foster home.

Response: Technical assistance will be provided to CPAs that indicate they will provide trafficking victim services and need further guidance. DFPS is adopting this section without change.

Comment concerning §749.4053: The commenter wanted to know how a child's right to receive mail, make telephone calls, etc. will be balanced with security measures.

Response: An operation must comply with the minimum standards relating to a child's rights, but the standards do discuss restrictions that can be put in place in certain circumstances by the treatment director, service planning team, etc. For trafficking victims, a service planning team may put such restrictions in place for the protection of the child. These restrictions would have to be documented as required by the applicable standard. DFPS is adopting this section without change.

Comment concerning §749.4251: The commenter stated that when a screening indicated a need for further testing or medical treatment, "'promptly' obtaining further testing or treatment" needs to be further defined. The commenter also wanted to know if there isn't a need for an immediate medical examination, is the current standard (medical examination required within 30 days) still applicable?

Response: DFPS agrees with the commenter that "promptly" can be further clarified and is changing the language of the rule to clarify the wording and to state that the GRO must obtain the medical examination and/or tests within five days. As the rule states, the current medical requirements under §749.1151 still must be met.

Comment concerning §749.4257: The commenter stated that a foster family meeting the assessment time frame for PTSD, depression, and anxiety is dependent on appointment availability with a behavioral health professional who will accept Medicaid. Some wait times will be beyond 30 days.

Response: The workgroup of advocates and providers in this field noted the absolute necessity of addressing behavioral health issues as quickly as possible. Depending upon the model a CPA currently uses for behavioral health issues, assessments are available that do not require a Medicaid provider to implement. A Helpful Information box will be added that lists different resources or tools which can be used. A CPA may also request a variance when appropriate. DFPS is adopting this section without change.

Comment concerning §749.4259: The commenter noted that the wrong licensing entity was listed for social workers, and recommended adding Licensed Professional Counselors to the list of professional service providers.

Response: DFPS agrees with the commenter and has corrected the entity that licenses social workers and added Licensed Professional Counselors to the list of professional service providers. Also, based on a comment received regarding the proposed minimum standards relating to "child safety, including treatment services for children with primary medical needs," DFPS is adding "a master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health" to the list of professional service providers to increase clarity and to remind GROs that this resource exists.

In addition to the changes in response to comments, DFPS is revising §749.4255 as a result of a comment to §748.4755 of this title (relating to 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). DFPS is changing the standard to indicate that the alcohol and substance abuse professional assessment must be scheduled within 14 days.

## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 2. SERVICES

#### 40 TAC §749.61

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.

*§749.61. What types of services does Licensing regulate?*

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) A Global Assessment Functioning of 50 or below;

(ii) A current DSM diagnosis;

(iii) Major self-injurious actions, including recent suicide attempts;

(iv) Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(v) A primary diagnosis of substance abuse or dependency and severe impairment because of the substance abuse;

(B) With Intellectual Disabilities, 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) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(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) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities including sensory impairments;

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of life-threatening conditions, including:

(i) The inability to maintain an open airway without assistance. This does not include the use of inhalers for asthma;

(ii) The inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(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

(iii) Determined by the child-placing agency to be 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;

(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) Additional Programmatic Services, which include:

(A) Transitional Living Program--A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living. A transitional living program includes basic life skills training and the opportunity for children to practice

those skills. A transitional living program is not an independent living program;

(B) Assessment Services Program--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained in order to facilitate service planning; and

(C) Respite Child-Care Services--See §749.2621 of this title (relating to What are respite child-care services?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff

Interim General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



## SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

### DIVISION 1. DEFINITIONS AND SCOPE

#### 40 TAC §§749.4001, 749.4003, 749.4005, 749.4007

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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## DIVISION 2. POLICIES AND PROCEDURES

### 40 TAC §§749.4051, 749.4053, 749.4055

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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## DIVISION 3. PERSONNEL

### 40 TAC §749.4101, §749.4103

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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## DIVISION 4. TRAINING

### 40 TAC §§749.4151, 749.4153, 749.4155, 749.4157

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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.

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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 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 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 an immediate need for a medical examination or medical tests, you must obtain the medical examination and/or medical tests within five days.

*§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) Within 14 days, 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.

*§749.4259. 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 Social Work Examiners;

(4) A professional counselor licensed by the Texas State Board of Examiners and Professional Counselors;

(5) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; or

(6) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

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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Trevor Woodruff

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**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 adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §750.161 and §750.169 without changes to the proposed text published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6197). The justification for 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.

The amendments will function by improving the safety of children in foster care and the quality of their care by strengthening minimum standards related to children with primary medical needs, normalcy, and child safety, including integrating trauma informed care into the minimum standards.

No comments were received regarding adoption of the sections.

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 DFPS; 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 DFPS.

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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## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 26. REGIONAL MOBILITY AUTHORITIES

The Texas Department of Transportation (department) adopts amendments to §26.2 and new §26.36, concerning Regional Mobility Authorities. The amendments to §26.2 and new §26.36 are adopted without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6199) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Senate Bill 1489, 83rd Legislature, Regular Session, 2013, expanded the definition of a transportation project 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 amend 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 compa-

rable 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.

#### COMMENTS

No comments on the proposed amendments and new section were received.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §26.2

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, 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.

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-201405138

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 adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, 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.

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Credit Union Department

### Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §§91.501 (Director Eligibility and Disqualification), 91.502 (Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures), 91.503 (Change in Credit Union President), 91.510 (Bond and Insurance Requirements), 91.515 (Financial Reporting), 91.516 (Audits and Verifications), 91.601 (Share and Deposit Accounts), 91.602 (Solicitation and Acceptance of Brokered Deposits), 91.608 (Confidentiality of Member Records), and 91.610 (Safe Deposit Box Facilities) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to [info@tud.texas.gov](mailto:info@tud.texas.gov). The deadline for comments is December 19, 2014.

The Commission also invites your comments on how to make these rules easier to understand. For example:

- \* Do the rules organize the material to suit your needs? If not, how could the material be better organized?
- \* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?
- \* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?
- \* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- \* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201405278  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: November 5, 2014



Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 161, Commissioner's Rules Concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 161 continue to exist.

The public comment period on the review of 19 TAC Chapter 161 begins November 14, 2014, and ends December 15, 2014. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337.

TRD-201405157  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: October 31, 2014



State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 241, Principal Certificate, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 241 continue to exist.

The public comment period on the review of 19 TAC Chapter 241 begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 241 at the March 6, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments or questions re-

garding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201405238

Cristina De La Fuente-Valadez  
Director, Rulemaking, Texas Education Agency  
State Board for Educator Certification  
Filed: November 3, 2014



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 242, Superintendent Certificate, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 242 continue to exist.

The comment period on the review of 19 TAC Chapter 242 begins November 14, 2014, and ends December 15, 2014. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 242 at the March 6, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201405239

Cristina De La Fuente-Valadez  
Director, Rulemaking, Texas Education Agency  
State Board for Educator Certification  
Filed: November 3, 2014



## Commission on State Emergency Communications

### Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Texas Administrative Code, Title 1, Part 12, Chapter 254, *Regional Poison Control Centers*. This review is conducted in accordance with Government Code §2001.039.

Comments or questions regarding this review should be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov.

In the "Proposed Rules" section of this issue of the *Texas Register*, CSEC submits for comment proposed amendments to its Chapter 254 rules. CSEC's Chapter 254 rules that it is proposing to readopt with amendments consist of:

Chapter 254. *Regional Poison Control Centers*

§254.1. Designation and Funding of Regional Poison Control Centers

§254.2. Poison Control Coordinating Committee

§254.3. Regional Strategic Plans and Reporting for Poison Control Service

§254.4. Texas Poison Control Network Operations

TRD-201405156

Patrick Tyler  
General Counsel  
Commission on State Emergency Communications  
Filed: October 31, 2014



General Land Office

### Title 31, Part 1

Pursuant to the Texas Government Code §2001.039, the Texas General Land Office (GLO) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters of Title 31, Part 1:

Chapter 3. General Provisions

Chapter 7. Surveying

Chapter 13. Land Resources

Chapter 15. Coastal Area Planning

Chapter 17. Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

Chapter 25. Beach Cleaning and Maintenance Assistance Program.

During the review process, the GLO will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapters 3, 7, 13, 15, 17, and 25 is filed in accordance with the GLO's rule review plan published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8271).

The GLO will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the GLO after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The GLO will accept written comments on this rule review for a thirty-day period beginning on the date of publication of this notice of intent to review in the *Texas Register*. Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address, walter.talley@glo.texas.gov. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201405280

Larry L. Laine  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Filed: November 5, 2014



School Land Board

### Title 31, Part 4

Pursuant to the Texas Government Code, §2001.039, the School Land Board (SLB) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters:

- Chapter 151. Executive Administration
- Chapter 154. Rules of Practice and Procedure
- Chapter 155. Gas Marketing Program

The rules to be reviewed are found in Title 31, Part 4 of the Texas Administrative Code.

During the review process, the SLB will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapters 151, 154 and 155 is filed in accordance with the SLB's rule review plan published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8271).

The SLB will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the SLB after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The SLB will accept written comments on this rule review for a thirty-day period beginning on the date of publication of this notice of intent to review in the *Texas Register*. Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address, walter.talley@glo.texas.gov. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201405282  
 Larry L. Laine  
 Chief Clerk, Deputy Land Commissioner  
 School Land Board  
 Filed: November 5, 2014



Texas Veterans Land Board  
**Title 40, Part 5**

Pursuant to the Texas Government Code, §2001.039, the Veterans Land Board (VLB) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters:

- Chapter 175. General Rules of the Veterans Land Board
- Chapter 176. Veterans Homes
- Chapter 177. Veterans Housing Assistance Program
- Chapter 178. Texas State Veterans Cemeteries

The rules to be reviewed are found in Title 40, Part 5, of the Texas Administrative Code.

During the review process, the VLB will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapters 175, 176, 177 and 178 is filed in accordance with the VLB's rule review plan published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8271).

