TEXAS REGISTER

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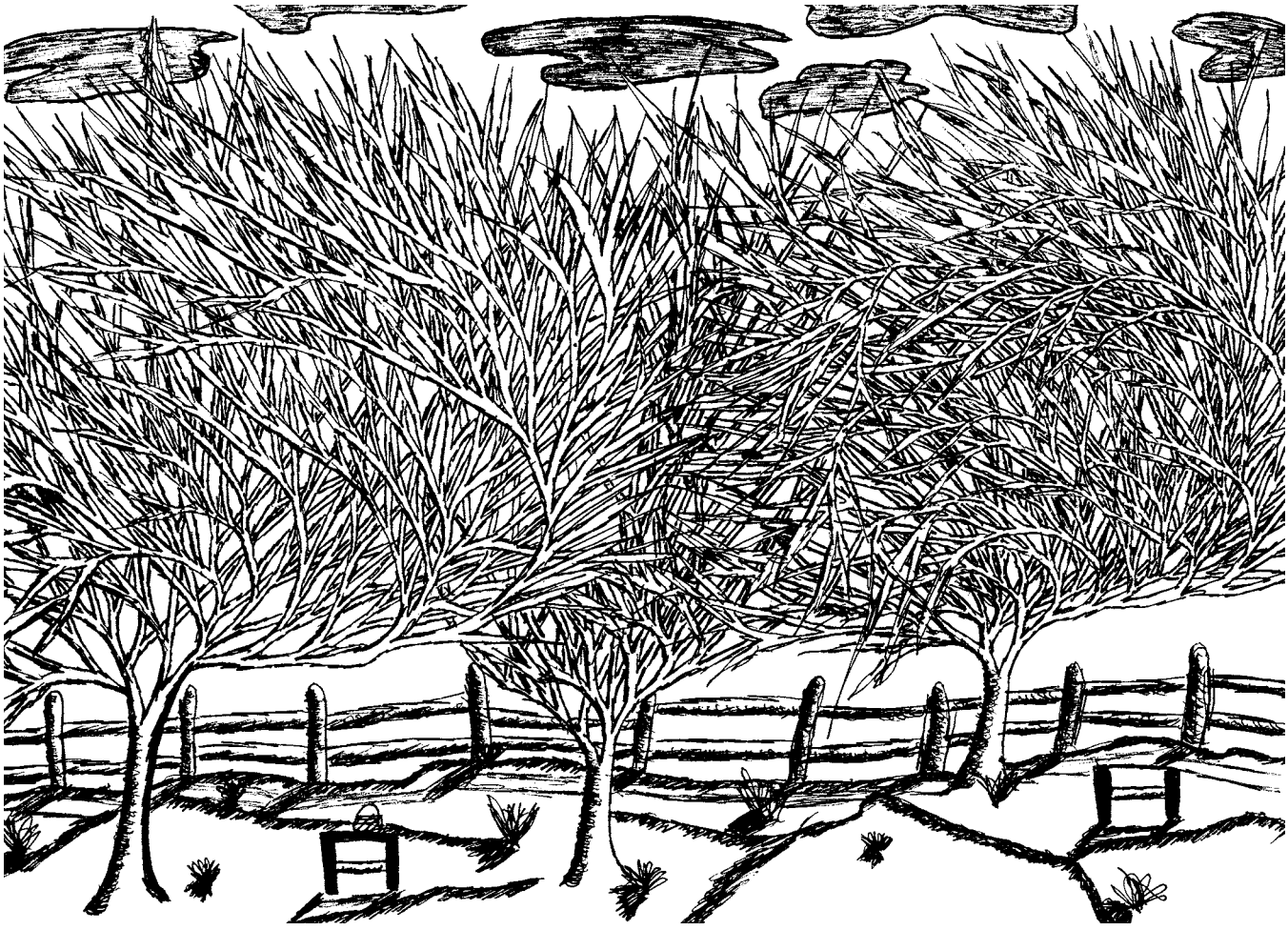

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

PROPOSED RULES

ADOPTED RULES

Open Meetings

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

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

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

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

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

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

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

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

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

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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 202, §§202.1 - 202.3, §§202.20 - 202.28, and §§202.70 - 202.78, concerning Information Security Standards, and new 1 TAC Chapter 202, §§202.1 - 202.4, §§202.20 - 202.26, and §§202.70 - 202.76, to ensure the rules more accurately reflect legislative actions and clarify the processes and policies of current information security practices. The new rules are necessary as the result of passage of Senate Bill 1102 (83R), effective as of May 10, 2013, which legislation added §2054.551, Texas Government Code, establishing a state cybersecurity coordinator. The new rules are also necessary as the result of passage of Senate Bill 1134 (83R), effective as of September 1, 2013, which legislation amended §2054.059, Texas Government Code, requiring the department to establish a state cybersecurity framework. Finally, the new rules are necessary as the result of passage of Senate Bill 1597 (83R), effective September 1, 2013, which legislation added §2054.133, Texas Government Code, requiring state agencies to develop an information security plan. The department published a formal notice of rule review in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5907).

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

The department proposes to repeal 1 TAC Chapter 202 in its entirety to rename rule titles, revise rule language, and allow for the resulting numbering of a new 1 TAC Chapter 202, Information Security Standards. In addition, consistent with the department's treatment of institutions of higher education, the new rules allow for any difference as to how these rules may apply to state agencies and institutions of higher education.

In proposed new Subchapter A, Definitions, the department proposes new §202.1 that defines new terms and technologies related to information security practices. Proposed new terms defined include: Agency Head, Availability, Cloud Computing, Confidentiality, Control Catalog, Custodian, Destruction, Guideline, High Impact Information Resource, Information Custodian, Information Resources Manager, Information System, Integrity, ITCHE, Low Impact Information Resource, Moderate Impact Information Resources, Network Security Operations Center, Personal Identifying Information (PII), Procedure, Residual Risk, Risk, and Standards. Proposed new §202.2 defines institution of higher education, while new §202.3 defines state agency. Proposed §202.4 defines the responsibilities of the state's Chief Information Security Officer.

In proposed new Subchapter B, Information Security Standards for State Agencies, the department proposes new §202.20, Responsibilities of the Agency Head, that clarifies the roles and responsibilities for an agency head related to information security. Proposed new §202.21, Responsibilities of the Information Security Officer, provides details on the responsibilities for the agency's designated information security officer. The department proposes new §202.22, Staff Responsibilities, that clarifies the security responsibilities of state agency staff who own, have custody, or use information resources. Proposed new §202.23, Security Reporting, highlights the required reporting of security incidents and the biennial security plan to the department, and the agency information security officer's annual report on security policies, procedures and practices to the agency head. Proposed new §202.24, Agency Information Security Program, requires each agency to develop, document and implement an agency-wide information security program approved by the agency head. Proposed new §202.25, Managing Security Risks, requires each agency to perform and document a risk assessment of the agency's information and information systems and assess levels of risk on the agency's mission and function. Finally, proposed new §202.26, Security Control Standards Catalog, establishes a Control Standards document published by the department that provides minimum information security requirements for state information and information systems, and standards to be used by state agencies to provide appropriate levels of information security according to risk levels.

The department proposes new Subchapter C, Information Security Standards for Institutions of Higher Education, with proposed new §202.70, Responsibilities of the Agency Head, that clarifies the roles and responsibilities for an institution of higher education head related to information security. Proposed new §202.71, Responsibilities of the Information Security Officer, provides details on the responsibilities for the institution's designated information security officer. The department proposes new §202.72, Staff Responsibilities, that clarifies the security responsibilities of institution of higher education staff who own, have custody, or use information resources. Proposed new §202.73, Security Reporting, highlights the required reporting of security incidents and the biennial security plan to the department, and the institution of higher education information security officer's annual report on security policies, procedures and practices to the institution head. Proposed new §202.74, Institution Information Security Program, requires each institution of higher education to develop, document and implement an institution-wide infor-

mation security program approved by the institution head. Proposed new §202.75, Managing Security Risks, requires each institution of higher education to perform and document a risk assessment of the institution's information and information systems and assess levels of risk on the institution's mission and function. Finally, proposed new §202.76, Security Control Standards Catalog, establishes a Control Standards document published by the department that provides minimum information security requirements for state information and information systems, and standards to be used by institutions of higher education to provide appropriate levels of information security according to risk levels.

The clarification of terms and definitions and the specific operational and business procedures highlighted in the rule, increases the effectiveness of the rule for agencies and institutions. Todd Kimbriel, Deputy Executive Director, has determined that during the first five-year period following the repeal and adoption of new 1 TAC Chapter 202, there will be no fiscal impact on local government. Mr. Kimbriel has also determined that during the first five-year period following the adoption of new 1 TAC Chapter 202, there may be fiscal impact to state agencies and institutions of higher education that are required to reconfigure information technology systems to meet the minimally acceptable system configuration requirements in §202.24 and §202.26 for state agencies and §202.74 and §202.76 for institutions of higher education. That fiscal impact will vary, depending on the degree to which the state agency or institution has a mature and robust information technology infrastructure that addresses the security standards developed in the Security Controls Standards Catalog. To minimize the impact on agencies and institutions, the required controls in the Security Controls Standards Catalog will be phased in over a period of three years, with no new controls in the first year.

Mr. Kimbriel has further determined that for each year of the first five years following the adoption of new 1 TAC Chapter 202, there are no anticipated additional economic costs to persons or small businesses required to comply with the repeal and proposed new rules.

Written comments on the proposed repeal and the adoption of new rules may be submitted to Mark Howard, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to mark.howard@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§202.1 - 202.3

(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 Information Resources or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.1. Applicable Terms and Technologies for Information Security.

§202.2. Institution of Higher Education.

§202.3. State 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 October 23, 2014.

TRD-201404955
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 7, 2014
For further information, please call: (512) 475-4700

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SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.28

(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 Information Resources or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.20. Security Standards Policy.

§202.21. Management and Staff Responsibilities.

§202.22. Managing Security Risks.

§202.23. Managing Physical Security.

§202.24. Business Continuity Planning.

§202.25. Information Resources Security Safeguards.

§202.26. Security Incidents.

§202.27. User Security Practices.

§202.28. Removal of Data from Data Processing Equipment.

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

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SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.78

(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 Information Resources or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.70. Security Standards Policy.

§202.71. Management and Staff Responsibilities.

§202.72. Managing Security Risks.

§202.73. Managing Physical Security.

§202.74. Business Continuity Planning.

§202.75. Information Resources Security Safeguards.

§202.76. Security Incidents.

§202.77. User Security Practices.

§202.78. Removal of Data from Data Processing Equipment.

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 A. DEFINITIONS

1 TAC §§202.1 - 202.4

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.1. Applicable Terms and Technologies for Information Security Standards.

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

(1) Access--The physical or logical capability to view, interact with, or otherwise make use of information resources.

(2) Agency Head--The top-most senior executive with operational accountability for an agency, department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government, that is created by the constitution or a statute of the state; or institutions of higher education, as defined in §61.003, Education Code.

(3) Availability--The security objective of ensuring timely and reliable access to and use of information.

(4) Cloud Computing--Has the same meaning as "Advanced Internet-Based Computing Service" as defined in §2157.007(a), Texas Government Code.

(5) Confidential Information--Information that must be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(6) Confidentiality--The security objective of preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

(7) Control--A safeguard or protective action, device, policy, procedure, technique, or other measure prescribed to meet security requirements (i.e., confidentiality, integrity, and availability) that may be specified for a set of information resources. Controls may include security features, management constraints, personnel security, and security of physical structures, areas, and devices.

(8) Control Standards Catalog--The document that provides state agencies and higher education institutions state specific implementation guidance for alignment with the National Institute of Standards and Technology (NIST) SP (Special Publication) 800-53 security controls.

(9) Custodian--See information custodian.

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

(11) Destruction--The result of actions taken to ensure that media cannot be reused as originally intended and that information is virtually impossible to recover or prohibitively expensive.

(12) Electronic Communication--A process used to convey a message or exchange information via electronic media. It includes the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), facsimile transmission, and other paperless means of communication.

(13) Encryption (encrypt or encipher)--The conversion of plaintext information into a code or cipher text using a variable called a "key" and processing those items through a fixed algorithm to create the encrypted text that conceals the data's original meaning.

(14) Guideline--Recommended, non-mandatory controls that help support standards or serve as a reference when no applicable standard is in place.

(15) High Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions;

(B) result in major damage to organizational assets;

(C) result in major financial loss; or

(D) result in severe or catastrophic harm to individuals involving loss of life or serious life threatening injuries.

(16) Information--Data as processed, stored, or transmitted by a computer.

(17) Information Custodian--A department, agency, or third-party service provider responsible for implementing the information owner-defined controls and access to an information resource.

(18) Information Owner(s)--A person(s) with statutory or operational authority for specified information or information resources.

(19) Information Resources--As defined in §2054.003(7), Texas Government Code.

(20) Information Resources Manager--As defined in §2054.071, Texas Government Code.

(21) Information Security Program--The policies, standards, procedures, elements, structure, strategies, objectives, plans, metrics, reports, services, and resources that establish an information resources security function within an institution of higher education or state agency.

(22) Information System--An interconnected set of information resources under the same direct management control that shares common functionality. An Information System normally includes, but is not limited to, hardware, software, network Infrastructure, information, applications, communications and people.

(23) Integrity--The security objective of guarding against improper information modification or destruction, including ensuring information non-repudiation and authenticity.

(24) ITCHE--Information Technology Council for Higher Education.

(25) Low Impact Information Resources--Information resources whose loss of confidentiality, integrity, or availability could be expected to have a limited adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;

(B) result in minor damage to organizational assets;

(C) result in minor financial loss; or

(D) result in minor harm to individuals.

(26) Mission Critical Information Resources--High impact Information Resources that are essential to the institution of higher education's or state agency's ability to meet its function(s). The loss of these resources or inability to restore them in a timely fashion would result in the failure of the institution of higher education's or state agency operations, inability to comply with regulations or legal obligations, negative legal or financial impact, or endanger the health and safety of State citizens.

(27) Moderate Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;

(B) result in significant damage to organizational assets;

(C) result in significant financial loss; or

(D) result in significant harm to individuals that does not involve loss of life or serious life threatening injuries.

(28) Network Security Operations Center (NSOC)--As defined in §2059.001(1), Texas Government Code.

(29) Personal Identifying Information (PII)--A category of personal identity information as defined by §521.002(a)(1), Business and Commerce Code.

(30) Procedure--Instructions to assist information security staff, custodians, and users in implementing policies, standards and guidelines.

(31) Residual Risk--The risk that remains after security controls have been applied.

(32) Risk--The effect on the entity's missions, functions, image, reputation, assets, or constituencies considering the probability that a threat will exploit a vulnerability, the safeguards already in place, and the resulting impact. Risk outcomes are a consequence of Impact levels defined in this section.

(33) Risk Assessment--The process of identifying, evaluating, and documenting the level of impact on an organization's mission, functions, image, reputation, assets, or individuals that may result from the operation of information systems. Risk Assessment incorporates threat and vulnerability analyses and considers mitigations provided by planned or in-place security controls.

(34) Risk Management--The process of aligning information resources risk exposure with the organization's risk tolerance by either accepting, transferring, or mitigating risk exposures.

(35) Security Incident--An event which results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information or information resources.

(36) Sensitive Personal Information--A category of personal identity information as defined by §521.002(a)(2), Business and Commerce Code.

(37) Standards--Specific mandatory controls that help enforce and support the information security policy.

(38) Threat--Any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, or individuals.

(39) User of an Information Resource--An individual, process, or automated application authorized to access an information resource in accordance with federal and state law, agency policy, and the information-owner's procedures and rules.

(40) Vulnerability Assessment--A documented evaluation containing information described in §2054.077(b), Texas Government Code which includes the susceptibility of a particular system to a specific attack.

§202.2. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Education Code.

§202.3. State Agency.

Means a department, commission, other than an institution of higher education, board, office, council, authority, or other agency in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

§202.4. Responsibilities of the State's Chief Information Security Officer.

The State's Chief Information Security Officer shall oversee the development of a statewide information security framework and statewide information security policies and standards, including:

(1) Providing leadership, strategic direction, and coordination for the State Information Security program;

(2) Developing and overseeing the implementation of policies, standards, and guidelines on information security, including ensuring timely agency adoption of and compliance with standards promulgated under §2054.059, Texas Government Code;

(3) Coordinating the development of standards and guidelines with agencies and offices operating or exercising control of State systems;

(4) Providing strategic direction to the State Network Security Operations Center; and

(5) Reporting to the Executive Director of the department and state leadership the status and effectiveness of the State Information Security Program.

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

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.26

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.20. Responsibilities of the Agency Head.

The head of each state agency is ultimately responsible for the agency's information resources. The head of each state agency or his/her designated representative(s) shall:

(1) designate an Information Security Officer who has the explicit authority and the duty to administer the information security requirements of this chapter agency wide;

(2) allocate resources for ongoing information security remediation, implementation, and compliance activities that reduce risk to a level acceptable to the agency head;

(3) ensure that senior agency officials and information-owners, in collaboration with the Information Resources Manager and Information Security Officer, support the provision of information security for the information systems that support the operations and assets under their direct or indirect (e.g., cloud computing or outsourced) control;

(4) ensure that the agency has trained personnel to assist the agency in complying with the requirements of this chapter and related policies;

(5) ensure that senior agency officials support the agency Information Security Officer in developing, at least annually, a report on agency information security program, as specified in §202.21(b)(11) and §202.23(a) of this chapter;

(6) approve high level risk management decisions as required by §202.25(4) of this chapter;

(7) review and approve at least annually the agency information security program required under §202.24 of this chapter; and

(8) ensure that information security management processes are integrated with agency strategic and operational planning processes.

§202.21. Responsibilities of the Information Security Officer.

(a) Each agency shall have a designated Information Security Officer (ISO), and shall provide that its Information Security Officer:

(1) reports to executive level management;

(2) has authority for information security for the entire agency;

(3) possesses training and experience required to administer the functions described under this chapter; and

(4) whenever possible, has information security duties as that official's primary duty.

(b) The Information Security Officer shall be responsible for:

(1) developing and maintaining an agency-wide information security plan as required by §2054.133, Texas Government Code;

(2) developing and maintaining information security policies and procedures that address the requirements of this chapter and the agency's information security risks;

(3) working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the agency's information security risks;

(4) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities;

(5) providing guidance and assistance to senior agency officials, information-owners, information custodians, and end users concerning their responsibilities under this chapter;

(6) ensuring that annual information security risk assessments are performed and documented by information-owners;

(7) reviewing the agency's inventory of information systems and related ownership and responsibilities;

(8) developing and recommending policies and establishing procedures and practices, in cooperation with the agency Information Resources Manager, information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;

(9) reviewing the data security requirements, specifications, and, if applicable, third-party risk assessment of any new

computer applications or services that receive, maintain, and/or share confidential data;

(10) verifying that security requirements are in place for the purchase of required information technology hardware, software, and systems development services for any new mission critical computer applications or computer applications that receive, maintain, and/or share confidential data;

(11) reporting, at least annually, to the state agency head the status and effectiveness of security controls; and

(12) informing the parties in the event of noncompliance with this chapter and/or with the agency's information security policies.

(c) The Information Security Officer, with the approval of the state agency head, may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated as part of the risk assessment process.

§202.22. Staff Responsibilities.

Information owners, custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the state agency. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Information Owner Responsibilities. The owner or his or her designated representative(s) are responsible for:

(A) classifying information under their authority, with the concurrence of the state agency head or his or her designated representative(s), in accordance with agency's established information classification categories;

(B) approving access to information resources and periodically review access lists based on documented risk management decisions;

(C) formally assigning custody of information or an information resource;

(D) coordinating data security control requirements with the ISO;

(E) conveying data security control requirements to custodians;

(F) providing authority to custodians to implement security controls and procedures;

(G) justifying, documenting, and being accountable for exceptions to security controls. The information owner shall coordinate and obtain approval for exceptions to security controls with the agency information security officer; and

(H) participating in risk assessments as provided under §202.25 of this chapter.

(2) Information Custodian Responsibilities. Custodians of information resources, including third party entities providing outsourced information resources services to state agencies shall:

(A) implement controls required to protect information and information resources required by this chapter based on the classification and risks specified by the information owner(s) or as specified by the policies, procedures, and standards defined by the agency information security program;

(B) provide owners with information to evaluate the cost-effectiveness of controls and monitoring;

(C) adhere to monitoring techniques and procedures, approved by the ISO, for detecting, reporting, and investigating incidents;

(D) provide information necessary to provide appropriate information security training to employees; and

(E) ensure information is recoverable in accordance with risk management decisions.

(3) User Responsibilities. The user of an information resource has the responsibility to:

(A) use the resource only for the purpose specified by the agency or information-owner;

(B) comply with information security controls and agency policies to prevent unauthorized or accidental disclosure, modification, or destruction; and

(C) formally acknowledge that they will comply with the security policies and procedures in a method determined by the agency head or his or her designated representative.

(4) Agency information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention.

§202.23. Security Reporting.

(a) Agency Reporting. Each Information Security Officer shall report, at least annually, to the agency head on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this chapter and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the agency risk management process; and

(3) agency information security requirements and requests.

(b) Report to the department.

(1) Urgent Incident Report.

(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Security incidents that require timely reporting to the department include those events that are assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement; or

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Chapters 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan, in accordance with §2054.133, Texas Government Code.

§202.24. Agency Information Security Program.

(a) Agency Program. Each agency shall develop, document, and implement an agency-wide information security program, approved by the agency head under §202.20 of this chapter, that includes protections, based on risk, for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the agency including outsourced resources to another agency, contractor, or other source (e.g., cloud computing). The program shall include:

(1) periodic assessments of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

(2) policies, controls, standards, and procedures that:

(A) are based on the risk assessments required by §202.25 of this chapter;

(B) cost-effectively reduce information security risks to a level acceptable to the agency head;

(C) ensure that information security is addressed throughout the life cycle of each agency information resource; and

(D) ensure compliance with:

(i) the requirements of this subchapter;

(ii) minimally acceptable system configuration requirements, as determined by the agency; and

(iii) the control catalog published by the department.

(3) strategies to address risk to High-Impact information resources;

(4) plans for providing information security for networks, facilities, and systems or groups of information systems, based on risk;

(5) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency; and

(6) a process to justify, grant and document any exceptions to specific program requirements in accordance with requirements and processes defined in this chapter.

(b) State agencies are responsible for:

(1) defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the controls for each;

(2) administering an ongoing information security awareness education program for all users; and

(3) administering new employee orientation to introduce information security awareness and inform new employees of information security policies and procedures.

§202.25. Managing Security Risks.

A risk assessment of the agencies information and information systems shall be performed and documented.

(1) The inherent impact will be ranked, at a minimum, as either "High," "Moderate," or "Low".

(2) The frequency of the future risk assessments will be documented.

(3) Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the state agency head or his or her designated representative(s). The state agency head or his or her designated representative(s) shall approve the acceptance, transference, or mitigation of security risks.

(4) The state agency head shall approve the security risk acceptance, transference, or mitigation decision for all systems identified with a residual High Risk.

§202.26. Security Control Standards Catalog.

(a) Mandatory Requirements. Mandatory security controls shall be defined by the department in a Control Standards document published on the department's website.

(b) Minimum Requirements for Security Controls. The controls required by subsection (a) shall include:

(1) minimum information security requirements for all State information and information systems; and

(2) standards to be used by all agencies to provide levels of information security according to risk levels.

(c) A review of the agency's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the agency head or his or her designated representative(s).

(d) Development of Control Standards. Prior to publishing new or revised standards as required by subsections (a) and (b), the department shall:

(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resource Managers, ITCHE, and Information Security Officers of agencies and institutes of higher education at least 30 days prior to publication of proposed standards;

(2) after reviewing comments provided in paragraph (1), present proposed standards to the department's Board and obtain approval from the Board for publication; and

(3) minimize the impact to an affected agency, to the extent possible by:

(A) ensuring that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

(B) ensuring that such standards provide for flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

(C) using flexible, performance-based standards and guidelines that permit the use of off-the-shelf commercially developed information security products.

(4) New standards required by the department will have an effective date, not to exceed 18 months from the date of adoption, after which agencies are required to adhere to the new standard.

(e) Application of More Stringent Standards. The head of an agency may employ standards for the cost-effective information security of information and information resources within or under the supervision of that agency that are more stringent than the standards the department prescribes under this section if the more stringent standards:

(1) contain at least the applicable standards issued by the department;

(2) are otherwise consistent with policies and guidelines issued under state rule; and

(3) are otherwise required under other applicable federal or state law, or industry standards.

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

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Martin H. Zelinsky
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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.76

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.70. Responsibilities of the Institution Head.

The head of each state institution of higher education is ultimately responsible for the security of state information resources. The head of each state institution of higher education or his/her designated representative(s), shall:

(1) designate an Information Security Officer who has the explicit authority and the duty to administer the information security requirements of this chapter institution wide;

(2) allocate resources for ongoing information security remediation, implementation, and compliance activities that reduce risk to a level acceptable to the institution head;

(3) ensure that senior institution of higher education officials and information-owners, in collaboration with the information resources manager and information security officer, support the provision of information security for the information systems that support the operations and assets under their direct or indirect (e.g., cloud computing or outsourced) control;

(4) ensure that the institution of higher education has trained personnel to assist the institution of higher education in complying with the requirements of this chapter and related policies;

(5) ensure that senior institution of higher education officials support the institution of higher education Information Security Officer in developing, at least annually, a report on institution of higher education information security program, as specified in §202.71(b)(11) and §202.73(a) of this chapter;

(6) approve high level risk management decisions as required by §202.75(4) of this chapter;

(7) review and approve at least annually institution of higher education information security program required under §202.74 of this chapter; and

(8) ensure that information security management processes are part of the institution of higher education strategic planning and operational processes.

§202.71. Responsibilities of Information Security Officer.

(a) Each institution of higher education shall have a designated Information Security Officer (ISO), and shall provide that its Information Security Officer:

(1) reports to executive level management;

(2) has authority for information security for the entire institution;

(3) possesses training and experience required to administer the functions described under this chapter; and

(4) whenever possible, has information security duties as that official's primary duty.

(b) The Information Security Officer shall be responsible for:

(1) developing and maintaining an institution-wide information security plan as required by §2054.133, Texas Government Code;

(2) developing and maintaining information security policies and procedures that address the requirements of this chapter and the institution's information security risks;

(3) working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the institution's information security risks;

(4) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities;

(5) providing guidance and assistance to senior institution of higher education officials, information owners, information custodians, and end users concerning their responsibilities under this chapter;

(6) ensuring that annual information security risk assessments are performed and documented by information-owners;

(7) reviewing the institution's inventory of information systems and related ownership and responsibilities;

(8) developing and recommending policies and establishing procedures and practices, in cooperation with the institution Information Resources Manager, information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;

(9) reviewing the data security requirements, specifications, and, if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data;

(10) verifying that security requirements are in place for the purchase of required information technology hardware, software, and systems development services for any new mission critical computer applications or computer applications that receive, maintain, and/or share confidential data;

(11) reporting, at least annually, to the state institution of higher education head the status and effectiveness of security controls; and

(12) informing the parties in the event of noncompliance with this chapter and/or with the institution's information security policies.

(c) The Information Security Officer, with the approval of the state institution of higher education head, may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated as part of the risk assessment process.

§202.72. Staff Responsibilities.

Information owners, custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the state institution of higher education. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Information Owner Responsibilities. The owner or his or her designated representative(s) are responsible for:

(A) classifying information under their authority, with the concurrence of the state institution of higher education head or his or her designated representative(s), in accordance with institution of higher education's established information classification categories;

(B) approving access to information resources and periodically review access lists based on documented risk management decisions;

(C) formally assigning custody of information or an information resource;

(D) coordinating data security control requirements with the ISO;

(E) conveying data security control requirements to custodians;

(F) providing authority to custodians to implement security controls and procedures;

(G) justifying, documenting, and being accountable for exceptions to security controls. The information owner shall coordinate and obtain approval for exceptions to security controls with the institution of higher education information security officer; and

(H) participating in risk assessments as provided under §202.75 of this chapter.

(2) Information Custodian Responsibilities. Custodians of information resources, including third party entities providing outsourced information resources services to state institutions of higher education shall:

(A) implement controls required to protect information and information resources required by this chapter based on the classification and risks specified by the information owner(s) or as specified by the policies, procedures, and standards defined by the institution of higher education information security program;

(B) provide owners with information to evaluate the cost-effectiveness of controls and monitoring;

(C) adhere to monitoring techniques and procedures, approved by the ISO, for detecting, reporting, and investigating incidents;

(D) provide information necessary to provide appropriate information security training to employees; and

(E) ensure information is recoverable in accordance with risk management decisions.

(3) User Responsibilities. The user of an information resource has the responsibility to:

(A) use the resource only for the purpose specified by the institution or information-owner;

(B) comply with information security controls and institutional policies to prevent unauthorized or accidental disclosure, modification, or destruction; and

(C) formally acknowledge that they will comply with the security policies and procedures in a method determined by the institution head or his or her designated representative.

(4) Institution information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention. Information Resources must require the acceptance of a banner or notice prior to use.

§202.73. Security Reporting.

(a) Institution Reporting. Each Information Security Officer shall report, at least annually, to the Institution of higher education Head on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this chapter and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Report to the department.

(1) Urgent Incident Report.

(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to ser-

vices, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the institution of higher education Information Security Officer. Security incidents that require timely reporting to the department include those events that are assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement; or

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Chapters 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.

(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with §2054.133, Texas Government Code.

§202.74. Institution Information Security Program.

(a) Institution of Higher Education Program. Each institution of higher education shall develop, document, and implement an institution of higher education-wide information security program, approved by the Institution of higher education Head or delegate under §202.70 of this chapter, that includes protections, based on risk, for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the institution of higher education including outsourced resources to another institution of higher education, contractor, or other source (e.g., cloud computing). The program shall include:

(1) periodic assessments of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the institution of higher education;

(2) policies, controls, standards, and procedures that:

(A) are based on the risk assessments required by §202.75 of this chapter;

(B) cost-effectively reduce information security risks to a level acceptable to the institution head;

(C) ensure that information security is addressed throughout the life cycle of each institution of higher education information resource; and

(D) ensure compliance with:

(i) the requirements of this subchapter;

(ii) minimally acceptable system configuration requirements, as determined by the institution of higher education; and

(iii) the control catalog published by the department.

(3) strategies to address risk to High-Impact information resources;

(4) plans for providing information security for networks, facilities, and systems or groups of information systems, based on risk;

(5) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the institution of higher education; and

(6) a process to justify, grant and document any exceptions to specific program requirements in accordance with requirements and processes defined in this chapter.

(b) State institutions of higher education are responsible for:

(1) defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the controls for each;

(2) administering an ongoing information security awareness education program for all users; and

(3) administering new employee orientation to introduce information security awareness and inform new employees of information security policies and procedures.

§202.75. Managing Security Risks.

A risk assessment of the institution's information and information systems shall be performed and documented.

(1) The inherent impact will be ranked, at a minimum, as either "High," "Moderate," or "Low".

(2) The frequency of the future risk assessments will be documented.

(3) Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the state institution of higher education head or his or her designated representative(s). The state institution of higher education head or his or her designated representative(s) shall approve the acceptance, transference, or mitigation of security risks.

(4) The state institution of higher education head shall approve the security risk acceptance, transference, or mitigation decision for all systems identified with a residual High Risk.

§202.76. Security Control Standards Catalog.

(a) Mandatory Requirements. Mandatory security controls shall be defined by the department in a Control Standards document published on the department's website.

(b) Minimum Requirements for Security Controls. The controls required by subsection (a) shall include:

(1) minimum information security requirements for all State information and information systems; and

(2) standards to be used by all institutions of higher education to provide levels of information security according to risk levels.

(c) A review of the institution's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or his or her designated representative(s).

(d) Development of Control Standards. Prior to publishing new or revised standards as required by subsections (a) and (b), the department shall:

(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resource Managers, ITCHE, and Information Security Officers of institutions of higher education and institutes of higher education at least 30 days prior to publication of proposed standards;

(2) after reviewing comments provided in paragraph (1), present proposed standards to the department's Board and obtain approval from the Board for publication; and

(3) minimize the impact to an affected institution of higher education, to the extent possible by:

(A) ensuring that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

(B) ensuring that such standards provide for flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

(C) using flexible, performance-based standards and guidelines that permit the use of off-the-shelf commercially developed information security products.

(4) New standards required by the department will have an effective date, not to exceed 18 months from the date of adoption, after which institutions of higher education are required to adhere to the new standard.

(e) Application of More Stringent Standards. The head of an institution of higher education may employ standards for the cost-effective information security of information and information resources within or under the supervision of that institution of higher education that are more stringent than the standards the department prescribes under this section if the more stringent standards:

(1) contain at least the applicable standards issued by the department;

(2) are otherwise consistent with policies and guidelines issued under state rule; and

(3) are otherwise required under other applicable federal or state law, or industry standards.

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

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Martin H. Zelinsky
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4700

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CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES

The Texas Department of Information Resources (department) proposes repeal of 1 TAC Chapter 215, §§215.1 - 215.3 and §215.10, concerning Statewide Technology Centers for Data and Disaster Recovery Services, and new 1 TAC Chapter 215, §§215.1 - 215.4, §§215.10 - 215.13, and §§215.30 - 215.33, to ensure the rules more accurately reflect legislative actions and changes in the use of statewide technology centers. The new rules are necessary, in part, as the result of passage of Senate Bill 866 (83R), effective as of May 18, 2013, which legislation added §2054.3771, Texas Government Code, concerning the addition of local government as potential users of Statewide Technology Centers. The new rules reflect the maturing of the business practices and processes for the department's management of statewide technology centers. The department published a formal notice of rule review in the June 21, 2013, issue of the *Texas Register* (38 TexReg 4007).

The changes to the chapter apply to state agencies, local government and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

The department proposes to repeal 1 TAC Chapter 215 in its entirety to rename rule titles, revise rule language, and allow for the resulting numbering of a new 1 TAC Chapter 215, Statewide Technology Centers for Data and Disaster Recovery Services. In addition, consistent with the department's treatment of institutions of higher education, the new rules allow for any difference as to how these rules may apply to state agencies and local government, or institutions of higher education.

In Subchapter A, the department proposes new §215.1 that references the statutory provision in Texas Government Code for the department's establishment and ongoing operation of Statewide Technology Centers. New §215.2 is proposed for applicable terms and technologies offering definitions for terms and acronyms referenced within the proposed new text for Subchapters B and C of the chapter. Proposed new §215.3 defines institution of higher education, while new §215.4 defines state agency.