The VLB will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the VLB after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

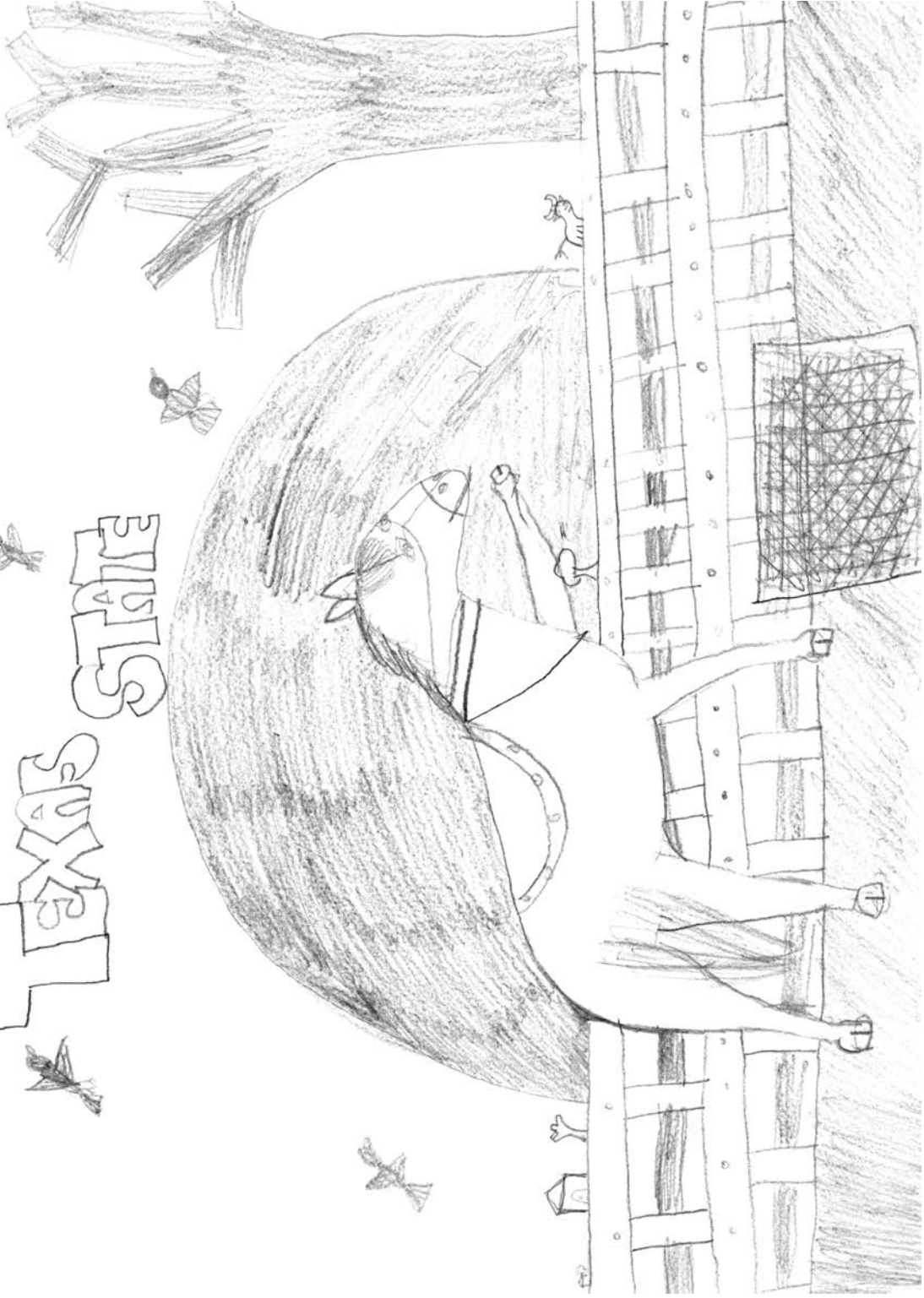
The VLB will accept written comments on this rule review for a thirty-day period beginning on the date of publication of this notice of intent to review in the *Texas Register*. Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address, walter.talley@glo.texas.gov. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201405283  
 Larry L. Laine  
 Chief Clerk, Deputy Land Commissioner  
 Texas Veterans Land Board  
 Filed: November 5, 2014



Merjein Cruz

TEXAS STATE



# 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: 1 TAC §18.25(c)

**Report Type I Levels Chart  
(For All Reports Other Than Critical Reports)**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1	0	Waiver	Waiver	Waiver	
1.5	1	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	1	\$300	\$200	\$100	
2.5	2	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	2	\$500	\$500	\$250	

\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(d) of this title.

Figure: 1 TAC §18.26(c)

**Report Type II Levels Chart  
(For Critical Reports under section 18.26(c))**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1.5	0	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	0	\$300	\$200	\$100	
2.5	1	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	1	\$500	\$500	\$250	

\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(d) of this title.

Figure: 1 TAC §18.26(d)

**Report Type II Formulas Chart  
(For Critical Reports under section 18.26(d))**

**Category A**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 for every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Fine = \$150 (0 priors); or Starting Fine = \$400 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

**Category B**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Fine = \$100 (0 priors); or Starting Fine = \$300 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

**Category C**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Fine = \$50 (0 priors); or Starting Fine = \$150 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Figure: 1 TAC §18.26(e)

(1) Candidate X seeking the office of State Representative (Category A filer type)

Report: 30-day pre-election report due February 3, 2014 (Report Type II)  
Filed Date: February 4, 2014 (1 day late; good cause under section 18.24(d))  
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)  
Prior offenses: none  
Penalty: \$500  
Determination: reduction to \$150

Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late)

(2) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)

Report: 30-day pre-election report due February 3, 2014 (Report Type II)  
Filed Date: February 4, 2014 (1 day late; good cause under section 18.24(d))  
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)  
Prior offenses: two prior late reports in the last five years  
Penalty: \$500  
Determination: reduction to \$300

Formula Calculation = \$300 (Category B, Good Cause, 2 Priors, 1st day late)

(3) Candidate Y seeking the office of District Judge (Category A filer type)

Report: 8-day pre-election report due February 24, 2014 (Report Type II)  
Filed Date: March 20, 2014 (24 days late; filed within 7 days of late notice; good cause under section 18.24(d))  
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)  
Prior offenses: none  
Penalty: \$2,800  
Determination: reduction to \$1,150

Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late) + \$1,000 (next 10 days late @ \$100 per day) + \$0 (remaining 13 days late do not add up to full 30-day segment) = \$1,150.

(4) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)

Report: 30-day pre-election report due February 3, 2014 (Report Type II)  
Filed Date: April 4, 2014 (60 day late)  
Activity: contributions = \$10,000; expenditures = \$5,000  
Prior offenses: five prior late reports in the last five years  
Penalty: \$500  
Determination: no waiver

Filer did not meet the criteria under subsection (b)(1) of this section because the filer has over two prior late offenses in the five years preceding the report due date.

Figure 1: 10 TAC §2.302(j)

**Penalty table for Community Affairs Program Violations**

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation/Not Cost Allocating properly	Up to \$500 for each instance	Up to \$1,000 for each instance
Violation of Texas Public Information Act	Up to \$1,000 for each instance + up to \$100 for each day the entity failed to comply	Up to \$1,000 for each instance + up to \$200 for each day the entity failed to comply
Lack of Insurance or Fidelity Bond Coverage	Up to \$1,000 + up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance
Failure to submit Inventory Report within 45 days (end of contract period)	Up to \$500	Up to \$1,000
Unallowable/Unreasonable expenditure	Up to \$1,000 for each instance	Up to \$1,000 for each instance
Violation of Procurement Requirements	Up to \$1,000 for each service or product not procured	Up to \$1,000 for each service or product not procured
Lack of Subcontractor contract	Up to \$250 for each instance	Up to \$500 for each instance
Lack of prior approval for purchase(s)	Up to \$500 for each instance	Up to \$1,000 for each instance
Instance of Fraud, Waste and/or Abuse	Up to \$1,000	Up to \$1,000
Commingling of funds, Misapplication of funds.	Up to \$1,000	Up to \$1,000
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$1,000 per violation
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance



<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Lack of providing requested documentation/item(s) for monitoring	Up to \$500 per day for each item or documentation not provided	Up to \$150 per day for each item or documentation not provided
Failure to timely respond to Report/provide required correspondence	Up to \$100 for first violation	Up to \$1,000 per day per violation
Failure to report/record program income	Up to \$500 for each instance	Up to \$1,000 for each instance
Noncompliance with record retention requirements	Up to \$100 for each instance	Up to \$1,000 for each instance
Providing assistance to income or SAVE ineligible applicants	Up to \$500 for each instance	Up to \$1,000 for each instance
Service provided to clients not according to poverty population makeup	Up to \$500	Up to \$1,000
Failure to meet Board of Director Requirements	Up to \$1,000 + up to \$100 for each day the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply
Failure to comply with Department minimum applicant/client denials and appeals	Up to \$250 for each instance	Up to \$500 for each instance
Failure to Prioritize applicants	Up to \$250 for each instance	Up to \$500 for each instance
Lack of providing Assurance 16 activities	Up to \$250 for each instance	Up to \$500 for each instance
Failure to complete or to properly complete required program documents	Up to \$250 for each instance	Up to \$750 for each instance
Failure to complete or properly complete a process required by Chapter 5 of this title.	Up to \$250 for each instance	Up to \$750 for each instance
Payment to Vendor without a Vendor Agreement	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to perform Outreach activities	Up to \$500	Up to \$1,000
Weatherized unit expenditure over maximum cost per unit w/o prior approval	Up to \$500 for each instance	Up to \$1,000 for each instance

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to input HHSP client data into the Homeless Management Information System	Up to \$500 for each instance	Up to \$1,000 for each instance
Other noncompliance with a contract requirement	Up to \$1,000	Up to \$1,000
Failure to comply with case management requirements	Up to \$500	Up to \$750
Noncompliance with Material Installation Standards Manual	Up to \$500	Up to \$750
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000
Noncompliance with Texas Prompt Payment Act	Up to \$500	Up to \$750
Noncompliance with Historical Commission requirements	Up to \$500	Up to \$750
Fair Housing Violations	Up to \$100 per violation	Up to \$200 per violation
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation

Figure 2: 10 TAC §2.302(j)

**Penalty table for Multifamily Rental Violations.**

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Violations of the Uniform Physical Condition Standards	Up to \$500 for level 3 deficiencies, up to \$250 for level 2 deficiencies, up to \$125 for level 1 deficiencies	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this title	Up to \$500	Up to \$1,000
Development is not available to the general public because of leasing issues	Up to \$750 per day per violation	Up to \$1,000 per day per violation
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancellation	Up to \$1,000 per day	Up to \$1,000 per day
Failure to timely enter into Land Use Restriction Agreement (LURA)	Up to \$1,000 per day	Up to \$1,000 per day
Project failed to meet minimum set aside	Up to \$1,000 per day	Up to \$1,000 per day
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	Up to \$10 per day per violation	Up to \$20 per day per violation
Development failed to meet additional state required rent and occupancy restrictions	Up to \$250 per day per violation	Up to \$500 per day per violation
Noncompliance with social service requirements	Up to \$500 per violation	Up to \$750 per violation
Development failed to provide housing to the elderly as promised at application	Up to \$5 per day per violation	Up to \$10 per day per violation
Failure to provide special needs housing as required by LURA	Up to \$1,000	Up to \$1,000
Changes in Eligible Basis or Applicable percentage in violation of the IRS 8823 Audit Guide or other IRS guidance	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Failure to submit all or parts of the Annual Owner's Compliance Report	Up to \$1,000	Up to \$1,000
Failure to timely submit quarterly reports as required by §10.607 of this title	Up to \$100 for first violation	Up to an additional \$500 for each subsequent quarter the report is not submitted
Noncompliance with utility allowance requirements described in §10.614 of this title and/or Treasury Regulation §1.42-10	Up to \$50 per unit per day	Up to \$100 per unit per day
Noncompliance with lease requirements described in §10.613 of this title	Up to \$500	Up to \$1,000
Development has failed to establish and maintain a reserve account in accordance with §10.404 of this title	Up to \$1,000	Up to \$1,000
Failure to provide a notary public as promised at application	Up to \$500	Up to \$750
Violation of the Unit Vacancy Rule	Up to \$250 per violation	Up to \$500 per violation
Failure to provide pre-onsite documentation	Up to \$250	Up to \$500
Failure to provide amenity as required by LURA	Up to \$750 per violation	Up to \$1,000 per violation
Failure to pay asset management, compliance monitoring or other required fee	Up to \$250 for the first day plus \$10 per day for each subsequent day the violation continues	Up to \$500 for the first day plus \$50 per day for each subsequent day the violation continues
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this title)	Up to \$1,000 for the first day plus \$100 per day for each subsequent day the violation continues	Up to \$1,000 for the first day plus \$200 per day for each subsequent day the violation continues
Failure to timely provide fair housing disclosure notice	Up to \$100 per violation	Up to \$200 per violation
Noncompliance with tenant selection requirements described in §10.610 of this title	Up to \$500 per violation	Up to \$1,000 per violation
Program Unit not leased to Low-Income household	Up to \$1,000 per violation	Up to \$1,000 per violation