In proposed new Subchapter B, Data Center Services for State Agencies and Local Government, the department proposes new §215.10, Receipt of Services, that clarifies how existing state agencies and local government customers either request to be exempted for certain services or request additional services; and for new customers, to establish services. Proposed new §215.11, Statewide Technology Center Billing, provides details on billing and payment procedures. The department proposes new §215.12, Statewide Technology Center User Responsibilities, that requires data center service customers to provide

proper contact information; insure they are in compliance with applicable laws and policies; coordinate with data center services to ensure software license compliance; support efforts for financial, operational, and technical planning; provide proper audit notification; participate in the governance process; and comply with security requirements, both program specific and in state law. Proposed new §215.13, Data Center Services, highlights the services available through the Data Center for state agencies and local government, generally.

The department proposes a new Subchapter C, Data Center Services for Institutions of Higher Education, with proposed new §215.30, Receipt of Services, that clarifies how institutions of higher education may establish services, and once established as a data center services customer, how to request additional services. Proposed new §215.31, Statewide Technology Center Billing, provides details on billing and payment procedures for institutions of higher education. The department proposes new §215.32, Statewide Technology Center User Responsibilities, that requires data center service customers from institutions of higher education to provide proper contact information; insure they are in compliance with applicable laws and policies; coordinate with data center services to ensure software license compliance; support efforts for financial, operational, and technical planning; provide proper audit notification; participate in the governance process; and comply with security requirements, both program specific and in state law. Proposed new §215.33, Data Center Services, highlights the services available through the Data Center for institutions of higher education, generally.

Todd Kimbriel, Deputy Executive Director, has determined that during the first five-year period following the repeal and adoption of new 1 TAC Chapter 215, there will be no fiscal impact on state agencies, institutions of higher education and local governments. The clarification of terms and definitions and the specific operational, financial, and business procedures highlighted in the rules increase the effectiveness of the chapter for existing and potential agency, institutions, and local government customers.

Mr. Kimbriel has further determined that for each year of the first five years following the adoption of new 1 TAC Chapter 215 there are no anticipated additional economic costs to persons or small businesses required to comply with the repeal and proposed new rules.

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

SUBCHAPTER A. DEFINITIONS

1 TAC §§215.1 - 215.3

(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 Information Resources or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

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

§215.1. Applicable Terms and Technologies for Statewide Technology Centers for Data and Disaster Recovery Services.
§215.2. Institution of Higher Education.
§215.3. State 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.

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SUBCHAPTER B. STATEWIDE TECHNOLOGY CENTERS FOR STATE AGENCIES

1 TAC §215.10

(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 Information Resources or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

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

§215.10. Statewide Technology Centers for State Agencies.

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 A. GENERAL PURPOSE AND DEFINITIONS

1 TAC §§215.1 - 215.4

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

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

§215.1. General Purpose.

As provided by §2054.378, Texas Government Code, the department may directly operate, or contract with another entity to operate, statewide technology centers to provide governmental entities, on a cost-sharing basis, services related to:

(1) Information resources and information resources technology; and

(2) The deployment, development, and maintenance of software applications.

§215.2. Applicable Terms and Technologies for Statewide Technology Centers for Data and Disaster Recovery Services.

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

(1) Administrative Fees--Those fees as authorized under §2054.380, Texas Government Code.

(2) Application--A separately identifiable and interrelated set of information resources technologies that allows for the manipulation of information resources to support specifically defined objectives on a computer.

(3) Bulk Print and Mail--A service capable of offering high-volume printing and mail needs, such as the production of statements, notifications, letters and other communications in a highly secure and cost-effective manner.

(4) Cloud--Has the same meaning as "Advanced Internet-Based Computing Service" as defined in §2157.007(a), Texas Government Code.

(5) Customer Representative--Primary point of contact for a Data Center Services Customer who has authority to request services and obligate funds for Data Center Services.

(6) Data Center--Physical location where computer and data processing equipment is installed and managed.

(7) Data Center Services (DCS)--See Statewide Technology Centers in this chapter.

(8) DCS Customer--Any state or local government entity receiving DCS services.

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

(10) Designated State Agency--A state agency selected for required consolidation at a statewide technology center as specified in §2054.385, Texas Government Code.

(11) Disaster Recovery--The process of planning for, and recovering, information infrastructure after a disaster.

(12) Discretionary State Agency--A state agency voluntarily receiving Data Center Services from a statewide technology center.

(13) Government Entity--A state agency or local government as defined herein.

(14) Information Resources--As defined in §2054.003(7),Texas Government Code.

(15) Information Resources Manager (IRM)-As defined in §2054.071, Texas Government Code.

(16) Information Resources Technologies--As defined in §2054.003(8), Texas Government Code.

(17) Interagency Agreement--An agreement, as authorized by Chapter 771, Texas Government Code, entered into between the department and any state agency or institution of higher education. Statewide Technology Center customer pursuant to which Services are provided to such customer.

(18) Interlocal Agreement--An agreement, as authorized by Chapter 791, Texas Government Code, entered into between the department and any local government Statewide Technology Center customer pursuant to which services are provided to such customer.

(19) ITCHE--Information Technology Council for Higher Education.

(20) Local Government--A county, municipality, special district, school district, junior college district, or other political subdivision of the state.

(21) Mainframe--A high-end computer processor, with related peripheral devices, capable of supporting large volumes of batch processing, high performance on-line transaction processing systems, and extensive data storage and retrieval.

(22) Network--Means collectively, WAN, LAN, and other communication or transport networks.

(23) Partner Group--To effectively engage DCS customers in enterprise decision making, governance committees use a representational approach. DCS customers are organized into groups and each governance committee includes the participation of at least one representative from each group.

(24) Server--Any computer that provides shared processing or resources (e.g. Application processing, identity management, database, mail, proxy, firewalls, backup capabilities, print, and fax services) over the Network. A Server includes associated peripherals (e.g. local storage devices, attachments to centralized storage, monitor, keyboard, pointing device, tape drives, and external disk arrays) and is identified by a unique manufacturer's serial number.

(25) Server Consolidation--The mandatory consolidation of select servers operated by Designated Agencies from the legacy data centers to the Statewide Technology Center.

(26) Service Catalog--The online catalog of the services, equipment, software, and configurations of services, equipment, and software based on deployment standards.

(27) Service Provider--Multi-sourcing Service Integrator (MSI) and Service Component Provider (SCP) vendors offering managed services through the Statewide Technology Center.

(28) SMM--Service Management Manual.

(29) Statewide Technology Center--Consolidated data services managed by contracted vendors; also referred to as Data Center Services (DCS).

(30) Technology Solution Group--A technology steering committee that approves technology plans and technology standards for hardware and software configurations related to Data Center Services.

(31) Technology Plan--A Data Center Services Plan that reports how the service provider will support DIR and DCS Customers in advancing their technology objectives and strategies.

§215.3. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Education Code.

§215.4. State Agency.

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

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

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SUBCHAPTER B. DATA CENTER SERVICES FOR STATE AGENCIES AND LOCAL GOVERNMENT

1 TAC §§215.10 - 215.13

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

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

§215.10. Receipt of Services.

(a) Eligible DCS Customers.

(1) Designated State Agencies.

(A) In accordance with Chapter 771, Texas Government Code, each participating state agency shall execute an Interagency Contract with the department prior to the start of services.

(B) Exemption Process. A designated state agency requesting exemption from all or part of the Data Center Services shall provide to the Director of the Data Center Services Program:

(i) Executive summary that describes the reason(s) for designated customer's requested exemption, signed by the agency head or designee;

(ii) Agency certification that includes documentation in which designated customer certifies that the proposed alternative to Data Center Services:

(I) Is financially viable;

(II) Protects state agency data;

(III) Is in the best interest of the State of Texas; and

(IV) Is compatible with the current Data Center Services technical environment.

(iii) Upon receipt of all required documentation, the department shall review and provide a formal determination to the requesting designated customer within 30 calendar days. The department's determination will be based on the best interest of the State.

(2) Discretionary State Agencies. In accordance with Chapter 771, Texas Government Code, each participating state agency shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(3) Local Government Entity. In accordance with Chapter 791, Texas Government Code, each participating local government shall execute an Interlocal Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective DCS Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the Director of Data Center Services. The written request shall, at a minimum, include the DCS Customer's estimated compute volume and service requirements.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the DCS Program to the prospective DCS Customer.

(2) An existing DCS Customer requesting additional services offered under this rule shall follow the policies and procedures established for all DCS Customers documented in the Service Management Manual.

(A) Upon receipt of any such request for additional services, the DCS Program will provide a cost estimate to the DCS Customer.

(B) Along with the cost estimate, a formal notice from the DCS Program to the DCS Customer shall include:

(i) The scope of the services to be provided; and

(ii) The implementation schedule.

(C) A DCS Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog, or through a phone call to the service desk.

§215.11. Statewide Technology Center Billing.

(a) The department shall bill each DCS Customer for services on a monthly basis. The DCS invoice may include the following:

(1) Services received by the department and service provider on behalf of the DCS Customer;

(2) The department's administrative fee; and

(3) Additional pass-through expenses incurred by the department or service providers on behalf of the DCS Customer.

(b) Notwithstanding subsection (d), in order to allow the department to meet the statutory payment requirements specified in Chapter 2251, Texas Government Code, DCS Customers shall ensure the department's receipt of payment within (20) calendar days following delivery of the monthly invoice.

(c) The department's administrative fee shall be, at a minimum, reviewed semi-annually. Any proposed incremental change in the department's administrative fee shall first be considered by the Legislative Budget Board and the Office of the Governor.

(d) DCS Customers shall dispute erroneous charges within four (4) invoice cycles after the date the DCS Customer receives the invoice in dispute. The dispute must provide details as to the nature of the dispute and all information the DCS Customer may have to assist in resolution of the dispute.

§215.12. Statewide Technology Center User Responsibilities.

(a) Each DCS Customer shall provide to the department the name, title, contact information, including emergency contact, of the designated employee(s) authorized to initiate, change, modify, or amend services. At a minimum it shall include:

(1) Executive level technology officer such as a Chief Information Officer or Information Resources Manager; and

(2) Customer Representative.

(b) Each DCS Customer is responsible for insuring that its use of DCS services is in compliance with applicable law, policy, and procedures.

(c) For software products not initially procured by or through the DCS program on behalf of DCS Customer, the DCS Customer shall coordinate with the DCS program to ensure complete documentation of entitlement is on file. The DCS Customer is responsible for providing proof of entitlement; without which, the DCS Customer is solely responsible for software license compliance.

(d) Each state agency customer that receives funding through the state appropriations shall coordinate with the department and the Legislative Budget Board to establish anticipated DCS program needs for each subsequent biennium. In coordination with the department, the state agency shall consider:

(1) Type and volume of future service; and

(2) Planned IT projects.

(e) To ensure savings to the state, each designated state agency shall make all reasonable efforts to affect server consolidation into the state data center. At a minimum, a designated state agency shall do the following:

(1) Coordinate with service provider to establish a consolidation plan in which server move groups and schedules for the consolidation of move groups are established;

(2) Coordinate with the department and the Legislative Budget Board to ensure its biennium budget includes the resources necessary to accomplish server consolidation per the established consolidation plan;

(3) Make all reasonable efforts, including the remediation of impacted applications, to ensure the consolidation plan is accomplished as scheduled.

(f) Audit notification.

(1) DCS Customers shall promptly notify the department whenever the customer becomes aware that an audit or compliance review is planned by external, internal, software vendor, or federal oversight auditors that will require audit assistance from the DCS program Service Providers. In any event, where audit assistance is required, the DCS Customer shall notify the department of planned audit or compliance review no less than five business days prior to anticipated start of audit or compliance review.

(2) In performing audits, DCS Customers shall endeavor to avoid unnecessary disruption of the DCS program operations and duplication of other audits. Therefore, DCS Customers shall leverage SSAE-16 or comparable audits provided for under the DCS contract, to the extent possible.

(3) The state auditor, the department's internal auditors, a state agency's internal auditors, and if applicable, the Office of Inspector General of the agency, or federal auditors, may conduct audits or investigations of any entity receiving funds from the state directly under a contract or indirectly under a subcontract for Statewide Technology Center services.

(4) A DCS Customer may request copies of SSAE-16 audit reports submitted to the department as required by the DCS contract. The requesting DCS Customer should submit the request to the DCS Audit Coordinator at the department. Due to the confidential nature of information in the report, the requesting DCS Customer shall only distribute the report to its staff that have a legitimate business need for access to the report and may not distribute the report to external auditors or entities. External auditors that require access to an SSAE-16 report in connection with an audit of a DCS Customer must contact the DCS Audit Coordinator and sign a non-disclosure agreement prior to receiving a copy of the report.

(g) Technology planning.

(1) Each DCS Customer will participate in an annual DCS technology planning process based on instructions provided in the technology planning process as documented in the Service Management Manual. This planning will relate to the services the DCS Customer receives or expects to receive through the program.

(2) All DCS Customer shall follow the technology standards for hardware and software configurations as specified in the annual technology plan and Service Management Manual. DCS Customers seeking exception to specified technology standards shall submit a technology standard exception request to the Technology Solution Group and specify:

(A) the specific exception requested;

(B) the financial impact supporting the exception; and

(C) the plan and timeline to achieve specified technology standards.

(h) Governance process.

(1) All DCS Customers will participate in the governance process designed to facilitate individual customer input into enterprise decisions that affect all customers. Each customer is assigned to a group of similar customers, called a "partner group", and that group will be given one membership position on each governance committee. Members of the partner group are expected to represent the interests of all partner group members in governance decisions.

(2) Enterprise-level decisions and resolution of escalated DCS Customer-specific issues shall be addressed through standing governance committees, organized by subject area and comprised of representatives from the department, DCS Customers, and service providers. Participation on committees are selected from each designated partner group.

(i) Confidential data.

(1) DCS Customer shall provide its specific confidentiality requirements as determined by the nature of the data stored in the DCS program. Generally, the specific confidentiality requirements shall be appended to the interagency or interlocal contract in Exhibit C. The Service Management Manual shall provide additional documentation on the specific procedures, including the process DCS Customers shall follow to identify confidential information.

(2) In general, a DCS Customer shall include in Exhibit C of the interagency or interlocal agreement:

(A) General notification as to the type of confidential data and the laws that guide in the handling of such data; and

(B) Subsequent changes to laws that apply to previously identified confidential data.

(j) Security.

(1) DCS Customers shall comply with the Security Incident Management and Response process available in the Service Management Manual.

(2) DCS Customers shall be in compliance with Chapter 202 of this title.

§215.13. Data Center Services.

(a) DCS services include:

(1) Mainframe services

(2) Server services, including cloud hosted services

(3) Storage services, including cloud hosted services

(4) Bulk Print and mail services

(5) Network services for DCS connectivity

(6) Disaster Recovery services

(7) Infrastructure Service Integration Management

(8) Application Lifecycle Management

(b) Unless an exemption has been requested and approved by the department pursuant to §215.10(a)(1)(B) of this chapter, designated DCS Customers shall not procure the services specified in this section outside the DCS program.

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

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SUBCHAPTER C. DATA CENTER SERVICES FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§215.30 - 215.33

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

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

§215.30. Receipt of Services.

(a) Eligible DCS Customers.

(1) In accordance with §2054.377, Texas Government Code, participation by an institution of higher education in the DCS program requires approval by the Information Technology Council for Higher Education.

(2) In accordance with Chapter 771, Texas Government Code, each participating institution of higher education shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective higher education DCS Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the Director of Data Center Services. The written request shall, at a minimum, include the written approval from the Information Technology Council for Higher Education, DCS Customer's estimated compute volume and service requirements.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the DCS Program to the prospective DCS Customer.

(2) After established as a DCS Customer, institutions of higher education requesting additional services offered under this rule shall follow the policies and procedures established for all DCS Customers documented in the Service Management Manual.

(A) Upon receipt of any such request for additional services a cost estimate will be provided by the DCS Program to the DCS Customer.

(B) Along with the cost estimate, a formal notice from the DCS Program to the DCS Customer shall include:

(i) The scope of the services to be provided; and

(ii) The implementation schedule.

(3) A DCS Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog, or through a phone call to the service desk

§215.31. Statewide Technology Center Billing.

(a) The department shall bill each DCS Customer for services on a monthly basis. The DCS invoice may include the following:

(1) Services received by the department and service provider on behalf of the DCS customer;

(2) The department's administrative fee; and

(3) Additional pass-through expenses incurred by the department or service providers on behalf of the DCS Customer.

(b) Notwithstanding subsection (d), in order to allow the department to meet the statutory payment requirements of Chapter 2251, Texas Government Code, a DCS Customer shall ensure the department's receipt of payment within (20) calendar days following delivery of the monthly invoice.

(c) The department's administrative fee shall be, at a minimum, reviewed semi-annually. Any proposed incremental change in the department's administrative fee shall first be considered by the Legislative Budget Board and the Office of the Governor.

(d) DCS Customers shall dispute erroneous charges within four (4) invoice cycles after the date the DCS Customer receives the invoice in dispute. The dispute must provide details as to the nature of the dispute and all information the DCS Customer may have to assist in resolution of the dispute.

§215.32. Statewide Technology Center User Responsibilities.

(a) Each DCS Customer shall provide to the department the name, title, contact information, including emergency contact, of the designated employee(s) authorized to initiate, change, or modify services. At a minimum it shall include:

(1) Executive level technology officer such as a Chief Information Officer or Information Resources Manager; and

(2) Customer Representative.

(b) Each DCS Customer is responsible for insuring that its use of DCS services is in compliance with applicable law, policy, and procedures.

(c) For software products not initially procured by or through the DCS program on behalf of DCS Customer, the DCS Customer shall coordinate with the DCS program to ensure complete documentation of entitlement is on file. The DCS Customer is responsible for providing proof of entitlement to the software and is accountable for software license compliance.

(d) Audit notification.

(1) DCS Customers shall promptly notify the department whenever the Customer becomes aware that an audit or compliance review is planned by external, internal, software vendor, or federal oversight auditors that will require audit assistance from the DCS program Service Providers. In any event, where audit assistance is required, the DCS Customer shall notify the department of planned audit or compliance review no less than five business days prior to anticipated start of audit or compliance review.

(2) In performing audits, DCS Customers shall endeavor to avoid unnecessary disruption of the DCS program operations and duplication of other audits. Therefore, DCS Customers shall leverage SSAE-16 or comparable audits provided for under the DCS contract, to the extent possible.

(3) The state auditor, the department's internal auditors, an institution of higher education's internal auditors, and if applicable, the Office of Inspector General of the institution of higher education, or federal auditors, may conduct audits or investigations of any entity receiving funds from the state directly under a contract or indirectly under a subcontract for Statewide Technology Center Services.

(4) A DCS Customer may request copies of SSAE-16 audit reports submitted to the department as required by the DCS contract. The requesting DCS Customer should submit the request to the DCS Audit Coordinator at the department. Due to the confidential nature of information in the report, the requesting DCS Customer shall only distribute the report to its staff that have a legitimate business need for access to the report and may not distribute the report to external auditors or entities. External auditors that require access to an SSAE-16 report in connection with an audit of a DCS Customer must contact the DCS Audit Coordinator and sign a non-disclosure agreement prior to receiving a copy of the report.

(e) Technology planning.

(1) Each DCS Customer will participate in an annual DCS technology planning process based on instructions provided in the technology planning process as documented in the Service Management Manual. This planning will relate to the services the DCS Customer receives or expects to receive through the program.

(2) All DCS Customers shall follow the technology standards for hardware and software configurations as specified in the annual technology plan and Service Management Manual. DCS Customers seeking exception to specified technology standards shall submit a technology standard exception request to the Technology Solution Group and specify:

(A) the specific exception requested;

(B) the financial impact supporting the exception; and

(C) the plan and timeline to achieve specified technology standards.

(f) Governance process.

(1) All DCS Customers will participate in the governance process designed to facilitate individual customer input into enterprise decisions that affect all customers. Each customer is assigned to a group of similar customers, called a "partner group", and that group will be given one membership position on each governance committee. Members of the partner group are expected to represent the interests of all partner group members in governance decisions.

(2) Enterprise-level decisions and resolution of escalated DCS Customer-specific issues shall be addressed through standing governance committees, organized by subject area and comprised of representatives from the department, DCS Customers, and service providers. Participation on committees are selected from each designated partner group.

(g) Confidential data.

(1) DCS Customer shall provide its specific confidentiality requirements as determined by the nature of the data stored in the DCS program. Generally, the specific confidentiality requirements shall be appended to the interagency contract in Exhibit C. The Service Management Manual shall provide additional documentation on the specific procedures, including the process DCS Customers shall follow to identify confidential information.

(2) In general, a DCS Customer shall include in Exhibit C of the interagency agreement:

(A) General notification as to the type of confidential data and the laws that guide in the handling of such data; and

(B) Subsequent changes to laws that apply to previously identified confidential data.

(h) Security.

(1) DCS Customers shall comply with the Security Incident Management and Response process available in the Service Management Manual.

(2) DCS Customers shall be in compliance with Chapter 202 of this title.

§215.33. Data Center Services.

DCS services include:

(1) Mainframe services

(2) Server services, including cloud hosted services

(3) Storage services, including cloud hosted services

(4) Bulk Print and mail services

(5) Network services for DCS connectivity

(6) Disaster Recovery services

(7) Infrastructure Service Integration Management

(8) Application Lifecycle Management

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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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.307

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.307, concerning Reimbursement Setting Methodology.

Background and Justification

This rule establishes the reimbursement methodology for the Nursing Facility (NF) program, including Medicaid reimbursement rates for pediatric care facilities. HHSC, under its authority and responsibility to administer and implement rates, proposes to update this rule to increase the number of adults who were admitted to a facility as children, but who are no longer children (i.e., individuals who have "aged in place") that are allowed to be counted as children for purposes of determining whether a facility meets the qualification requirements for remaining a pediatric care facility.

This change will apply only when the pediatric care facility is the entire facility; it will not apply to pediatric care facilities that are distinct units within a larger facility. In addition, the change will apply only to determining whether an already existing pediatric care facility meets the requirements to remain a pediatric care facility. It will not apply to determining whether a non-pediatric care facility meets the requirements to become a pediatric care facility.

The proposal amends the current rule language requiring a pediatric care facility to maintain an average daily census of 80 percent children, to allow a greater number of adults who were admitted to the facility as children, but who are no longer children, to be counted as children for purposes of determining whether the facility meets the requirements for remaining a pediatric care facility. Under current rule language, the number of such individuals who may be counted as children for this purpose is limited to 15 percent of the average daily census of the facility; the proposed amendment increases the allowed percentage to 33 percent of the facility's average daily census.

HHSC received a great deal of stakeholder input regarding this proposed rule during the advisory committee process. Stakeholders expressed strong reservations about increasing the percentage of "aged in place" individuals that may be counted as children for purposes of determining qualification for the Pediatric Care Facility Class. They pointed out that HHSC had already amended the rule and increased said percentage in July of 2009 in response to a request from one provider. Stakeholders also indicated that providers' continued need for increases to the percentage of "aged in place" individuals is caused by the fact that very few children are being admitted to nursing facilities while the existing child-residents continue to age in place. They said that given these dynamics, facilities needed to transition away from business models that require the entire facility to qualify for the Pediatric Care Facility Class.

HHSC agrees with these stakeholders and also determined that the time has come for Pediatric Care Facilities in the state to develop a proactive plan to transition away from business models that are dependent upon an entire facility qualifying for the Pediatric Care Facility Class. HHSC also understands that such a transition will take some time to develop and implement. Thus, it proposes to increase from 15 to 33 percent the number of adults who "aged in place" who can be counted as children for purposes of qualifying for the Pediatric Care Facility Class. However, HHSC wants to make it explicitly clear that it does not intend to increase this percentage again.

Section-by-Section Summary

Proposed amended §355.307(c)(2)(C)(i) increases from 15 to 33 percent the number of adults who "aged in place" who can be counted as children for purposes of determining whether a facility meets the requirements for remaining a Pediatric Care Facility.

Fiscal Note

David Cook, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Cook does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any change in practice or any additional cost to the contracted provider.

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

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the existing pediatric care nursing facility will be able to remain a pediatric care facility for a limited period of time while it develops and implements a plan to transition from its current business model which is dependent upon the entire facility qualifying for the Pediatric Care Facility Class to a new, sustainable business model.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Laura Marble in the HHSC Rate Analysis Department by telephone at (512) 707-6078. Written comments on the proposal may be submitted to Ms. Marble by fax to (512) 730-7475; by e-mail to laura.marble@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC to with broad rulemaking authority; and the Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§355.307. Reimbursement Setting Methodology.

(a) Case mix classes. The Texas Health and Human Services Commission (HHSC) reimbursement rates for nursing facilities (NFs) vary according to the assessed characteristics of the recipient. Rates are determined for 34 case mix classes of service, plus a 35th, temporary classification assigned by default when assessment data are incomplete or in error and a 36th classification assigned by default when an assessment is missing.

(b) Reimbursement determination. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Rate Components. Under the case mix methodology, reimbursements are comprised of five cost-related components: the direct care staff component; the other recipient care component; the dietary component; the general/administration component; and the fixed capital asset component. The direct care staff component is calculated as specified in §355.308 of this title (relating to Direct Care Staff Rate Component).

(A) The dietary rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(B) The general/administration rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(C) The fixed capital asset component is constant across all case mix classes and is calculated as follows:

(i) Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land and improvements. Appraised values for this purpose are determined as follows:

(I) For proprietary facilities, tax exempt facilities provided an appraisal from their local property taxing authority, and tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined as described in §355.306(g) of this title (relating to Cost Finding Methodology).

(II) For tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is not in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined by indexing the facility's allowable appraised value as determined in §355.306(g) of this title (relating to Cost Finding Methodology) to the median increase in appraised values among contracted facilities in the state as a whole from the reporting period coinciding with the first year of the facility's five-year interval to the reporting period upon which reimbursements are to be based.

(III) Those facilities that do not report an allowable appraised value as described in §355.306(g) of this title (relating to Cost Finding Methodology) are not included in the array for purposes of calculating the use fee.

(ii) Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the personal consumption expenditures (PCE) chain-type price index from the cost reporting year to the rate year.

(iii) Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(iv) Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(v) The use fee is limited to the lesser of the fee as calculated in clauses (i) - (iv) of this subparagraph, or the fee as calculated by inflating the fee from the previous rate period by the forecasted rate of change in the PCE chain-type price index.

(2) Case mix classification system. All Medicaid recipients are classified according to the Resource Utilization Group (RUG-III) 34 group classification system, Version 5.20, index maximizing, as established by the state and the Centers for Medicare and Medicaid Services (CMS). Each of the case-mix groups, including the default groups, is assigned CMS standard nursing time measurements for Registered Nurses (RNs), Licensed Vocational Nurses (LVNs) and aides (Medication Aides and Certified Nurse Aides). These measurements indicate the amount of staff time required on average to deliver care to residents in that group.

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the RUG-III groups and for the default groups according to the following procedures:

(A) For each RUG-III group, calculate a total LVN-equivalent minute statistic by converting the CMS standard

nursing time measurements for RNs, LVNs and aides into Texas-specific LVN-equivalent minutes as per §355.308(j) of this title (relating to Direct Care Staff Rate Component) and summing the converted figures.

(B) Weight the total LVN-equivalent minute statistics from subparagraph (A) of this paragraph for each RUG-III group except the default groups as follows and determine the statewide weighted average total adjusted minutes:

(i) For rates effective September 1, 2008, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of December 2007 and ending the last day of February 2008.

(ii) For rates effective September 1, 2009, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September 2008 and ending the last day of February 2009.

(iii) For rates effective September 1, 2011 and thereafter, for the other recipient care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base. For the direct care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September, 2008 and ending the last day of February, 2009.

(C) Determine the standardized statewide case mix index for each of the RUG-III groups by dividing each of the total LVN-equivalent minute statistics described under subparagraph (A) of this paragraph by the statewide weighted average total adjusted minutes described under subparagraph (B) of this paragraph.

(D) The other recipient care rate component varies according to case mix class of service and is calculated as follows. Adjust the raw sum of other recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §355.306 of this title (relating to Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, multiply each of the standardized statewide case mix indexes from subparagraph (C) of this paragraph by the average other recipient care rate component.

(E) Total case mix per diem rates vary according to case mix class of service and according to participant status in Direct Care Staff Rate enhancements described in §355.308 of this title (relating to Direct Care Staff Rate Component).

(i) For each participating facility, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff rate component for that participating facility as determined in §355.308(l) of this title (relating to Direct Care Staff Rate Component).

(ii) For nonparticipating facilities, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff base rate component as determined in §355.308(k) of this title (relating to Direct Care Staff Rate Component).

(F) Qualifying ventilator-dependent residents may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must require artificial ventilation for at least six consecutive hours daily and the use must be prescribed by a licensed physician.

(ii) A ventilator-dependent resource differential case mix index for the other recipient care rate component is calculated by subtracting the standardized statewide case mix index for the SE1 RUG-III case mix group from subparagraph (C) of this paragraph from 3.61. A ventilator-dependent resource differential case mix index for the direct care staff base rate component is calculated by dividing the resource differential case mix index for the other recipient care rate component by 0.9908.

(iii) The per diem rate supplement is calculated by multiplying the resource differential case mix index for the other recipient care rate component times the per diem average other recipient care rate component, as described in subparagraph (D) of this paragraph and multiplying the resource differential case mix index for the direct care staff base rate component by the average direct care staff base rate component as described in §355.308(k) of this title (relating to Direct Care Staff Rate) and summing the products.

(iv) The supplemental reimbursement for residents requiring continuous artificial ventilation is 100% of the per diem ventilator rate supplement.

(v) The supplemental reimbursement for residents not requiring continuous artificial ventilation daily but requiring artificial ventilation for at least six consecutive hours daily is 40% of the per diem ventilator rate supplement.

(G) Qualifying children with tracheostomies requiring daily care may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self

care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement as specified in subparagraph (F) of this paragraph.

(H) Children with qualifying conditions as specified in subparagraphs (F) and (G) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who are also ventilator-dependent are not eligible to receive both supplemental reimbursements.

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility--Except as provided for in subparagraph (C) of this paragraph, a pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85% or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.

(B) Distinct unit--A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(C) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(i) Only for a pediatric care facility that is designated in its entirety as a pediatric care facility, a limited number of adults who were admitted to the facility as children but who are no longer children (i.e., individuals who have "aged in place") may be counted as children for purposes of determining if the facility meets the requirements for remaining a pediatric care facility described in subparagraph (A) of this paragraph. The number of such individuals who may be counted as children for purposes of determining if the facility continues to meet the requirements for remaining a pediatric care facility is limited to 33% [~~15%~~] of the average daily census of the facility.

(ii) Individuals who have "aged in place" as described in clause (i) of this subparagraph may not be counted toward meeting the requirements for a facility to initially become a pediatric care facility nor can they be counted toward meeting the requirements for a distinct unit to remain a pediatric care facility.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process) except that payment rates are determined annually, coincident with the state's fiscal year, within available funds. A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.

(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the RUG level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(E) Pediatric care facilities are not eligible to participate in §355.308 of this title (relating to Enhanced Direct Care Staff Rate).

(F) The facility's cost-based retrospective cost settlement will be determined annually. An annual settlement payment will only be made for fiscal years in which the average daily census for the facility in that year was less than the average daily census of the prior fiscal year, except that no settlement will be made for fiscal years in which the average daily census for the facility exceeded 85 percent or for fiscal years in which the facility's Medicaid revenues exceeded its Medicaid allowable costs.

(4) If HHSC determines that a pediatric care facility that is designated in its entirety as a pediatric care facility no longer qualifies as a member of such class according to paragraph (2) of this subsection, HHSC will notify the facility in writing.

(A) Within 30 calendar days of the date on the written notification, HHSC Rate Analysis must receive a written compliance plan from the facility as described in subparagraph (B) of this paragraph. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day receipt of the plan will be accepted.

(B) The compliance plan must indicate the facility's intent to, within 180 calendar days of the date of HHSC's initial written notification to the facility, come into compliance with paragraph (2) of this subsection by:

(i) Managing a sufficient number of admissions and discharges to come into compliance with the requirements of paragraphs (2)(A) and (2)(C) of this subsection to remain a member of the pediatric care facility special reimbursement class;

(ii) Creating a distinct unit of the facility as described under paragraph (2)(B) of this subsection; or

(iii) Withdrawing the entire facility from the pediatric care facility special class.

(C) HHSC will make a written determination regarding approval or disapproval of the compliance plan. A facility that submits a compliance plan that is subsequently disapproved will cease being reimbursed as a member of the pediatric facility special class on the first day of the month following HHSC's disapproval of the compliance plan.

(D) A compliance plan that is not received by the stated deadline will not be accepted, and the facility will be removed from the pediatric care facility special reimbursement class retroactive to the first day of the month following the date of HHSC's initial written notification to the facility.

(E) A facility that obtains approval of its compliance plan from HHSC Rate Analysis will continue to be reimbursed as a member of the pediatric care special class until 180 calendar days of the date of HHSC's initial written notification to the facility. If by that time the facility has not achieved the stated goal of its compliance plan, the facility will be removed from the pediatric care special class effective the first day of the following month.

(F) If, at any time, HHSC determines that a facility that has come into compliance with paragraph (2) of this subsection by managing a sufficient number of admissions and discharges, as described in subparagraph (B)(i) of this paragraph, no longer qualifies as a member of such class, that facility will be excluded from the pediatric care special class for 365 days from the date HHSC makes its determination. The facility may apply to rejoin the class on the 366th day.

(G) A facility that is removed from or withdraws from the pediatric care special class will be considered a new facility, as described in §355.308(e) of this title for purposes of enrollment in the Nursing Facility Direct Care Staff Rate enhancement.

(H) A facility that is removed or withdraws from the pediatric care special class may not re-enter the class within one year of its removal or withdrawal.

(d) Nurse aide training and competency evaluation costs.

(1) DADS reimburses nursing facilities for the actual costs of training and testing nurse aides as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training provided after October 1, 1990, for:

(A) actual training course expenses up to a set amount determined by DADS per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included on the reimbursement voucher.

(3) Training program costs that exceed the DADS cost ceiling must have prior approval from DADS before costs can be reimbursed. A written request to Provider Billing Services must include:

(A) name and vendor number of facility.

(B) description of training program for which the facility is seeking reimbursement approval, to include:

(i) name, telephone number and address of the nurse aide training and competency evaluation program (NATCEP);

(ii) whether the NATCEP program is facility or non-facility-based; and

(iii) name of the NATCEP program director.

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling. The explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP.

(D) an explanation of why the nursing facility cannot utilize a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost efficient training courses. The explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in clause (i) of this subparagraph, as specified in subparagraph (C)(i) or (ii) of this paragraph.

(4) All prior approval requests as outlined in paragraph (3) of this subsection must be submitted to DADS, Provider Billing Services that:

(A) may request additional information in order to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by DADS before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to DADS audits. If substantiating documentation for amounts billed to DADS cannot be verified, DADS will immediately recoup funds paid to the facility.

(7) Individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A) - (E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by, or received an offer of employment from, a nursing facility not later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than six months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to DADS with proof that the individual has been employed by a facility for no less than six months.

(9) Individuals who leave nursing facility employment before accruing the required six months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50% reimbursement as long as the individual was employed for no less than three months.

(10) Reimbursement to individuals may not exceed the reimbursement ceiling as detailed in paragraph (1)(A) of this subsection.

(e) Oxygen costs. Oxygen costs incurred on or after January 1, 1995, will not be reimbursed on cost reimbursement vouchers. Those oxygen costs must be reported as expenses on the cost report.

(f) TILE to RUG-III Hold Harmless Transition. For rates effective September 1, 2008, payment rates for the direct care staff component and the other recipient care component will be updated within available funds, payment rates for the dietary, general/administration and fixed capital asset rate components will be equal to the rates in effect on August 31, 2008 times 1.025, payment rates for the professional and general liability insurance add-on and the professional-only liability insurance add-on will be equal to the rates in effect on August 31, 2008 times 1.024, and the payment rate for the general-only liability insurance add-on will be equal to the rate in effect on August 31, 2008 times 1.018.

(1) To calculate the updated direct care staff per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 0.9908, which is the weighted average TILE case mix index for the 1998 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated direct care staff rate component.

(2) To calculate the updated other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 1.0267, which is the weighted average TILE case mix index for the 2005 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated other recipient care rate component.

(3) For state fiscal year 2009 only, for each Medicaid-contracted nursing facility, HHSC will:

(A) Calculate the sum of the weighted average TILE direct care staff base rate (with no enhancements) and other recipient care rate based on the TILE rates for these cost areas in effect on August 31, 2008 and the facility's approved to be paid days of service by TILE from January 1, 2008 through June 30, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around November 3, 2008.

(B) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(C) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (B) of this paragraph. If the sum from subparagraph (A) is greater than the sum from subparagraph (B), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (B) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(D) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(E) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (D) of this paragraph. If sum from subparagraph (A) is greater than the sum from subparagraph (D), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (D) times the facility's approved to be paid days of service for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(F) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008, and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010.

(G) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (F) of this paragraph.

(i) If the sum from subparagraph (A) is greater than the sum from subparagraph (F), determine the difference between the sum from subparagraph (A) and the sum from subparagraph (F) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010, and subtract the hold harmless payments made under subparagraphs (C) and (E) from the product calculated in this clause.

(I) If the result is a positive number, DADS will pay the facility the difference.

(II) If the result is a negative number, DADS will recoup the difference from the facility.

(ii) If the sum from subparagraph (A) is less than the sum from subparagraph (F) and the facility received a hold harmless payment under subparagraph (C) and/or (E), DADS will recoup from the facility the hold harmless payments made under these subparagraphs.

(4) "On or around" as used in this subsection means the date that the state pulls the information as described in the subsection as close to the dates specified in subsection as feasible and determined by the state. Once the state does the data pull, no other pulls will be made for the purpose of calculating the values described in this subsection. This means that once the paid days of service for a paragraph have

been determined for purposes of calculating the TILE to RUG-III hold harmless transition, they will not be updated for late Minimum Data Set (MDS) submissions, Utilization Review RUG-III changes, retroactive eligibility or any other reason.

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 27, 2014.

TRD-201404986
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 7, 2014
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.5

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC §1.5, concerning Previous Participation. The proposed amendments eliminate certain discrete instances of noncompliance that will not be taken into consideration when reviewing an applicant's compliance history. Those events include situations where five or fewer Uniform Physical Condition Standards ("UPCS") deficiencies are now corrected but were not corrected during the corrective action period and noncompliance with the requirement to provide the Fair Housing Disclosure notice if the date of noncompliance is within the first 6 months of calendar year 2013, the owner responded during the corrective action period and the issue cannot be corrected. In addition, the amendment eliminates the ability to file an appeal to the Executive Director and makes other changes that promote more effective administration of the review process.

The amendment also provides for a method and frequency by which previous participation is reviewed for formula funded programs.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendment does not have any foreseeable changes related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in reviewing an applicant's compliance history. There will not be any additional economic cost to any persons required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 7, 2014, through December 8, 2014, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 8, 2014.

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

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

§1.5. Previous Participation.

(a) The governing board ("Board") of the Texas Department of Housing and Community Affairs (the "Department") designates the Executive Award and Review Advisory Committee ("EARAC"), established pursuant to Texas Government Code, §2306.1112, to receive reports regarding the compliance history of an applicant or proposed awardees (including any affiliates as defined by §10.3 of this title (relating to Definitions) of any such applicant) seeking approval to own an existing affordable housing Development assisted by the Department and applicants seeking financial assistance or awards from the Department [~~and any affiliate as defined by §10.3 of this title (relating to Definitions) of any such applicant~~] and provide to the Board the assessment contemplated in Texas Government Code, §2306.057 in order that this Board may consider the compliance history and make and document its award decisions with full knowledge of these matters. For the purposes of previous participation reviews, applicants and affiliates of an applicant do not include:

(1) Individual elected officials affiliated with an application or proposed awardee from a city, county, or local government unless they are a signatory on the contract with the Department;

(2) Individual members of a 501(c)(3) nonprofit Board unless they are the Executive Director, Chair of the Audit Committee, Board Chair, or person who executes the contract on behalf of the applicant. However, if it is determined that any member of the Board of the nonprofit is on the Department's or a federal agency's debarred list, the request for assistance will be terminated. If within the five (5) business day period referenced in subsection (f) of this section, the individual with reportable history of noncompliance resigns from the Board of the nonprofit, the noncompliance will not be taken into consideration.

(b) The executive director of the Department shall designate the membership of EARAC, and the makeup of EARAC shall include, at a minimum, those members required by Texas Government Code, §2306.1112.

(c) For any application for financial assistance or awards, entities must complete the Department's Uniform Previous Participation Review Form. EARAC will not consider or recommend approval to the Board if the entity fails to complete the form or respond to staff inquiries regarding apparent errors or omissions. In [~~presented to EARAC and in~~] addition to any application-specific considerations, including but not limited to threshold evaluation, selection scoring criteria, and underwriting, EARAC shall receive [~~the applicant's previous participation disclosure and~~] the following reports regarding the applicant and each affiliate of the applicant or proposed awardee from

the division(s) [~~division~~] responsible for monitoring for compliance or administering such matters:

(1) A report of any instance(s) of noncompliance that remain uncorrected and for which the applicable period for corrective action has expired with the exception of instances of noncompliance related to the Fair Housing Disclosure Notice that meet the following criteria:[~~;~~]

(A) The date of noncompliance was within the first six (6) months of calendar year 2013;

(B) The noncompliance was not correctable at the time of the Previous Participation Review; and

(C) The owner responded during the corrective action period. Provided, however, that if an applicant has significant, pervasive, and ongoing failure to make a good faith attempt at compliance, the Department may consider that as a basis for debarment.

(2) A report of any instance(s) of noncompliance that have been corrected within the last three (3) years[~~,~~] but [~~that were~~] not corrected within the initial [~~applicable~~] period for corrective action, including any extensions granted by the Department for good cause, with the exception of:[~~; and~~]

(A) Uniform Physical Condition Standards violations, provided that a response was submitted during the corrective action period, and the initial response cured substantially all of the deficiencies. For purposes of this paragraph, "substantially all" means that no more than five (5) UPCS deficiencies remained uncorrected at the end of the corrective action period; and

(B) Matters that EARAC has considered for the same type of award during a prior previous participation review and resulted in an affirmative recommendation to the Board with no conditions.

(3) If the applicant or any affiliate of the applicant is subject to the requirement of an annual single audit:

(A) A report of any required single audit or single audit certification form that is currently past due; and

(B) If such single audit has been submitted and the most recent single audit report contained findings, a copy of that single audit.

(4) It is the policy of the Board to encourage owners and managers to implement effective property management plans that assure the ongoing compliance of housing developments that are subject to Department monitoring regardless of the initial condition of the property upon transfer to the new owner. Nothing in this rule shall be construed as approving or conditioning the existence of ongoing violations, even if subsequently corrected, for the purposes of initiating debarment or assessing administrative penalties, in accordance with the Enforcement Rule, as amended.

(d) From the division(s) [~~division~~] responsible for the receipt and application of payments on loans held by the Department and the receipt of fees associated with multifamily bond developments or housing tax credit developments or administering such matters, EARAC shall receive the following reports regarding the applicant and each affiliate of the applicant:

(1) A report of any payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents;

(2) A report of any failure to provide evidence of or maintain any required insurance on any collateral for any loan held by the Department;

(3) A report of any failure to pay property taxes or provide evidence of the payment of property taxes on any collateral for any loan held by the Department unless either provision has been made for such payment or the Department has been provided satisfactory evidence of a tax exemption; and

(4) A report of any [~~past due~~] fees that were invoiced over 60 days prior to the date of the report and for which payment has not yet been received.

(e) Where a report is to be provided, pursuant to subsection (c) or (d) of this section, the Director of the Asset Management Division shall prepare a report documenting any known current or ongoing concerns regarding the applicant or any affiliate of the applicant to financially or operationally manage one or more affordable rental properties assisted by the Department in a manner to keep the development sanitary, decent, and safe, which may include but not be limited to:

(1) The establishment and maintenance of appropriate reserves;

(2) Identification of the development's capacity to meet financial obligations consistent with the minimum ratios to meet underwriting feasibility for the long term;

(3) Material modifications or amendments;

(4) Any financing known to be in a workout status; and

(5) Delays in issuance of IRS Form(s) 8609 which are within the control of the owner.

(f) If an issue is identified during a review, prior to EARAC notification, the applicant or proposed awardee will be provided a five (5) business day period to submit evidence in response to the issue(s) identified. Extensions can be granted for good cause if they are requested during the five (5) day period and still provides for sufficient time for EARAC to meet and review the response prior to the date the contemplated Board action. Failure to respond during the five business day period may result in delay in submission of recommendations to the Board or a recommendation of denial.

(g) [~~(f)~~] EARAC shall review the reports provided, along with the response provided by the applicant or proposed awardee, and determine whether and the extent to which matters set forth in the report bear on the applicant's or affiliate's ability to perform, in a compliant manner, with regard to funding and allocation decisions by the Board. While EARAC may review and analyze the information provided, EARAC does not function as an appeal panel and does not affirm or overturn findings in division reports. However, EARAC may return the matter to the respective division, as time permits, for further review, information, and development.

(h) If EARAC determines that the matters set forth in the report do not bear on the applicant's or proposed awardee's ability or willingness to perform in a compliant manner on the activity being considered, provided that all other applicable criteria are met, EARAC will disclose to the Board that a report was made but that approval is recommended.

(i) If EARAC determines that the matters set forth in the report bear on the applicant's or proposed awardee's ability or willingness to perform in a compliant manner on the activity being considered, EARAC may only recommend approval provided that the identification of issue(s) identified under subsection (c), (d) or (e) of this section is disclosed to the Board and EARAC determines that a recommendation of approval is warranted because:

(1) The award will not present undue increased program risk or financial risk to the Department or the state; and

(2) The applicant or proposed awardee has taken reasonable measures within its power to remedy the issue and/or the cause for the noncompliance.

(j) If EARAC determines that the matters set forth in the report bear on the applicant's or proposed awardee's ability or willingness to perform the activity being considered in a compliant manner but is not able to determine that all of the criteria listed in paragraphs (1) and (2) of subsection (i) of this section have been met, EARAC must recommend denial.

(k) For all applications or awarding of funds, EARAC will take such actions deemed reasonable and necessary to make full, accurate, informed recommendations to the Board regarding funding and allocation decisions, and may recommend conditions placed on awards in relation to issues identified during the Previous Participation Review or the underwriting report.

[(g) If an issue is identified during a review, prior to EARAC notification, the applicant will be provided a five (5) business day period to submit evidence to resolve and comment upon the issue(s) identified.]

(l) [(h)] Requests for funding and allocation assistance that involve disqualification or termination required by operation of law, such as an applicant who has been disbarred, will not be brought before EARAC, and such matters will be handled or terminated at the program level, subject to any applicable appeals process.

[(i) For each application EARAC shall either:]

[(1) Recommend approval;]

[(2) Recommend denial, accompanied by an assessment of all reports received and setting out the factual basis for the denial recommendation;]

[(3) Recommend approval but disclose that one or more issues under subsection (c), (d) or (e) of this section, have been reported, but after consideration of relevant material facts, and circumstances it has been determined that denial is not warranted because:]

[(A) It is in the best interests of the state to proceed with the award;]

[(B) The award will not present undue increased program risk or financial risk to the Department or the state;]

[(C) The applicant is not acting in bad faith; and]

[(D) The applicant has taken reasonable measures within it power to remedy the issue; or]

[(4) Take such other action as deemed reasonable and necessary to make full, accurate, and informative recommendations to the Board regarding funding and allocation decisions, including recommendations with conditions.]

(m) [(j)] EARAC is designated to review and shall follow the same procedure prior to approval of an entity as a reservation system participant and for assessing the compliance history of a proposed transferee (other than an affiliate of the current owner) when they seek approval to acquire an ownership interest in an affordable rental property assisted by the Department.

(n) [(k)] An applicant, proposed awardee or any affiliate of an applicant who is not recommended for assistance based upon EARAC's review of their compliance history will be notified in writing. Such entity will have three (3) business days to propose conditions that could mitigate the issues identified during the Previous Participation Review and address EARAC's concerns. If an entity chooses to do this, EARAC will reconsider and may recommend approval with conditions or may affirm their original decision. If EARAC does not recommend approval, an entity may appeal EARAC's determination in accordance with [§1.7 and] §1.8 of this chapter (relating to [Staff Appeals Process and] Board Appeals Process).

(o) Formula Funded Awards. In general, the Department administers the Community Services Block Grant Program ("CSBG"), the Low Income Home Energy Assistance Program ("LIHEAP"), and the Weatherization Assistance Program ("WAP") through an established network of subrecipient providers. For these subrecipients a previous participation review for this group of awards will be conducted once per calendar year. The required previous participation review form referenced in subsection (c) of this section must be submitted to the Compliance Division no earlier than June 15th and no later than July 1st of each year. Any conditions recommended by EARAC will be incorporated into the next contract(s) entered into between the Department and the subrecipient for the activity being considered. In the event that EARAC does not recommend CSBG funding to a CSBG eligible entity the Department will simultaneously initiate proceedings under the due process requirements of CSBG to terminate the eligible entity status and may take other actions regarding funds available under current contracts.

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 22, 2014.

TRD-201404939
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 7, 2014
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER H. DISCOVERY PROCEDURES

16 TAC §22.146

The Public Utility Commission of Texas (commission) proposes new §22.146, relating to Limitations on Discovery in Rate Proceedings. The proposed rule requires that, for all rate proceedings, a discovery control plan rate be established by an order entered by the presiding officer or the commission. The rule prescribes specific discovery limitations on requests for information, requests for admission, and deposition by oral examination, while affording the presiding officer latitude in granting requests for additional discovery upon a showing of good cause. The rule further provides for the presiding officer to adopt a discovery control plan in base rate proceedings that conforms to the particular circumstances of each base rate case. Modifications by the presiding officer or the commission are also authorized upon the occurrence of certain events. Commission staff is exempted from the limitations. Project Number 42330 is assigned to this proceeding.

Debi Loockerman, Regulatory Accountant, in the Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loockerman has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be the establishment of discovery control limits for all rate proceedings. Based on these discovery control limits and other requirements established in the rule, affected persons may experience enhanced efficiency in the discovery process. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Loockerman has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022.

Commission staff will conduct a public hearing on this rulemaking, if requested, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c). Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 42330.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.146. Limitations on Discovery in Rate Proceedings.

(a) Definitions. "Rate proceeding" means a proceeding in which a rate is changed and parties are entitled to the recovery of rate case expenses under the Public Utility Regulatory Act (PURA) §33.023 and §36.061.

(b) Limitation of discovery requests. Every rate proceeding must be governed by a discovery control plan as provided in this section.

(c) Establishment of discovery control plan for rate proceedings. A discovery control plan for rate proceedings may be established by entry of an order by the presiding officer or by the commission.

(d) Discovery limitations.

(1) To the extent that a rate proceeding is not governed by specific discovery limitations set forth in the commission's substantive rules, nor subject to a discovery control plan established under paragraph (2) of this subsection, a discovery control plan containing the following discovery limitations shall apply to each party, other than commission staff:

(A) No more than 20 requests for information, which include requests for inspection or production of documents or things;

(B) No more than 20 requests for admissions of fact; and

(C) No more than 10 hours of oral depositions, with an additional limitation of six hours, per individual witness, per day.

(2) In comprehensive base rate proceedings or in other rate proceedings in which the parties have agreed to be subject to a discovery control plan under this paragraph in lieu of a discovery control plan pursuant to paragraph (1) of this subsection, the presiding officer shall adopt a discovery control plan establishing reasonable limits on the amount of discovery in a particular proceeding that is tailored to the circumstances of the specific rate proceeding. The limitations in the discovery control plan shall apply to each party to a proceeding other than commission staff.

(A) In developing the discovery control plan, the presiding officer shall consider the factors listed in §22.142(d)(1) of this title (relating to Limitations on Discovery and Protective Orders), as well as:

(i) Any jurisdictional deadlines;

(ii) The alignment of the parties to a proceeding or on particular issues in the proceeding;

(iii) Whether the utility is a fully integrated or a transmission and distribution utility; and

(iv) The amount of time that has passed since the utility's last base rate proceeding.

(B) The discovery control plan adopted under this subsection shall include:

(i) A date for hearing or for a conference to determine a hearing setting;

(ii) A discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it;

(iii) Appropriate limits on the amount of discovery; and

(iv) Deadlines for joining additional parties and amending or supplementing pleadings.

(3) For the purpose of calculating the number of requests for information or requests for admissions of fact, each answer shall count as one request.

(e) Modification of discovery control plan.

(1) The presiding officer may modify a discovery control plan at any time and must do so when the interest of justice requires. The presiding officer must allow additional discovery:

(A) Related to new, amended, or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(i) The pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters; and

(ii) The adverse party would be unfairly prejudiced without such additional discovery.

(B) Regarding matters that have changed materially after the deadline for completion of discovery.

(2) The presiding officer may also allow for additional discovery beyond the limitations in a discovery control plan upon the request of any party for good cause. The burden is on the requesting party to show good cause for why additional discovery is needed.

(3) The commission may modify a discovery control plan at any time.

(f) Staff exemption. Commission staff shall not be subject to the limitations on discovery in rate case proceedings established in discovery control plans adopted pursuant to this section, unless so ordered by the commission.

(g) Other discovery limitations not affected. Nothing in this section shall be interpreted to restrict the presiding officer's authority to limit discovery pursuant to §22.142 of this title or any other discovery procedures in the commission's procedural or substantive rules.

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

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

TRD-201404930
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 7, 2014
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER T. ENGINEERING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.220 - 1.226

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter T, §§1.220 - 1.226, concerning Engineering Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop an engineering field of study. The newly added rules will affect students when the engineering field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an engineering degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.220. Authority and Specific Purposes of the Engineering Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Engineering Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Engineering field of study curricula.

§1.221. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the engineering degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.222. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the

institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.223. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.224. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.225. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Engineering Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Engineering Field of Study Curricula; and

(3) Any other issues related to the Engineering Field of Study Curricula as determined by the Board.

§1.226. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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 27, 2014.

TRD-201405003
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

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SUBCHAPTER U. MUSIC FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.330 - 1.336

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter U, §§1.330 - 1.336, concerning Music Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a music field of study. The newly added rules will affect students when the music field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a music degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.330. Authority and Specific Purposes of the Music Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Music Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Music field of study curricula.

§1.331. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Music degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.332. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.333. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.334. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.335. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Music Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Music Field of Study Curricula; and

(3) Any other issues related to the Music Field of Study Curricula as determined by the Board.

§1.336. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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 27, 2014.

TRD-201405004

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

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SUBCHAPTER V. NURSING FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.440 - 1.446

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter V, §§1.440 - 1.446, concerning Nursing Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a nursing field of study. The newly added rules will affect students when the nursing field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a nursing degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.440. Authority and Specific Purposes of the Nursing Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Nursing Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Nursing field of study curricula.

§1.441. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Nursing degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.442. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.443. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.444. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.445. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Nursing Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Nursing Field of Study Curricula; and

(3) Any other issues related to the Nursing Field of Study Curricula as determined by the Board.

§1.446. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

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SUBCHAPTER W. BUSINESS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.550 - 1.556

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter W, §§1.550 - 1.556, concerning Business Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Business field of study. The newly added rules will affect students when the Business field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Business degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.550. Authority and Specific Purposes of the Business Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Business Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Business field of study curricula.

§1.551. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Business degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.552. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.553. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.554. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.555. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Business Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Business Field of Study Curricula; and

(3) Any other issues related to the Business Field of Study Curricula as determined by the Board.

§1.556. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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-201405006
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

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SUBCHAPTER X. COMMUNICATIONS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.660 - 1.666

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter X, §§1.660 - 1.666, concerning Communications Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Communications field of study. The newly added rules will affect students when the Communications field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Communications degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code,

Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.660. Authority and Specific Purposes of the Communications Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Communications Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Communications field of study curricula.

§1.661. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Communications degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.662. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.663. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.664. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.665. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Communications Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Communications Field of Study Curricula; and

(3) Any other issues related to the Communications Field of Study Curricula as determined by the Board.

§1.666. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER Y. ENGINEERING TECHNOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.770 - 1.776

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter Y, §§1.770 - 1.776, concerning Engineering Technology Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Engineering Technology field of study. The newly added rules will affect students when the Engineering Technology field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Engineering Technology degree and improved transferability and applicability of courses.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.770. Authority and Specific Purposes of the Engineering Technology Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Engineering Technology Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Engineering Technology field of study curricula.

§1.771. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Engineering Technology degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.772. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.773. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.774. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.775. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Engineering Technology Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Engineering Technology Field of Study Curricula; and

(3) Any other issues related to the Engineering Technology Field of Study Curricula as determined by the Board.

§1.776. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER Z. MEXICAN AMERICAN STUDIES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§1.880 - 1.886

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter Z, §§1.880 - 1.886, concerning Mexican American Studies Field of Study Advisory Committee. The proposed new rules authorize the Board to create an

advisory committee to develop a Mexican American Studies field of study. The newly added rules will affect students when the Mexican American Studies field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Mexican American Studies degree and improved transferability and applicability of courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, §61.823(a) and Texas Government Code, Chapter 2110, §2110.005, which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.880. Authority and Specific Purposes of the Mexican American Studies Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Mexican American Studies Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Mexican American Studies field of study curricula.

§1.881. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Mexican American Studies degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

§1.882. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§1.883. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.884. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§1.885. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Mexican American Studies Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Mexican American Studies Field of Study Curricula; and

(3) Any other issues related to the Mexican American Studies Field of Study Curricula as determined by the Board.

§1.886. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.282, §21.286

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.282 and §21.286, concerning the Good Neighbor Scholarship Program (Definitions and Award Amount). Due to the passage of Senate Bill 1210 (83rd Legislature, Regular), two new titles have been added to reflect the new provisions, causing a subsequent title to be renumbered.

The amendments to these sections introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014. The new provisions, which included a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding, were introduced by Senate Bill 1210, passed by the 83rd Legislature, Regular Session. The inclusion of definitions for "continuation award" and "excess hours" caused subsequent definitions to be renumbered.

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Moller has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, Chapter 54, Subchapter B, Tuition Rates, which provides the Coordinating Board with the authority to adopt rules to implement the Good Neighbor Scholarship Program.

The amendments affect Texas Education Code, §54.331.

§21.282. Definitions.

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

(1) - (2) (No change.)

(3) Continuation award--An exemption from tuition awarded to a student in accordance with this subchapter who has received the exemption in a previous semester.

(4) [~~(3)~~] Eligible country--A politically independent nation, other than Cuba and the United States, located in the Western, or American hemisphere.

(5) Excess hours in accordance with Texas Education Code §54.014, for undergraduates--Hours in excess of 30 or more than those required for completion of the degree program in which the student is enrolled.

(6) [~~(4)~~] Native-born citizen of an eligible country--A person who is a citizen of an eligible country and who was born in that country or who was born abroad, if at least one of his or her parents was a citizen of the eligible country and not permanently residing in a foreign country.

(7) [~~(5)~~] Resident of an eligible country--A person who is a citizen of a country and has that country as his or her place of home residence and who intends to return to that country to live immediately after finishing the educational program for which this scholarship will be used.

(8) [~~(6)~~] Scholastically qualified--Meets the basic admissions requirements of the nominating institution.

§21.286. Award Amount.

Students selected to receive awards through the Good Neighbor Scholarship Program may be exempted from the payment of tuition for the 12-month period beginning with the fall semester following the students' selection as recipients. An exemption under this title only applies to courses for which an institution receives formula funding.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §21.287

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §21.287, concerning the Good Neighbor Scholarship Program (Continuation Awards). The repeal of this section is due to the passage of Senate Bill 1210 (83rd Legislature, Regular). Two new titles have been added to reflect the new provisions, causing a subsequent title to be renumbered.

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal

implications to state or local government as a result of enforcing or administering the rule.

Ms. Moller has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the repeal may be submitted to Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code, Chapter 54, Subchapter B, Tuition Rates, which provides the Coordinating Board with the authority to adopt rules to implement the Good Neighbor Scholarship Program.

The repeal affects Texas Education Code, §54.331.

§21.287. Dissemination of Information and Rules.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §§21.287 - 21.289

The Texas Higher Education Coordinating Board proposes new §§21.287 - 21.289, concerning the Good Neighbor Scholarship Program. Due to the passage of Senate Bill 1210, (83rd Legislature, Regular), two new titles have been added to reflect the new provisions, causing a subsequent title to be renumbered.

The new sections reflect the Senate Bill 1210 requirements regarding grade point average and number of completed hours. Specifically, new subsections (a) and (b) of §21.287 add language to implement legislative changes mandated by Senate Bill 1210. New §21.288 outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. In addition, in keeping with Senate Bill 1210, the new sections indicate institutions may, on a showing of good cause, allow an undergraduate to receive the exemption although he or she has completed a number of hours considered excessive under §21.287(b) of this subchapter (relating to Continuation Awards).

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Moller has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Chapter 54, Subchapter B, Tuition Rates, which provides the Coordinating Board with the authority to adopt rules to implement the Good Neighbor Scholarship Program.

The new sections affect Texas Education Code, §54.331.

§21.287. Continuation Awards.

(a) Grade Point Average.

(1) If receiving a continuation award in fall 2014 or later, a student who is classified as an undergraduate or a graduate, must be meeting the institution's financial aid grade point average requirement;

(2) If receiving a continuation award in fall 2014 or later, a student may be allowed to receive an award while holding a grade point average lower than the institution's financial aid academic progress requirements if he or she is granted an exception by the institution under §21.288 of this subchapter (relating to Hardship Provisions).

(b) Excess Hours. Unless granted a hardship exception under §21.288 of this subchapter, an undergraduate student applying for a continuation exemption in fall 2014 or later and who has completed as of the beginning of the semester or term a number of semester credit hours that is considered to be excessive under Texas Education Code §54.014 may not receive the exemption under this subchapter.

§21.288. Hardship Provisions.

(a) Each institution of higher education is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §21.287 of this subchapter (relating to Continuation Awards) to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate continuation award applicant to receive an exemption or waiver although he or she has completed a number of semester

credit hours that is considered excessive under Texas Education Code §54.014.

§21.289. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in 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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER S. NEWBORN HEARING SCREENING

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§37.501 - 37.512 and new §§37.501 - 37.507, concerning the Newborn Hearing Screening Program.

BACKGROUND AND PURPOSE

The department administers the Newborn Hearing Screening Program, which is a point-of-care hearing screen on all newborns in the state. Pursuant to Texas Health and Safety Code, Chapter 47, Texas birthing facilities are required to perform hearing screenings, either directly or through a referral. The results are shared with the parents and, with parental consent, reported to the department. When a newborn or infant does not pass a hearing screen, the rules prescribe follow-up, diagnostic, and intervention timelines and reporting requirements to follow the progress of the child in the hearing screening continuum of care to maximize linguistic competence and literacy development. Without opportunities to learn language, these children will fall behind their hearing peers in communication, cognition, reading and social-emotional development. Such developmental delays may result in lower educational and employment levels in adulthood. With full participation of the providers in the early hearing screening continuum of care, the data reporting and use of the department's Texas Early Hearing Detection and Intervention Management Information System (TEHDI MIS) provides a seamless transition for infants and their families through this process.

The rules incorporate legislative revisions from House Bill (HB) 411 and Senate Bill (SB) 229, 82nd Legislature, Regular Session, 2011, and SB 793, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 47, Hearing Loss in Newborns. The revisions will reflect changes in definitions; changes in roles and responsibilities; clarification of requirements for birthing facilities; and changes to reporting by health care providers, including performance, tracking and documentation and intervention requirements. The repeal of and new rules are necessary to update, clarify, and restructure sections to improve readability and user-friendliness.

The rules also comply with the Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.501 - 37.512 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed, although revisions are needed as detailed herein.

SECTION-BY-SECTION SUMMARY

New §37.501 provides a detailed summary of the contents of the subchapter. It identifies the statutory authority for the various elements of the program, emphasizes the guidelines the department will use to protect patient confidentiality, identifies the department's TEDHI MIS as the mechanism used to capture and report newborn hearing screening data, and references the online policy regarding program protocols and program certification process.

New §37.502 provides definitions for terminology used throughout the subchapter.

New §37.503 establishes the process the department will use to obtain parental consent before capturing or sharing individually-identifiable information through the department's TEDHI MIS and the guidelines used to protect patient data.

New §37.504 identifies the department's TEHDI MIS for all newborn hearing screening programs to report and share information regarding infants that do not pass hearing screenings. This information is vital to the infant's physician or health care provider to ensure follow-up and coordinate appropriate and necessary care as required by Health and Safety Code, §47.005.

New §37.505 documents the timelines required for each level of care for infants that do not pass hearing screenings and the audiological diagnostic evaluation. The section simplifies and condenses the reporting requirements for all hearing screening participants and promotes the TEDHI MIS as a shared resource to follow the progress of an infant that requires follow-up services.

New §37.506 establishes program protocols and certification. The current nationally-recognized standard for newborn hearing screening is the most recent Joint Committee on Infant Hearing (JCIH) Position Statement. The standards are incorporated into the section by reference to allow the department to stay current with national standards without having a potential contradiction in the department rules.

New §37.507 identifies statutory references for authorizing hearing screening services under Medicaid and private insurance.

FISCAL NOTE

Sam Cooper, Director, Specialized Heath Services Section, has determined that for each year of the first five years that the sec-

tions 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, other than greater efficiencies resulting from improved organization, clarity, readability and user-friendliness.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Cooper has also determined that there will be no adverse economic impact 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, beyond what is already required by statute, in order to comply with the sections.

REGULATORY FLEXIBILITY ANALYSIS

Texas Government Code, Chapter 2006, was amended by the HB 3430, 80th Legislature, Regular Session, 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rules. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rules are an implementation of legislative directives because of statutory changes, that proposed rule language becomes per se consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no fiscal impact to local employment.

PUBLIC BENEFIT

In addition, Mr. Cooper has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to improve how the state newborn hearing screening program screens all Texas babies for hearing loss and provides follow-up and intervention services to those infants who do not pass by ensuring that follow-up confirmatory tests and intervention are received, if needed. These proposed new rules will increase the efficiency in the hearing services continuum of care and will increase the user-friendliness of the rules for stakeholders because of improved organization, clarity and readability. The new rules would provide for greater agency transparency in its processes, and make agency actions more predicable for stakeholders. All of this would constitute a public benefit.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to David R. Martinez, Newborn Screening Unit, Specialized Heath Services Section, Division of Family and Community Heath Services, Department of State Health Services, Mail Code 1918, P.O. Box 149347, Austin, Texas 78714-9347 or by email at Davidr.Martinez@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

25 TAC §§37.501 - 37.512

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §47.010, which requires the department to adopt rules necessary to carry out the program, and by Chapter 47 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Health and Safety Code, Chapters 47 and 1001; and Government Code, Chapter 531.

§37.501. Purpose.
§37.502. Definitions.
§37.503. Newborn Hearing Screening, Tracking, and Intervention Program.
§37.504. Certification of Screening Programs.
§37.505. Program Performance Standards and Goals.
§37.506. Program Certification.
§37.507. Information Concerning Screening Results and Follow-up Care.
§37.508. Training and Technical Assistance by Department.
§37.509. Information Management, Reporting, and Tracking System.
§37.510. Responsibilities of the Department of State Health Services.
§37.511. Confidentiality and General Access to Data.
§37.512. Authorized Medicaid Newborn Hearing 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.

Filed with the Office of the Secretary of State on October 24, 2014.

TRD-201404984
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 7, 2014
For further information, please call: (512) 776-6972

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25 TAC §§37.501 - 37.507

STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §47.010, which requires the department to adopt rules necessary to carry out the program, and by Chapter 47 in general; and Government Code, §531.0055(e), and the Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The new rules affect Health and Safety Code, Chapters 47 and 1001; and Government Code, Chapter 531.

§37.501. Purpose.

This purpose of this subchapter:

(1) describes point-of-care newborn hearing screening process administered by the Department of State Health Services (department) pursuant to Texas Health and Safety Code, Chapter 47;

(2) details confidentiality and general access to data regarding newborn hearing screening with state and federal privacy guidelines;

(3) identifies the department's Texas Early Hearing Detection and Intervention Management Information System (TEHDI MIS) used to capture and report newborn hearing screening information, and describes the requirements for follow-up, intervention, and reporting to the department by newborn hearing screening participants; and

(4) incorporates by reference the protocols for newborn hearing screening programs and the criteria used by the department to certify hearing screening programs.

§37.502. Definitions.

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

(1) Audiologist--A person licensed pursuant to Texas Occupations Code, Chapter 401.