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Program unit occupied by nonqualified full-time students	Up to \$1,000 per violation	Up to \$1,000 per violation
Low-Income units used on a transient basis	Up to \$500 per violation	Up to \$1,000 per violation
Violation of the Available Unit Rule	Up to \$500 per violation	Up to \$1,000 per violation
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Unit not available for rent	Up to \$1,000 per unit per violation	Up to \$1,000 per unit per violation
Failure to collect data required by §10.608(b)(1) and/or (2) of this title	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$1,000 per violation	Up to \$1,000 per violation
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas Government Code Chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation

Figure 3: 10 TAC §2.302(j)

**Penalty table for Single Family Program Violations**

<b>Noncompliance Event</b>	<b>First Time Violation Administrative Penalty</b>	<b>Repeat Violation</b>
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1,000
Fair housing violations	Up to \$100 per violation	Up to \$200 per violation
Repeated violations of interim loan terms or timeline	Up to \$500	Up to \$1,000
Records retention violations	Up to \$100 per violation	Up to \$200 per violation
Failure to attend required training as required by program rule, policy or agreement	Up to \$100 per violation	Up to \$200 per violation
Providing assistance to households that are not income eligible	Up to \$500	Up to \$1,000
Violations of construction standards	Up to \$500	Up to \$1,000
Violations of property condition standards	Up to \$500	Up to \$1,000
Violation of Conflict of Interest Policies	Up to \$500	Up to \$1,000
Violation of program policies regarding use of funds for sectarian or religious activity	Up to \$500	Up to \$1,000
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with procurement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with Section 3 requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with displacement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1,000

Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Failure to collect data required by program rules, policies or agreements	Up to \$50 per violation	Up to \$100 per violation
Failure to provide reports required by program rules, policies or agreements, such as single audit certifications	Up to \$250 per violation	Up to \$1,000 per violation
Failure to provide required documentation or corrections to documentation	Up to \$50 per day	Up to \$150 per day
Failure to comply with defective mortgage loan policies per program rules, policies or agreements	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, gross rent exceeds the highest rent by program rule, policy or agreement	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to return or repay funds to the Department as required by rule, policy or agreements (such as contract termination, assessed penalties, disallowed costs, overpayment, Deobligation, or recapture)	Up to \$50 per day	Up to \$150 per day
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas Government Code Chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000

Figure: 16 TAC §65.615(1)

Exhibit 1



**TX**  
**124608**





Figure:16 TAC §65.615(2)

Exhibit 2

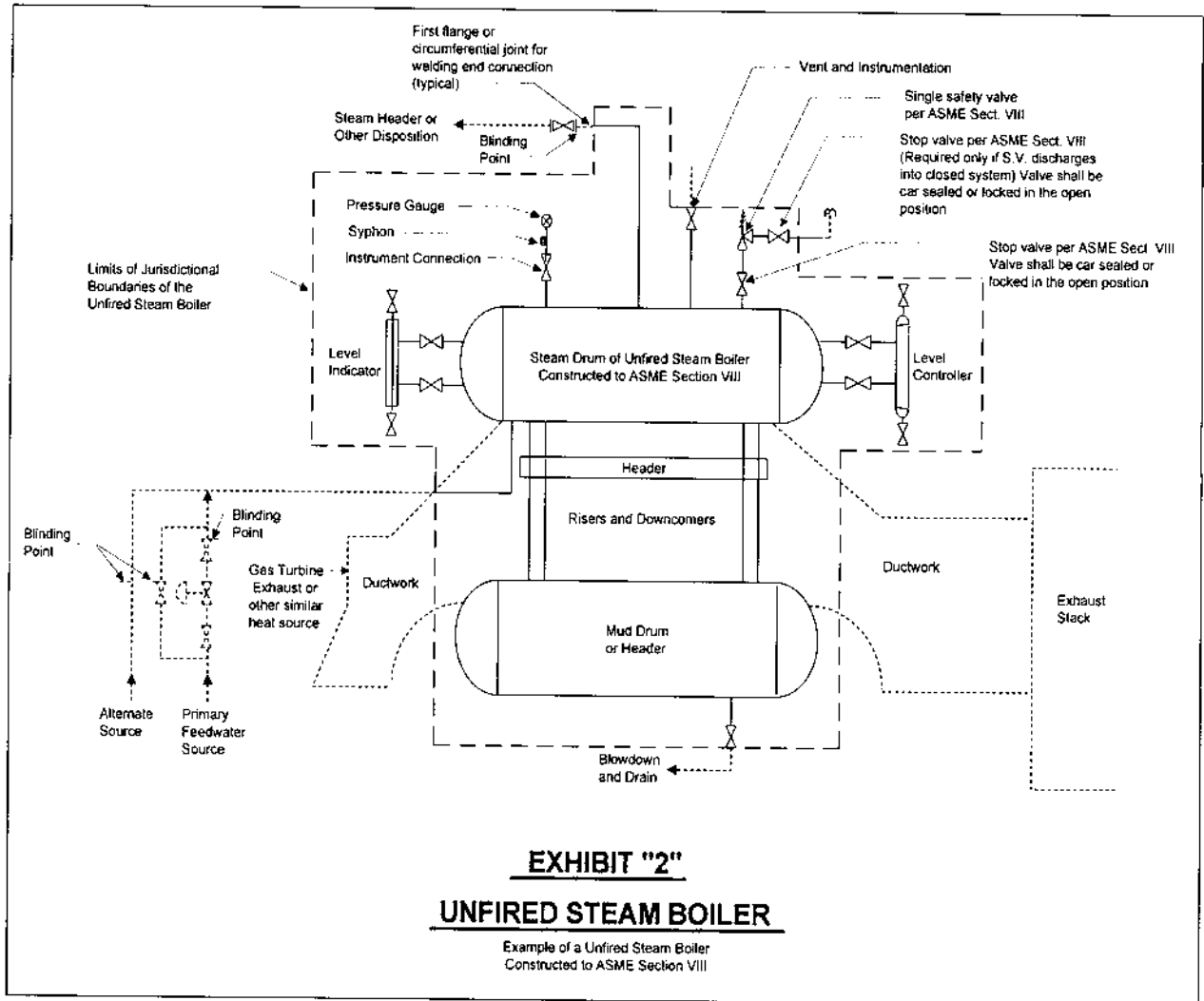


Figure:16 TAC §65.615(3)

Exhibit 3

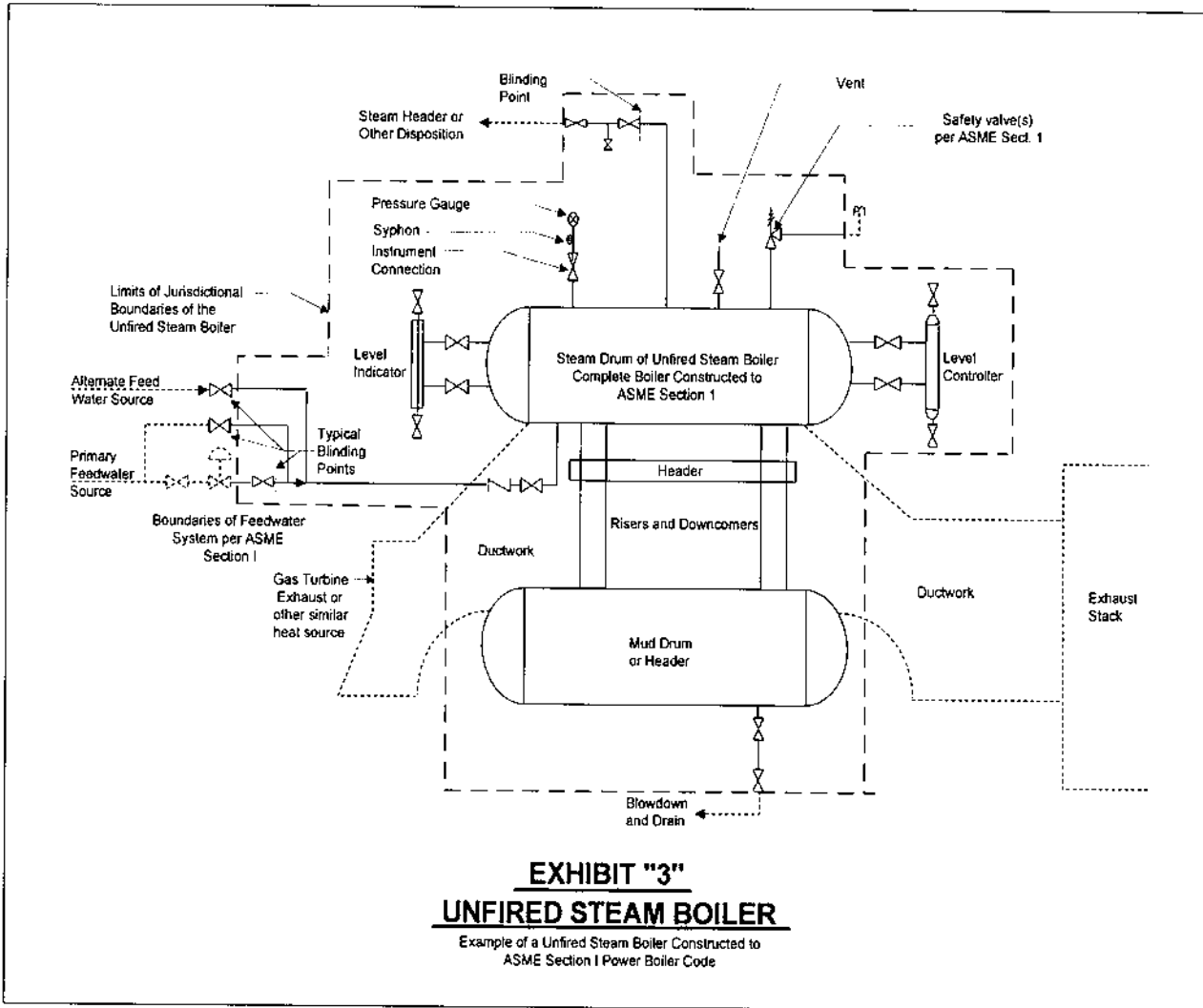


Figure:16 TAC §65.615(4)

Exhibit 4

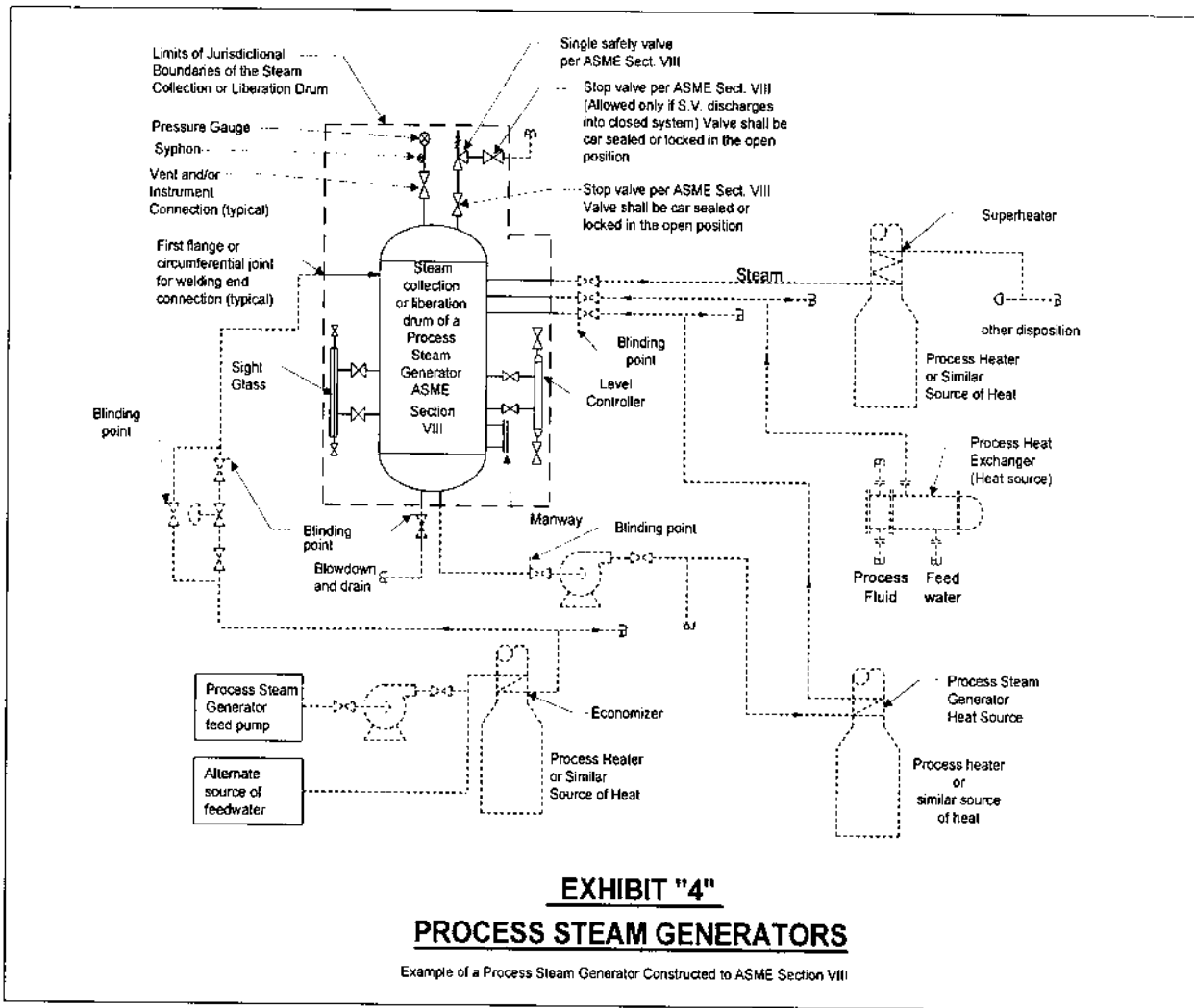
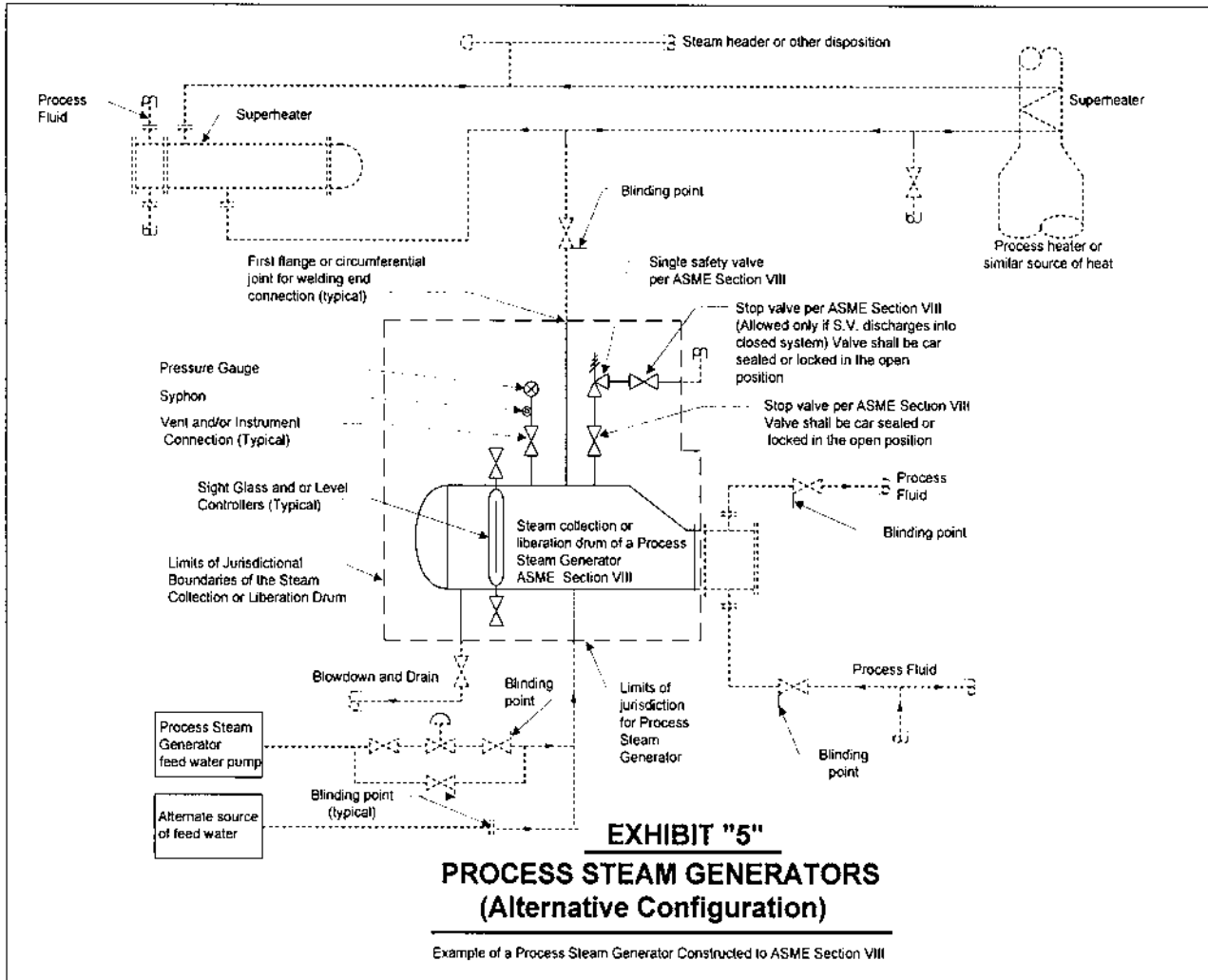


Figure:16 TAC §65.615(5)

Exhibit 5



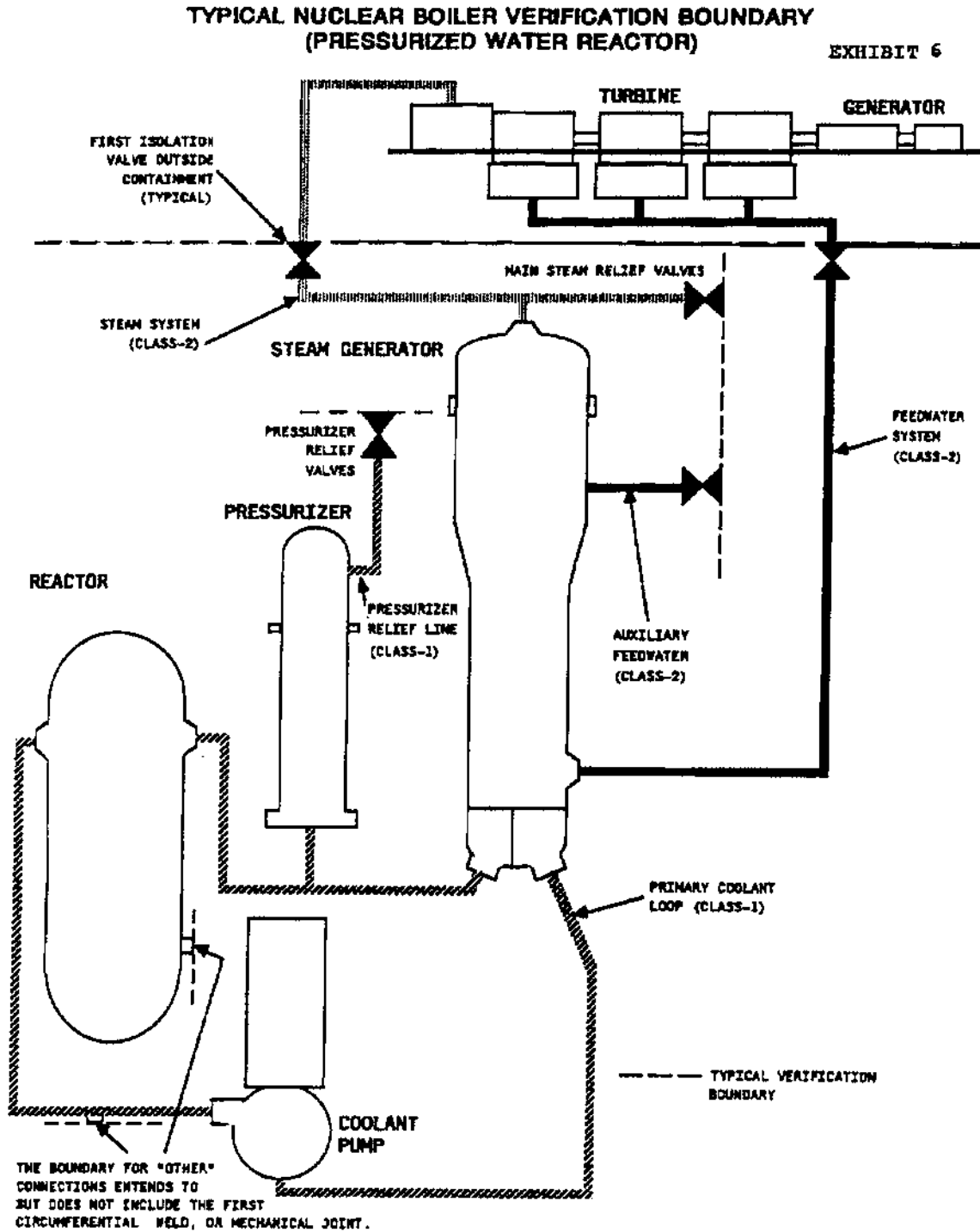


Figure:16 TAC §65.615(7)

Exhibit 7

MINIMUM POUNDS OF STEAM PER HOUR  
PER SQUARE FOOT (METER) OF HEATING SURFACE

	Firetube Boilers	Watertube Boilers
<b>Boiler Heating Surface</b>		
Hand fired	5 (24)	6 (29)
Stoker fired	7 (34)	8 (39)
Oil, gas or pulverized fuel fired	8 (39)	10 (49)
<b>Waterwall Heating Surface</b>		
Hand fired	8 (39)	8 (39)
Stoker fired	10 (49)	12 (59)
Oil, gas, or pulverized fuel fired	14 (68)	16 (78)

Note: The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3 ½ lb/hr/kw (1.6 kg/hr/kw) input.