(2) Birthing facility:

(A) a hospital licensed under Texas Health and Safety Code, Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Texas Health and Safety Code, Chapter 244;

(C) a children's hospital licensed under Texas Health and Safety Code, Chapter 241 that offers obstetrical and/or neonatal intensive care unit services; or

(D) a facility maintained or operated by this state or an agency of this state that provides obstetrical services.

(3) Consent--A written statement signed by a parent agreeing that individually identifying information may be disclosed to the department.

(4) Department--The Department of State Health Services.

(5) Follow-Up Care--Additional screening, diagnostic audiological evaluation, or treatment and services for newborns or infants who do not pass.

(6) Hearing loss--A hearing loss averaging 30 dB hearing level or greater in the frequency region important for speech recognition and comprehension in one or both ears, 500 through 4000 Hz.

(7) Individually-identifying information--Confidential and protected health information (PHI) that identifies the parent or newborn including common identifiers such as, but not limited to, names, addresses, birthdates, and social security numbers.

(8) Infant--A child who is at least 30 days but who is younger than 24 months old.

(9) Intervention--Other intervention services separate from Part C Early Childhood Invention and include those medical and therapeutic services designed to support infants with hearing loss.

(10) Newborn--A child younger than 30 days old.

(11) Parent--A natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(12) Part C Early Childhood Intervention--The early intervention services described in Part C, Individuals with Disabilities Education Act (20) United States Code §§1431-1445, as amended by Pub. L. No. 105-17.

(13) Program--A supervised newborn hearing screening, tracking and intervention program certified by the department.

(14) Protocol(s)--Guidelines or procedures, based on the latest Joint Committee on Infant Hearing (JCIH) position statement, used by programs to conduct newborn hearing screening.

(15) Screen--An initial or a repeat test that identifies an increased risk for hearing loss, which must be confirmed by an audiological diagnostic evaluation.

(16) State--The State of Texas.

(17) Texas Early Hearing Detection and Intervention Management Information System (TEHDI MIS)--The department's central information source of newborn hearing screens and audiological diagnostics to ensure follow-up and any type of intervention for newborns or infants identified as hard of hearing or deaf.

§37.503. Confidentiality and General Access to Data.

This section establishes the guidelines to protect the confidentiality of patients in accordance with Texas Occupations Code, Chapter 159, and Texas Health and Safety Code, §47.008 (relating to Confidentiality and General Access to Data) and §47.009 (relating to Immunity from Liability).

(1) The birthing facility, provider, or program shall ensure that the written consent of a parent is obtained before any individually-identifying information on the newborn or infant is released through the TEHDI MIS.

(2) If consent to disclose individually-identifying information to the department is obtained, the facility or provider obtaining consent shall retain the consent in the patient's medical record.

(3) At any time a parent may request the department in writing that individually-identifying information concerning his or her child be removed from the department's TEHDI MIS. The department shall act on any request in a timely manner.

(4) Sample consent forms can be found on the department's newborn hearing website at: www.dshs.state.tx.us/tehdi.

§37.504. Information Management and Tracking System.

(a) Birthing facilities, programs and providers mentioned in this subchapter that perform hearing screening, diagnosis, and provide follow-up and intervention, including Part C early childhood intervention services for newborns or infants shall have access to the department's TEHDI MIS. Information regarding access and technical assistance is located at www.dshs.state.tx.us/tehdi.

(b) Reporting is required to the department's TEHDI MIS. The TEHDI MIS shall be updated to provide the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components. The department may also use the collected data to monitor for health events of epidemiological importance.

§37.505. Screens, Follow-up, and Reporting.

(a) After an initial or a follow-up hearing screening is performed, the birthing facility that operates the program, other programs, or other providers shall report the results to the parents. With parental consent, the results are also reported to the attending or primary care physician or other applicable healthcare provider, and to the department according to the requirements in Texas Health and Safety Code, Chapter 47. The results are reported to the department within five business days after the date of birth or the date of discharge. The physician or health care provider attending to the infant who needs follow-up care should direct, track, and coordinate appropriate and necessary care.

(b) The follow-up hearing screen must be performed within 30 days from date of discharge from the birthing facility.

(c) If the newborn or infant does not pass the follow-up hearing screen, the program or provider performing the screens shall:

(1) assist in coordinating and scheduling a diagnostic audiological evaluation with another program or licensed audiologist who performs these evaluations; and

(2) refer the newborn or infant to Early Childhood Intervention Services, Department of Assistive and Rehabilitative Services.

(d) Unless the newborn or infant has been hospitalized since birth, the diagnostic audiological evaluation must be completed:

(1) no later than the third month of birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) The program, person, or provider that identified or diagnosed the newborn or infant with hearing loss shall refer the family for Part C Early Childhood Intervention services, in accordance with 34 Code of Federal Regulations §303.303(a)(2)(i) (relating to Referral Procedures) as soon as possible, but in no case more than seven days after the child has been identified and not later than the sixth month after birth and through the time the child is an infant, unless the infant has been hospitalized since birth. A referral can come from a primary referral resource identified in §303.303(c) (relating to Primary Referral Sources).

(f) Audiologists, hospitals, physicians, health care providers, qualified hearing screeners, early childhood intervention specialists, educators, and others who receive referrals from programs under this subchapter shall either provide the needed services or refer the newborn or infant to appropriate services. With parental consent, these providers shall report the following information to the department's TEHDI MIS. These providers may also track the activities and progress of the infant and obtain information from the TEHDI MIS relating to:

(1) results of each hearing screening performed;

(2) results of all follow-up care and services;

(3) results of each diagnostic audiological evaluation;

(4) reports on initiation and results of intervention services;

(5) reports on the initiation of Part C Early Childhood Intervention services; and

(6) case-level information necessary to report required statistics to the:

(A) Maternal and Child Health Bureau/ Health Resources and Services Administration on an annual basis; and

(B) federal Centers for Disease Control and Prevention.

§37.506. Program Protocols and Certification.

(a) The department shall certify programs that meet and maintain the newborn hearing screening criteria and may renew certification to ensure quality services to newborns, infants and families. The department's criteria are based on the most recent JCIH position paper for newborn hearing screens. Specific requirements for program protocols and certification are established in policy located on the department's website at: www.dshs.state.tx.us/tehdi.

(b) No fees are associated with the certification or recertification of a program.

§37.507. Authorized Newborn Hearing Services.

(a) A newborn hearing screening performed by a birthing facility and any related diagnostic follow-up care, provided in accordance with Texas Health and Safety Code, Chapter 47 and the requirements of this subchapter, for a newborn who receives medical assistance or who is Medicaid-eligible is a covered service of the Texas Medical Assistance (Medicaid) Program, in accordance with Texas Human Resources Code, Chapter 32.

(b) The reimbursement rates and methodology for covered services described in this section shall be established by the Health and Human Services Commission.

(c) Screening tests for hearing loss from birth through the date the infant is 30 days of age and any diagnostic follow-up care related to the screening test from birth through the date the child is 24 months of age as provided under this subchapter shall be a covered benefit pursuant to Texas Insurance Code, §§1367.101 - 1367.103. Co-payments or co-insurance requirements are permitted, however; deductible requirements or dollar limits are prohibited.

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

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §336.1310

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.1310.

Background and Summary of the Factual Basis for the Proposed Rule

Texas Health and Safety Code (THSC), §401.245, requires the commission by rule to adopt and periodically revise party state compact waste disposal fees.

On June 19, 2014, Waste Control Specialists (WCS) submitted a volume adjustment request to the commission to calculate the annual volume adjustment to the low-level radioactive waste (LLRW) disposal rates charged at the Compact Waste Disposal Facility in Andrews County, Texas. WCS' volume adjustment proposes to reduce the disposal rate for Class A Low-Level Waste (LLW) - Shielded from $250 per cubic foot to $180 per cubic foot. After a review of WCS' request, staff agrees that this change in rate is necessary in order to reflect material changes to the volume of waste expected to be received at the Compact Waste Disposal Facility. Accordingly, the executive director (ED) initiated a rate revision to lower the maximum disposal rate for Class A LLW - Shielded to $180 per cubic foot.

On July 18, 2014, the ED published notice of the proposed rate change in the *Texas Register* (39 TexReg 5635). Additionally, on July 22, 2014, WCS mailed the notice to all known customers that will ship or deliver waste to the Compact Waste Disposal Facility. The proposed rate change was subject to a contested case hearing if a party state generator requested one. TCEQ did not receive a request for a contested case hearing. Therefore, pursuant to 30 TAC §336.1305(g), the ED approved the reduction in rate for the Class A LLW - Shielded as an uncontested matter.

THSC, §401.245 requires the commission to adopt the maximum disposal rates by rule. Therefore, an expedited rulemaking is necessary in order for this rate change to become effective and reflected in the rate schedule established in §336.1310. This rulemaking would amend §336.1310 by reducing the maximum disposal rate for Class A LLW - Shielded.

Section Discussion

§336.1310, Rate Schedule

The commission proposes to amend §336.1310 by reducing the maximum disposal rate that a licensee may charge party-state generators for disposal of Class A LLW - Shielded waste.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, fiscal implications are anticipated for the state and Andrews County in the form of increased revenue collections. The anticipated increase in revenue will be deposited into the General Revenue Fund and will also be distributed to Andrews County as required by statute.

The State of Texas and the State of Vermont entered into the Low-Level Radioactive Waste Disposal Compact agreement in 2004 subsequent to the departure of the state of Maine from the compact. A private company, WCS located in Andrews County is currently licensed to operate the LLRW disposal facility. The commission by rule sets the maximum disposal rates that the licensee can assess to waste generators in the compact. During the 82nd Texas Legislative Session, 2011, the facility received authorization to accept non-compact waste (waste generated outside of Texas or Vermont). The maximum rates set by the commission also serve as the minimum rates that can be charged to non-compact generators who dispose of LLW at the site.

The proposal would amend Chapter §336.1310, and would reduce the maximum disposal rate that the licensee may charge generators for disposal of Class A LLW - Shielded from $250 per cubic foot to $180 per cubic foot.

The reduction in the rate is necessary in order to reflect material changes to the volume of waste expected to be received at the compact waste disposal facility. The volume received in 2013 was less than the estimated amount in the licensee's rate application and the TCEQ rate schedules. In order to bring the revenue in line with the revenue target that formed the basis of the adopted rate, the "waste volume charge" for shielded Class A waste would be reduced. A reduction of that rate will increase volume of shielded Class A waste from out-of-compact generators while still leaving more than adequate capacity for in-compact generators. As a result of the rate reduction, the facilities operator projects an additional 12,000 cubic feet of Class A LLW - Shielded waste from non-compact generators to be disposed of at the site. This potential additional waste would not be disposed of at the Andrews facility if the rates were not reduced. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal.

Utilizing the proposed minimum of $180 per cubic foot and applying it to the facilities projected additional 12,000 cubic feet of Class A LLW - Shielded, from non-compact generators the agency projects an additional $540,000 will be generated for the state in additional revenue over the next five years. The agency projects that $432,000 will be generated from the 20% surcharge on non-compact waste receipts and $108,000 will be generated from the 5% fee assessed on the gross receipts of all waste disposed of in the Compact Waste Facility as a result of this rule change. The additional revenue will come from the compact facility operator and be deposited to the credit of the General Revenue Fund. The operator will pass along the cost to the non-compact generators who they establish disposal agreements with.

Andrews County, which is the host county for the facility, will collect an estimated $108,000 from the 5% fee that is assessed on gross receipts of all waste disposed. Governmental entities located in the compact states that generate Class A LLW - Shielded waste could see a decrease in contracted per cubic foot level as a result of the proposed rule. In Fiscal Year (FY) 2014, the facility received approximately 4,200 cubic feet

of Class A LLW - Shielded waste from compact generators. The TCEQ estimates that 10% of the volume of all waste disposed at the compact facility will come from academic, medical, and non-power generation sources. Many of these sources are classified as governmental entities.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, there is no direct public benefit anticipated from the changes seen in the proposed rule other than an increase in General Revenue Funding and an increase in funding for public projects for Andrews County. The lower rate may help to ensure that Class A LLW - Shielded waste is being properly disposed of at the compact facility and not remaining on the premises of generators.

Fiscal implications are anticipated for businesses that generate Class A LLW - Shielded waste and the operator of the compact facility. No direct fiscal implications are anticipated for individuals.

The owner or operator of a private facility located in the compact states that generate Class A LLW - Shielded waste could see a decrease in the contracted per cubic foot rate as a result of the proposed rule. Generators that are not located in the compact states will likely see a decrease in contracted per cubic foot level as a result of the proposed rule. The proposed rates will only apply to new contracts entered into by the facility. The facilities previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal. The additional fee of 20% and 5% surcharge revenue are deposited to the General Revenue Fund.

In FY 2014 the facility received approximately 9,000 cubic feet of Class A LLW - Shielded waste. Of the total approximated volume, 4,200 cubic feet came from compact generators and 4,800 cubic feet were from non-compact generators. The TCEQ estimates that 90% of the volume of all waste disposed at the compact facility will come from nuclear utilities generators. As a result of the reduction, the facility's operator projects an additional 12,000 cubic feet of Class A LLW - Shielded waste from non-compact generators will be disposed of at the site. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal.

Utilizing the proposed minimum of $180 per cubic foot and applying it to the facility's projected additional 12,000 cubic foot of Class A LLW - Shielded waste, from non-compact generators, the agency projects an additional $2.1 million will be generated in additional revenue over the next five years, by the compact facility operator as result of this rule change. The operator will pass the additional cost along to the non-compact generators who they establish disposal contracts with. The proposed rates will only apply to new contracts entered into by the facility. The facility's previously agreed upon LLW disposal contracts rates will remain in place and not be impacted by the rule proposal.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The amount of any savings for disposal of Class A LLW - Shielded waste would depend on the rate set by the licensee.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is a component of the state's plan to protect the environment and reduce risks to human health from environmental exposure to air pollutants; and the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule amendment to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to amend the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed amendment is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements because the proposed amendment: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of federal delegation

agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rule; and (4) is not an adoption of a rule solely under the general powers of the commission as the proposed amendment is required by THSC, §401.245.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of amending the LLRW maximum disposal rate that a licensee may charge for disposal of Class A LLW - Shielded waste. The proposed rulemaking amends §336.1310. The commission's analysis revealed that amending this rule section would achieve consistency with THSC, §401.245. Amended §336.1310 would reduce the maximum rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by amending the maximum disposal rate that a licensee may charge a party state generator for disposal of Class A LLW - Shielded waste, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal on December 4, 2014, at 10:00 a.m. in Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-031-336-WS. The comment period closes on December 8, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Materials Division, (512) 239-6415 or Ron Olson, Environmental Law Division, (512) 239-0608.

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and other laws of the state.

The proposed amendment implements THSC, §401.245.

§336.1310. Rate Schedule.

Fees charged for disposal of party-state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

[~~Figure: 30 TAC §336.1310~~]

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 24, 2014.

TRD-201404983

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 7, 2014

For further information, please call: (512) 239-6812

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER C. ADMINISTRATIVE REVIEW

1 TAC §55.101

The Office of the Attorney General, Child Support Division, adopts an amendment to §55.101 regarding the forms for child support enforcement pursuant to Texas Family Code, Chapter 231. The amended section is adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5852) and will not be republished.

The amendment is adopted to provide a central and convenient location for all child support forms associated with the Texas Administrative Code.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201404924
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: November 10, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 936-1180

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SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.111, 55.112, 55.115 - 55.120

The Office of the Attorney General, Child Support Division, adopts amendments to §§55.111, 55.112 and 55.115 - 55.120 regarding the forms for child support enforcement pursuant to Texas Family Code, Chapter 231. The amendments are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5852) and will not be republished.

The adopted amendments provide a central and convenient location for all child support forms associated with the Texas Administrative Code. The forms associated with these adopted amendments contained minor edits, updates to include the sensitive data notice when required under the Texas Rules of Civil Procedure and edits to incorporate federal updates to the National Medical Support Notice.

No comments were received regarding adoption of the amendments during the comment period.

The amendments are adopted under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.141

The Office of the Attorney General, Child Support Division, adopts an amendment to §55.141 regarding the administrative review pursuant to Texas Family Code, Chapter 231. The amendment is adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5854) and will not be republished.

The adopted amendment provides a central and convenient location for all child support forms associated with the Texas Administrative Code. The form associated with this adopted amendment contained minor edits updating citation references.

No comments were received regarding adoption of the amendment during the comment period.

The amendment is adopted under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Katherine Cary
General Counsel
Office of the Attorney General
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Proposal publication date: August 1, 2014
For further information, please call: (512) 936-1180

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SUBCHAPTER I. STATE DIRECTORY OF NEW HIRES

1 TAC §55.303

The Office of the Attorney General, Child Support Division, adopts an amendment to §55.303 regarding the state directory of new hires pursuant to Texas Family Code, Chapter 234. The amendment is adopted with changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5854). The change updates the agency's internet address.

The adopted amendments provide a central and convenient location for all child support forms associated with the Texas Administrative Code. The form associated with this adopted amendment contained minor edits updating reference to the agency website.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Family Code §234.104, which provides the Office of the Attorney General with the authority to establish by rule procedures for reporting.

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

§55.303. Employer New Hire Reporting Requirements.

(a) Except as provided in §§55.304 - 55.306 of this title (relating to Common Paymaster, Multi-State Employers, and Federal Government Employers), each Texas employer shall furnish to the State Directory of New Hires in the state in which a newly hired employee works a report of all new hires that contains the following seven required data elements:

(1) the employee name,

(2) the employee address,

(3) the employee social security number,

(4) the employee's date of hire,

(5) the employer name,

(6) the employer address, and

(7) the Federal Employer Identification Number (FEIN).

(b) Employers, at their option may also provide the following additional information in the report:

(1) the employee's date of birth, and

(2) the employee's expected salary or wages,

(3) Employer payroll addresses for mailing of notice to withhold child support.

(c) All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hardcopy to adopt the Employer New Hire Reporting Form supplied by the IV-D agency.

(1) Formats available to employers include:

(A) Fully and accurately completed copy of the new employee's W-4 form with all mandatory information, as specified by Employer New Hire Reporting requirements, typed or written using large, capitalized lettering (cursive writing is not permitted);

(B) The prescribed Employer New Hire Reporting Form (Form 1856e & 1856s) can be obtained from the Texas Attorney General's Child Support Division webpage www.texasattorneygeneral.gov under Child Support, Forms.

(C) Existing employer report or printout;

(D) Facsimile; or

(E) Any other means authorized by the Title IV-D agency for conveying information which includes electronic transmission.

(2) All printed lists must be provided in 10 point font, or larger.

(d) To ensure timely receipt of information, Texas employers are required to report the hiring or rehiring of persons to the Title IV-D agency. Employer New Hire reports shall be considered timely if postmarked by the due date or if filed electronically, upon receipt by the agency. Employer New Hire reports are due:

(1) not later than the 20 calendar days after the date the employer hires the employee; or

(2) in the case of an employer transmitting reports electronically, by two monthly transmissions (if necessary) not more than 16 days apart.

(e) Employers should send reports for newly hired or rehired employees to Texas Employer New Hire Reporting Operations Center, Post Office Box 149224, Austin, Texas 78714-9224.

(f) Questions regarding the Employer New Hire Reporting Program should be directed to Texas Employer New Hire Reporting on the Internet. The Internet address is: www.employer.texasattorneygeneral.gov.

(g) Each employer submitting an incomplete or illegible report, upon request, must resubmit the incomplete or illegible data within 10 days after receiving notice.

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 21, 2014.

TRD-201404927
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: November 10, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 936-1180

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.111

The Public Utility Commission of Texas (commission) adopts an amendment to §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria, with changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6356). The amendment clarifies the applicability of requirements in the rule to deregulated companies holding a COA or to an Exempt Carrier as defined in §26.5(89). In addition, the amendment further amends §26.111 to conform to 2013 legislation, specifically the implementation of Senate Bill 259 of the 83rd Legislature, Regular Session. This amendment is adopted under Project Number 42477.

No public hearing in this rulemaking was held.

The commission received comments on the proposed amendment from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas), Office of Public Utility Counsel (OPUC), and Birch Communications, Cbeyond Communications LLC, and the Texas Cable Association (collectively known as Joint Commenters). The commission also received reply comments from AT&T Texas.

General Comments

AT&T Texas and OPUC stated that they appreciated the work of staff and supported the adoption of the proposed amendments to the rule. OPUC stated that the amendments correctly conform the rule to reflect changes made to PURA by SB 259. In initial comments, AT&T Texas agreed the proposed amendments appropriately incorporated the changes made to PURA by Senate Bill 259. However, AT&T Texas proposed modifications in its reply comments as described below.

Reporting Requirements

Joint Commenters supported the adoption of the proposed amendments but sought clarification in the rule regarding the reporting requirements applicable to Exempt Carriers. Specifically, Joint Commenters pointed out that PURA §52.154 prohibits the commission from requiring competitive local exchange carriers (CLECs) that are Exempt Carriers to file any reports that deregulated companies holding a COA are not required to file. Joint Commenters pointed out that the amendment to subsection (l)(5) is intended to reflect statutory changes to PURA that reduced regulatory obligations applicable to deregulated incumbent local exchange carriers (ILECs) and Exempt Carriers, including elimination of some reporting requirements. However, Joint Commenters argued that the proposed phrase "to the extent," required by PURA and this title in subsection (l)(5) with respect to the reports, creates ambiguity as to which reports a certificate holder will be expected to file. Joint Commenters interpret the rule, as proposed, to say that deregulated ILECs and Exempt Carriers will no longer be required to submit some or all of the various reports listed in this portion of the rule, but leaves the reader the responsibility of determining which reports are required. Joint Commenters contended that the lack of clarity regarding filing obligations has potential serious consequences for a deregulated carrier or an Exempt Carrier because a failure to file required reports is one of the grounds for commission-imposed penalties, for revocation or suspension of a certificate, or for initiation of an investigation under subsection (o) of the rule.

Joint Commenters further argued that the lack of clarity in subsection (l)(5) is compounded by similar ambiguity in subsection (o)(5). Subsection (o)(5) states "(f)ailure to meet commission reporting requirements to the extent required by PURA and this title." Joint Commenters argued that it is essential that the commission's rules clearly and unequivocally apprise all certificated carriers of their obligations, including reporting obligations, especially considering AT&T Texas has filed its application for a COA and, therefore, the change in reporting requirements applicable to AT&T Texas and Exempt Carriers is imminent. Therefore, Joint Commenters urged the commission to modify the amendments to the rule to identify the specific reports that must continue to be submitted by deregulated ILECs and Exempt Carriers. In the alternative, Joint Commenters urged the commission to direct Staff to modify the commission's website and post a list of the specific reporting requirements applicable to deregulated ILECs and Exempt Carriers.

In its reply comments, AT&T Texas acknowledged the recommendation of Joint Commenters that clarification was necessary regarding which reporting rules were to remain applicable to Exempt Carriers. AT&T Texas argued that the only necessary clarification is in subsection (l)(1) and (l)(2). AT&T Texas noted that the rule as published failed to include certain language that was in the Strawman regarding the changes in reporting requirements. Specifically, AT&T Texas stated that, in their opinion, the Strawman properly acknowledged changes in reporting requirements under PURA Chapter 65 by inserting into subsection (l)(1) the phrase "to the extent required by PURA and this title" and inserting into subsection (l)(2) the modifier "applicable" to reports. AT&T Texas argued these provisions, as found in the Strawman, should be restored and adopted resulting in subsection (l)(1) stating "(e)ach COA or SPCOA holder must provide

and maintain accurate contact information using the annual report to the extent required by PURA and this title...." And subsection (l)(2) providing that "(t)he applicable annual report is due on or before April 30 of each calendar year...."

Commission response

The commission appreciates the comments provided by Joint Commenters, but disagrees that the rule should include a list of the reports that deregulated ILECs and Exempt Carriers are required to file. The commission notes that carriers should be aware of the reports that they are currently required to file pursuant to PURA and commission rules and should be able to determine any new or different reporting obligations in a deregulated environment.

Additionally, the commission finds it impractical to list all reporting requirements in the rule, because the rule would then need to be revised every time modifications are made to reporting requirements in PURA or commission rules relating to deregulated ILECs or Exempt Carriers. The commission understands the concerns expressed by AT&T Texas and Joint Commenters regarding the importance of clarity and will review the feasibility of posting a list of the specific reporting requirements applicable to deregulated ILECs and Exempt Carriers on the commission's website.

The commission agrees to the specific modifications proposed by AT&T Texas. The commission agrees these modifications are consistent with the changes in reporting requirements made to PURA by Senate Bill 259. The commission therefore has revised subsection (l)(1) and (l)(2) as proposed by AT&T Texas.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.154, which precludes the commission from adopting a rule or regulatory practice that would impose a greater burden on a nondominant telecommunications utility than is imposed on a holder of a certificate of convenience and necessity serving the same area or on certain deregulated incumbent local exchange carriers (ILECs), and PURA §65.102, which specifies the requirements applicable to a deregulated ILEC that holds a COA.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.154, and 65.102.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) Scope and purpose. This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

(1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.

(2) Annual Report--A report that includes but is not limited to the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, emergency contacts (primary and secondary) and migration contacts (operation and policy) which is submitted to the commission on an annual basis. Each provided contact shall include the contact's company title.

(3) Control--The term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(4) Executive officer--When used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(5) Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(6) Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(7) Person--Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(8) Principal--A person or member of a group of persons that controls the person in question.

(9) Shareholder--The term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) Ineligibility for certification.

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).

(3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:

(A) CCN for the same territory; or

(B) COA for the same territory.

(d) Application for COA or SPCOA certification.

(1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A per-

son who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.

(2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.

(4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.

(6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.

(e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.

(f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.

(3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant shall include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered *(e.g.,* corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(i) Amendment of a COA or SPCOA Certificate.

(1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

(B) Change the geographic scope of the COA and SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services.

(i) A deregulated company holding a certificate of operating authority or an Exempt Carrier shall provide the information in subclauses (I) - (III) of this clause for the discontinuation of its service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or an Exempt Carrier.

(I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;

(II) A statement regarding the disposition of customer credits and deposits; and

(III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).

(ii) For all other carriers, such an application is subject to subsections (m) and (n) of this section.

(2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.

(3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.

(4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) Non-use of certificates. Applicants shall use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) Renewal of certificates. Each COA and SPCOA holder is required to file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file, the following year, a renewal of its certification.

(1) The certification renewal will consist of:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.

(2) The certification renewal shall be filed on or before June 1, 2014 and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1st of each reporting year to comply with paragraph (1) of this subsection. The commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1st. The first notice will be sent on or before July 1st, the second notice will be sent on or before August 1st, and the third notice will be sent on or before September 1st. Failure to send any of these notices by the commission or failure to receive any of these notices by a COA or SPCOA holder shall not affect the requirement to renew a certificate under this section by October 1st of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1st of each reporting year will automatically render the certificate of the COA or SPCOA invalid.

(5) COA or SPCOA holders that are found to be invalid are no longer in compliance with PURA §54.001.

(6) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(7) A certificate holder whose COA or SPCOA certificate is no longer valid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) Reporting Requirements.

(1) Each COA or SPCOA holder must provide and maintain accurate contact information using the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder shall submit the required information in the manner established by the commission.

(2) The applicable annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.

(4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy *(e.g.,* Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.

(5) A certificate holder shall file all reports to the extent required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(m) Standards for discontinuation of service and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if commission authorization to cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders). This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services

from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).

(A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter shall give customers a minimum of 61 days of notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.

(C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

(2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations and relinquish its certificate, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.

(n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.

(1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, consisting of the following information:

(A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.

(B) The notification letter shall give customers a minimum of 61 days of notice of discontinuation of optional services.

(3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.

(4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.

(o) Revocation or suspension. A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;

(2) Providing false or misleading information to the commission;

(3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;

(5) Failure to meet commission reporting requirements to the extent required by PURA and this title;

(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;

(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;

(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;

(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;

(13) Failure to serve as a provider of last resort if required to do so by the commission;

(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;

(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and

(16) Violations of PURA or any commission rule or order applicable to the certificate 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 24, 2014.

TRD-201404968
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 13, 2014
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For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §§216.1, 216.5, 216.6

Introduction. The Texas Board of Nursing (Board) adopts amendments to Chapter 216, §§216.1, 216.5, and 216.6, concerning Definitions, Additional Criteria for Specific Continuing Education Programs, and Activities that are not Acceptable as Continuing Education. The amendments are adopted without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7530) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.151, 301.152, and 301.303 - 301.307 and effectuate the provisions of Senate Bill (SB) 1058 and SB 1191 enacted during the 83rd Legislative Session. The amendments also allow an individual to receive continuing education credit for authoring an article published in a nursing periodical or developing and presenting a continuing nursing education (CNE) program that would qualify for credit under the Board rules provided it is at least two hours in length.

How the Sections Will Function.

The adopted amendment to §216.1(6) adds a phrase to the definition "authorship" to further clarify that publication refers to manuscripts published in a nursing or health-related textbook or journal.

The adopted amendment to §216.1(16) adds a new term "program development and presentation" and renumbers the section accordingly.

The adopted amendment to §216.5 adds a new subsection that allows individuals to receive continuing education (CE) credit for the development and presentation of a program that is approved by one of the credentialing agencies or providers approved by the Board and for the development and publication of a manuscript related to nursing and health care. The adopted amendment to §216.5 also adds provisions relating to auditing an individual who claims these credits.

The adopted amendment to §216.6 removes reference to "authorship" from the list of activities that are not acceptable as continuing education.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.151, 301.152, and 301.303 - 301.307.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) defines "advanced practice registered nurse" as a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse." Section 301.152(b) authorizes the board to adopt rules to: (1) license a registered nurse as an advanced practice registered nurse; (2) establish: (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054; (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054 on the receipt of evidence of completing the specialized education and training requirement under paragraph (A); and (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under paragraph (B); and (3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under §301.301. Section 301.152(c) requires the rules adopted under subsection (b)(2) must: (1) require com-

pletion of pharmacology and related pathophysiology education for initial approval; and (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under §301.303. Section 301.152(d) provides that the signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.

Section 301.303(a) provides that the board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (1) completion of targeted continuing education programs; and (2) consideration of a license holder's professional portfolio, including certifications held by the license holder. Section 301.303(b) provides that the board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period. Section 301.303(c) provides that if the board requires participation in continuing education programs as a condition of license renewal, the board by rule shall establish a system for the approval of programs and providers of continuing education. Section 301.303(e) authorizes the board to adopt other rules as necessary to implement this section. Section 301.303(f) states that the board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers. Section 301.303(g) authorizes the board by rule to establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (1) the nurses who are required to complete the targeted continuing education program; (2) the type of courses that satisfy the targeted continuing education requirement; (3) the time in which a nurse is required to complete the targeted continuing education; (4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (5) any other requirement considered necessary by the board.

Section 301.304(a) states that as part of the continuing education requirements under §301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases. Section 301.304(b) authorizes the board to adopt rules to identify the license holders who are encouraged to complete continuing education under §301.304(a) and establish the content of that continuing education. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal. Section 301.304(c) states if relevant, the board shall consider a license holder's participation in a continuing education course approved under §301.304(b) if: (1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and (2) the license holder completed the course not more than two years before the start of the investigation. Section 301.304(d) authorizes the board to adopt other rules to implement this section, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.305(a) states that as part of a continuing competency program under §301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period. Section 301.305(b) authorizes the board to adopt rules implementing the requirement under §301.305(a) in accordance with the guidelines for targeted continuing education under §301.303(g). Section 301.305(c) states the board may not require a license holder to complete more than four hours of continuing education under this section.

Section 301.306(a) provides that as part of continuing education requirements under §301.303, a license holder who is employed to work in an emergency room setting and who is required under board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than: (1) September 1, 2008; or (2) the second anniversary of the initial issuance of a license under this chapter to the license holder. Section 301.306(b) states that the continuing education required under §301.306(a) must be part of a program approved under §301.303(c). Section 301.306(c) authorizes the board to adopt rules to identify the license holders who are required to complete continuing education under §301.306(a) and to establish the content of that continuing education. The board may adopt other rules to implement this section, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.307(a) states as part of a continuing competency program under §301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations. Section 301.307(b) authorizes the board to adopt rules implementing the requirement under subsection (a) in accordance with the guidelines for targeted continuing education under §301.303(g). Section 301.307(c) states the board may not require a license holder to complete more than six hours of continuing education under this section.

Cross Reference to Statute. The following statutes are affected by this adoption: the Occupations Code §§301.151, 301.152, and 301.303 - 301.307.

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 21, 2014.

TRD-201404920
James W. Johnston
General Counsel
Texas Board of Nursing
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Proposal publication date: September 19, 2014
For further information, please call: (512) 305-6821

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Texas Department of Insurance adopts amendments to 28 TAC Chapter 5, Subchapter M, Division 4, §5.9310; Division 5, §5.9320; Division 7, §§5.9340 - 5.9342; Division 8, §§5.9350 - 5.9352; Division 9, §5.9355 and §5.9357; Division 10, §5.9360 and §5.9361; and new Division 5, §5.9321 and §5.9322, and new Division 6, §§5.9330 - 5.9337, concerning filing requirements. These amendments and new sections implement HB 1951, 82nd Legislature, 1st Called Session, 2011. Sections 5.9310, 5.9320, 5.9322, 5.9332, 5.9334, and 5.9337 are adopted with changes to the proposed text published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3665).

REASONED JUSTIFICATION. The amendments and new sections conform the rules to revisions HB 1951 made to Insurance Code §2251.101, which require TDI to prescribe the process by which it will request supplementary rating information and supporting information under that section, including setting the number of times TDI may request information and the types of information TDI may request when reviewing a rate filing. The amendments and new sections also improve clarity and transparency and adjust the rules for compatibility with the System for Electronic Rate and Form Filing (SERFF). In conjunction with this adoption, TDI also adopts the repeal of existing Division 6, §§5.9330 - 5.9332 in a separate order, also published in this issue of the *Texas Register.*

This order summarizes the comments TDI received on the proposed rules. In response to comments on the published proposal, TDI has adopted changes to the proposed text of §§5.9310, 5.9320, 5.9322, 5.9332, 5.9334, and 5.9337. TDI has adopted nonsubstantive changes to the proposed text in §§5.9320, 5.9332, and 5.9334 to improve clarity. The changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The following explains adopted §§5.9310, 5.9320 - 5.9322, 5.9330 - 5.9337, 5.9340 - 5.9342, 5.9350 - 5.9352, 5.9355, 5.9357, and 5.9360 - 5.9361 in greater detail.