TABLE 2  
 SIZE OF BOTTOM BLOWOFF PIPING, VALVES, AND COCKS

Minimum Required Safety Valve Capacity lb. (kg) of Steam/Hr.	Blowoff Piping Valves, and Cocks Size, min. in. (mm)
(Note)	
Up to 500 (226)	¾ (20)
501 to 1,250 (227 to 567)	1 (25)
1,251 to 2,500 (568 to 1184)	1 ¼ (32)
2,501 to 6,000 (1185 to 2721)	1 ½ (40)
6,001 (2722) and Larger	2 (50)

Note: To determine the discharge capacity of safety relief valves in terms of Btu, the relieving capacity in lbs. of steam/hr. is multiplied by 1,000.

Figure: 16 TAC §65.615(8)

Exhibit 8

SIZE OF BOTTOM BLOWOFF PIPING, VALVES, AND COCKS

Minimum Required Safety Valve Capacity lb. (kg) of Steam/Hr.	Blowoff Piping Valves, and Cocks Size, min. in. (mm)
(Note)	
Up to 500 (226)	¾ (20)
501 to 1,250 (227 to 567)	1 (25)
1,251 to 2,500 (568 to 1184)	1 ¼ (32)
2,501 to 6,000 (1185 to 2721)	1 ½ (40)
6,001 (2722) and Larger	2 (50)

Note: To determine the discharge capacity of safety relief valves in terms of Btu, the relieving capacity in lbs. of steam/hr. is multiplied by 1,000.



## Exhibit 9

### 1.0 Basic Elements of a Written Quality Control System

**1.1** This outline sets the requirements of the Boiler Section for a written quality control system for repairers of ASME safety and safety relief valves.

#### 1.2 Control Copy

A controlled copy of the written quality control system shall be submitted to the inspector. Revisions shall also be submitted for acceptance prior to being implemented.

#### 1.3 Sample Forms

Forms used in the quality control system shall be included in the manual with a written description. Forms exhibited should be marked SAMPLE and completed in a manner typical of actual valve repair procedures.

#### 1.4 Individuality Important

It is extremely important that the manual describe and the operation implement the system of each individual firm while meeting the requirements of the owner/operator certification program.

#### 1.5 Quality Control Manual Requirements

It is essential that each valve repair organization develop its own quality control system which meets the requirements of each organization. Some of these requirements are, but not limited to:

##### 1.5.1 Title Page

The title page shall include the name and address of the company to which the certificate of authorization is to be issued.

##### 1.5.2 Revision Log

A revision log is required to assure revision control of the quality control manual. The log should contain sufficient space for date, description and section of revision, company approval, and chief inspector or authorized inspector acceptance.

##### 1.5.3 Contents Page

The contents page should list and reference, by paragraph and page number, the subjects and exhibits contained therein.

##### 1.5.4 Statement of Authority and Responsibility

A statement of authority and responsibility shall appear on company letterhead, dated and signed by an officer of the company verifying that only ASME Code stamped safety and safety relief valves will be repaired and returned to a condition equivalent to the standards for new valves. To ensure this is attained, the requirements of the written quality control system shall include as a minimum:

- 1.5.4.1** the title of the individual responsible to ensure that the quality control system is followed and has the authority and organizational freedom to effect the responsibility;
- 1.5.4.2** if there is disagreement in the implementation of the written quality control system, the matter is to be referred to a higher authority in the company for resolution; and
- 1.5.4.3** the title of the individual authorized to approve revisions to the written quality control system and the method by which such revisions are to be submitted to the authorized inspector for acceptance before implementation.

#### **1.5.5 Organization Chart**

The organization chart shall include all departments or divisions within the company that perform functions affecting the quality of the valve and show the relationship.

#### **1.5.6 Scope of Work**

The scope of work section should clearly indicate the scope and type of valve repairs the organization is capable of and intends to carry out, and should include the types and sizes of valves which can be repaired. In addition, the testing media (steam, air, water, etc.) and pressure ranges should be included. The scope can be limited by engineering, machine tools, welding processes, heat treatment facilities, testing facilities, nondestructive examination (NDE) techniques, or qualified personnel.

#### **1.5.7 Drawings and Specification Control**

The drawings and specification control system shall provide procedures assuring that applicable drawings, specifications, and instructions required are used for valve repair, inspection, and testing.

Specific reference should be made to the materials used for the repair of various valve parts (PG-73.2.3, Section I and UG-136(b)(3), Section VIII Division 1 of the ASME Code).

Mechanical requirements shall comply with the ASME Code. See applicable Code section.

#### **1.5.8 Material and Part Control**

The material and part control section shall describe purchasing of parts from the valve manufacturer, if applicable, and of material with request for mill test certification as required. It shall also describe receiving, storage, and issuing.

- 1.5.8.1** State the title of the individual responsible for the purchasing of all material.
- 1.5.8.2** State the title of the individual responsible for certification and other records as required.
- 1.5.8.3** All incoming material and parts shall be checked for conformance with the purchase order, and where applicable, the material specifications or drawings. Indicate how material or part is identified and how identity is maintained by the quality control system.
- 1.5.8.4** All critical parts shall be fabricated to the valve manufacturer's specifications. Critical parts are defined as any part which may affect the flow passage, capacity, or valve function.
- 1.5.8.5** When the original manufacturer's nameplate is missing or illegible, or when valve parts are no longer available from the manufacturer, a system will be in place to provide positive valve identification or replacement.

#### **1.5.9 Repair and Inspection Program**

The repair and inspection program section shall include reference to a document (such as a report, traveler, or check list) which outlines the specific repair and inspection procedures used in the repair of safety and safety relief valves. Provisions shall be made to retain this document for a period of at least five (5) years as a part of quality control traceability documents.

- 1.5.9.1** Each valve or group of valves shall be accompanied by the document referred to above for processing through the plant.
- 1.5.9.2** The document referred to above should include material check, reference to items such as the welding procedures specifications (WPS), fitup, NDE technique, heat treatment, and pressure test methods to be used. There should be a space for "sign-offs" at each operation to verify that each step has been properly performed.
- 1.5.9.3** The system shall include a method of controlling the repair or replacement of critical valve parts. The method of identifying each spring shall be indicated.

#### **1.5.10 Welding, NDE, and Heat Treatment**

The quality control manual is to indicate the title of the person(s) responsible

for the development and approval of the welding procedure specifications and their qualifications and the qualifications of welders and welding operators. It is essential that only welding procedure specifications and welders or welding operators qualified to the requirements of the ASME Boiler and Pressure Vessel Code, Section IX, be used in the valve repair. Similarly, NDE and heat treatment techniques must be covered in the quality control manual. This section should also include outside contracting for services and qualifications.

#### **1.5.11 Valve Testing and Setting**

The system shall include provisions that every valve shall be tested, set, and all external adjustments sealed according to the requirements of the applicable ASME Code section.

The seal shall identify the repair organization. Abbreviations or initials shall be permitted, provided such identification is acceptable to the authorized inspector.

#### **1.5.12 Valve Repair Tags**

An effective system shall be established to ensure proper tagging of each valve. The manual shall include a description of the tag or a drawing.

#### **1.5.13 Calibration of Measurement and Test Gages**

The calibration of measurement and test gage system shall include the periodic calibration of measuring instruments and pressure gages.

Pressure gages used for setting valves are to be checked periodically (indicate frequency) by authorized quality control personnel. The method of gage testing is to be indicated and results recorded.

Periodically, all master gages shall be calibrated, preferably but not necessarily, to measuring equipment traceable to the National Bureau of Standards.

#### **1.5.14 Training of Valve Repair Personnel**

The certificate holder shall describe a system of providing and documenting in-house training for persons repairing, testing, setting, and sealing safety valves and safety relief valves. This training shall include and document the following as a minimum:

- 1.5.14.1** a general working knowledge of the organization's quality control manual;
- 1.5.14.2** a general working knowledge of the applicable requirements;
- 1.5.14.3** a general working knowledge of the manufacturer's technical bulletin for valves being repaired, tested, set, and sealed.

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Hunt County, Texas and the State of Texas v. Harry Hronas, Cause No. 77,077; in the 196th Judicial District Court, Hunt County, Texas.

Nature of Defendant's Operations: Defendant Harry Hronas, owns real property on which he operates Harry's Redline Raceway, located in Caddo Mills, Hunt County, Texas. Investigators with the Hunt County Office of Homeland Security investigated the facility and observed several large piles of asphalt and rock, a discarded refrigeration unit and more than 30 steel 55-gallon drums labeled "racing fuel." One such drum was observed leaking its contents onto the ground.

Proposed Agreed Judgment: The Agreed Final Judgment orders Harry Hronas to pay civil penalties to the State and Hunt County in the amount of \$5,000 to be divided equally between the State and Hunt County. The Judgment also awards attorney's fees to the State in the amount of \$2,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711 2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201405246  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: November 3, 2014



### Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or

considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. Clinton S. Morse and Vivian G. Morse*, Cause No. D-1-GN-14-003287, in the 419th Judicial District Court, Travis County, Texas.

Nature of Case: The case involves the illegal impoundment of water on the North Fork of the Guadalupe River approximately nine miles upstream from Hunt, Texas in Kerr County. The defendants are alleged to have constructed a dam for the storage of water without a permit from the Texas Commission on Environmental Quality.

Proposed Agreed Judgment: The Agreed Final Judgment orders defendants to pay civil penalties and costs of prosecution to the State. Defendants agree to pay civil penalties of \$21,500 to the State of Texas. The Defendants will pay attorney's fees to the State of Texas in the amount of \$8,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711 2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201405255  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: November 4, 2014



## Comptroller of Public Accounts

### Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Sprague's Pipit ("RFP 209c"):

Texas State University, 601 University Drive, San Marcos, Texas 78666. The total maximum amount of the contract is \$247,505.00. The term of the contract is November 3, 2014 through July 1, 2017.

The notice of issuance was published in the April 25, 2014, issue of *Texas Register* (39 TexReg 3477).

TRD-201405295  
William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



## Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Texas Kangaroo Rat ("RFP 209f"):

Texas Tech University, 2903 4th Street, Box 45017, Lubbock, Texas 79415. The total maximum amount of the contract is \$199,999.00. The term of the contract is November 3, 2014 through April 30, 2018.

The notice of issuance was published in the June 27, 2014, issue of *Texas Register* (39 TexReg 4971).

TRD-201405296

William C. George

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 5, 2014



## Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Black Rail ("RFP 209g"):

Texas State University, 601 University Drive, San Marcos, Texas 78666. The total maximum amount of the contract is \$199,462.00. The term of the contract is November 3, 2014 through March 31, 2018.

The notice of issuance was published in the June 27, 2014, issue of *Texas Register* (39 TexReg 4971).

TRD-201405297

William C. George

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 5, 2014



## Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212c ("RFP 212c") for Endangered Species Research Project for the American Eel. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405287

William C. George

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: November 5, 2014



## Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212d ("RFP 212d") for Endangered Species Research Project for the Louisiana Pine Snake. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract

on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405288  
William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212e ("RFP 212e") for Endangered Species Research Project for the Golden-Winged Warbler. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015,

or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405289  
William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212f ("RFP 212f") for Endangered Species Research Project for the Prairie Chub. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405290

William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212g ("RFP 212g") for Endangered Species Research Project for the Saltmarsh Topminnow. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405291

William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212h ("RFP 212h") for Endangered Species Research Project for the Chihuahua Catfish. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201405292

William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212i ("RFP 212i") for Endangered Species Research Project for Morse's Little Plain Brown Sedge. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard



copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESB as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESB as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESB for updates to the RFP prior to submitting a Response.

TRD-201405293  
William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 212j ("RFP 212j") for Endangered Species Research Project for the Texas Troglitic Water Slater. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 16, 2015.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, November 14, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, December 1, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely

receipt. On or about Friday, December 5, 2014, Comptroller expects to post responses to questions on the ESB as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, January 30, 2015. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 14, 2014, after 10:00 a.m. CT; Questions Due - December 1, 2014, 2:00 p.m. CT; Official Responses to Questions posted - December 5, 2014, or as soon thereafter as practical; Proposals Due - January 30, 2015, 2:00 p.m. CT; Contract Execution - March 16, 2015, or as soon thereafter as practical; and Commencement of Work - on or after March 16, 2015. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESB as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESB for updates to the RFP prior to submitting a Response.

TRD-201405294  
William C. George  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: November 5, 2014



### 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 11/10/14 - 11/16/14 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/10/14 - 11/16/14 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 11/01/14 - 11/30/14 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/14 - 11/30/14 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201405251  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: November 4, 2014



## Commission on State Emergency Communications

### Notice Concluding Annual Review of 1 TAC §255.4

The Commission on State Emergency Communications (CSEC) published notice of its annual review of the definition in §255.4 of "local exchange access line" and "equivalent local exchange access line," in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3991). CSEC's annual review is required by Health and Safety Code §771.063(c).

No comments were received regarding CSEC's notice of annual review.

CSEC has determined not to propose amendments to the definitions in §255.4 and to leave in effect the rule as adopted in October 2007.

This concludes CSEC's annual review of §255.4.

TRD-201405159

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: October 31, 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 December 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 December 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: A.J. Brauer Stone, Incorporated; DOCKET NUMBER: 2013-0925-EAQ-E; IDENTIFIER: RN106591647; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: limestone processing and cutting facility; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution

Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$5,157; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: CAROTHERS EXECUTIVE HOMES, LIMITED; DOCKET NUMBER: 2014-1209-WQ-E; IDENTIFIER: RN106245517; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: single family housing development; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR15YI41, Part III, Section F(2)(c)(i)(B) and (6)(a) and Part VII, Numbers 1 and 9, by failing to implement and maintain effective sediment control practices at the site; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Center; DOCKET NUMBER: 2014-0774-MWD-E; IDENTIFIER: RN101614014; LOCATION: Center, Shelby County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010063003, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations of Outfall Number 001; Supplemental Environmental Project offset amount of \$25,200 applied to Texas Association of Resource Conservation and Development Areas, Inc.; PENALTY: \$31,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Orange; DOCKET NUMBER: 2014-1063-PWS-E; IDENTIFIER: RN101385854; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(C), by failing to operate the facility under the direct supervision of at least two water works operators who hold a Class C or higher license; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assemblies which are installed to provide protection against health hazards and certified to be operating within specifications tested at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.42(e)(4)(B), by failing to properly house the gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's Turret elevated storage tank that is designed in strict accordance with American Water Works Association standards; 30 TAC §290.46(f)(2), (3)(A)(iii) and (iv), (B)(iv) and (D)(ii), by failing to provide facility records to Commission personnel at the time of an investigation; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(h)(4)(C), by failing to ensure that any backflow prevention assembly Test and Maintenance report form which varies from the format specified in 30 TAC §290.47(f) is approved by the executive director prior to being placed in use; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing for chlorine leakage which is readily accessible outside the chlorination room; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; and 30 TAC §290.43(e), by failing to ensure the fence around the potable water storage tanks and pressure maintenance facilities is intruder-resistant; PENALTY: \$2,254; ENFORCEMENT COORDINATOR: Katy Mont-

gomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Clean Harbors San Leon, Incorporated; DOCKET NUMBER: 2014-1366-PWS-E; IDENTIFIER: RN100890235; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on the running annual average; PENALTY: \$234; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Clear Lake City Water Authority; DOCKET NUMBER: 2014-1035-MWD-E; IDENTIFIER: RN101440485; LOCATION: Houston, Harris County; TYPE OF FACILITY: water reclamation facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010539001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$13,725; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512)239-3158; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Comfort Retail, Incorporated dba Comfort Food Mart; DOCKET NUMBER: 2014-1123-PST-E; IDENTIFIER: RN104534011; LOCATION: Comfort, Kendall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Cuitlahuac P. Roque; DOCKET NUMBER: 2014-1581-WOC-E; IDENTIFIER: RN105850515; LOCATION: Donna, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Debbie M. Kendrick; DOCKET NUMBER: 2014-1586-WOC-E; IDENTIFIER: RN105239008; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: EnAqua Solutions, LLC; DOCKET NUMBER: 2014-1070-AIR-E; IDENTIFIER: RN106555832; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: salt water disposal plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: \$18,375; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: First Choice Home Construction, LLC; DOCKET NUMBER: 2014-0945-WQ-E; IDENTIFIER: RN107230146; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY:

\$3,750; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: GUM SPRINGS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1027-PWS-E; IDENTIFIER: RN102680063; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on a locational running annual average; PENALTY: \$342; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Johnny D. Johnson dba Johnson Excavating; DOCKET NUMBER: 2013-0694-MLM-E; IDENTIFIER: RN105694665; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: sand mining; RULES VIOLATED: 30 TAC §342.25, by failing to register the site as an aggregate production operation by October 30, 2012; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under the Texas Pollutant Discharge Elimination System General Permit Number TXR050000; 30 TAC §334.127(a)(1), by failing to register above-ground storage tanks; and TWC, §26.121(a), by failing to prevent an unauthorized discharge into or adjacent to water in the state; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: L.F. Manufacturing, Incorporated; DOCKET NUMBER: 2014-1066-IHW-E; IDENTIFIER: RN102318565; LOCATION: Karnes City, Karnes County; TYPE OF FACILITY: fiberglass aboveground storage manufacturing; RULES VIOLATED: 30 TAC §335.2(a) and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to prevent unauthorized storage and processing of hazardous waste; 30 TAC §335.112(a)(3) and §335.69(a)(4)(A), and 40 CFR §262.34(a)(4) and §265.52, by failing to maintain an adequate Contingency Plan; and 30 TAC §335.6(c), by failing to update the Facility's Notice of Registration; PENALTY: \$6,094; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: LANGTRY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0914-PWS-E; IDENTIFIER: RN101454791; LOCATION: Langry, Val Verde County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), 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 §290.46(f)(2) and (3)(A)(ii)(III), by failing to provide facility records to commission personnel at time of an investigation; PENALTY: \$559; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(16) COMPANY: Parkside at Mayfield Ranch, Limited; DOCKET NUMBER: 2014-1102-EAQ-E; IDENTIFIER: RN107157935; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential subdivision; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of regulated activities; PENALTY: \$16,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: PETE'S PARK, L.L.C. and ASWAD FAMILY LIMITED PARTNERSHIP; DOCKET NUMBER: 2014-0844-PWS-E; IDENTIFIER: RN101235356; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2010 monitoring period; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011 monitoring period; 30 TAC §290.106(c) and (e), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2012 monitoring period; and 30 TAC §290.106(e) and §290.122(c)(2)(A), by failing to provide the results of quarterly nitrate monitoring sampling to the executive director for the second, third, and fourth quarters of 2013, and failed to provide public notification for the failure to collect routine nitrate monitoring samples for the second quarter of 2013; PENALTY: \$549; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: R & R Suleiman LLC dba Shell Express; DOCKET NUMBER: 2014-0991-PST-E; IDENTIFIER: RN101532620; LOCATION: Cedar Hill, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(d)(3) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §334.10(b), by failing to maintain underground storage tank records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,626; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: REPUBLIC PLASTICS, LTD.; DOCKET NUMBER: 2014-1202-AIR-E; IDENTIFIER: RN100851211; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: production of plastics and foam products; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2680, General Terms and Conditions, by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: RUDOLPHS, INCORPORATED; DOCKET NUMBER: 2014-1386-PST-E; IDENTIFIER: RN103101051; LOCATION: Yoakum, Lavaca County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), the respondent failed to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Scurry County; DOCKET NUMBER: 2014-1596-WQ-E; IDENTIFIER: RN107711731; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: residential subdivision construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit / Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(22) COMPANY: Simon Gonzalez; DOCKET NUMBER: 2014-1585-WOC-E; IDENTIFIER: RN106890734; LOCATION: Tyler, Smith County; TYPE OF FACILITY: landscape irrigation services; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201405252  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: November 4, 2014



### Enforcement Orders

An agreed order was entered regarding HUNZA (U.S.A.), INC. dba East Hill Deli & Grocery, Docket No. 20130748PSTE on October 27, 2014 assessing \$3,505 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 5885933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Efrain Franco and Christina Solis, Docket No. 20132035PWSE on October 29, 2014 assessing \$975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHOO & KAYAAN INVESTMENT, LLC. dba I B Cheapers Fuel & Beer Emporium, Docket No. 20140261PSTE on October 27, 2014 assessing \$4,926 in administrative penalties with \$985 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 Rommie L. Back dba Houston Metal Stripping, Docket No. 20140394AIRE on October 27, 2014 assessing \$4,012 in administrative penalties with \$802 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QUALITY RETAILER, INC. dba Quality Food, Docket No. 20140604PSTE on October 27, 2014 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linda Moore Pettit, Docket No. 20140662WRE on October 27, 2014 assessing \$400 in administrative penalties with \$80 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard E. Meaders, Inc. dba Super Stop Convenience Store, Docket No. 20140702PSTE on October 27, 2014 assessing \$5,818 in administrative penalties with \$1,163 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Morgan's Point, Docket No. 20140718MWDE on October 27, 2014 assessing \$3,250 in administrative penalties with \$650 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.

A field citation was entered regarding Mark Aldriedge Custom Homes, LLC, Docket No. 20140771WQE on October 27, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONCAN WATER SUPPLY CORPORATION, Docket No. 20140786PWSE on October 27, 2014 assessing \$2,205 in administrative penalties with \$441 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.

A field citation was entered regarding TRS Construction, Inc., Docket No. 20140807WQE on October 27, 2014 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 5885825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Osburn Contractors, Inc., Docket No. 20140869AIRE on October 27, 2014 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GURUDWARA SAHIB OF HOUSTON INC., Docket No. 20140888PWSE on October 27, 2014 assessing \$787 in administrative penalties with \$157 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 4034077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW HORIZONS RANCH AND CENTER, INC., Docket No. 20140916PWSE on October 27, 2014 assessing \$270 in administrative penalties with \$54 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 8253425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronnie McClendon dba Rambling Road Tree Farm LLC, Docket No. 20141146WRE on October 27, 2014 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201405277

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 5, 2014



#### Houston-Galveston Area Council Water Quality Management Plan Update Invitation for Public Comment

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Fiscal Year 2013 Update to the Water Quality Management Plan (WQMP) developed for the Houston-Galveston region of Texas prepared by the Houston-Galveston Area Council (H-GAC).

The WQMP update is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208 and §604(b). The WQMP update includes WQMP review and coordination, wastewater infrastructure planning elements, and support for watershed planning in the Lake Houston Watershed. Once the commission certifies the WQMP update, it is submitted to the United States Environmental Protection Agency for approval. The 2013 WQMP may contain service area populations for specific wastewater treatment facilities, designated management agency information, and data to support current wastewater infrastructure planning elements.