Section 5.9310. Property and Casualty Transmittal Information and General Filing Requirements. This section replaces the TDI Property and Casualty Filing Transmittal form with general transmittal information requirements. This transmittal information consists of the company and group names and company and group NAIC numbers, whether the filing is new or replaces an existing filing, the line of insurance, the type of filing, the proposed effective date, and contact information. If applicable, the required transmittal information also includes the TDI file number of the replaced filing, and the TDI file number of any associated or companion filings of a different filing type. For example, the transmittal information for a rate filing must include the TDI file number of an associated form filing. The section removes the definition of "line of insurance" to accommodate SERFF filings, which use the NAIC Uniform Property and Casualty Product Coding Matrix.

Amended §5.9310 also contains new language that defines multi-peril insurance as "policies and rates for two or more lines of insurance that are subject to regulation under Insurance Code Chapters 2251 and 2301." TDI adds this language to the section because Insurance Code Chapters 2251 and 2301 refer to multi-peril insurance but do not define it.

Amended §5.9310(e) contains new language regarding use of the word "copyright". This section clarifies that marking documents "copyright" will not affect how TDI will treat their availability or openness under the relevant statute. Rate filings under Insurance Code Chapter 2251 that are marked "copyright" will be subject to Government Code Chapter 552, while form filings under Insurance Code Chapter 2301 and rate filings under Chapters 2053 and 3502 marked "copyright" will be open for public inspection. The intent of the new language is to give filers notice as to what is subject to public disclosure, and the possible public disclosure methods. TDI will continue to comply with copyright law in making documents open or available for public disclosure.

TDI makes changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice, nor do they raise new issues.

As a result of comments, TDI changed proposed §5.9310(c)(6) to clarify that each filing's transmittal information must specify the line of insurance using either a type of insurance and sub-type of insurance listed in the NAIC Uniform Property and Casualty Product Coding Matrix, or a line of insurance listed in the Filings Made Easy Guide. Insurers not filing through SERFF may use the latter.

Section 5.9320. Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings. This section specifies the filing requirements for property and casualty policy form, endorsement, and manual rule filings submitted under Insurance Code Chapters 2052, 2251, 2301, and 3502. The filing requirements in §5.9320 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements).

Section 5.9320(f) consists of new language on public information. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents, as contemplated by Government Code §552.137, to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

Section 5.9320(g) amends language regarding an incomplete filing under Division 5 and describes how TDI will process incomplete filings.

Section 5.9320(h) and (i) contain new language to make the rule consistent with TDI's transition to SERFF. TDI will no longer accept filings submitted under Division 5 with rate filings or any other filings submitted under Subchapter M. TDI will no longer accept manual rule filings with any other filings submitted under Division 5.

TDI makes changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice, nor do they raise new issues.

As a result of comments, adopted §5.9320(c)(3)(B) requires all policy forms and endorsements contained in personal automobile and residential property insurance filings to meet the statutory requirements for plain language in policies as set forth by Commissioner's Order No. 92-0573, or any superseding commissioner's orders.

As a result of comments, TDI makes nonsubstantive, clarifying changes to proposed §5.9320(c)(3)(A).

Section 5.9321. Request for Deemer Period Waiver. This section allows insurers to waive the time periods in Insurance Code §2301.006, after which a form is deemed approved if the commissioner has not disapproved it.

Section 5.9322. Insurers Providing Coverage through a Purchasing Group. This section provides that insurers that provide coverage to participants through a purchasing group must comply with the filing requirements in Division 5. As a result of comments, this section applies to policies effective on or after September 1, 2015. This section also reminds insurers writing commercial group property insurance that they must comply with Insurance Code §2171.003 and file a policy form with the commissioner before using the policy form for a group of businesses or an association in which each member of the group or association is not a large risk.

Section 5.9330. Purpose. Section 5.9330 sets out the purpose of Division 6, which is to specify requirements for rate filings under Insurance Code Chapters 2053, 2251, and 3502. This division governs rates and related concepts including prospective loss costs, loss cost multipliers, rating manuals, other supplementary rating information, and information concerning fees or other amounts charged or collected by an insurer in connection with a policy. Section 5.9330 contains nonsubstantive changes to conform the section to statutory recodifications.

Section 5.9331. Definitions. Section 5.9331 defines certain terms used in Division 6.

Because Insurance Code §2251.101(b)(1)(C) requires the commissioner to adopt rules on fee information included in filings, §5.9331 contains new language defining fees.

"Other amounts" in the definition of fees refers to amounts such as recoveries for assessments under Insurance Code Chapter 2007 for rural fire protection or fees for the Automobile Burglary and Theft Prevention Authority. Insurers must file these amounts or fees so that the commissioner may consider them, because they affect insurance rates and the amounts charged to policyholders.

Section 5.9331(4) defines and gives examples of a new type of rate filing called the "short track filing." Short track filings are those for which TDI requires limited supporting information to determine compliance with Texas statutes and rules. TDI will maintain a list of qualifying types of rate filings on its website. Section 5.9334(g) lists information required in short track filings.

Section 5.9332. Categories of Supporting Information. As Insurance Code §2251.101(b)(1)(A) requires, §5.9332 determines categories of supporting information. Some of the categories appear in the current §5.9332 and others are new. The rule does not require each category for all filings; instead, §5.9334 details when each category is required.

The categories of supporting information in both the current rule and the adopted rule are "actuarial support," "rate change information," "historical premium and loss information," "historical and projected expense information," "loss cost information for reference filings," and "profit provision information." These categories are in paragraphs (3), (7), (8), (9), (10), and (11) of §5.9332 of the proposed rule. Some of the categories of supporting information in the adopted rule differ substantively from the current rule. For example, new language in the "actuarial support" category describes three subcategories - rate indications, relativity analysis, and other actuarial support. The "rate change information" category now specifies a six-year rate change history. New language in the "historical and projected expense information" category addresses additional expense provisions, such as the net cost of reinsurance or an expense offset from fee income. "Loss cost information for reference filings" now includes supporting documentation for loss cost modification factors other than 1.00.

The adopted §5.9332 contains categories of supporting information that are not listed as distinct categories of supporting information in the current §5.9332, but which TDI has requested or filers have included as supporting documentation with filings under the current rule. These categories are "actuarial memorandum," "SERFF rate data," "policyholder impact information," "average rate change by county," "side-by-side comparison," "mark up," "sample premium impacts by selected ZIP codes," and "other information" in paragraphs (2), (4), (5), (6), (12), (13), (14), and (16) in the adopted rule, respectively. The "SERFF rate data" category applies to all filers, whether or not they use SERFF.

The adopted §5.9332 contains two new categories of supporting information, "rate filing checklists" and "rate filing templates," which are in paragraphs (1) and (15) of this section of the adopted rule. The checklists and the template should provide clarity to filers. Insurers must submit a rate filing checklist with each filing. Use of rate filing templates, which TDI will make available to insurers, is optional; but they are a convenient way for insurers to file certain supporting information.

TDI makes changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice, nor do they raise new issues.

As a result of comments, the second sentence of adopted §5.9332 provides that not every rate filing requires every category of supporting information.

As a result of comments, adopted §5.9332(11) is changed to clarify that profit provision information must include support for the assumptions used to arrive at the profit provisions.

As a result of comments, adopted §5.9332(12) is changed to include rating rules.

Section 5.9333. Categories of Supplementary Rating Information. As Insurance Code §2251.101(b)(1)(A) requires, adopted §5.9333 determines categories of supplementary rating information. The section elaborates on the definition of supplementary rating information found in Insurance Code §2251.002(7), so as to name some of the kinds of "similar information" insurers may use to determine the applicable premium for an insured. This information includes rating algorithms and rating plans. Adopted §5.9333(5) makes clear that "classification system" refers to criteria used to place individual risks into groupings for rating purposes, regardless of whether the groupings are called tiers, categories, or some other term.

Section 5.9334. Requirements for Rate Filing Submissions. This section describes submission requirements for workers' compensation rate filings, rate filings for insurance governed by In-

surance Code Chapter 2251, and mortgage guaranty insurance rate filings.

Section 5.9334(b) specifies that for rates governed by Chapter 2251, insurers must file any new or revised rates, rating manuals, rating rules, all other supplementary rating information, fees, and all other information required under the section. This information may be used on and after the date of the filing. Subsection (b) has new language to conform the rule to new language in Insurance Code §2251.101(a).

Section 5.9334(e) contains a revised description of the memorandum that must accompany each filing. The filing memorandum must explain the purpose of the filing, describe each change the filing would make, and summarize any related form or endorsement filings.

Section 5.9334(f) describes which categories of supporting information, defined in §5.9332, insurers must include with which filings under Division 6. The goal of subsection (f) is to aid insurers in filing sufficient supporting information for TDI to determine whether a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply. Section 5.9334(f)(7) requires all owner-occupied homeowner and personal automobile filings to include policyholder impact information if the filings will result in minimum and maximum policyholder impacts that differ by more than 5 percentage points. TDI does not intend to discourage any filings with this requirement; but TDI does intend to get information on how many policyholders the rate change will affect.

Insurers submitting short track filings under §5.9334(g) or who qualify for the reduced filing requirements under Division 9 will not need to file all the supporting information required under Division 6.

Section 5.9334(g) describes which categories of supporting information insurers must file with short track filings, which are defined in §5.9331(b)(4).

Section 5.9334(h) requires that filings be legible, accurate, internally consistent, and complete. Paragraphs (1) - (5) list specific standards that, when followed, will facilitate TDI's review of the filings.

Subsection (i) addresses public information received with a filing. Filers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information, including email addresses, disclosed in a filing. Filers submitting through SERFF also certify that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information within SERFF from public disclosure. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

For documents filed under Insurance Code Chapter 2251, insurers must mark each page of documents they consider confidential and excepted from disclosure under Government Code Chapter 552. TDI does not consider loss cost multipliers, rates, rating factors and relativities, rating manuals, fees, and summary information about the rate filing as excepted from disclosure under Government Code Chapter 552. Subsection (i) also lists categories of supporting information under Chapter 2251 that will not be considered excepted from disclosure under Government Code Chapter 552. Filings under Insurance Code Chapters 2053 and 3502 will be open for public inspection. TDI will comply with copyright law in making documents open or available for public disclosure.

Subsection (k) directs insurers to the Filings Made Easy Guide on TDI's website for rate filing templates or exhibits they may use to display supporting information.

Subsection (l) contains new language to make the rule consistent with TDI's transition to SERFF. TDI will no longer accept filings submitted under Division 6 with form filings or any other filings submitted under Subchapter M.

TDI makes changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice, nor do they raise new issues.

As a result of comments, adopted §5.9334(b) references "other information required by this section," to encompass categories of supporting information the section requires for certain filings.

As a result of comments, TDI makes nonsubstantive changes to adopted §5.9334(f)(6)(C) for clarity.

Section 5.9335. Requests for Information. In compliance with Insurance Code §2251.101(b)(2), §5.9335 prescribes the process by which TDI may request additional supplementary rating information and supporting information. Section 5.9335(b) defines a fully responsive answer to a request.

Section 5.9335(c) explains that additional information may include a comprehensive set of rates, rating manuals, rating rules, fees, and all other supplementary rating information when an insurer has filed a revision to previously filed rates, rating manuals, rating rules, fees, and all other supplementary rating information. This will improve TDI's understanding of the revision by enabling comparison of the revision with the comprehensive set of rates.

Section 5.9335(d) limits to five the number of times TDI may request additional supplementary rating information and limits to five the number of times TDI may request additional supporting information. Follow-up requests for information necessitated by an incomplete response, requests for clarification of an unclear response, and requests for information that would have been included in a complete filing will not count against the limits. Section 5.9335(e) gives examples of requests necessary to make a filing complete.

Section 5.9336. Request for Information Limit Waiver. This section enables an insurer to waive the limits §5.9335 places on the number of times TDI may request additional supplementary rating information and supporting information.

Section 5.9337. Insurers Providing Coverage through a Purchasing Group. This section provides that insurers providing coverage to participants through a purchasing group must comply with the filing requirements in Division 6. As a result of comments, this section applies to policies effective on or after September 1, 2015.

Section 5.9340. Purpose. This section is amended to specify underwriting guideline filing requirements under Insurance Code §38.003. In addition, nonsubstantive amendments conform this section to statutory recodifications.

Section 5.9341. Definitions. Nonsubstantive amendments conform this section to statutory recodifications.

Section 5.9342. Filing Requirements. TDI amends this section to specify underwriting guideline filing requirements under

Insurance Code §38.003, which insurers must follow only if TDI requests underwriting guidelines under §38.003. Amendments to this section conform the filing requirements for underwriting guidelines for personal automobile, residential property, and workers' compensation insurance to the changes in Division 4. The filing transmittal information required in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements) must accompany each underwriting guideline filing or update to underwriting guideline filings. The amended section also states that all underwriting guideline filings must relate to only one line of insurance.

Section 5.9350. Purpose. Nonsubstantive amendments conform this section to statutory recodifications.

Section 5.9351. Definitions. Nonsubstantive amendments conform this section to statutory recodifications and current agency style.

Section 5.9352. Filing Requirements. Amendments to this section conform the filing requirements for credit scoring models to the changes in Division 4. The amendments in subsection (b) impose the same requirements on insurers that file credit scoring models themselves and those that reference a credit scoring model filed by another entity on behalf of an insurer. Subsection (b)(2) adds tiering as a use for credit scoring. This reflects the increased use of tiering in the Texas market. Subsection (b)(3) requires the completion of a questionnaire to verify that the insurer's use of the model complies with Insurance Code Chapter 559.

Subsection (c) describes how TDI will treat information received with a filing. Insurers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information included with a filing. The filer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Filers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

New subsections (e) and (f) state that all filings for credit scoring models must relate to only one line of insurance and that the credit scoring model must be refiled before it may be used for another line of insurance that was not identified in the original filing.

Consistent with TDI's use of SERFF, amended §5.9352 no longer addresses credit scoring model filings by insurer groups or groups of affiliated insurers.

Section 5.9355. Purpose. Nonsubstantive amendments conform this section to statutory recodifications and changes to section and division names in this title.

Section 5.9357. Filing Requirements. Amended §5.9357 lists the filing requirements for the three classes of insurers who qualify for reduced rate filing requirements under Insurance Code Chapter 2251, Subchapters E and F. The amendments conform §5.9357 to Division 6 (relating to Filings Made Easy - Requirements for Rate Filings).

Section 5.9357(a) and (c) contain nonsubstantive amendments to the provisions on county mutual insurers writing only nonstandard personal automobile insurance and insurers writing residential property insurance in underserved areas. Both must file in compliance with Division 6, but need not provide some of the supporting information required in §5.9334(f).

Amended §5.9357(d) specifies that insurers submitting a filing under Division 9 must still comply with 28 TAC §5.9941 and §5.9960 (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Rating Territory Requirements under Insurance Code §2253.001). The amendments remove a redundant sentence but do not change this requirement. Amended §5.9357(d) also specifies that §5.9335 (relating to Requests for Information) governs additional requests for information.

Consistent with TDI's use of SERFF, the amended section no longer addresses combined filings.

Amended §5.9357(e) describes how TDI will treat information received with a filing. Insurers submitting through SERFF affirmatively consent, as contemplated by Government Code §552.137, to the release of any contact information included with a filing. The insurer also certifies that each person associated with an email address contained in the filing has affirmatively consented to the release and disclosure of that email address. TDI will make filings submitted through SERFF available for public disclosure using SERFF. TDI cannot restrict contact information from public disclosure within SERFF. Insurers who do not consent to the release and disclosure of contact information, or who cannot make the certification the rule requires, should not file using SERFF.

New §5.9357(f) states that insurers may obtain the certification forms in the Filings Made Easy Guide.

Section 5.9360. Purpose. Nonsubstantive amendments conform this section to statutory recodifications and changes in section names in this title.

Section 5.9361. Additional Requirements. Nonsubstantive amendments conform this section to statutory recodifications and changes in section names in this title.

The department has made other changes to text for clarity and consistency with agency style.

HOW THE SECTIONS WILL FUNCTION.

Section 5.9310. Property and Casualty Transmittal Information and General Filing Requirements. This section specifies the general filing requirements for property and casualty form, endorsement, rate, underwriting guideline, and credit scoring model filings and the transmittal information each filing must contain. Subsequent sections contain additional requirements depending on the filing.

Section 5.9320. Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings. This section specifies the filing requirements for property and casualty policy form, endorsement, and manual rule filings submitted under Insurance Code Chapters 2052, 2251, 2301, and 3502. The section also addresses public information as it relates to these filings. The filing requirements in §5.9320 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements).

Section 5.9321. Request for Deemer Period Waiver. This section allows insurers to waive the time periods in Insurance Code §2301.006, after which a form is deemed approved if the commissioner has not disapproved it.

Section 5.9322. Insurers Providing Coverage Through a Purchasing Group. This section provides that, for policies effective on and after September 1, 2015, insurers that provide coverage to participants in a purchasing group must comply with the filing requirements in Division 5. This section also reminds insurers writing commercial group property insurance under Insurance Code §2171.002 that they must comply with Insurance Code §2171.003.

Section 5.9330. Purpose. Section 5.9330 sets out the purpose of Division 6, which is to specify requirements for rate filings under Insurance Code Chapters 2053, 2251, and 3502. The section also briefly sets out the types of information that may be included under the term rate filing.

Section 5.9331. Definitions. Section 5.9331 defines certain terms used in Division 6.

Section 5.9332. Categories of Supporting Information. Section 5.9332 determines categories of supporting information. The rule does not require each category for all filings; instead, §5.9334 details when each category is required.

Section 5.9333. Categories of Supplementary Rating Information. Section 5.9333 determines categories of supplementary rating information.

Section 5.9334. Requirements for Rate Filing Submissions. Section 5.9334 describes submission requirements for workers' compensation rate filings, rate filings for insurance governed by Insurance Code Chapter 2251, and mortgage guaranty insurance rate filings. The section also addresses public information as it relates to these filings. The filing requirements in §5.9334 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements).

Section 5.9335. Requests for Information. Section 5.9335 prescribes the process by which TDI may request additional supplementary rating information and supporting information.

Section 5.9336. Request for Information Limit Waiver. This section enables an insurer to waive the limits §5.9335 places on the number of times TDI may request additional supplementary rating information and supporting information.

Section 5.9337. Insurers Providing Coverage through a Purchasing Group. This section provides that, for policies effective on and after September 1, 2015, insurers providing coverage to participants through a purchasing group must comply with the filing requirements in Division 6.

Section 5.9340. Purpose. This section sets out the purpose of Division 7: to specify underwriting guideline filing requirements under Insurance Code §38.002 and §38.003, and Chapter 2053.

Section 5.9341. Definitions. This section references Insurance Code §38.002 and §38.003 and Chapter 2053, and §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements), which define terms used in Division 7.

Section 5.9342. Filing Requirements. This section sets out the requirements for underwriting guideline filings submitted under Insurance Code §38.002 and §38.003, and Chapter 2053. The filing requirements in §5.9342 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements).

Section 5.9350. Purpose. This section sets out the purpose of Division 8: to specify filing requirements for insurers using credit scoring models.

Section 5.9351. Definitions. This section defines the term credit scoring model and references Insurance Code Chapter 559 and §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements), which define terms used in Division 8.

Section 5.9352. Filing Requirements. This section sets out the filing requirements for insurers using credit scoring models. The filing requirements in §5.9352 are in addition to those in §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements). The section also addresses public information as it relates to credit scoring model filings.

Section 5.9355. Purpose. This section sets out the purpose of Division 9: to specify requirements for insurers who qualify for reduced rate filing requirements under Insurance Code Chapter 2251, Subchapters E or F.

Section 5.9357. Filing Requirements. This section specifies the filing requirements for county mutual insurers writing nonstandard personal automobile insurance, insurers writing personal automobile insurance, and insurers writing residential property insurance in underserved areas who qualify for reduced rate filing requirements under Insurance Code Chapter 2251, Subchapters E or F. Insurers qualifying under §5.9357 must still comply with the requirements of §5.9310 (relating to Property and Casualty Transmittal Information and General Filing Requirements). Section 5.9357 also addresses public information as it relates to reduced filing requirements.

Section 5.9360. Purpose. This section sets out the purpose of Division 10: to specify additional filing requirements for certain county mutual insurance companies and appointed managing general agents, districts, or local chapter programs of certain county mutual insurance companies. The section also identifies the county mutual insurance companies and appointed managing general agents, districts, or local chapter programs to which Division 10 applies.

Section 5.9361. Additional Requirements. This section specifies additional filing requirements for certain county mutual insurance companies and appointed managing general agents, districts, or local chapter programs of certain county mutual insurance companies.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General Comments

Comment: A commenter writes that the proposed rules do not require insurers to file rate information that is specific enough to determine whether the rates meet statutory requirements. The commenter writes that under existing rules, insurers may submit a rate filing and "implement rates without including information any reasonable actuary would believe is necessary to provide sufficient justification."

Response: TDI appreciates the comment. The adopted rules are intended to enable TDI to gather sufficient information to enable TDI to determine whether a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply, while not unduly burdening insurers. Under Insurance Code §2251.101, the commissioner must by rule determine the categories of supporting information and supplementary rating information required in rate

filings. The adopted rules contain some new categories of supporting information and expand on or more clearly define existing categories. The adopted rules also separately define some categories of supporting information that previously were not listed as distinct categories. At the same time, however, not every rate filing requires every category of supporting information and supplementary rating information.

The adopted rules explicitly require that each rate filing be legible and that insurers must respond to requests for information in sufficient detail to allow a qualified actuary to understand the response. Section 5.9334(a) - (g) details requirements for different rate filings. All rate filings require the rate filing checklist defined in §5.9332(1), which is intended to assist insurers in attaching all the information a particular filing requires.

Comment: A commenter expresses concern that there is a disincentive for insurers to comply with filing rules because money collected on a rate in effect while TDI is evaluating that rate is not subject to refund if the rate is eventually found to be excessive or discriminatory. The commenter states this makes it important for rules to clearly establish what information insurers must include in a filing.

Response: The calculation of refunds is determined by statute and is outside the scope of these rules. The adopted rules are designed to enable TDI to gather sufficient information to determine whether rates are excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply, while doing so in a targeted way that does not unduly burden insurers.

Comments by Section

Comment on §5.9310(b): A commenter writes that the definition of "line of insurance" should not be removed from the rules because while companies filing through SERFF use the NAIC Uniform Property and Casualty Product Coding Matrix, not all companies use SERFF. The lines of insurance listed in the definition which TDI proposes removing are useful to companies that do not file with SERFF.

Response: TDI agrees that insurers that do not file through SERFF should be able to specify the line of insurance without using the NAIC Uniform Property and Casualty Product Coding Matrix, which SERFF requires. As a result of this comment, adopted §5.9310(c)(6) states that insurers filing through SERFF must use the appropriate type of insurance and sub-type of insurance listed in the NAIC Uniform Property and Casualty Product Coding Matrix. Insurers not filing through SERFF must use the appropriate line of insurance listed in the Filings Made Easy Guide.

Comment on §5.9310(e): A commenter suggests adding to this new subsection on copyright language stating that TDI will continue to comply with applicable copyright law before making documents open or available for public disclosure.

Response: TDI declines to make the suggested change. As stated in the introduction of this adoption order, TDI will comply with applicable copyright law. It is not practical for an agency's rules to list all of the laws with which the agency complies.

Comment on §5.9320(c)(2): A commenter writes that proposed §5.9320(c)(2), regarding filing requirements specific to new policy forms or endorsements for use with new products, should be changed to require insurers to submit either a summary of all policy provisions or a coverage comparison with a similar, previously approved policy form or endorsement. The commenter writes that requiring either the summary or comparison up front, instead of having TDI request them, will prevent the introduction of forms or endorsements with unacceptable provisions and delays in the approval process.

Response: While TDI appreciates the concerns expressed in the comment, TDI declines to make the suggested changes. Some new policy forms and endorsements for use with new products do not require the summary of all policy provisions or the coverage comparison described in §5.9320(c)(2)(A)(i) and (ii), but can be fully explained in the memorandum required under §5.9320(c)(1)(B)(iii). Retaining the existing language will allow staff to require a comparative evaluation when necessary, while not requiring insurers to provide information that staff may not need to complete the review.

Comment on §5.9320(c)(3): A commenter writes that §5.9320(c)(3) should not allow insurers to indefinitely add the required statutory or regulatory provisions to their policy forms by attaching amendatory endorsements. The commenter writes that amendatory endorsements make policies confusing for consumers. The commenter gives examples of amendatory endorsements that add to policies provisions that have been in effect for over 10 years. The commenter suggests revising §5.9320(c)(3) to require the incorporation of "the statutory and regulatory provisions contained in a Texas amendatory endorsement into the policy every three calendar years."

Response: TDI appreciates the suggestion, and will consider addressing it in a separate rulemaking.

Comment on §5.9320(c)(3)(A): A commenter writes that the first sentence in §5.9320(c)(3)(A) should have the words "if any" added to it, so that it would read: "Filings for new and amended policy forms or endorsements must include all provisions, if any, required by statute, administrative rule, or commissioner's order." The commenter also writes that the second sentence in §5.9320(c)(3)(A) should have the word "order" added to it, so that it would read: "Filers may add the required statutory, order, or administrative rule provisions to a policy form by a Texas amendatory endorsement." The commenter writes that this change would make the second sentence consistent with the first sentence, which requires filings for new and amended policy forms and endorsements to include all provisions required by "statute, administrative rule, or commissioner's order."

Response: TDI declines to accept the first suggestion in the comment. The addition of "if any" to the first sentence in §5.9320(c)(3)(A) is unnecessary as it would not change the meaning of the sentence.

As a result of the second suggestion in the comment, TDI changes the second sentence in §5.9320(c)(3)(A) to read: "Filers may add the required provisions to a policy form by a Texas amendatory endorsement."

Comment on §5.9320(c)(3)(B): A commenter writes that the rules should require that policy forms be in plain language and not reference an order from 1992. The commenter states that, "There have been a number of law changes since the commissioner's order."

Response: The chapters referenced in Commissioner's Order No. 92-0573 have been recodified, but not substantively changed since the order was issued. The order is still accurate and appears on TDI's website. Insurance Code §2301.053 requires policy forms to be in plain language, with plain language defined as achieving a score set by the commissioner on a reading ease test the commissioner has selected, or conforming

to the language requirements in a NAIC model act, if that is the criterion the commissioner has selected. Commissioner's Order No. 92-0573 contains the commissioner's selections required by Insurance Code §2301.053.

As a result of the comment, however, §5.9320(c)(3)(B) has been changed to read: "All policy forms and endorsements contained in personal automobile and residential property insurance filings must meet the statutory requirements for plain language in policies as set forth by Commissioner's Order No. 92-0573, or any superseding order."

Comment on §5.9320(g)(1): A commenter writes that instead of considering a filing incomplete if it "does not comply with the filing requirements" in §5.9320(c), (d), and (e), TDI should consider a filing incomplete if it does not "include all information required to be filed." The commenter states that TDI reviewers have used the phrase "does not comply" subjectively, when all information required has in fact been filed. The commenter states that subjective criteria should not be used to determine whether a filing is complete.

Response: TDI declines to accept the suggestion. The phrase the commenter requests, "include all information required to be filed," does not differ from the phrase, "does not comply with the filing requirements." TDI staff's determination that a filing is incomplete is objective and based on the statutory and regulatory requirements set out in the applicable statutes and these rules.

Comment on §5.9322: A commenter writes that requiring insurers that provide coverage to participants in a risk purchasing group to comply with Division 5 requirements is a major position change for TDI and that the 1981 and 1986 federal statutes on risk purchasing groups did not contemplate the requirement. In 1987, State Board of Insurance member David Thornberry testified on the bill that would be codified as Article 21.54, now Chapter 2201, that if the bill were passed, business written through RPGs "would not be written on regulated forms and rates."

The commenter writes that in 2004 TDI determined it could regulate rates by making periodic requests under §38.001.

The commenter asks how the rule would be applied to out of state purchasing groups operating in Texas, which may issue policy forms outside of Texas. The group may receive a policy and the members may receive certificates of insurance. The commenter asks whether both the master group policy and certificates need to be filed for approval in Texas.

Response: TDI declines to remove the requirement, but the adopted rule applies it to policies effective on and after September 1, 2015.

Federal courts have found that the 1981 and 1986 federal statutes on risk purchasing groups did not exempt insurers providing coverage to members of risk purchasing groups from all state policy form and rate regulation. The Second Circuit found that "both the language and the legislative history of the [Risk Retention Act] indicate that Congress did not intend to preempt all such regulation." *Insurance Co. of Pennsylvania v. Corcoran,* 850 F. 2d 88, 89 (2d Cir. N.Y. 1988).

Texas law does not exempt insurers providing coverage to members of risk purchasing groups from all rate and form filing requirements; the only exemption with respect to rate and form filing requirements appears in Insurance Code §2201.254. Insurance Code §2201.254(b) exempts insurers from any Texas law that prohibits providing certain advantages to purchasing groups or their members with respect to rates and forms; it does not exempt the insurers from rate and form regulation altogether. While the commenter correctly cites the legislative testimony of State Board of Insurance member David Thornberry, the testimony is not determinative because the statute is not ambiguous. When the text of a statute is clear, courts use the language in the statute to determine the legislature's intent. *LTTS Charter School, Inc. v. C2 Constr., Inc.,* 54 Tex. Sup. Ct. J. 1176, (Tex. 2011).

As with other authorized group property and casualty products, the adopted rules apply to those policies covering risks in Texas.

Most states require insurers providing coverage to participants in a risk purchasing group to comply with certain rate and form filing requirements. Requiring insurers to comply with the filing requirements of Division 5 enables TDI to monitor whether the insurers are complying with statutory requirements for cancellation and nonrenewal.

Comment on §5.9322: A commenter writes that requiring insurers that provide coverage to participants in a risk purchasing group to comply with Division 5 and 6 requirements would create a burden on risk purchasing groups and insurers providing coverage to participants in risk purchasing groups. Policyholders would ultimately bear this burden in the form of higher rates. The proposed requirements may lead to the elimination of some risk purchasing groups. The commenter also writes that the proposed requirements are unnecessary because TDI can request rate information from insurers providing coverage to participants in risk purchasing groups and can regulate the rates if TDI shows the market is not competitive. The commenter writes that the market for insurers writing coverage for participants in risk purchasing groups is competitive.

Response: Most states require insurers providing coverage to participants in a risk purchasing group to comply with certain rate and form filing requirements. Requiring insurers to comply with the filing requirements of Division 5 enables TDI to monitor whether the insurers are complying with statutory requirements for cancellation and nonrenewal. Requiring insurers to comply with the filing requirements of Division 6 enables TDI to monitor rates. Although this requirement should not be an undue burden on insurers, TDI has changed the adopted rule so that it applies to policies effective on and after September 1, 2015.

Comment on §5.9330: A commenter writes that although the proposed rule says rate filings may include information on fees collected under Insurance Code §550.001 and §4005.003, fees collected under §4005.003 would not be collected by an insurer. The commenter states that any fees collected under §4005.003 would be collected by an agent and the insurer may not have information about them.

Response: Insurance Code §2251.101(b)(1)(C) states that the commissioner shall determine by rule the information to be included in a rate filing, including fees "that are charged or collected by the insurer under [Insurance Code] Section 550.001 or 4005.003." If an insurer does not charge or collect fees under Insurance Code §4005.003, then they will not be part of the insurer's rate filing information.

Comment on §5.9330: A commenter writes that §5.9330 is unclear and provides an incomplete explanation of a rate filing. The commenter suggests either removing from the section the lists of information that rate filings may include or adding language stating that rate filings are not limited to the categories of information included in those lists.

Response: TDI declines to accept the suggestion. The last two sentences in adopted §5.9330 begin with "Rate filings may include" and "Rate filings may also include " Under Government Code §311.005(13), the terms "include" and "including" do not "create a presumption that components not expressed are excluded." In addition, it should be clear that rate filings may include information other than the kinds listed because §5.9330 states that rate filings may include "other supplementary rating information" and "other amounts collected by the insurer in connection with a policy." Changing the sentences to "Rate filings may include but are not limited to" would not change the meaning of §5.9330.

Comment on §5.9332: A commenter states that the rules are not clear as to whether all the categories of supporting information are required in all filings. The commenter states that requiring an actuarial memorandum and actuarial support for each filing creates additional expense.

Response: Section 5.9332 lists and defines the categories of supporting information that TDI may use to verify compliance with Texas statutes and rules. Not every category of supporting information is required for every rate filing. To make this clear, TDI has added the preceding sentence to the adopted rule.

Comment on §5.9332(5): A commenter states that this paragraph would require policyholder impact information for "every homeowners and personal automobile rate filing." The commenter expresses concern that this will create additional expense for insurers without in-house actuarial services and that "further definitions may be needed because of the vast differences in classification systems that may be used by some insurers." The commenter states that it is not clear why this information is needed to evaluate each rate filing. The commenter states that while TDI routinely requests policyholder impact information of some insurers, it should not require it for all filings.

Response: The adopted rules do not require policyholder impact information for "every homeowners and personal automobile rate filing." Section 5.9334(f)(7) requires this information as part of the filing only for certain filings, namely "owner-occupied homeowner and personal automobile filings that include changes that will result in a difference between the minimum and maximum policyholder impact that is greater than 5 percent." TDI staff may ask for policyholder impact information for other filings as part of a request for additional information. Policyholder impact information is useful because it enables TDI staff to see the distribution of the rate changes that a filing will create over the insurer's book of business. This can help TDI prepare for future policyholder complaints or legislative requests for information. Other states also require policyholder impact information.

While Insurance Code Chapter 2251 does not explicitly require that policyholder impact information be included in certain rate filings, the chapter requires the commissioner to determine information to be included in rate filings, including categories of supporting information and supplementary rating information. Policyholder impact information is one of the categories of supporting information that the commissioner has identified as necessary to better understand certain owner-occupied homeowners and personal automobile rate filings.

It is not clear to TDI how differences in insurers' classification systems affect the cost of complying with this requirement.

Comment on §5.9332(6): A commenter writes that this subsection would require the average rate change by county in every rate filing and that the necessity of this is unclear. The commenter states that Insurance Code Chapter 2251 does not require the average rate change by county. The commenter states that requiring the average rate change by county would cause insurers to duplicate calculations they have already made for filings under Chapter 2253.

In addition, the commenter states that this requirement raises confidentiality concerns, especially where a large number of insurers seek rate information by ZIP code within a county.

Response: The adopted rules do not require that every rate filing include the average rate change by county. Section 5.9334(f)(8) requires the "average rate change by county for owner-occupied homeowners rate filings." Information on average rate change by county is not required of insurers making short track filings under §5.9334(g). It is unclear how the requirement for information on the average rate change by county would duplicate information insurers would provide on rating territories for subdivided counties under Insurance Code Chapter 2253. In contrast with Insurance Code Chapter 2253, this requirement calls for the average rate change at the county level.

While Insurance Code Chapter 2251 does not explicitly require that average rate change by county be included in certain rate filings, the chapter requires the commissioner to determine information to be included in rate filings, including categories of supporting information and supplementary rating information. Average rate change by county is one of the categories of supporting information that the commissioner has identified as necessary to better understand owner-occupied homeowners rate filings; therefore, this rule requires it.

If an insurer believes that information filed under §5.9332(6) is confidential, the insurer may mark it confidential as described in §5.9334(i).

Comment on §5.9332(9)(E): A commenter writes that §5.9332(9)(E) does not require sufficient information to evaluate the net cost of reinsurance. The commenter suggests requiring gross reinsurance premiums, expected recoverables, a description of the layers of reinsurance in force and related attachment points, allocation of reinsurance costs by line and state, a financial or solvency-based justification for the level of reinsurance coverage, a description of changes in reinsurance coverage since the last filing, and the disclosure of all reinsurance purchased from any affiliate of the insurer or the insurer's holding company.

Response: TDI declines to accept the suggestion. Adopted §5.9332(9)(E) states that support for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits. TDI may obtain the information on reinsurance that the commenter suggests adding to the rule, and other information, if necessary, through a request for additional information. The list of support for provisions for the net cost of reinsurance in §5.9332(9)(E) is nonexclusive. The information the commenter lists is not necessary for every filing.

Comment on §5.9332(11): A commenter writes that §5.9332(11) should be more specific in its description of profit provision information and should include support for the assumptions used to arrive at the profit provisions underlying the proposed rates.

Response: TDI agrees with the suggestion. Adopted §5.9332(11) is changed so that the description of profit provision information reads: "This information consists of a description

of the methodology, assumptions, and support for the assumptions used to arrive at the profit provisions underlying the proposed rates." This change makes §5.9332(11) consistent with §5.9332(3), which describes actuarial support and requires sufficient information to allow a qualified actuary to understand the appropriateness of each material assumption used in developing the rates. Profit provisions are required under §5.9332(3)(A)(x) and (xi).

Comment on §5.9332(12) and (13): A commenter writes that §5.9332(12), describing a side-by-side comparison of the new filing with a previous filing, duplicates §5.9332(13), describing a mark up of the previous filing.

Response: Both the side-by-side comparison and the mark up are categories of supporting information, neither of which is required under any filing but which staff may request under §5.9335. The two categories are similar, but provide a different way of looking at the proposed changes to a previous filing. It is at the discretion of TDI staff to decide whether to request neither, both, or one of the two categories, based on the best manner to review a particular file. For example, a mark up would likely not be useful in reviewing a rate table, but would be useful in reviewing a rating rule.

Comment on §5.9332(14): A commenter writes that this paragraph requires sample premiums and premium changes "for certain specified policy types and ZIP codes," but does not actually specify the policy types or ZIP codes. This requirement would apply to all rate filings and is unnecessary. Most insurers would consider ZIP code-specific premium information confidential.

Response: Section 5.9332(14) does not require sample premiums and premium changes for any filing; the information is one of the categories of supporting information listed under §5.9332. TDI staff may request the information under §5.9335 and would specify the policy types and ZIP codes in the request. The premiums and premium changes that would result for specified ZIP codes and policy types if a particular rate filing were put into effect are basic pieces of information that help TDI reviewers understand the filing. This information is much the same as what insurers provide for sample rates under Insurance Code §32.102 for posting on HelpInsure.com, a service through which TDI and the Office of Public Insurance Counsel provide information that helps the public compare sample rates and policy provisions.

If an insurer believes that information filed under §5.9332(14) is confidential, the insurer may mark it confidential as described in §5.9334(i).

Comment on §5.9333: A commenter writes that insurers may consider several of the categories of supplementary rating information defined in the proposed rule to be confidential and suggests the rule alert insurers of this.

Response: It is not practical for a TDI rule to make assumptions as to what information insurers may consider confidential. Section 5.9334(i) of the adopted rule alerts insurers of the relevant Insurance Code statutes that govern the extent to which rate-filing information and supporting documents are subject to public inspection and informs insurers how TDI will treat filings submitted under different chapters with regard to public inspection. Filings submitted under Chapter 2053 and 3502, and any supporting information filed, will be open for public inspection as of the date of the filing. Because filings submitted under Chapter 2251 are subject to Government Code Chapter 552, §5.9334(i) alerts insurers how they must mark information filed under Chapter 2251 that they consider confidential under the Government Code and states that TDI will request an attorney general decision before making filings under Insurance Code Chapter 2251 open for public inspection. Adopted §5.9334(i)(3) alerts insurers as to what information TDI does not consider excepted from disclosure under Government Code Chapter 552, while making clear that TDI will request an attorney general decision. Insurers are in the best position to make their own decisions as to what information to mark confidential based on the statutes and adopted rules.

Comment on §5.9334(b): A commenter writes that §5.9334(b) should be modified to be more consistent with Insurance Code §2251.101(a) by adding a phrase referencing other required information to the list of information that must be filed. Insurance Code §2251.101(a) requires the filing of "all rates, applicable rating materials, supplementary rating information, and additional information as required by the commissioner." The commenter suggests that the first sentence of §5.9334(b) should read: "For rates governed by Insurance Code Chapter 2251, insurers must file any new rates, rating manuals, rating rules, all other supplementary rating information, and fees, or revisions to these items as well as all other information required by this section."

Response: TDI agrees with the suggestion. As proposed, the first sentence of §5.9334(b) did not reference all the categories of supporting information that §5.9334 may require for insurers filing rates governed by Insurance Code Chapter 2251. The first sentence of adopted §5.9334(b) reads: "For rates governed by Insurance Code Chapter 2251, insurers must file any new rates, rating manuals, rating rules, all other supplementary rating information, and fees, or revisions to these items as well as all other information as required by this section." This change does not add any requirement that was not in the rule proposal. Insurers should read all of §5.9334 to be sure which filing requirements in the section apply to their filing.

Comment on §5.9334(f)(6)(C): A commenter writes that §5.9334(f)(6)(C) should state: "Filings must include other actuarial support when neither relativity analyses nor rate indications are required." As proposed, subparagraph (C) referenced subparagraphs (A) and (B), which require relativity analyses and rate indications, respectively, for specified filings.

Response: As a result of the comment, adopted §5.9334(f)(6)(C) is changed to read: "Filings must include other actuarial support when neither the relativity analysis in subparagraph (A) nor the rate indications in subparagraph (B) of §5.9334(f)(6) apply."

Comment on §5.9334(f)(5) and (6): A commenter writes that §5.9334(f)(5) and (6) should not require all filings to contain an actuarial memorandum and actuarial support. The commenter writes that Chapter 2251 does not require this and that this information "does not go directly to the rating standards."

Response: The proposed and adopted rules do not require all filings to contain an actuarial memorandum and actuarial support. Short track filings under §5.9334(g) do not require an actuarial memorandum and actuarial support. Insurers who qualify for the reduced rate filing requirements under Insurance Code Chapter 2251, Subchapters E or F and who file under §5.9357 do not have to provide an actuarial memorandum and actuarial support. Insurers who must submit an actuarial memorandum and actuarial support, but for whom §5.9334(f)(6)(A) or (B) do not apply, must submit other actuarial support, defined in §5.9332.

TDI requires some form of support for a rate change to evaluate it. While Insurance Code Chapter 2251 does not explicitly require that certain rate filings include an actuarial memoran-

dum and actuarial support, the chapter does require the commissioner to determine the information to be included in rate filings, including categories of supporting information and supplementary rating information. The actuarial memorandum and actuarial support are two of the categories of supporting information that the commissioner has identified as necessary to better understand certain rate filings; therefore, this rule requires it.

Comment on §5.9334(f)(7): A commenter writes that the requirement for policyholder impact information for owner-occupied homeowner and personal automobile filings that will result in a difference between the minimum and maximum policyholder impact that is greater than 5 percent is not required by statute and "does not go directly to the rating standards."

Response: Policyholder impact information is useful because it enables TDI staff to see the distribution of the rate changes a filing will create over the insurer's book of business. This can help TDI prepare for future policyholder complaints or legislative requests for information. Other states also require policyholder impact information.

While Insurance Code Chapter 2251 does not explicitly require that policyholder impact information be included in certain rate filings, the chapter requires the commissioner to determine information to be included in rate filings, including categories of supporting information and supplementary rating information. Policyholder impact information is one of the categories of supporting information that the commissioner has identified as necessary to better understand certain owner-occupied homeowners and personal automobile rate filings.

Insurers making short track filings under §5.9334(g) do not need to provide policyholder impact information. Insurers submitting owner-occupied homeowner and personal automobile filings that will result in a difference between the minimum and maximum policyholder impact that is not greater than 5 percent do not need to provide policyholder impact information.

Comment on §5.9334(j): A commenter requests that §5.9334(i) permit insurers filing information they have marked confidential to file additional documentation. The commenter suggests §5.9334(i) permit insurers to file statements stating the provisions of Government Code Chapter 552 under which they consider the information excepted from disclosure, and, if applicable, an affidavit establishing the elements of trade secrets. The commenter states that permitting insurers to file such an affidavit with the filing will save insurers from the consequences of not filing the affidavit later when TDI requests a decision on Government Code Chapter 552 from the attorney general.

Response: TDI appreciates the practicality of this request and in principle has no objection to insurers filing statements of Government Code Chapter 552 provisions or trade secret affidavits. However, the affidavit the commenter suggests is not rate information. More importantly, in the event of a request for an attorney general decision on whether rate filing information is excepted from disclosure under Government Code Chapter 552, insurers are in the best position to ensure that their communications reach the attorney general. Filing statements on Government Code provisions or trade secret affidavits with TDI along with rate filings would not necessarily protect insurers from the consequences of not filing the appropriate documentation with the attorney general. TDI would still have to comply with Government Code §552.305 in requesting an attorney general decision and so would still have to provide notice to the insurer of the request for the decision. The form the attorney general prescribes for communicating reasons to support withholding information could change between the time an insurer submits a filing to TDI and the time TDI requests an attorney general decision.

Comment on §5.9334(i)(5): A commenter writes that the rule should not state that TDI does not consider sample premium impacts by selected ZIP codes excepted from disclosure under Government Code Chapter 552. The commenter states that this information could be confidential and a trade secret.

Response: The adopted rule states TDI's position for purposes of clarity and transparency. The premiums and premium changes that would result for specified ZIP codes and policy types if a particular rate filing were put into effect are basic pieces of information that help TDI reviewers and members of the public understand the filing. This information is much the same as what insurers provide for approved rates under Insurance Code §32.102 for posting on HelpInsure.com, a service through which TDI and the Office of Public Insurance Counsel provide information that helps the public compare sample rates and policy provisions.

If an insurer believes that information filed under §5.9332(14) is confidential, the insurer may mark it confidential as described in §5.9334(i). For filings submitted under Insurance Code Chapter 2251 and that are marked confidential, TDI will request an attorney general decision under Government Code Chapter 552 before making the filings open to public inspection.

Comment on §5.9334(l): A commenter writes that §5.9334(l) should not prohibit filings under Division 6 from being combined with any other filings submitted under Subchapter M. The commenter writes that manual rules and rating rules are traditionally intermingled in the same document and submitted as one filing. The commenter expresses concern that prohibiting the combination of rating rules and manual rules in a single filing will either require the creation of a Texas-specific manual separating the two groups of rules, or require the submission of an identical filing more than once. The commenter states that it would be inefficient for TDI and filers to track and reference the same filing under different TDI reference numbers.

Response: TDI is sympathetic to the commenter's concerns, but anticipates that the transition to SERFF will improve overall efficiency. Requiring separate filings is not a new policy. Historically, TDI has not accepted filings submitted under Divisions 5 and 6 with filings submitted under Divisions 7 or 8. TDI has allowed combined filings under Divisions 5 and 6. SERFF is now TDI's system of record. Separate filings will enable TDI to track filings and the timeliness of reviews in SERFF, as it is currently structured. If SERFF were changed to allow two parts of a combined filing to be tracked separately, with separate stages and dispositions, TDI would consider allowing combined filings again. At present, filers have the option of either submitting separate filings or two identical filings.

A second major advantage to separate filings is that finding information in SERFF is easier with separate filings. As SERFF is currently structured, it is not possible to give filings more than one designation. This makes locating a rate filing that is combined with a form filing challenging if the combined filing has been designated a form filing, and vice versa. With a combined filing it is more difficult to find information specific to rates, forms, or manual rules, depending on how the combined filing is designated.

Comment on §5.9335(e): A commenter writes that §5.9335(e), which concerns requests for information that TDI must make to complete a filing, should include a statement that TDI will provide

notice to an insurer when TDI is requesting information that the rules required in the original filing. The commenter writes that the statement in the rule should say that the notice will specify the missing information. The commenter states that this will help TDI to document the requests it makes.

Response: TDI declines to accept the suggestion because the proposed additional language is unnecessary. The information requested in the proposed language should be apparent in a request for information necessary to make a filing complete. TDI's written request for information that should have been included in the filing constitutes TDI's documentation of the information that was missing from the filing.

Comment on §5.9335(b): A commenter writes that §5.9335(b) should not require that an insurer's responses be of sufficient detail to allow a qualified actuary to understand them for the responses to be considered fully responsive. The commenter writes that certain requests for information may not require this level of detail.

Response: The question of whether a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply is an actuarial one and responses to requests for information require the level of detail a qualified actuary can understand and evaluate. The actuaries at TDI who review the filing need to understand the filing and responses to requests for information on the filing. The rule does not require a qualified actuary to provide the response.

Comment on §5.9335(d): A commenter writes that the rules should limit the time period during which TDI may request additional supplementary rating information and additional supporting information. The commenter also asks why it is necessary for TDI to have the opportunity to make additional requests for supplementary rating information and supporting information five times each. The commenter suggests limiting the number to one or two times each.

Response: Insurance Code §2251.101 requires the commissioner to adopt rules on the number of times TDI may request supplementary rating information and supporting information on a rate filing. TDI does not expect to make five requests for additional supplementary rating information and five requests for additional supporting information for every filing. The number is an upper bound of what TDI has found necessary to evaluate previous filings. The number of requests necessary is contingent on filers providing the required information with the initial filing or providing a fully responsive response to a request for information.

The Insurance Code does not limit the time during which TDI may request the information. The Insurance Code does limit the time the commissioner has to disapprove a rate before it goes into effect. After a rate has gone into effect, the commissioner may still disapprove a rate after notice and hearing.

Comment on §5.9336: A commenter states that the rule should not contain a provision allowing an insurer to waive the number of times TDI may request additional supplementary rating information and supporting information. The commenter expresses concern that an insurer that does not waive this number may be perceived as not cooperating with TDI.

Response: TDI declines to accept the suggestion. Insurers that do not waive the number of times that TDI may request additional supplementary rating information and supporting information will not be perceived as uncooperative. The rule provides for the waiver as an option for insurers. This option gives insurers a means of avoiding having a filing disapproved if the filing does not contain all the required information. This option would allow TDI to continue working with a company to resolve any issues.

An insurer must send written notice to make use of this option.

Comment on §5.9337: A commenter re-urges comments made on the requirement that insurers providing coverage through a purchasing group comply with the filing requirements of Division 5.

Response: For the reasons discussed in TDI's responses to comments on §5.9322, TDI declines to remove the requirement, but the adopted rule applies it to policies effective on and after September 1, 2015.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: Office of Public Insurance Counsel, Texas Medical Liability Trust, and Insurance Services Office, Inc.

Against: Insurance Council of Texas

DIVISION 4. FILINGS MADE EASY - TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §5.9310

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner

may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9310. Property and Casualty Transmittal Information and General Filing Requirements.

(a) Purpose. The purpose of this division is to specify the transmittal information and general filing requirements for property and casualty form, endorsement, rate, underwriting guideline, and credit scoring model filings.

(b) Definitions. Terms not defined in this division may be defined in Insurance Code Chapters 2053, 2251, and 2301, and have the same meaning when used in this division. The following terms when used in this division have the following meanings unless the context indicates otherwise:

(1) TDI--Texas Department of Insurance.

(2) TDI file number--The number TDI assigns to a filing.

(3) Interline filing--A filing that may be used for more than one line of insurance submitted for:

(A) an endorsement, provided the endorsement does not have an impact on rates; or

(B) policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code §550.001 or §4005.003.

(4) Reference filing--A filing that references the use of policy forms, endorsements, manual rules, loss costs, rating manuals, other supplementary rating information, or credit scoring models that TDI has adopted, approved, or accepted.

(5) Dual filing--A filing submitted for one line of insurance that may also be used in multi-peril insurance.

(6) Multi-peril insurance--Policies and rates for two or more lines of insurance that are subject to regulation under Insurance Code Chapters 2251 and 2301.

(c) Transmittal information. Each filing must contain the following transmittal information:

(1) company name and company number assigned by the National Association of Insurance Commissioners (NAIC);

(2) company group name and group NAIC number;

(3) whether the filing is new, or revises or replaces an existing filing;

(4) TDI file number of the revised or replaced filing;

(5) TDI file number of associated or companion filings of other filing types;

(6) line of insurance:

(A) all filings must specify the line of insurance to which the filing applies using either the appropriate type of insurance and subtype of insurance listed in the NAIC Uniform Property and Casualty Product Coding Matrix, or, in the case of filings not submitted through SERFF, the appropriate line of insurance listed in the Filings Made Easy Guide;

(B) interline filings must specify all lines of insurance to which the filing applies;

(C) dual filings must indicate multi-peril insurance and the line of insurance to which the filing applies;

(7) type of filing;

(8) proposed effective date; and

(9) contact person, including name, telephone number, mailing address, and fax number.

(d) Filings Made Easy Guide. TDI maintains the Filings Made Easy Guide to assist insurers in submitting filings and complying with statutory requirements. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

(e) Copyright. Information included in rate filings under Insurance Code Chapter 2251 that is marked "copyright" may be made available for public disclosure in the same manner as information filed under Chapter 2251 that is not marked "copyright." Information that is marked "copyright" and that is included in rate filings under Insurance Code Chapter 2053 and Chapter 3502 and in form filings is not confidential and will be open for public inspection in the same manner as information not marked "copyright." Public disclosure methods may include posting filings on TDI's website.

(f) Submission of Filing. Filings under Divisions 5, 6, 7, 8, and 9 of this subchapter (relating to Filings Made Easy - Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings; Filings Made Easy - Requirements for Rate Filings; Filings Made Easy - Requirements for Underwriting Guideline Filings; Filings Made Easy - Requirements for Credit Scoring Model Filings for Personal Insurance; and Filings Made Easy - Reduced Filing Requirements for Certain Insurers, respectively) must be submitted either through the System for Electronic Rate and Form Filing (SERFF); delivered to the Texas Department of Insurance, Property and Casualty Intake Unit, William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas 78701, Mail Code 104-3B; or mailed to the Texas Department of Insurance, Property and Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

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-201404995
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: November 16, 2014
Proposal publication date: May 9, 2014
For further information, please call: (512) 463-6326

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DIVISION 5. FILINGS MADE EASY - REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM, ENDORSEMENT, AND MANUAL RULE FILINGS

28 TAC §§5.9320 - 5.9322

STATUTORY AUTHORITY. The amendments and new sections are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9320. Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings.

(a) Purpose. The purpose of this section is to specify the filing requirements for property and casualty policy form, endorsement, and manual rule filings that are submitted under Insurance Code Chapter 2052, 2251, 2301, or 3502.

(b) Definitions. The definitions set forth in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements) apply to this division.

(c) Filing requirements for policy forms and endorsements. All insurer and advisory organization policy form and endorsement filings submitted under Insurance Code Chapter 2052, 2301, or 3502 must comply with the filing requirements in paragraphs (1) - (3) of this subsection, and any other applicable rules adopted by the commissioner.

(1) General filing requirements.

(A) All filings for new and amended policy forms or endorsements must relate to only one line of insurance except for multiperil and interline filings.

(B) All filings for new and amended policy forms or endorsements must contain the following:

(i) the transmittal information required in §5.9310 of this title;

(ii) a copy of the proposed policy forms or endorsements; and

(iii) a memorandum that contains a detailed explanation of the reasons for the filing and a description of the policy forms or endorsements and their use; for example, the type of risk or risks for which the forms or endorsements will be used.

(2) Additional filing requirements.

(A) Additional filing requirements specific to new policy forms or endorsements for use with new products. If the memorandum required under paragraph (1)(B)(iii) of this subsection does not fully explain or describe the filed policy forms or endorsements, TDI may request either:

(i) a summary of all policy provisions that includes a detailed description and explanation of the coverages, limitations, exclusions, and conditions; or

(ii) a coverage comparison to a similar policy form or endorsement that the commissioner has previously approved or adopted containing a detailed explanation of all the differences including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved policy forms or endorsements.

(B) Additional filing requirements specific to amending previously approved or adopted policy forms or endorsements. In addition to the general requirements outlined in paragraph (1) of this subsection, the filing must include a coverage evaluation that contains a detailed explanation of the proposed changes including any restrictions in coverage, enhancements in coverage, or clarifications to the previously approved or adopted policy forms or endorsements. The additional requirements under this subsection may be provided in the memorandum required under paragraph (1)(B)(iii) of this subsection or in:

(i) a side-by-side comparison showing any differences between the previously approved or adopted policy forms or endorsements and the proposed policy forms or endorsements; or

(ii) a copy of the previously approved or adopted policy forms or endorsements indicating the differences between the approved or adopted policy forms or endorsements and the filed policy forms or endorsements, with the new language underlined and the deleted language in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language.

(3) Statutory and regulatory filing requirements.

(A) Filings for new and amended policy forms or endorsements must include all provisions required by statute, administrative rule, or commissioner's order. Filers may add the required provisions to a policy form by a Texas amendatory endorsement. The filing must include the amendatory endorsement, or the filing may reference an approved amendatory endorsement that is applicable to the policy forms contained in the filing.

(B) All policy forms and endorsements contained in personal automobile and residential property insurance filings must meet the statutory requirements for plain language in policies as set forth by Commissioner's Order No. 92-0573, or any superseding commissioner's order.

(d) Filing requirements for manual rules. Manual rules are rules other than rating rules that relate to policy forms or endorsements. A manual rule filing must include the transmittal information required in §5.9310 of this title, relate to only one line of insurance except for multi-peril and interline filings, and include a memorandum as described in subsection (c)(1)(B)(iii) of this section.

(e) Filing requirements for reference filings. An insurer may make a filing referencing approved or accepted policy forms, endorsements, or manual rules without including a copy of the referenced material. All reference filings must relate to only one line of insurance except for multi-peril and interline filings. In addition to the transmittal information, a reference filing must include the following:

(1) the name of the insurance company or advisory organization whose filing is being referenced; and

(2) the TDI file number of the filing being referenced.

(f) Public information. To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

(g) Incomplete filings.

(1) TDI will consider a filing incomplete if the filing does not comply with the filing requirements contained in subsections (c), (d), and (e) of this section.

(2) If TDI determines that a filing is incomplete, TDI will provide a notice that states the filing is incomplete and identifies the additional information required to complete the filing. A filing that is not completed before the date specified in the notice will be rejected. A rejected filing:

(A) is not considered filed with TDI for the purposes of this division;

(B) will not be reopened for purposes of resubmission; and

(C) must be resubmitted as a new filing.

(3) The deemer period does not commence until a complete filing is received by TDI.

(h) Filings under this division may not be combined with any other filings submitted under this subchapter.

(i) Manual rule filings submitted under this division may not be combined with any other filings submitted under this division.

§5.9322. Insurers Providing Coverage through a Purchasing Group.

(a) For policies effective on and after September 1, 2015, insurers that provide coverage to participants through a purchasing group must comply with the filing requirements of this division.

(b) As Insurance Code §2171.003 requires, insurers writing commercial group property insurance under Insurance Code §2171.002 must file a policy form with the commissioner before using the form for a group of businesses or an association described by §2171.002 in which each member of the group or association is not a large risk.

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

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DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE FILINGS

28 TAC §§5.9330 - 5.9337

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed

managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9332. Categories of Supporting Information.

Supporting information is the documentation needed to verify compliance with Texas statutes and rules. Not every filing requires every category of supporting information defined in this section. Section 5.9334 of this title (relating to Requirements for Rate Filing Submissions) lists the categories of supporting information that different rate filings require. The categories of supporting information include:

(1) Rate filing checklists. These are found in the Filings Made Easy Guide and show the information filers need to include with the filing.

(2) Actuarial memorandum. This memorandum describes the methodologies for determining each component used in developing the actuarial support, as well as a qualitative discussion on the selections for each component. It includes an explanation for any changes in methodologies or any changes to the component selections from the previous analysis.

(3) Actuarial support. This type of support consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Actuarial support is divided into the following subcategories:

(A) Rate indications consist of the analyses the insurer relies on to support its filed rates, each component used to develop the rate indications, and support for each of these components, including the data and methodologies used by the insurer. Rate indications may be on an overall basis or by coverage, class, form, or peril when appropriate. Rate indications must include each of the following with documentation in support of each, to the extent applicable:

(i) premiums, on-level factors, and premiums at current rate level;

(ii) incurred and paid losses;

(iii) loss and claim development factors;

(iv) premium and loss trend factors;

(v) hurricane and nonhurricane catastrophe factors or loss provisions including the definition of a catastrophe and how the definition has changed over the experience period used to calculate the provisions;

(vi) off-balance factors if there are changes in relativities, for example, discounts, surcharges, or territorial definitions;

(vii) the measure of credibility, the complement of credibility, the criteria for full credibility, and the method for determining partial credibility;

(viii) expenses including general expenses; other acquisition expenses; commissions and brokerage expenses; taxes, licenses and fees; loss adjustment expenses; and expense offsets from fee income;

(ix) the net cost of reinsurance;

(x) for rates filed under Insurance Code Chapter 2251, profit provisions, including risk loads;

(xi) for rates filed under Insurance Code Chapters 2053 and 3502, profit and contingency provisions, including risk loads;

(xii) the effect on premiums of individual risk variations based on loss or expense considerations; and

(xiii) any other component used in developing a rate indication.

(B) Relativity analysis consists of both the analysis and support for the selected rating factors, including the data and methodologies used by the insurer to derive the indicated rating factors. Supporting information must include:

(i) the current relativity;

(ii) the indicated relativity;

(iii) support for the indicated relativities, including the data and methodologies used by the insurer to derive such indications;

(iv) the selected relativity;

(v) support for the selected relativities if they differ from the indicated relativities; and

(vi) the percent change from current to selected relativity.

(C) Other actuarial support consists of both the analysis and support for the selected rates, including the data and methodologies used by the insurer to derive them. Examples include:

(i) description and support for new discounts and surcharges;

(ii) description and support for rates for new endorsements; and

(iii) competitive analysis.

(4) SERFF rate data. This data consists of all information necessary to complete the company rate information fields in SERFF. For filers not using SERFF, this information includes the company name, the overall percentage and effective date of the last rate revision, the overall indicated change as a percent, the overall rate impact as a percent, the written premium change for the program, the number of policyholders affected for the program, the written premium for the program, and the maximum and minimum percentage change for the filing.

(5) Policyholder impact information. This information consists of the following provided separately by homeowners form and personal automobile coverage:

(A) a histogram which graphically depicts the impact of the filed changes to policyholders in 5 percentage point intervals;

(B) the policy counts in each interval displayed in either the histogram or a separate table;

(C) the minimum and maximum policyholder impact; and

(D) a description of the changes that contributed to the minimum and maximum policyholder impact.

(6) Average rate change by county. This is the average impact of all changes included in a filing by county, provided separately by homeowners form.

(7) Rate change information.

(A) For loss cost reference filings, rate change information consists of:

(i) the proposed percentage change in the underlying loss costs;

(ii) the change in the insurer's loss cost multiplier;

(iii) the combined change in the loss costs and the loss cost multipliers;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change for all coverages and forms combined.

(B) For workers' compensation filings using classification relativities established under Insurance Code §2053.051, rate change information consists of:

(i) the percentage change in the underlying classification relativities;

(ii) the change in the insurer's deviation;

(iii) the combined change in the classification relativities and the insurer's deviation;

(iv) a six-year rate change history; and

(v) the effect that changes in fee income have on the total average rate change.

(C) For all other filings, rate change information consists of:

(i) the average proposed rate change for each applicable coverage or form;

(ii) the total average rate change for all applicable coverages and forms combined;

(iii) a six-year rate change history; and

(iv) the effect that changes in fee income have on the total average rate change for all applicable coverages and forms combined.

(8) Historical premium and loss information. This information consists of an insurer's most recent five-year experience, for both Texas and countrywide, of direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, direct losses and defense and cost containment expenses incurred, and the ratio of the direct losses and defense and cost containment expenses incurred to direct earned premiums. The Texas experience is the amounts, or a subset of the amounts, pertinent to the line of business reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. The countrywide experience is the amounts, or a subset of the amounts, pertinent to the line reported on the insurer's Insurance Expense Exhibit (IEE), Part III in the insurer's Annual Statement.

(9) Historical and projected expense information. This information consists of Texas experience, and, if applicable, countrywide experience. The loss adjustment expenses must be shown as a dollar amount as well as a ratio-to-incurred losses. All other expenses must be shown as a dollar amount as well as a ratio to premium. All expense items must be on a direct basis.

(A) Three years of historical Texas experience must be included for commissions and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and defense and cost containment expenses incurred. These must be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience must be included for commissions and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred, and adjusting and other loss adjustment expenses incurred. These must be the amounts reported in the insurer's IEE, Part III in the insurer's Annual Statement.

(C) Three years of historical countrywide experience must be included for each category of disallowed expenses. These must be the amounts reported in the insurer's response to the annual TDI Disallowed Expense Call. Other acquisition and general expenses, each adjusted to remove disallowed expenses, must be listed separately. The total adjusted general expense percentage must reflect any necessary adjustment due to the capping of general expenses at 110 percent of the industry median for the line of insurance.

(D) To the extent that the expense provisions differ from the historical expenses, the filing must provide additional support for the expense provisions underlying the rates. Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses, and fees; and profit and contingencies must be displayed and a sum computed. For filings submitted under Insurance Code Chapter 2251, the expense provisions must exclude disallowed expenses.

(E) When additional expense provisions are included, such as the net cost of reinsurance or an expense offset from fee income, the filing must include expected or historical experience. Sup-

port for provisions for the net cost of reinsurance may include reinsurance premiums, expected reinsurance recoverables, and a description of reinsurance coverage including attachment points and limits.

(10) Loss cost information for reference filings. This information consists of the following:

(A) the TDI file number of the loss costs being referenced;

(B) the derivation of the proposed loss cost multiplier including any loss cost modification factor and the following expense and profit provisions:

(i) commissions and brokerage expenses;

(ii) other acquisition expenses, adjusted to remove disallowed expenses;

(iii) general expenses, adjusted to remove disallowed expenses;

(iv) taxes, licenses, and fees; and

(v) underwriting profit and contingencies;

(C) supporting documentation for loss cost modification factors other than 1.00;

(D) the loss cost multiplier to be used as of the effective date of the filing;

(E) the loss cost multiplier used immediately prior to the effective date of the filing; and

(F) the effective rate-level change due to any change in the loss cost multiplier.

(11) Profit provision information. This information consists of a description of the methodology, assumptions, and support for the assumptions used to arrive at the profit provisions underlying the proposed rates.

(12) A side-by-side comparison. This comparison must show any differences between the previously filed and the proposed rates, rating manual, rating rules, or other supplementary rating information.

(13) A mark up. This is a copy of the previously filed rates, rating manuals, rating rules, or other supplementary rating information indicating the differences between it and the revised version, with any new language or factors underlined and the deleted language or factors in brackets with a strikethrough, or other clearly identified or highlighted editorial notations referencing the new and replaced language or factors.

(14) Sample premium impacts by selected ZIP codes. These are sample premiums and premium changes based on all changes included in a filing for certain specified policy types and ZIP codes.

(15) Rate filing templates. These are found in the Filings Made Easy Guide and provide insurers with an optional means of providing certain supporting information and supplementary rating information.

(16) Other information. This includes any other information required by the commissioner necessary to determine that the rates meet the rate standards.

§5.9334. Requirements for Rate Filing Submissions.

(a) Insurers must file any new rates or revisions to previously filed rates governed by Insurance Code Chapter 2053 at least 30 days before they become effective. The insurer must file any supplementary rating information not prescribed under Insurance Code Article 5.96.

(b) For rates governed by Insurance Code Chapter 2251, insurers must file any new rates, rating manuals, rating rules, all other supplementary rating information, and fees, or revisions to these items as well as all other information required by this section. An insurer may use the information filed under this division on and after the date of the filing.

(c) Insurers must file any new rates and supplementary rating information or revisions to previously filed rates and supplementary rating information governed by Insurance Code Chapter 3502 at least 15 days before they become effective.

(d) Each filing must include the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements). If the proposed effective date in the filing transmittal information changes, insurers must inform TDI of the new proposed effective date prior to the original proposed effective date.

(e) Each filing must include a filing memorandum that explains the purpose of the filing and provides all material background details relating to the filing, including a statement on the overall impact of the filing. The filing memorandum must briefly describe each change to the rates, rating manuals, rating rules, any other supplementary rating information and fees used by the insurer, and briefly describe the supporting information provided for each change. A brief summary of any related policy form or endorsement filings, including the coverages, limitations, and exclusions, must be included.

(f) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy - Reduced Filing Requirements for Certain Insurers), or subsection (g) of this section, each filing must include supporting information. Sufficient supporting information is necessary for TDI to establish that a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply. Insurers must provide sufficient documentation to justify specific rates or revisions they are proposing. To the extent the information originally submitted in a rate filing is insufficient, TDI may request additional information as deemed necessary by TDI or the commissioner. Each filing must contain the following items:

(1) a completed rate filing checklist;

(2) rate change information;

(3) SERFF rate data;

(4) loss cost information, if the filing references an advisory organization loss cost filing;

(5) an actuarial memorandum;

(6) actuarial support appropriate to the rating information being filed, as specified in subparagraphs (A) - (C) of this paragraph:

(A) All filings that propose changes to relativities, such as territory or class, as well as those applied through discounts, surcharges, or tiers, must include relativity analyses. The related territory codes and descriptions, classification systems and descriptions, or rules must also be included.