A copy of the Fiscal Year 2013 H-GAC WQMP update may be found on the website located at <http://www.tceq.texas.gov>. A copy of the update may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Megan Wilson, Texas Commission on Environmental Quality, Water Quality Planning Division, MC-203, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4732, but must be followed up with the submission and receipt of written comments within three working days of when they were faxed. Written comments must be submitted no later than 4:00 p.m. on December 5, 2014. For further information, or questions, please contact Megan Wilson at (512) 239-1165 or by email at [megan.wilson@tceq.texas.gov](mailto:megan.wilson@tceq.texas.gov).

TRD-201405270



## Notice of Water Quality Applications

The following notices were issued on October 24, 2014 through October 31, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

CITY OF COLEMAN has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010150003 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 800 Mississippi Street, Coleman in Coleman County, Texas 76834.

UNIMIN CORPORATION 6680 State Highway 71, Voca, Texas 76887, which operates the Voca Facility, a silica sand mining and processing facility, has applied for a renewal of TPDES Permit No. WQ0003911000, which authorizes the discharge of process wastewater and stormwater on an intermittent and flow-variable basis via Outfalls 001 and 002. The facility is located at 6680 State Highway 71, south of State Highway 71, approximately 2,000 feet east of the intersection of State Highway 1851 and State Highway 71 near the city of Voca, McCulloch County, Texas 76887.

RIVER OAKS COUNTRY CLUB which proposes to operate the River Oaks Country Club RO Plant, has applied for new TPDES Permit No. WQ0005129000 to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 110,000 gallons per day. The facility is located at 1600 River Oaks Boulevard, Houston, Harris County, Texas 77019.

CITY OF ELECTRA has applied for a renewal of TPDES Permit No. WQ0010020001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility is located approximately 2 miles southeast of the intersection of Farm-to-Market Road 1739 and State Highway Loop 477 in Wichita County, Texas 76360.

CITY OF MISSION has applied for a major amendment to TPDES Permit No. WQ0010484001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 9,000,000 gallons per day to an annual average flow not to exceed 13,500,000 gallons per day. The facility is located at 906 South Conway Avenue, Mission, approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 1016 and U.S. Highway 83 in Hidalgo County, Texas 78572.

CITY OF LOS FRESNOS has applied for a major amendment to TPDES Permit No. WQ0010590002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day. The application also includes a request for a temporary variance to the existing 500 feet separation distance requirement between the wastewater treatment facility and the raw water storage ponds. The actual distance between

the wastewater treatment facility and the raw water storage ponds is 425 feet. The variance would enable the permit amendment. The facility is located at 802 South Nogal Street, approximately 2,000 feet west of Farm-to-Market Road 1847 and 3,000 feet south of State Highway 100 at the end of Nogal Street in the southwestern portion of the City of Los Fresnos in Cameron County, Texas 78566.

CITY OF WESLACO has applied for a renewal of TPDES Permit No. WQ0010619003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,500,000 gallons per day. The facility is located northeast of the City of Weslaco approximately 4,000 feet east of State Highway 88 and approximately 4,000 feet north of Pike Boulevard in Hidalgo County, Texas 78599.

CITY OF LEWISVILLE has applied for a renewal of TPDES Permit No. WQ0010662001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The facility is located at 897 Treatment Plant Road, Lewisville in Denton County, Texas 75057.

CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,926,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of the Laredo Country Club and Casa Blanca County Golf Courses. The facility is located at 2851 Shiloh Drive, approximately 2.5 miles northeast of the intersection of Del Mar Boulevard and Interstate Highway 35 in the City of Laredo in Webb County, Texas 78045.

CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 9.0 miles north of the intersection of Interstate Highway 35 and Farm-to-Market Road 1472, approximately 3,000 feet east of Interstate Highway 35 and 1,000 feet north of the entrance to the Uniroyal Proving Grounds in Webb County, Texas 78045.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0011480001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via surface irrigation of 4.8 acres of restricted access display agricultural land. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located at 2920 Ranch Road 1, Stonewall, approximately 1.5 miles east of the intersection of Farm-to-Market Road 1623 and U.S. Highway 290 in Gillespie County, Texas 78671.

LAKEWAY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TCEQ Permit No. WQ0011495006, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via surface irrigation of 117 acres of Live Oak Golf Course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 123 Trophy Drive, Lakeway, approximately 2.0 miles northwest of the intersection of Ranch Road 620 and Lohmans Crossing Road in Travis County, Texas 78734.

GULF MARINE FABRICATORS LP has applied for a renewal of TPDES Permit No. WQ0012064001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 1982 Farm-to-Market Road 2725, Aransas Pass, in San Patricio County, Texas 78336.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012070001, which authorizes the

discharge of treated domestic wastewater at a daily average flow not to exceed 63,000 gallons per day. The facility is located at 14910 Aldine Westfield Road, Houston in Harris County, Texas 77032.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 200 has applied for a renewal of TPDES Permit No. WQ0012294001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,440,000 gallons per day. The facility is located at 13050 Stonefield Drive, Houston in Harris County, Texas 77014.

CITY OF MULLIN has applied for a renewal of TPDES Permit No. WQ0013758001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 3,100 feet south of the intersection of State Highway 183 and Farm-to-Market Road 573 and approximately 1,900 feet east of Farm-to-Market Road 573 in the City of Mullin in Mills County, Texas 76864.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

W AND P DEVELOPMENT CORPORATION which operates U.S. Eco Park, has applied for a minor amendment without renewal to TPDES Permit No. WQ0001160000 to change the sampling location for residual chlorine to a point immediately after chlorination and prior to mixing with any other wastewaters in Interim Phase I of the permit. The existing permit authorizes the discharge of treated stormwater, landfill leachate, and treated domestic wastewater on an intermittent and flow variable basis (Interim Phase I); treated industrial wastewater, treated domestic wastewater, municipal wastewater, landfill leachate, and stormwater at a daily average flow not to exceed 16,000,000 gallons per day (Interim Phase II) and 26,000,000 gallons per day (Final Phase) via Outfall 001; and stormwater water runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located at 18511 Beaumont Highway, north of Old Highway 90, between Sheldon Road and the San Jacinto River, within the 5-mile extraterritorial jurisdiction of the City of Houston, Harris County, Texas 77049.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201405276

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 5, 2014

## Texas Facilities Commission

Request for Proposals #303-6-20473

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-6-20473. TFC seeks a five (5) or ten (10) year lease of approximately 2,396 square feet of office space in Daingerfield, Morris County, Texas.

The deadline for questions is December 10, 2014 and the deadline for proposals is December 17, 2014 at 3:00 p.m. The award date is January 21, 2015. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=114514](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=114514).

TRD-201405247

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 3, 2014

## Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 4, 2014, at 2:00 p.m., to receive public comment on proposed payment rates for the assisted living (AL) services under the Community Based Alternatives (CBA) program, CBA Personal Care III services (PCIII) and Residential Care (RC) program. Although the CBA Waiver has ceased to exist, effective 09/01/14, and clients have been transitioned into the managed care model under STAR+PLUS, CBA rates continue to be used by actuaries, providers, and managed care organizations for informational purposes. Accordingly, HHSC will continue to adopt payment rates and will conduct the required rate hearings. The Department of Aging and Disability Services (DADS) operates the RC program. The payment rates are proposed to be effective January 1, 2015.

The public hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard.

**Proposal.** HHSC proposes to decrease the facility cost area rates for the CBA AL, CBA PCIII services, and RC programs to reflect the most recent increase in federal Supplemental Security Income (SSI) payments in accordance with the rate-setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

**Methodology and justification.** The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(c)(2)(B) for the CBA AL service, and 1 TAC §355.503(c)(2)(D) for the CBA PCIII service.

**Briefing package.** A briefing package describing the proposed reimbursement rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 17, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Michelle Mikulencak by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written and oral comments.** Written comments regarding the payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, 4900 North Lamar, Austin, Texas 78751-2316.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201405284

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: November 5, 2014



### Notice of Public Hearing on Proposed Medicaid Add-on Payment Rates for Certain Individuals in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, December 2, 2014, at 10:00 a.m. to receive public comment on proposed new add-on payment rates for certain individuals in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program operated by the Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursement rates before HHSC approves the proposed rates. The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the south entrance to the building. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes new add-on rates for certain individuals in the ICF/IID program. The proposed add-on rates will be effective January 1, 2015, and were determined in accordance with the rate-setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed add-on rates were determined in accordance with the rate-setting methodologies proposed in the *Texas Register* (39 TexReg 8023) and scheduled for adoption effective January 1, 2015. The methodologies will be codified at 1 TAC Chapter 355, Subchapter D, §355.456, Reimbursement Methodology.

**Briefing Package.** A briefing package describing the proposed add-on rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on November 14, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed add-on rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201405285

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: November 5, 2014



### Notice of Public Hearing on Proposed Medicaid Payment Rates for Home and Community-based Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, December 2, 2014, at 9:00 a.m. to receive public comment on proposed payment rate adjustments for the Home and Community-based Services (HCS) waiver program operated by the Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursement rates before HHSC approves the rates. The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the south entrance to the building. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to add a rate for transition assistance services to the HCS waiver program. The proposed rate will be effective January 1, 2015, and was determined in accordance with the rate-setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed payment rate was determined in accordance with the rate-setting methodologies proposed in the *Texas Register* (39 TexReg 6119) and scheduled for adoption effective December 1, 2014. The methodologies will be codified at 1 TAC Chapter 355, Subchapter F, §355.725, Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHML).

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on November 14, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by



e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201405286

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: November 5, 2014

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## Texas Low-Level Radioactive Waste Disposal Compact Commission

### Notice of Receipt of 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 an amendment request for an agreement for import for disposal of low-level radioactive waste from:

Florida Power and Light, Turkey Point Nuclear Plant (TLLRWDC #1-0072-02)

9760 SW 344th Street

Homestead, Florida 33035

The amendment request will be placed on the Compact Commission web site, [www.tllrwcc.org](http://www.tllrwcc.org), where it will be available for inspection and copying.

Comments on the amendment request are due to be received by November 11, 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@tllrwcc.org](mailto:administration@tllrwcc.org).

TRD-201405160

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: October 31, 2014

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## North Central Texas Council of Governments

### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7241). The selected consultant will perform technical and professional work to develop a transit master plan for the Fort Worth Transportation Authority.

The consultant selected for this project is Nelson\Nygaard Consulting Associates, Inc., 77 Franklin Street, 10th Floor, Boston, MA 02110. The amount of the contract is not to exceed \$500,000.

TRD-201405189

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: November 3, 2014

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## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 27, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Grande Communications Networks LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 43624.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the Cities of Wylie, Aubrey, and West Lake Hills, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 43624.

TRD-201405092

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 30, 2014

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### Notice of Application for Approval of Revised Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 31, 2014, for approval of revised depreciation rates pursuant to Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 2007 and Supp. 2014) §52.252 and §53.056.

Docket Title and Number: Application of Ganado Telephone Company, Inc. for Approval of Revised Depreciation Rates Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 43682.

The Application: Ganado Telephone Company, Inc. (Ganado) filed an application to revise the depreciation rates for Account 2422 - Underground Cable - Metallic; Account 2422.1 - Underground Cable - Non-Metallic; Account 2423 - Buried Cable - Metallic; and Account 2423.1 - Buried Cable - Non-Metallic. Ganado proposed an effective date of January 1, 2014.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43682.

TRD-201405272

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 4, 2014



### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Blanco, Gillespie, and Kendall Counties, Texas.