(B) All except the following filings must include rate indications:

(i) filings for new rates that will not replace, modify, or supersede any existing rates, unless the rates are derived from the experience of an affiliate, including an eligible surplus lines insurer;

(ii) fee filings; or

(iii) filings containing changes only to supplementary rating information with no overall rate impact. Examples include filings with no overall rate impact that contain only items such as relativity changes or rates for endorsements.

(C) Filings must include other actuarial support when neither the relativity analysis in subparagraph (A) nor the rate indications in subparagraph (B) of §5.9334(f)(6) apply;

(7) policyholder impact information for owner-occupied homeowner and personal automobile filings that include changes that will result in a difference between the minimum and maximum policyholder impact that is greater than 5 percent;

(8) the average rate change by county for owner-occupied homeowners rate filings;

(9) historical premium and loss information, if the filing changes or replaces existing rates;

(10) historical and projected expense information, if the filing changes or replaces existing rates; and

(11) profit provision information, if the filing changes or replaces existing rates.

(g) Instead of the items in subsection (f) of this section, short track filings must include:

(1) a completed rate filing checklist;

(2) rate change information; and

(3) SERFF rate data.

(h) Each filing submitted must be legible, accurate, internally consistent, complete, and contain all required documents. In each filing:

(1) each table must be clearly labeled, including titles and column and row headings, so as to clearly identify the contents;

(2) row and column headings must be repeated on each page of tables displayed on multiple pages;

(3) all pages must print to at least 10-point font;

(4) text shading, with the exception of yellow highlighting, may not be used; and

(5) each page should include a page number or other unique identifier.

(i) Paragraphs (1) - (4) of this subsection address public information.

(1) To the extent that a filing submitted through SERFF includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

(2) If an insurer believes a portion of the information required to be filed under Insurance Code Chapter 2251 is confidential and excepted from disclosure under Government Code Chapter 552, the insurer must mark each page excepted.

(3) For filings submitted under Insurance Code Chapter 2251 and that are marked confidential, TDI will request an attorney general decision under Government Code Chapter 552 before making the filings open for public inspection. TDI does not consider the following excepted from disclosure under Government Code Chapter 552: loss cost multipliers, rates, rating factors and relativities, rating manuals, fees, and summary information about the rate filing, including date filed, rate impact, effective dates, and a summary of the changes. TDI does not consider the following categories of supporting information excepted from disclosure under Government Code Chapter 552: rate change information, SERFF rate data, average rate change by county, sample premium impacts by selected ZIP codes, historical premium and loss information, and historical expense information.

(4) Each filing submitted under Insurance Code Chapters 2053 and 3502, including any supporting information filed, will be open for public inspection as of the date of the filing.

(j) The insurer is responsible for ensuring that its filing complies with Texas statutes and rules.

(k) TDI maintains the Filings Made Easy Guide to assist insurers in complying with Texas statutes and rules. Insurers may refer to the Filings Made Easy Guide for rate filing templates or exhibits that insurers can use to display necessary supporting information required in subsection (f) of this section. Insurers may obtain this guide from TDI's website at www.tdi.texas.gov.

(l) Filings under this division may not be combined with any other filings submitted under this subchapter.

§5.9337. Insurers Providing Coverage Through a Purchasing Group.

For policies effective on and after September 1, 2015, insurers that provide coverage to participants through a purchasing group must comply with the filing requirements of this division.

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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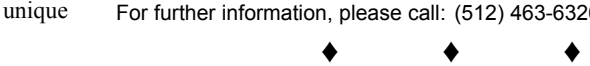

DIVISION 7. FILINGS MADE EASY - REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §§5.9340 - 5.9342

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance com-

panies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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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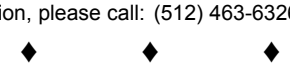

DIVISION 8. FILINGS MADE EASY - REQUIREMENTS FOR CREDIT SCORING MODEL FILINGS FOR PERSONAL INSURANCE

28 TAC §§5.9350 - 5.9352

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Insurance
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DIVISION 9. FILINGS MADE EASY - REDUCED FILING REQUIREMENTS FOR CERTAIN INSURERS

28 TAC §5.9355, §5.9357

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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-201405000
Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6326

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DIVISION 10. FILINGS MADE EASY - ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

28 TAC §5.9360, §5.9361

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.002, 38.003, 559.004, 912.056, 2052.002, 2053.003, 2053.034, 2251.101, 2251.201, 2251.204, 2251.252, 2301.006, 2301.055, 3502.108, and 36.001. Section 38.002 provides that each insurer writing personal automobile insurance or residential property insurance must file its underwriting guidelines with TDI. Section 38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance. Section 559.004 provides that the commissioner may adopt rules implementing Chapter 559 (relating to Credit Scoring and Credit Information). Section 912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner by rule requires. Section 2052.002 provides that before an insurance company may use a workers' compensation form that the commissioner has not prescribed, the insurance company must submit it to and receive approval from TDI. Section 2053.003 provides that each insurance

company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 2251.201 provides that the commissioner may by rule designate types of insurers, in addition to county mutual insurance companies, that will be subject to Chapter 2251, Subchapter E (relating to Standard Rate Index for Personal Automobile Insurance). Section 2251.204 provides that the commissioner by rule must determine filing requirements for certain county mutual insurance companies subject to Chapter 2251, Subchapter E. Section 2251.252 provides that an insurer is exempt from the filing requirements of Chapter 2251 if it or the rate it is filing meets certain criteria. Section 2301.006 provides that an insurer may not use policy forms, other than the standard forms adopted by the commissioner, until the insurer files the forms with and receives approval by the commissioner. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B (relating to Policy Forms for Personal Automobile Insurance Coverage and Residential Property Insurance Coverage). Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

28 TAC §§5.9330 - 5.9332

The commissioner of insurance adopts the repeal of 28 TAC Chapter 5, Subchapter M, Division 6, §§5.9330 - 5.9332, concerning requirements for rate filings. The repeals are adopted without changes to the proposal published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3684). The repeal is related to a separate rule adoption published in this issue of the *Texas Register* of a new Division 6 and amendments to 28 TAC Chapter 5, Subdivision M, Division 4, §5.9310; Division 5, §§5.9320 - 5.9323; Division 7, §§5.9340 - 5.9342; Division 8, §§5.9350 - 5.9352; Division 9, §5.9355 and §5.9357; and Division 10, §5.9360 and §5.9361. Those amendments relate to filing requirements for property and casualty insurers.

REASONED JUSTIFICATION. Repeal of §§5.9330 - 5.9332 is necessary to adopt new Division 6, §§5.9330 - 5.9337, which implements the requirements of HB 1951, 82nd Legislature, Regular Session, effective September 1, 2011. The adopted new Division 6 also contains adjustments for clarity and transparency and is compatible with TDI's use of the System for Electronic Rate and Form Filing (SERFF).

HOW THE SECTIONS WILL FUNCTION. Adoption of the proposed repeal permits the adoption of new Division 6, §§5.9330 - 5.9337.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI received no comments on the published proposal.

STATUTORY AUTHORITY. TDI adopts the repeal under Insurance Code §§2053.003, 2251.101, 3502.108, and 36.001. Section 2053.003 provides that each insurance company writing workers' compensation insurance must file with TDI all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in Texas. Section 2251.101 provides that the commissioner must adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information. Section 3502.108 provides that the commissioner may adopt rules establishing guidelines by which the forms and documents submitted to TDI under Chapter 3502 are to be reviewed and acted on by TDI. Section 3502.108 also provides that TDI may establish requirements for data and information filed under Chapter 3502. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER J. EXPEDITED PERMITTING

30 TAC §§101.600 - 101.602

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) adopts new §§101.600 - 101.602.

Section 101.600 is adopted *with changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4129). Section 101.601 and §101.602 are adopted *without changes* to the proposed text, and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1756, 83rd Legislature, 2013, amended the Texas Health and Safety Code (THSC), Chapter 382, Texas Clean Air Act (TCAA), to provide TCEQ with the authority to accept a surcharge from the applicant to cover the expenses incurred by expediting the processing of an application. THSC, §382.05155, Expedited Processing of Application, allows applicants to request, and the executive director may grant, expedited processing of applications. The commission interprets THSC, §382.05155 to only apply to an application filed under 30 Texas Administrative Code (TAC) Chapter 106, 116, or 122. The applicant must demonstrate that the purpose of the application will benefit the state or local economy and the executive director may expedite the processing of the application if it is determined that by expediting the processing it will benefit the economy of this state or an area of this state. THSC, §382.05155 allows the commission to authorize the use of overtime or contract labor to process expedited applications, and to add a surcharge to cover expenses incurred by the expediting process. THSC, §382.05155 specifies that the overtime or contract labor used to process expedited applications is not included in the calculation of the number of full-time equivalent commission employees. Applicants must still comply with all applicable federal and state requirements, including the existing public notice requirements. These requirements will continue to include the opportunity, when applicable, to submit comments and request a public meeting, a notice and comment hearing, or a contested case hearing. In addition, when public notice is required for an expedited project, the published notice must indicate that the application is being processed in an expedited manner.

Section by Section Discussion

§101.600, Applicability

The commission adopts new §101.600, to establish that owners and operators may request expedited processing of applications filed under 30 TAC Chapter 106, 116, or 122, and to establish the standard the executive director must use to determine whether an application may be processed under this section. Adopted new §101.600(a) requires the owner or operator to demonstrate that the application and project will benefit the economy of this state or an area of this state. Adopted new §101.600(b) provides that the executive director may expedite the processing of an application if the executive director determines that expediting it will benefit the economy of this state or an area of this state. In addition to this determination, adopted subsection (b) provides that the executive director must have the available financial and physical resources for this purpose. The number of applications that can be expedited will depend upon available permitting resources, such as availability of qualified personnel (commission employees or contract labor), office space, and computers. For the 2014 - 2015 biennium, the commission appropriation for the program is limited by the Appropriation Rider authorized by General Appropriations Act, Article IX, §18.57 (83rd Legislature, 2013). This rider limits the funds appropriated for this program to an amount not to exceed $955,000 in fiscal year 2014 and not to exceed $897,000 in fiscal year 2015. The Appropriation Rider limits the amount the commission can spend from the collected surcharge and does not include other fees, such as Prevention of Significant Deterioration (PSD) fees. Expending the appropriation authorized under this rider is contingent on the agency collecting revenue from the expedited permit program.

§101.601, Surcharge

The commission adopts new §101.601 to provide for the executive director to add a surcharge for processing expedited applications and to provide for a refund or additional charge when applicable. Adopted new §101.601(a) requires this surcharge to be added in an amount sufficient to cover expenses incurred by expediting the processing of an application. Adopted new §101.601(b) requires applicants to pay a surcharge at the time an application, filed under 30 TAC Chapter 106, 116, or 122, is submitted or is under review. Only after the surcharge is received will TCEQ begin expediting the processing of the application. Adopted new §101.601(c) allows the executive director to collect additional surcharge(s) from an applicant to cover the expenses of expediting the application above the original surcharge amount. The requirement that the executive director include a surcharge to cover the expenses of expediting an application is statutory. Once a request for expedited permitting is received, the executive director will evaluate the resources necessary to expedite the processing of each application. The commission has included this provision allowing for additional surcharge(s) to meet the intent of the statute if additional surcharge is necessary to cover expenses incurred by expediting the application. Adopted new §101.601(d) states that the executive director may refund any unused portion of the surcharge.

§101.602, Public Notice

The commission adopts new §101.602 to specify that for expedited applications with a surcharge, any required public notice, including that described in 30 TAC Chapters 39, 55, and 122, must also include a statement that the application is being processed in an expedited manner.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the processing of an application filed under 30 TAC Chapter 106, 116, or 122.

Additionally, even if the rules met the definition of a major environmental rule, the rulemaking does not meet any of the four ap-

plicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted new rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, and is specifically required by state law. Further, the rules do not exceed a standard set by federal law or exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution §17 or §19, Article I; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the adopted rulemaking under Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to implement SB 1756 by developing a process to expedite the application process.

The adopted rules will not create any additional burden on private real property. The adopted rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on June 24, 2014. The comment period closed on June 30, 2014. The commission received comments from Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP), the United States Environmental Protection Agency (EPA), the TCEQ Office of the Public Interest Council (OPIC), the Texas Chemical Council (TCC), the Texas Pipeline Association (TPA), the Texas Oil and Gas Association (TXOGA), and Valero. Five commenters supported the proposed rulemaking, and two commenters were neutral. Four commenters suggested specific changes to the proposed rules.

Response to Comments

Comment

TIP, TCC, TPA, TXOGA, and Valero submitted comments in support of the revisions to Chapter 101.

Response

The commission appreciates the support. No change was made to the rules in response to this comment.

Comment

TPA, TXOGA, and TCC made suggestions regarding the economic benefit analysis. TPA suggested changing §101.600(a) and (b) to also include, "an area of this state" as having an economic benefit to be more consistent with the Texas Health and Safety Code and to ensure a benefit to the local economy. TCC commented that the economic benefit analysis should not be a burdensome process, that the burden is on the applicant to make the demonstration, and the evidence necessary to support the economic benefit finding should be minimal. TXOGA and TCC commented that the ED should maintain discretion in the economic benefit analysis and the analysis should not be a subject to challenge in a contested case hearing.

Response

The language has been changed to "this state or an area of this state" in places that economic benefit is discussed, including §101.600(a) and (b). The commission has not specified criteria for evaluating economic benefit and will consider any demonstration of economic benefit to this state or an area of this state. The economic benefit analysis and determination is only used to determine whether the application is expedited. The economic benefit analysis is not part of the administrative or technical review and does not impact permit issuance. Therefore, the economic benefit analysis is not subject to the contested case hearing process.

Comment

TPA recommended changing "may" to "shall" in §101.600(b) to more clearly state that if the resources are available and expediting the permit would benefit the economy, application of the process would be automatic. TPA also recommended changing "may" to "shall" in §101.601(d) that discusses refunding any unused portion of the surcharge to more clearly indicate that overpayments will be refunded and to ensure consistency with the THSC.

Response

Changing the rule language as recommended would be inconsistent with the statutory language and would remove the flexibility needed to administer these rules. In addition, there could be situations when expediting a permit application might not be possible, such as if the rider appropriations limit has been reached. No change was made to the rule in response to this comment.

Comment

TPA suggested including rule language that requires the commission to inform the applicant on its decision regarding expediting within ten business days.

Response

The commission is committed to responding to expedited requests in a reasonable amount of time. In the commission's experience, considerations such as these should be in the implementation procedures and policies so that specific facts such as permit type and complexity can be included. No change was made to the rule in response to this comment.

Comment

EPA asked whether the proposed revisions to Chapter 101 would be submitted to EPA for review as a revision to the State Implementation Plan (SIP) or the Texas Federal Operating Permits Program.

Response

The commission is not submitting Project 2013-042-101-AI or any portions of the rulemaking to EPA as a SIP or Texas Federal Operating Permits Program revision. No change was made to the rule in response to this comment.

Comment

TCC asked the commission to revise the preamble to clarify that the current caps for each fiscal year do not also include permit fees in 30 TAC §116.141.

Response

The financial limits in the Section by Section Discussion for §101.600, Applicability, are referring to funds appropriated by the legislature, not a financial cap that the agency can control. The limit in the appropriations rider is the amount the commission can spend in fiscal years 2014 and 2015 from the surcharge(s) collected through the expedited permit process to pay for additional resources. This does not include other fees, such as PSD fees. The preamble was updated to include this clarification. No change was made to the rule in response to this comment.

Comment

EPA, TCC, and OPIC asked how the commission would ensure that any contracted workers hired to expedite permits would not introduce a conflict of interest in developing and issuing air permits.

Response

The commission plans to initially use current employees as the additional resources needed to implement the expedited permitting program. The rule language allowing for the use of contract labor reflects the statutory language in the THSC. If the commission chooses in the future to use contract labor to work on expedited permit projects, appropriate language in the contract will address potential conflicts of interest. No change was made to the rule in response to this comment.

Comment

TCC sought clarification regarding a scenario when both a New Source Review (NSR) permit and Title V permit is required. TCC asked if the applicant would have the option to expedite only one permit or the other, or if both permits would be required to be expedited. TCC also wanted clarification regarding how a surcharge would be assessed in that scenario.

Response

Requests for expediting application reviews will be made by the applicant as part of each application submitted. A separate surcharge will be assessed for each request that the executive director has determined meets the requirements of the §§101.600 - 101.602. The applicant will not be required to expedite multiple applications, even in circumstances when the applicant has multiple applications pending with the Air Permits Division. The expedited permit program is a voluntary program and the applicant can request to expedite any or all applications submitted.

Comment

OPIC, TCC, TXOGA, and TIP expressed concerns regarding expedited permit applications and public notice. TCC and TXOGA requested clarification on how the commission is planning on handling a situation when an application has already been to public notice and then the applicant chooses to expedite the application process.

Response

The commission will continue to follow all public notice process requirements for both NSR and Title V permitting. An application for an expedited permit will continue to meet the same public notice timeframes as required by current public notice rules. In instances when the applicant requests an application to be expedited after public notice has been correctly completed, the commission does not intend to require the applicant to republish notice. No change was made to the rule in response to these comments.

Comment

OPIC specifically expressed concern about the timeline for public review being reduced.

Response

Expedited permit applications will continue to be subject to the existing public notice deadlines and timeframes specified in current rules covering the public notice and comment process. However, the intended purpose of the underlying legislation is to shorten the overall time between the filing of a permit application and the issuance or denial of the permit, and as a natural consequence, certain steps in the administrative and technical review portions of the permit review may occur more

rapidly. The public will continue to be able to state their views regarding all aspects of the permit application and technical review, and will continue to have the opportunity to request a public meeting, contested case hearing, motion to overturn, or a request for reconsideration (as applicable) under the same time constraints currently allowed.

Comment

EPA asked for an explanation of how the commission will integrate the expedited process into the Title V workload. Specifically, EPA asked how the commission was planning on keeping the expedited surcharge separate from Title V emission fees.

Response

The commission will continue to follow all air permitting process requirements for both NSR and Title V permitting. Application fees, emission fees, and expedited permitting surcharges will be tracked separately. Expedited permitting surcharge funds will not be placed in or combined with the commission's Title V fee account (Account No. 5094); rather, as specified in the rider for SB 1756 in the General Appropriations Act, the surcharges will be paid from Clean Air Account No. 151. The commission will create a separate and distinct tracking number for the expedited surcharge and any resulting incentives for payroll accounting purposes. No change was made to the rule in response to this comment.

Comment

TIP, OPIC, TCC, TPA, and TXOGA provided implementation suggestions. TIP provided implementation suggestions for expediting permit projects regarding staffing, timing of applicability, and public notice language. OPIC expressed concerns regarding implementation of contract labor and preservation of sufficient time for public review of application documents. TCC provided many implementation suggestions for expediting permit projects regarding economic benefit analysis, the surcharge, applicability, project prioritization, staffing, and administration. TPA provided implementation suggestions regarding response letter deadlines, issuance deadlines, and staffing. TXOGA provided implementation suggestions regarding staffing, public notice timing, specificity of providing economic benefit, and the surcharge. TIP requested that the commission confirm, and TXOGA and TPA commented, that all aspects of the permit application process, e.g., the modeling and toxicology analyses, can be expedited, and owners or operators may elect expedited treatment for applications after initial submission. TCC recommended a "once in, always in" approach, meaning once an applicant has requested expedited processing, the application remains in the program for all purposes until a draft permit is issued.

Response

The commission appreciates the suggestions and will consider them in its implementation process. The commission will continue to follow all air permitting process requirements for both NSR and Title V permitting. The commission agrees that under the rule, all parts of the permit application process that do not have a specific timeline in rule or statute may be expedited. The commission will take appropriate measures to inform applicants of all implemented procedures and policies by developing guidance and promptly responding to public questions. No change was made to the rule in response to these comments.

Comment

TCC and TXOGA suggested that any surcharge money accumulated in one fiscal year should be allowed to be used the next fiscal year. TXOGA specifically suggested adding rule language to accomplish this.

Response

The ability to carry forward appropriation authority across bienniums requires specific legislative authority. The commission currently does not have this authority for expedited air permits funding. The commission is limited to carrying forward appropriation authority within the same biennium. No change was made to the rule in response to this comment.

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.05155, concerning Expedited Processing of Application, which authorizes the commission to develop a process for expediting applications and charging a surcharge; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which requires an applicant for a permit issued under THSC, §382.0518 to publish notice of intent to obtain a permit. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules, and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted rulemaking implements Senate Bill 1756 (83rd Legislature, 2013), THSC, §§382.002, 382.011, 382.012, 382.051, 382.05155, and 382.056; and Texas Government Code, §2001.004 and §2001.006.

§101.600. Applicability.

(a) An owner or operator may request the expedited processing of an application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) Subject to the availability of commission resources for expediting permit applications, the executive director may expedite the

processing of an application filed under Chapter 106, 116 or 122 of this title if the executive director determines that expediting it will benefit the economy of this state or an area of this state.

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) 239-2613

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CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §290.272

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §290.272 *with changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4132) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this adopted rulemaking is to amend Chapter 290 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts revisions to 30 TAC Chapter 291, Utility Regulations, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes throughout the adopted rule to update terminology and conform with *Texas Register* requirements.

§290.272, Content of the Report

The commission adopts the amendment to §290.272(b)(2)(E) to correct the existing acronym for micrograms per liter. The commission adds §290.272(h) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is adopted to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Adopted subsection (h) requires the retail public utility to notify its customers of water loss through its next CCR following the filing of the water loss audit, unless the retail public utility elects to notify its customers through the next bill sent to its customers; either notification method is allowed under the legislation. In response to comments, the commission has revised §290.272(h) to clarify that the water loss may be included "on or with" the next CCR filed by the utility.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy. Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the notification of water loss from retail public utilities to their customers. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking will be adopted pursuant to the commission's specific authority in TWC, Chapter 13, Subchapter E. Therefore, the rule is not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative

changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The adopted rule would substantially advance this purpose by amending Chapter 290 to incorporate the new statutory requirement.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The adopted rule will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on June 30, 2014. The commission received comments on this rulemaking from the American Water Works Association - Texas Section, Austin Water Utility, the City of Seguin (City), and the San Antonio Water System (SAWS).

American Water Works Association - Texas Section, Austin Water Utility, and SAWS commented that the proposed rule should be revised to accurately reflect the intent of HB 1461. The City requested the executive director's staffs' guidance on compliance with HB 1461.

Response to Comments

Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §290.272(h) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills; the proposed language had indicated that the audit loss results must be provided "in" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. Additionally, Austin Water Utility, American Water Works Association - Texas Section, and SAWS expressed appreciation "that the proposed rules do not specify what metrics will be used...," stating that "it is important that such details be left up to the individual utilities to determine what data would be the most meaningful for their customers."

In response to these comments, the commission has replaced the word "in" with the phrase "on or with" to more closely reflect the amended statute.

The City requested the executive director's staffs' guidance on complying with HB 1461 during 2014. The City commented that it should have notified its customers in the billing cycle immediately following the City's submission of its water loss audit to the TWDB, which occurred during March, 2014. And, because the City's annual CCRs have already been published and were being distributed at the time of the public hearing, the City finds itself unable to comply with HB 1461's notification methods during 2014; however, the City confirmed its intent to comply with the notification options beginning in 2015.

HB 1461 took effect on September 1, 2013, and required a retail public utility that files a water loss audit with the TWDB to provide notice of said water loss to its customers. HB 1461 allows the retail public utility to provide this information to its customers in the next CCR or the next customer bill after the filing of the audit. The commission understands the City's dilemma; however, the TCEQ has not been granted legislative authority to either waive or alter the statutory notification requirement. Therefore, no change has been made in response to this comment.

Statutory Authority

This rule is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The adopted rule implements the language set forth in House Bill 1461, which affects all retail public utilities. Therefore, the TWC authorizes a rulemaking that amends §290.272, requiring all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official and approved by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report must contain the following definitions.

(A) Maximum contaminant level goal (MCLG)--The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) Maximum contaminant level (MCL)--The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to maximum contaminant level goals as feasible using the best available treatment technology.

(C) Maximum residual disinfectant level goal (MRDLG)--The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) Maximum residual disinfectant level (MRDL)--The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(2) The following terms and their descriptions must be included when they appear in the report:

(A) MFL--million fibers per liter (a measure of asbestos);

(B) mrem/year--millirems per year (a measure of radiation absorbed by the body);

(C) NTU--nephelometric turbidity units (a measure of turbidity);

(D) pCi/L--picocuries per liter (a measure of radioactivity);

(E) ppb--parts per billion, or micrograms per liter (µg/L);

(F) ppm--parts per million, or milligrams per liter (mg/L);

(G) ppt--parts per trillion, or nanograms per liter (ng/L); and

(H) ppq--parts per quadrillion, or picograms per liter (pg/L).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act must include a description of the variance or the exemption granted under §290.102(b) of this title (relating to General Applicability).

(4) A report that contains data on a contaminant for which the United States Environmental Protection Agency (EPA) has set a treatment technique (TT) or an action level (AL) must include, depending on the contents of the report, the following definitions.

(A) TT--A required process intended to reduce the level of a contaminant in drinking water.

(B) AL--The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium.* Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, MRDL, AL, or TT; and

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, and found in §290.275(4) of this title (relating to Appendices A - D).

(2) The data relating to these detected contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its reports must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the TT or specific AL applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with *National Primary Drinking Water Regulations* (NPDWR) and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) In accordance with date requirements included in the table under §290.115(a) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), entitled "Date to Start Stage 2 Compliance," for the MCLs for total trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment), the table(s) must contain

the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the AL.

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or TTs. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and the actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium),* the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium,* radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium,* the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon, which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring, which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the NPDWR or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems that have failed to install adequate filtration, disinfection equipment, or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems that fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275(3) of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of TTs for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report must include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title, the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(8) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title, the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban storm water runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistencia en español, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of limited English proficiency residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator-positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator-positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under

§290.109(d) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

(9) Every report must include the following lead-specific information - a short informational statement about lead in drinking water and its effect on children.

(A) The statement must include the information set forth in this example statement. "If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. NAME OF UTILITY is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at *http://www.epa.gov/safewater/lead."*

(B) A system may write its own educational statement, but only in consultation with the executive director.

(h) Customer notification of water loss by a retail public utility. A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code, §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next report following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next bill sent to its customers following the filing of the water loss audit in accordance with §291.87 of this title (relating to Billing).

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 24, 2014.

TRD-201404970

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 13, 2014
Proposal publication date: May 30, 2014
For further information, please call: (512) 239-2613

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CHAPTER 291. UTILITY REGULATIONS
SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §291.87

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §291.87 *with changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4138) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2013, the 83rd Legislature passed House Bill (HB) 1461, which requires all retail public utilities to notify their customers of water loss reported in their water loss audits filed with the Texas Water Development Board (TWDB). The notice shall be provided through the utility's consumer confidence report (CCR) or in the customer's bill after the water loss audit is filed. The purpose of this adopted rulemaking is to amend Chapter 291 to reflect the legislative changes to Texas Water Code (TWC), §13.148, Notification of Water Loss.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 293, Water Districts.

Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes throughout the adopted rule to conform with *Texas Register* requirements.

§291.87, Billing

The commission adds §291.87(e)(3) to implement the changes made to TWC, §13.148, in HB 1461 to remain consistent with the amended statute. The rulemaking is adopted to ensure that retail public utilities notify their customers of water loss reported in their filed water loss audits. HB 1461 specifies that the requirement to provide water loss information to customers is in conjunction with water loss audits filed pursuant to TWC, §16.0121, Water Audits (submitted to the TWDB). Adopted paragraph (3) requires the retail public utility to notify its customers of water loss through the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers through its next CCR; either notification method is allowed under the legislation. In response to comments, the commission has revised §291.87(e)(3) to clarify that the water loss may be included "on or with" the next bill sent to customers. The commission further renumbers existing §291.87(e)(3) to improve the rule's organizational structure.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also states that the notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy. Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the notification of water loss from retail public utilities to their customers. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking will be adopted pursuant to the commission's specific authority in the TWC, Chapter 13, Subchapter E. Therefore, the rule is not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 1461, which requires all retail public utilities to notify their customers of water loss reported in their filed water loss audits. HB 1461 also requires that this notice shall be provided through the utility's CCR or in the customer bills after the water loss audit is filed. The adopted rule would substantially advance this purpose by amending Chapter 291 to incorporate the new statutory requirement.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The adopted rule will primarily affect those retail public utilities that experience water loss; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on June 30, 2014. The commission received comments on this rulemaking from the American Water Works Association - Texas Section, Austin Water Utility, the City of Seguin (City), and the San Antonio Water System (SAWS).

American Water Works Association - Texas Section, Austin Water Utility, and SAWS commented that the proposed rule should be revised to accurately reflect the intent of HB 1461. The City requested the executive director's staffs' guidance on compliance with HB 1461.

Response to Comments

Austin Water Utility, American Water Works Association - Texas Section, and SAWS commented that the proposed changes to §291.87(e)(3) should be amended to reflect that the water loss audit results reported to customers of retail public utilities can be provided "on or with" the CCRs or customer bills; the proposed language had indicated that the audit loss results must be provided "in" the CCRs or customer bills. These commenters stressed that, for their customers and the public to receive the most benefit from this reporting and also to reduce confusion, utilities might also include a narrative explaining what the water loss audit results mean. Additionally, Austin Water Utility, American Water Works Association - Texas Section, and SAWS expressed appreciation "that the proposed rules do not specify what metrics will be used...," stating that "it is important that such details be left up to the individual utilities to determine what data would be the most meaningful for their customers."

In response to these comments, the commission has replaced the word "in" with the phrase "on or with" to more closely reflect the amended statute.

The City requested the executive director's staffs' guidance on complying with HB 1461 during 2014. The City commented that it should have notified its customers in the billing cycle immediately following the City's submission of its water loss audit to the TWDB, which occurred during March, 2014. And, because the City's annual CCRs have already been published and were being distributed at the time of the public hearing, the City finds itself unable to comply with HB 1461's notification methods during 2014; however, the City confirmed its intent to comply with the notification options beginning in 2015.

HB 1461 took effect on September 1, 2013, and required a retail public utility that files a water loss audit with the TWDB to provide

notice of said water loss to its customers. HB 1461 allows the retail public utility to provide this information to its customers in the next CCR or the next customer bill after the filing of the audit. The commission understands the City's dilemma; however, the TCEQ has not been granted legislative authority to either waive or alter the statutory notification requirement. Therefore, no change has been made in response to this comment.

Statutory Authority

This rule is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The adopted rule implements the language set forth in House Bill 1461, which affects all retail public utilities. Therefore, the TWC authorizes a rulemaking that amends §291.87, requiring all retail public utilities to notify their customers of water loss reported in their filed water loss audits.

§291.87. Billing.

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either $5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage; and

(O) the local telephone number or toll free number where the utility can be reached.

(3) A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code (TWC), §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information on or with its next consumer confidence report following the filing of the water loss audit in accordance with §290.272 of this title (relating to Content of the Report).

(4) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the TWC or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

(h) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(j) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(k) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(l) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by §291.88 of this title.

(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title.

(m) Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide in-

formation to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(n) Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(o) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(p) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract;

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director; or

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §291.88(h)(2) of this title and §291.89(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(q) Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.

(r) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

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 24, 2014.

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§293.1, 293.12, 293.41, 293.44, 293.51, 293.54, 293.63, 293.81, 293.94, and 293.171. Sections 293.1, 293.12, 293.54, 293.63, 293.81, 293.94, and 293.171 are adopted *without changes* to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4143), and therefore will not be republished. Sections 293.41, 293.44, and 293.51 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2013, the 83rd Legislature passed House Bill (HB) 738, HB 1050, HB 2704, and Senate Bill (SB) 902. The purpose of this adopted rulemaking is to amend Chapter 293 to reflect the legislative changes to Texas Water Code (TWC), §§49.154, 49.181, 49.194, 49.212, 49.273, 49.462, 49.4641, 49.4645, 54.0161, and 54.236.

HB 738 amends TWC, §54.0161, to specify that the commissioners court of a county in which a proposed municipal utility district (MUD) is located may review the petition and provide comment to the commission on the creation of a MUD located entirely outside the corporate limits of a municipality. HB 738 requires the commission to promptly notify a commissioners court of a MUD creation petition. Under prior law, a county could provide comments to the commission only if any portion of a proposed MUD was located outside the extraterritorial jurisdiction (ETJ) of a municipality. HB 738 expands the opportunity for review and comment by the county commissioners court on a proposed MUD outside the corporate limits (within or outside the ETJ) of a municipality. As a result, the commission adopts an amendment to §293.12 to reflect the required notification process only for MUD creations.

HB 1050 and HB 2704 amend TWC, §49.273(i), to specify that a change order can be approved by a district's governing board, or by an official or employee responsible for purchasing or for administering a contract that is given authority by the district's governing board, so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under prior statute. The commission adopts an amendment to §293.81 to reflect this increase.

SB 902, §13, specifies that bond anticipation notes (BANs) may be issued for any purpose for which bonds of the district may be issued. Prior statutory language stated that BANs may be issued for any purpose for which bonds of the district may have been previously voted, which is reflected in the existing Chapter 293 rules. Therefore, the commission adopts an amendment to §293.54 to reflect that a BAN may be issued for any purpose for which bonds of the district may be issued.

SB 902, §14, specifies that a district may not issue bonds to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds. Prior statutory language stated that a district may not issue bonds (no distinguishing type) to finance a project for which the commission has adopted rules requiring review and approval unless the commission determines that the project is feasible and issues an order approving the issuance of the bonds, which is reflected in the existing Chapter 293 rule. Therefore, the commission adopts an amendment to §293.41 to reflect that the commission's review of a district's bond issue is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval.

SB 902, §15, specifies that a special water authority shall submit a copy of an audit report to the commission not later than 160 days after the special water authority's fiscal year end. Prior statutory language allowed for an audit report from any type of water district or authority to be filed within 135 days after the close of the district's fiscal year end, which is reflected in the existing Chapter 293 rule. Therefore, the commission adopts an amendment to §293.94 to reflect that a special water authority shall submit a copy of an audit report and related filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end.