Docket Style and Number: Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Blumenthal Substation and 138-kV Transmission Line Project in Blanco, Gillespie, and Kendall Counties, Docket Number 43599.

The Application: The application of LCRA Transmission Services Corporation (LCRA TSC) for a proposed 138-kV transmission line is designated as the Blumenthal Substation and 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line that will connect Central Texas Electric Cooperative's new Blumenthal Substation, located in the Blumenthal area in Gillespie County, to LCRA TSC's existing Kendall-to-Mountain Top transmission line, which runs through northern Kendall and western Blanco counties.

The total estimated cost for the project ranges from approximately \$24.5 million to \$40.1 million, depending on the route chosen. The proposed project is presented with 20 alternate routes and is estimated to be approximately 10 to 17 miles in length. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is December 15, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43599.

TRD-201405271  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 4, 2014



### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 28, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Cumby Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43664.

The Application: Cumby Telephone Cooperative, Inc. (Cumby) filed an application with the commission for revisions to its Local Exchange

Tariff. Cumby proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is \$26,247 in gross annual intrastate revenues. The Applicant has 607 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by November 26, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by November 26, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. 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 Tariff Control Number 43664.

TRD-201405142  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 31, 2014



### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Lake Livingston Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43683.

The Application: Lake Livingston Telephone Company (Lake Livingston) filed an application with the commission for revisions to its General Exchange Tariff. Lake Livingston proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is \$14,047 in gross annual intrastate revenues. The Applicant has 571 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by November 25, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by November 25, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. 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 Tariff Control Number 43683.

TRD-201405273

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 4, 2014



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Ganado Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43684.

The Application: Ganado Telephone Company, Inc. (Ganado) filed an application with the commission for revisions to its General Exchange Tariff. Ganado proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is \$68,235 in gross annual intrastate revenues. The Applicant has 2,199 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. 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 Tariff Control Number 43684.

TRD-201405274  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 4, 2014



#### Notice of Petition for Amendment to a Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on October 29, 2014, a petition under Tex. Water Code Ann. §13.254(a-5) by Tyler Blue Ridge LLC (Tyler) to amend Tall Timbers Utility Company's sewer certificate of convenience and necessity by expedited release in Smith County, Texas.

Docket Style and Number: Petition of Tyler Blue Ridge LLC to Amend Tall Timbers Utility Company, Inc.'s Certificate of Convenience and Necessity in Smith County by Expedited Release, Docket Number 43669.

The Application: Tall Timbers Utility Company, Inc. (Tall Timbers) owns 150,566 acres in Smith County, Texas. Tyler petitioned the Public Utility Commission of Texas under Tex. Water Code Ann. §13.254(a-5) for expedited release of this property from Tall Timbers

Utility Company, Inc.'s sewer certificate of convenience and necessity, No. 20694. Tyler states that this property is not receiving retail sanitary sewer utility service from Tall Timbers.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than December 15, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43669.

TRD-201405275  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 4, 2014



### Texas State Soil and Water Conservation Board

#### USDA-Natural Resources Conservation Service - State Technical Advisory Committee Meeting

On behalf of the USDA-Natural Resources Conservation Service (NRCS), the Texas State Soil and Water Conservation Board announces USDA-NRCS has scheduled a meeting of the State Technical Advisory Committee Meeting for November 13 - 14, 2014 from 9:00 a.m. - 5:00 p.m. on November 13th and from 9:00 a.m. - 12 noon on November 14th at the Embassy Suites Austin Central, 5901 N. IH 35, Austin, Texas.

The Draft Agenda for the State Technical Committee Meeting scheduled for November 13 - 14, 2014 is as follows:

#### November 13th

- 8:00 a.m. - 9:00 a.m. Registration
- 9:00 a.m. Welcome and Opening Comments - Salvador Salinas
- 10:00 a.m. New Agronomy Standards - Willie Durham
- 10:30 a.m. New Engineering Standards - John Mueller
- 11:00 a.m. Program Overview - Mark Habiger, Claude Ross, Troy Daniell
- 12:00 noon - 1:00 p.m. Lunch on your own
- 1:00 p.m. Partnerships and Leveraging Dollars - Salvador Salinas
- 1:30 p.m. Restore ACT - Tomas Dominguez
- 2:00 p.m. Statewide Proposals
- 5:00 p.m. Adjourn

#### November 14th

- 8:00 a.m. FSA Update - Judith Canales, Mickey Woodward
  - 9:30 a.m. Local Work Group Functions
  - 10:00 a.m. New Grazing Land Standards Jeff Goodwin
  - 10:30 a.m. New Forestry Standards Mike Oliver
  - 11:00 a.m. New Biology Standards Russell Castro
  - 11:15 a.m. Closing Discussion
  - 12:00 noon Adjourn
- TRD-201405298

Mel Davis  
Special Projects Coordinator  
Texas State Soil and Water Conservation Board  
Filed: November 5, 2014

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**Texas Water Development Board**

**Applications for November 6, 2014**

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62647, a request from the City of Euless, 201 N. Ector Dr., Euless, Texas 76039-3595, received July 28, 2014, for a \$4,685,000 loan and \$808,050 in loan forgiveness from the Drinking Water State Revolving Fund to finance construction for water system improvements; and a waiver of the requirement that the project be consistent with the State Water Plan and an approved regional water plan.

Project ID #73693, a request from the City of Kirbyville, 107 S. Elizabeth Ave., Kirbyville, Texas 75956-2101, received July 7, 2014, for a \$1,370,000 and \$1,342,466 in loan forgiveness from the Clean Water State Revolving Fund to finance planning, design, and construction of collection system improvements and rehabilitation of deteriorating lift station to address infiltration and inflow.

Project ID #62649, a request from the Port Mansfield Public Utility District, 400 W. Hidalgo Ave., Ste. 200, Raymondville, Texas 78580-3529, received August 21, 2014, for \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, design, and construction to rehabilitate an elevated storage tank.

Project ID #10430, a request from the North Alamo Water Supply Corporation, 420 S. Doolittle Rd., Edinburg, Texas 78542, received May 23, 2014, for a \$9,154,000 grant and \$646,000 loan from the Economically Distressed Areas Program (EDAP), to finance construction of a new 0.5 million gallons-per-day wastewater treatment plant and collection system to provide first-time wastewater service to six subdivisions northwest of the City of Donna.

Project ID #10446, a request from the City of Pharr, P.O. Box 1729, Pharr, Texas 78577, received July 29, 2014, for a \$1,762,500 loan and

\$1,762,500 in grant funds from the Economically Distressed Area Program (EDAP) for the propose of purchasing additional surface water rights to meet the City's water treatment plant raw water demand.

Project ID #62622, a request from Nueces County, received July 30, 2014, for \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning for water system improvements to the Cyndie Park colonia.

Project ID #73696, a request from the City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666, received August 8, 2014, for financial assistance totaling \$811,915 consisting of a \$410,000 loan and \$401,915 in loan forgiveness from the Clean Water State Revolving Fund to finance the planning and design costs associated with the expansion of the City's reuse system.

Project ID #73697, a request from the City of El Campo, 315 E. Jackson, El Campo, Texas 77437, received August 8, 2014, for a \$150,000 loan from the Clean Water State Revolving Fund to finance planning and design costs to prepare the existing wastewater treatment plant for reuse capabilities.

Project ID #62645, a request from the City of San Antonio, P.O. Box 2449, San Antonio, Texas 78298-2449, received June 23, 2014, for a \$75,920,000 loan from the Drinking Water State Revolving Fund to finance the construction of Phase 1 of the Water Resources Integration Program.

TRD-201405149  
Les Trobman  
General Counsel  
Texas Water Development Board  
Filed: October 31, 2014

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**Texas Workforce Commission**

**Resolution of the Texas Workforce Commission Establishing the Unemployment Obligation Assessment for Calendar Year 2015**

**Resolution of the Texas Workforce Commission  
Establishing the Unemployment Obligation Assessment  
For Calendar Year 2015**

Whereas, pursuant to Texas Labor Code, Chapter 203, Subchapter F, the Texas Public Finance Authority Unemployment Compensation Obligation Assessment Series 2010A and Series 2010B (the "Bonds") have been issued on behalf of the Texas Workforce Commission (the "Commission") and will be outstanding; and

Whereas, pursuant to Texas Labor Code, Section 203.105, the Commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of Bond Obligations, consisting of the principal, premium if any, interest on the Bonds and bond administrative expenses; and

Whereas, the rate of the unemployment obligation assessment must be based on the formula prescribed in Commission rule 815.132 (40 Tex. Admin. Code, §815.132); and

Whereas, in accordance with the Financing and Pledge Agreement entered into by and between the Commission and the Texas Public Finance Authority (the "Authority"), in connection with the Bonds, the Commission has covenanted to impose an unemployment obligation assessment so long as Bonds are outstanding in an amount not less than 1.50 times the debt service amount due in the next year; and

Whereas, the Authority has provided notification of the required unemployment obligation assessment of \$332,389,588.00 for calendar year 2015;

Now, therefore, the Commission hereby RESOLVES:

1. In accordance with the formula provided in 40 Tex. Admin Code §815.132 as set out in part in subsection (e):  
“(c) The rate of the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer’s prior year general tax rate, the replenishment tax rate and the deficit tax rate. The percentage to be determined by Commission resolution, shall not exceed 200%.” The “percentage” for 2015 is 100%.
2. The obligation assessment ratio is .17 for calendar year 2015.
3. The rate calculated with the 2015 percentage and the obligation assessment ratio will generate an amount that the Authority has informed the Commission is needed to pay Bond Obligations.

4. The 2015 percentage shall be published in the *Texas Register* on November 21, 2014.

Further, the Commission hereby CERTIFIES:

1. The 2015 percentage as set herein is set in accordance with the requirements of Chapter 203 of the Texas Labor Code.
2. The 2015 percentage is a rate that will provide at least 1.50 times the debt service amount, as determined by the Authority, due in calendar year 2015.
3. The action of the Commission reflected in this Resolution complies with the requirements in Chapter 203 of Texas Labor Code.

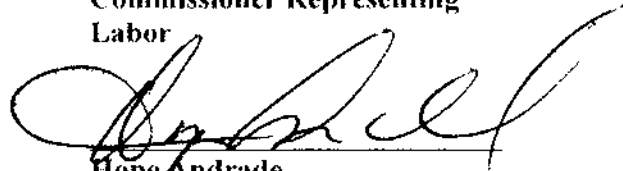
Signed this 4<sup>th</sup> day of November 2014, upon the affirmative vote of a majority of the Commission present and voting.



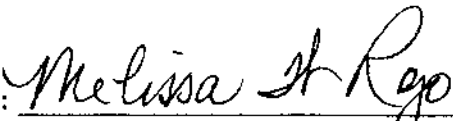
Andres Alcantar, Chairman  
Commissioner Representing  
The Public



Ronald G. Congleton  
Commissioner Representing  
Labor




Hope Andrade  
Commissioner Representing  
Employers

Attested: 

(secretary or other appropriate officer/employee of the Commission)

SWORN AND SUBSCRIBED TO before me this 4<sup>th</sup> day of November, 2014

  
Notary Public



TRD-201405254  
Larry E. Temple  
Executive Director  
Texas Workforce Commission  
Filed: November 4, 2014



# Open Meetings

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

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

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

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

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

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

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

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

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

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



## 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

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### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

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40 TAC §3.704.....950 (P)

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