Prior statutory language allowed for a determination that a fee charged by a district for certain facilities such as water, sanitary sewer, or drainage facilities was not an impact fee. SB 902, §16, added storm water detention or retention facilities and related storm water conveyances to the list of facilities that may be exempt from the impact fee designation. SB 902, §16, also allowed for the determination of actual costs of facilities to include certain non-construction costs such as design, permitting, financing, construction, and interest. The existing Chapter 293 rule for impact fees mirrored the previous statutory language. Therefore, the commission adopts an amendment to §293.171 to reflect the addition of storm water detention or retention facilities to the list of facilities that may be exempt from the impact fee designation and the definition of actual costs.

Prior statutory language specified that a district shall advertise and publish notice for district contracts over $50,000. SB 902, §19, increased the contract amount for which a district must advertise and publish notice from $50,000 to $75,000. Additionally, prior statutory language specified that a district shall solicit bids when a district contract is over $25,000 but not more than $50,000. SB 902, §19, increased the maximum amount for which a district shall solicit bids from $50,000 to $75,000. The existing Chapter 293 rule for advertising and soliciting bids for contracts mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.63 to reflect these increases.

Prior statutory language defined a recreational facility as parks, landscaping, parkways, greenbelts, sidewalks, trails, public right-of-way beautification projects, and recreational equipment and facilities. SB 902, §21, specified that the definition of a "recreational facility" does not include a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The existing Chapter 293 rule defining recreational facilities mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.1 to reflect the revised definition of a recreational facility.

SB 902, §22, allows districts to fund the full costs of sites acquired for developing water, wastewater, or drainage facilities

that also have a recreational facility component by specifying that a district would not be required to prorate the costs of the site between the utility and recreational purposes. SB 902, §22, requires a licensed professional engineer to certify that such a site is reasonably sized for the utility purpose, and gives guidance for what should be considered in order to determine if the site is reasonably sized for the utility purpose. SB 902, §22, provided guidance for the factors the engineer may consider when determining the reasonableness of the site. The existing Chapter 293 rule regarding the proration of these types of facilities does not reflect the statutory changes of SB 902. Therefore, the commission adopts amendments to §293.44 and §293.51 to reflect the district's ability to finance the full cost associated with site acquisition.

Prior statutory language set the limitation for the total amount of bonds outstanding and proposed to be issued for recreational facilities at 1% of a district's total assessed valuation. SB 902, §23, added that this 1% limitation also applied to bonds supported by a contract tax and was based on the taxable value of property in the district making payments under the contract. SB 902, §23, further specified that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within a district for the issuance of recreational facilities bonds. The existing Chapter 293 rule for the 1% limitation and appraisal district certification mirrored the prior statutory language. Therefore, the commission adopts an amendment to §293.41 to reflect these changes.

SB 902, §29, added that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The existing Chapter 293 rule regarding street lighting stipulates that a district may not fund these facilities. Therefore, the commission adopts an amendment to §293.41 to allow MUDs to fund street lighting facilities in compliance with SB 902.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission also adopts revisions to 30 TAC Chapter 290, Public Drinking Water, and 30 TAC Chapter 291, Utility Regulations.

Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission adopts administrative changes throughout the adopted rules to update citations and terminology and conform with *Texas Register* requirements.

§293.1, Objective and Scope of Rules; Meaning of Certain Words

The commission adopts an amendment to §293.1(c) to specify that the definition of a recreational facility does not include a minor improvement or beautification project to land acquired or to be acquired solely as part of a district's water, wastewater, or drainage facilities. The adopted amendment implements TWC, §49.462(1), as amended by SB 902, §21, to remain consistent with the amended statute.

§293.12, Creation Notice Actions and Requirements

The commission adds §293.12(h) to specify that upon receipt of a petition to create a district under TWC, Chapter 54, all of which is to be located outside the corporate limits of a municipality, the executive director shall notify the commissioners court of any county in which the proposed district is to be located that the petition has been filed. The adopted addition implements TWC, §54.0161, as amended by HB 738, to remain consistent with the amended statute.

§293.41, Approval of Projects and Issuance of Bonds

The commission adds §293.41(a)(6) to specify that the commission's review of district bond issues is limited to bonds to finance a project for which the commission has adopted rules requiring review and approval. The adopted addition implements TWC, §49.181(a), as amended by SB 902, §14, to remain consistent with the amended statute. The commission adopts an amendment to §293.41(e)(3)(H) to specify that a MUD may issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting under a MUD's authorization to acquire road facilities or as a recreational facility. The adopted amendment to §293.41(e)(3)(H) implements TWC, §54.236, as amended by SB 902, §29, to remain consistent with the amended statute. The commission further adopts an amendment to §293.41(e)(4) to specify that the district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of property in the district and that the aforementioned 1% limitation also applies for bonds supported by a contract tax, and is based on the taxable value of property in the district(s) making payments under the contract. The commission adopts an amendment to §293.41(e)(4) to specify that an estimate of value provided by the central appraisal district may be used to establish the value of taxable property within the district(s) for the issuance of bonds for recreational facilities. In response to comment, the commission has revised §293.41(e)(4) by replacing the word "must" with "may" to accurately reflect the statute specifying that a district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of the property in the district. The adopted amendment to §293.41(e)(4) implements TWC, §49.4645(a), as amended by SB 902, §23, to remain consistent with the amended statute.

§293.44, Special Considerations

The commission adopts an amendment to §293.44(a)(12) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose. In response to comment, the commission has removed the word "land" from the phrase "land costs" in §293.44(a)(12) to clarify that the adopted rule would apply to all eligible costs associated with sites as provided for in the amended statute. In response to comment, the commission also removed the proposed statement in §293.44(a)(12) that would have required sites to be prorated if the licensed professional engineer certified that the site was reasonably sized for the primary purpose as the amended statute did not mandate proration of these sites if said certificate was not provided. The adopted amendment implements the addition of TWC, §49.4641, as added by SB 902, §22, to remain consistent with the amended statute.

§293.51, Land and Easement Acquisition

The commission adds §293.51(j) to specify that a district is not required to prorate the land costs of a combined lake and detention site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the

site is reasonably sized for the primary purpose. In response to comment, the commission removed the proposed statement in §293.51(j) that would have required sites to be prorated if the licensed professional engineer certified that the site was reasonably sized for the primary purpose as the amended statute did not mandate proration of these sites if said certificate was not provided. The adopted amendment implements the addition of TWC, §49.4641, as added by SB 902, §22, to remain consistent with the amended statute.

§293.54, Bond Anticipation Notes (BAN)

The commission adopts an amendment to §293.54 to reflect that BANs may be issued for any purpose for which bonds of the district may be issued, in lieu of the prior statutory requirement that BANs may be issued for any purpose for which bonds of the district may have been previously voted. The adopted amendment implements TWC, §49.154(c), as amended by SB 902, §13, to remain consistent with the amended statute.

§293.63, Contract Documents for Water District Projects

The commission adopts an amendment to §293.63(8) to increase the amount of a contract for which a district's governing board of directors is required to advertise the project from $50,000 to $75,000. The commission also adopts an amendment to §293.63(8) to increase the amount of a contract for which a district's governing board is required to solicit written competitive bids on the project from $50,000 to $75,000. The adopted amendment implements TWC, §49.273(d) and (e), as amended by SB 902, §19, to remain consistent with the amended statute.

§293.81, Change Orders

The commission adopts an amendment to §293.81(1)(A) to specify that a district may issue a change order so long as the aggregate of the change orders does not increase the original contract amount by more than 25%, instead of by 10% as allowed under the existing rule. The adopted amendment implements TWC, §49.273(i), as amended by HB 1050 and HB 2704, to remain consistent with the amended statute.

§293.94, Annual Financial Reporting Requirements

The commission adopts an amendment to §293.94(h)(1)(A) to specify that a special water authority, as defined in TWC, §49.001(8), shall submit a copy of an audit report and accompanying annual filing affidavit to the commission not later than 160 days after the special water authority's fiscal year end, in lieu of the prior statutory language's 135-day time period which was applicable to all districts and authorities subject to TWC, Chapter 49. The adopted amendment implements TWC, §49.194(h), as amended by SB 902, §15, to remain consistent with the amended statute.

§293.171, Definitions of Terms

The commission adopts an amendment to §293.171 and its subdivisions to specify that actual costs, as it relates to impact fees, may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities. The commission also adopts an amendment to §293.171 to add storm water detention or retention facilities, or capacity in such facilities and related storm water conveyances, to the list of facilities that may be exempt from the impact fee designation. The adopted amendment implements TWC, §49.212(d), as amended by SB 902, §16, to remain consistent with the amended statute.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The adopted rules would substantially advance this purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rulemaking will be adopted pursuant to the commission's specific authority in TWC, §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 738, HB 1050, HB 2704, and SB 902 relating to the creation, regulation, powers, and operation of water districts. The adopted rules would substantially advance this

purpose by amending the existing Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This adopted rulemaking will primarily affect districts, especially in the areas of contracts, projects, and authority; this would not be an effect on private real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of this rulemaking with the CMP.

Public Comment

The commission held a public hearing on June 26, 2014. The comment period closed on June 30, 2014. Comments were received from the Honorable Hugh Coleman of Denton County; Allen Boone Humphries Robinson, L.L.P. (ABHR); County Judges and Commissioners Association of Texas; Muller Law Group, P.L.L.C. (Muller); and Schwartz, Page & Harding, L.L.P. (SPH).

ABHR and SPH offered comments to add clarification language to rules as proposed. County Commissioner Coleman provided comment detailing his understanding of the intent of HB 738. Muller requested the commission add new rule language clarifying the definition of an impact fee.

Response to Comments

County Commissioner Coleman and the County Judges and Commissioners Association of Texas recommended revised rule language for proposed §293.12(h) which would require the TCEQ's Chief Clerk's Office to: 1) send a copy of the complete petition to the commissioners court, and 2) provide the commissioners court with the criteria applicable and used by the TCEQ in its review of the petition.

The commissions' rule regarding application materials required to be filed with a petition requesting creation of a MUD is publicly available and can be found under §293.11. A county in which a proposed MUD is to be located is provided a copy of the notice of petition to create a MUD from the TCEQ. If the county commissioners court requires additional information, TWC, §54.0161(a-2), requires the petitioner(s) provide the information to the commissioners court by specifying that *"petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court."* Therefore, no change has been made in response to these comments.

ABHR and SPH commented that §293.41(e)(3)(H) should read *"street lighting, except as authorized by TWC, §54.236, as amended."* Instead, the commission's proposed language was *"street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended."*

The commission responds that the proposed language sufficiently reflects the language from SB 902, §29. No change has been made in response to these comments.

SPH commented that §293.41(e)(4) should read, *"{a} district's outstanding principal debt (bonds, notes, and other obligations) supported by ad valorem taxes for recreational facilities may not exceed 1%..."* Instead, the commission's proposed language was *"{a} district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities must not exceed 1%..."*

The commission concurs and in response has amended §293.41(e)(4) by changing to the word "must" to "may" to accurately reflect the statute.

SPH commented that commission's proposed change to §293.44(a)(12) should read *"pursuant to the provisions of TWC, §49.4641, as amended, a district... is not required to prorate the costs of a site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose."* Instead, the commission's proposed language was *"pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the land costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose; however, the site shall be prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose."*

The commission concurs and in response to this comment has removed the word "land" from phrase "land costs" in §293.44(a)(12). Additionally, the reference in §293.44(a)(12) to prorating a site not certified by a licensed professional engineer, beginning at "; however,..." has also been removed in response to this comment to accurately reflect the wording and intent of the amended statute. However, the commenter's requested deletion of the phrase "combined lake and detention" has not been acted upon as the provisions of adopted §293.44(a)(12) would apply only to combined lake and detention facilities and would not apply to other facility types.

ABHR and SPH commented that §293.51(j) should read, *"notwithstanding subsections (d) and (i), a district is not required to prorate the costs of a site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended."* Instead, the commission's proposed language was *"notwithstanding subsections (d) and (i), a district is not required to prorate the land costs of site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended. However, the site shall be*

prorated if a licensed professional engineer does not certify that the site is reasonably sized for the primary purpose."

The commission responds that the word "land" from the phrase "land costs" and the second sentence which had required proration if a licensed professional engineer's certification was not provided has been removed from adopted §293.51(j) in response to these comments to accurately reflect the wording and intent of the amended statute.

ABHR and SPH commented that the second sentence of §293.81(1)(A) should read *"change orders increasing the original contract price more than 25% may be issued only in response to...";* instead, the commission's proposed language was *"change orders above 25% may be issued only in response to..."*

The commission responds that the proposed language sufficiently reflects the statute as written in HB 1050 and HB 2704. No change has been made in response to these comments.

ABHR and SPH commented that the second sentence of §293.94(h)(1)(A) should read, *"audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year, except that audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year."* Instead, the commission's proposed language was *"audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. A special water authority's audit report and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year."*

The commission responds that the proposed language sufficiently reflects SB 902, §15. No change has been made in response to these comments.

SPH commented that the commission's proposed language to amend §293.171(1) and (1)(B) should reflect the removal of the words *"sanitary sewer, or"* and *"if."* SPH also commented that language in §293.171(1)(B) should remove of the word *"it."*

The commission responds that the rule language, as proposed, reflects the changes suggested by the commenter; therefore, no additional changes are necessary to the aforementioned section in response to this comment.

Muller requested the commission add §293.171(1)(D) to reflect that a payment made pursuant to a contract as provided in §293.44(b)(3) is not an impact fee to clarify *"long-standing confusion"* on the difference between impact fees and contractual purchase agreements imposed by one entity onto another.

The commission responds that the recommended rule language proposed by the commenter is outside the scope of this rulemaking as this rulemaking does not address contracts between entities with respect to the definition of an impact fee. No change has been made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.1, which relates to districts.

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 24, 2014.

TRD-201404972
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 13, 2014
Proposal publication date: May 30, 2014
For further information, please call: (512) 239-2613

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.12

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in House Bill 738, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.12, which relates to districts.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.41, 293.44, 293.51, 293.54

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendments implement the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §§293.41, 293.44, 293.51, and 293.54, which relate to districts.

§293.41. Approval of Projects and Issuance of Bonds.

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities;

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies;

(4) refunding bonds issued to refund bonds described by paragraph (3) of this subsection;

(5) bonds issued by a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by subsection (d)(1)(E) of this section; or

(6) bonds issued by a district to finance a project for which the commission has not adopted rules requiring review and approval.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to:

(1) a district if:

(A) the boundaries include one entire county;

(B) the district was created by a special act of the legislature; and

(i) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(ii) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(iii) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(C) the district is a special water authority as defined by TWC, §49.001(8);

(D) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(E) the district:

(i) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(ii) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(iii) has at least 5,000 active water connections; or

(F) the district:

(i) is a conservation and reclamation district created under the *Texas Constitution,* Article 16, §59, that includes territory in at least three counties; and

(ii) has the rights, privileges, and functions applicable to a river authority under TWC, Chapter 30; or

(2) a public utility agency created under Local Government Code, Chapter 572, any of the public entities participating in which are districts, if at least one of those districts is a district described by paragraph (1)(E) of this subsection.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for a district all or part of which is located in Montgomery County and includes land within a planned community of at least 15,000 acres, of which a majority of the developed acreage is subject to restrictive covenants containing ad valorem assessments), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a licensed professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting, except for a district operating under TWC, Chapter 54, pursuant to TWC, §54.236, as amended.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), supported by ad valorem taxes, for recreational facilities may not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller. If supported by contract taxes under TWC, §49.108, the outstanding principal debt (bonds, notes, and other obligations) may not exceed an amount equal to 1% of the value of the taxable property in the district or districts making payments under the contract. An estimate of the value provided by the central appraisal district may be used to establish the value of the taxable property in the district or districts.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a licensed professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required

developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Local Government Code, §552.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity).

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by paragraph (1) of this subsection or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title. Districts operating under Texas Water Code (TWC), Chapter 54, except one affected by House Bill 2965, 76th Legislature, 1999, are prohibited from exercising the power of eminent domain outside the district's boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by TWC, §49.462;

(3) an exclusive easement through a county regional park; or

(4) a site or easement for a road project.

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by licensed professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a licensed professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

(j) Notwithstanding subsections (d) and (i) of this subsection, a district is not required to prorate the costs of a site between the primary water, wastewater, or drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary water, wastewater, or drainage purpose pursuant to the provisions of TWC, §49.4641, as amended.

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 24, 2014.

TRD-201404974
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: May 30, 2014
For further information, please call: (512) 239-2613

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SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

30 TAC §293.63

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.63, which relates to districts.

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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Robert Martinez
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Texas Commission on Environmental Quality
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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in House Bill (HB) 1050 and HB 2704, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to districts.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER H. REPORTS

30 TAC §293.94

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore,

the TWC authorizes rulemaking that amends §293.94, which relates to districts.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER N. PETITION FOR APPROVAL OF IMPACT FEES

30 TAC §293.171

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules. In addition, TWC, §12.081, provides the commission authority to issue rules necessary to supervise districts and authorities created under Article 3, §52, and Article 16, §59, of the Texas Constitution.

The adopted amendment implements the language set forth in Senate Bill 902, which will primarily affect districts, especially in the areas of contracts, projects, and their authority. Therefore, the TWC authorizes rulemaking that amends §293.171, which relates to districts.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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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 §3.335

The Comptroller of Public Accounts adopts an amendment to §3.335, concerning property used in a qualifying data center; temporary state sales tax exemption, without changes to the proposed text as published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7073). This section is being amended to correct the form number of the Texas Application for Certification as a Qualifying Data Center referenced in subsection (e)(1) from AP-223 to AP-233. Additionally, subsection (f)(4) is being amended to revise the form number of the Qualifying Data Center Job Creation Report from 01-930 to 01-160. Nonsubstantive changes are made in subsections (c), (d), (e), (i), and (l).

No comments were received regarding adoption of the amendment.

This 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 the Tax Code, Title 2.

The amendment implements Tax Code, §151.359(e) and (i)(3).

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 21, 2014.

TRD-201404905
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 10, 2014
Proposal publication date: September 5, 2014
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 441. CONTINUING EDUCATION

37 TAC §§441.7, 441.11, 441.13, 441.15, 441.17, 441.19, 441.21

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 441, Continuing Education, concerning §441.7, Continuing Education for Structure Fire Protection Personnel; §441.11, Continuing Education for Marine Fire Protection Personnel; §441.13, Continuing Education for Fire Inspection Personnel; §441.15, Continuing Education for Arson Investigator or Fire Investigator; §441.17, Continuing Education for Hazardous Materials Technician; §441.19, Continuing Education for Head of a Fire Department; and §441.21, Continuing Education for Fire Service Instructor. The amendments are adopted without changes to the proposed text as

published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6811) and will not be republished.

The amendments are adopted to clarify language regarding continuing education requirements for the various disciplines of commission certification.

The adopted amendments will provide clear and concise rules regarding continuing education for individuals who hold commission certification in the various disciplines.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel certification.

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 21, 2014.

TRD-201404922
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: November 10, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 936-3813

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CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

37 TAC §457.3

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 457, Minimum Standards For Incident Safety Officer Certification, concerning §457.3, Minimum Standards for Incident Safety Officer Certification. The amendments are adopted without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6816) and will not be republished.

The amendments are adopted to delete language referencing specific courses that do not meet commission requirements for certification as Incident Safety Officer.

The adopted amendments will provide clear and concise rules regarding requirements for commission certification as Incident Safety Officer.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel certification.

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 21, 2014.

TRD-201404923
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: November 10, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 936-3813

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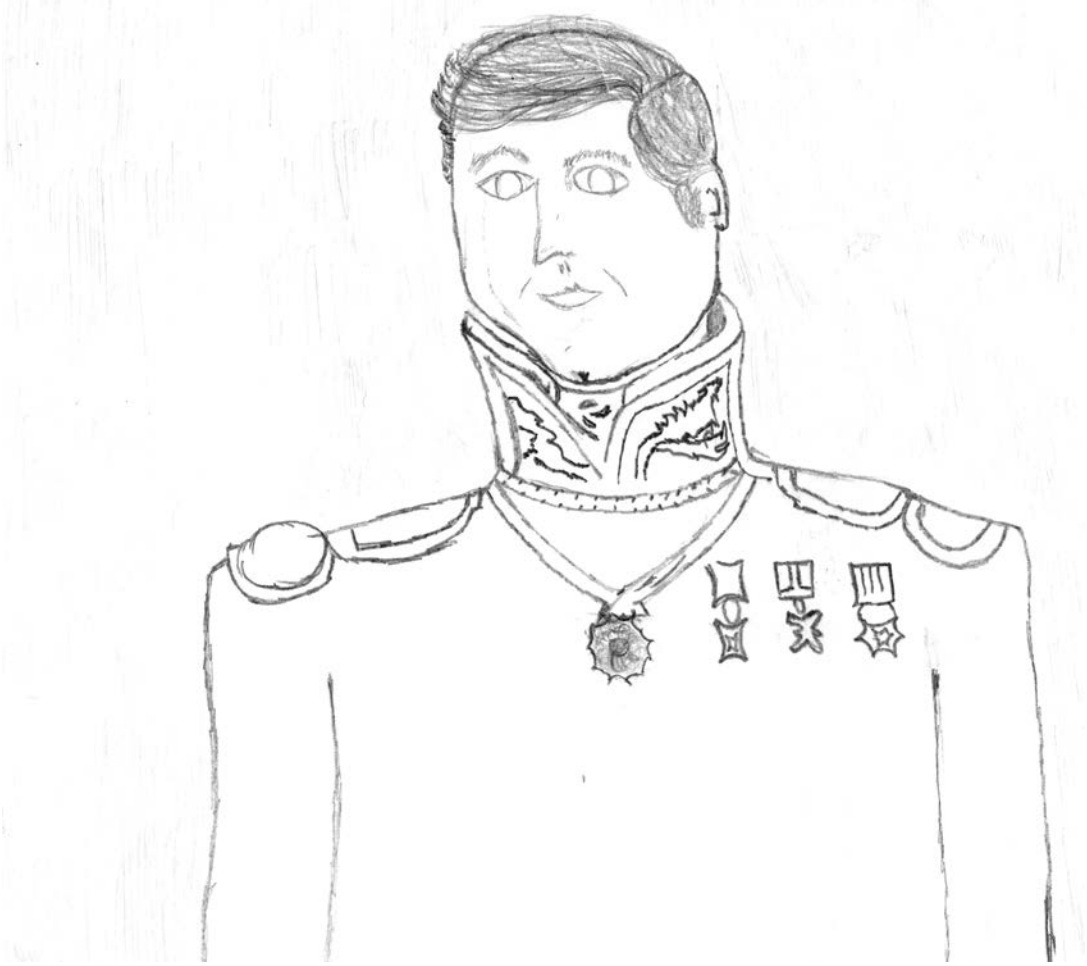
Santa Ana

Karen Ramos



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 86, concerning Retail Creditors. Chapter 86 contains Subchapter A, concerning Registration of Retail Creditors; and Subchapter B, concerning Retail Installment Contract. Subchapter A consists of §86.101, concerning Consumer Notifications, and §86.102, concerning Annual Registration Fees. Subchapter B consists of §86.201, concerning Documentary Fee.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201405040
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 28, 2014

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 1, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act. Chapter 2 contains Subchapter A, concerning Application Procedures for Office of Consumer Credit Commissioner Applicants; and Subchapter B, Operational Requirements for Office of Consumer Credit Commissioner Licensees.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201405039
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: October 28, 2014

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General Land Office

Title 31, Part 16

Pursuant to the Texas Government Code §2001.039, the General Land Office (GLO) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters in Title 31, Part 16, of the Texas Administrative Code:

Chapter 501. Coastal Management Program

Chapter 503. Coastal Management Program Boundary

Chapter 504. Coastal Management Program

Chapter 505. Council Procedures for State Consistency with Coastal Management Program Goals and Policies

Chapter 506. Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities

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 any chapter is appropriate. Existing rules may be amended for simplification or clarity.

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-201405070
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 29, 2014

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Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 211, §§211.1 - 211.3, 211.10, 211.11, 211.20, and 211.21, "Information Resources Managers." The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201404961
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: October 23, 2014

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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: 30 TAC §336.1310

Disposal Rate for the Compact Waste Disposal Facility

1. Base Disposal Charge:

1A. Waste Volume Charge	Charge per cubic foot ($/ft3)
Class A LLW - Routine	$100
Class A LLW - Shielded	$180
Class B and C LLW	$1,000
Sources	$500
Biological Waste (Untreated)	$350

1B. Radioactivity Charge	
Curie Inventory Charge ($/mCi)	$0.55
Maximum Curie Charge (per shipment) (excluding C-14)	$220,000/shipment
Carbon-14 Inventory Charge ($/mCi)	$1.00
Special Nuclear Material Charge ($/gram)	$100

2. Surcharges to the Base Disposal Charge:

2A. Weight Surcharge - Weight (lbs.) of Container	Surcharge ($/container)
10,000 to 50,000 lbs	$10,000
Greater than 50,000 lbs	$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container	Surcharge per cubic foot ($/ft3)
1-5 R/hour	$100
Greater than 5 to 50 R/hour	$200
Greater than 50 to 100 R/hour	$300
Greater than 100 R/hour	$400

2C. Irradiated Hardware Surcharge	
Surcharge for special handling per shipment	$75,000/shipment

2D. Cask (Shielding Waste) Surcharge	
Cask handling surcharge per cask	$2,500/cask

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.

Department of Assistive and Rehabilitative Services

Notice of Public Hearings

The Texas Department of Assistive and Rehabilitative Services (DARS) is providing an opportunity for public comment and a notice of public hearings on proposed revisions to 40 TAC Chapter 108, Division for Early Childhood Intervention Services.

The public hearings listed below will be held from 3:00 p.m. until 6:00 p.m.

December 9, 2014

Wichita Falls

North Texas Rehabilitation Center

1005 Midwestern Parkway

Wichita Falls, Texas 76302

December 10, 2014

Galveston

Shearn Moody Plaza

Room 1010

123 Rosenberg Avenue

Galveston, Texas 77550

Copies of the proposed rule revisions may be obtained on the Texas Department of Assistive and Rehabilitative Services website at http://www.dars.state.tx.us/ecis/index.shtml or by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754.

Written comments on the proposed rule revisions may be submitted electronically to DARSrules@dars.state.tx.us or sent by postal mail to:

Texas Department of Assistive and Rehabilitative Services

Center for Policy and External Relations, Mail Code 1411

4800 North Lamar Blvd.

Austin, Texas 78751-2399

All comments must be received by 5:00 p.m. January 6, 2015.

Persons who have communication or accommodation needs who are planning to attend a public hearing should contact the DARS Inquiries Line at 1-800-628-5115. Requests for accommodations should be made five business days before the date of the hearing.

TRD-201405058
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: October 29, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/3/14 - 11/9/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/3/14 - 11/9/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201405025
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 28, 2014

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from Ward County Teachers Credit Union, Monahans, Texas. The credit union is proposing to change its name to Ward County Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201404954
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 23, 2014

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Texas Education Agency

Request for Applications (RFA) Concerning Generation Twenty Open-Enrollment Charter Application for Out-of-State Operators (RFA #701-14-113)

Filing Date. October 29, 2014

Filing Authority. Texas Education Code, §12.101 and §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-113 from eligible out-of-state entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Thursday, December 4, 2014, and Friday, December 19, 2014, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Friday, January 9, 2015, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as it existed on January 1, 2009, that would have been received by the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

(a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled.

(a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106(a), to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 196 charters approved under the TEC, §12.101, and 5 charters approved under the TEC, §12.152. There is a cap of 225 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-14-113 in May 2015.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic re-

gions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *Generation Twenty Open-Enrollment Charter Application for Out-of-State Operators* (RFA #701-14-113), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/charterapp.aspx.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201405060
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 29, 2014

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Request for Applications (RFA) Concerning Generation Twenty Open-Enrollment Charter Application (RFA #701-14-112)

Filing Date. October 29, 2014

Filing Authority. Texas Education Code, §12.101 and §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-112 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Thursday, December 4, 2014, and Friday, December 19, 2014, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Friday, January 9, 2015, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as it existed on January 1, 2009, that would have been received by the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

(a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled.

(a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106(a), to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 196 charters approved under the TEC, §12.101, and 5 charters approved under the TEC, §12.152. There is a cap of 225 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-14-112 in May 2015.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *Generation Twenty Open-Enrollment Charter Application* (RFA #701-14-112), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/charterapp.aspx.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201405059
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 29, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 8, 2014. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 8, 2014. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Bradley Buckley; DOCKET NUMBER: 2014-0928-AGR-E; IDENTIFIER: RN106747496; LOCATION: Salado, Bell County; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §321.31(a), by failing to prevent an unauthorized discharge of wastewater from an animal feeding operation; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Burlington Resources Oil and Gas Company LP; DOCKET NUMBER: 2014-1101-AIR-E; IDENTIFIER: RN106241391; LOCATION: Whitsett, Live Oak County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain the proper authorization; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $42,412; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Caterpillar Incorporated; DOCKET NUMBER: 2014-1257-AIR-E; IDENTIFIER: RN105667349; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: engine manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3363, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Barstow; DOCKET NUMBER: 2014-0962-PWS-E; IDENTIFIER: RN101241719; LOCATION: Barstow, Ward County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the

tenth day of the month following the end of the quarter and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs; and 30 TAC §§290.272, 290.273 and 290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the year of 2012; PENALTY: $400; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(5) COMPANY: CONSTRUCTION ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2014-1142-WQ-E; IDENTIFIER: RN107573909; LOCATION: College Station, Brazos 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 activity under Texas Pollutant Discharge Elimination System Construction General Permit Number TXR150000; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2014-1104-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and §122.143(4), Standard Permit Number 73563, Federal Operating Permit Number O2585, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,447; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2014-1108-AIR-E; IDENTIFIER: RN100219492; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: natural gas booster station; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2545, Special Terms and Conditions Number 6, and New Source Review Permit Number 73382, Special Conditions Number 1, by failing to comply with the authorized hourly sulfur emissions rate from the Acid Gas Flare; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: Edward Keller and Richard Keller dba The Crossing KOA; DOCKET NUMBER: 2014-1150-PST-E; IDENTIFIER: RN102712494; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Edward Leiber; DOCKET NUMBER: 2014-1521-WOC-E; IDENTIFIER: RN107696294; LOCATION: Navasota, Grimes 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: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (210) 490-3096.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2014-1003-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: polymer manufacturing; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(6), Federal Operating Permit Number O1419, Special Terms and Conditions Number 10, New Source Review Permit Number 9423, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,912; Supplemental Environmental Project offset amount of $3,165 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Evergreen Alliance Golf Limited, L.P. dba Lakeridge Country Club; DOCKET NUMBER: 2014-1292-PST-E; IDENTIFIER: RN101728343; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(1), §334.50(b)(1)(A) and TWC, §26.3475(c)(1) and (d), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and by failing to provide corrosion protection for the UST system; PENALTY: $5,813; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(12) COMPANY: Georgetown Life Properties, LLC; DOCKET NUMBER: 2014-1047-EAQ-E; IDENTIFIER: RN106744782; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: behavioral health institute; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an aboveground storage tank Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: Glenn Fuqua, Incorporated; DOCKET NUMBER: 2014-1534-WR-E; IDENTIFIER: RN107534729; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: highway construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2014-1091-AIR-E; IDENTIFIER: RN100212463; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 54330, Special Conditions Numbers 6 and 9, and Federal Operating Permit Number O2352, Special Terms and Conditions Number 4, by failing to record the fresh water flow rate for the ammonia scrubber, Emission Point Number AMMON1, at least once per hour and by failing to monitor the wastewater cyanide concentration on a monthly basis; PENALTY: $1,941; Supplemental Environmental Project offset amount of $1,553 applied to Houston-Galveston Area Council - AERCO; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Hank B. Hochstetler; DOCKET NUMBER: 2014-1520-WOC-E; IDENTIFIER: RN103460705; LOCATION: Ponder, Denton County; TYPE OF FACILITY: on-site sewage facility; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: HH FOOD MART LLC; DOCKET NUMBER: 2013-2069-PST-E; IDENTIFIER: RN101639136; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and §115.248(1), and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification and by failing to ensure that at least one station representative received training in the operation of the Stage II vapor recovery system, and each current employee received in-house training regarding the purpose and correct operating procedure of the vapor recovery system; PENALTY: $3,968; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Jason Delgado dba Inn Exxon; DOCKET NUMBER: 2014-1039-PST-E; IDENTIFIER: RN101472934; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: John Doyle Shaw; DOCKET NUMBER: 2014-1533-WOC-E; IDENTIFIER: RN107674525; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: on-site sewage facility; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(19) COMPANY: KELLEY's USED AUTO PARTS, INCORPORATED; DOCKET NUMBER: 2014-0879-MSW-E; IDENTIFIER: RN103759957; LOCATION: Waco, McLennan County; TYPE OF FACILITY: automotive salvage yard; RULES VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; and 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Landmark Residential Construction - Central Texas, Limited; DOCKET NUMBER: 2014-1531-WQ-E; IDENTIFIER: RN107707390; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(21) COMPANY: Lehigh Cement Company LLC; DOCKET NUMBER: 2014-1178-AIR-E; IDENTIFIER: RN100218254; LOCATION: Waco, McLennan County; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1035, General Terms and Conditions, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $5,325; Supplemental Environmental Project offset amount of $2,130 applied to Texas Congress of Parents and Teachers dba Texas PTA; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Lewis Petro Properties, Incorporated; DOCKET NUMBER: 2014-0817-AIR-E; IDENTIFIER: RN106851371; LOCATION: Laredo, Webb County; TYPE OF FACILITY: oil and gas handling and production site; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and §116.615(2), Texas Health and Safety Code (THSC), §382.085(b), and Standard Permit Registration Number 111919, by failing to comply with the annual emissions limit of 33.11 tons per year of volatile organic compounds for the site; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit for the site; PENALTY: $36,628; Supplemental Environmental Project offset amount of $18,314 applied to Railroad Commission of Texas; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(23) COMPANY: Lewis Petro Properties, Incorporated; DOCKET NUMBER: 2014-1258-AIR-E; IDENTIFIER: RN106584709; LOCATION: Encinal, Webb County; TYPE OF FACILITY: oil and gas treating plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and General Operating Permit Number 514/Federal Operating Permit Number O3593, Site-Wide Requirements (b)(2), by failing to submit a Permit Compliance no later than 30 days after the end of the certification period; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(24) COMPANY: Lhoist North America of Texas, Limited; DOCKET NUMBER: 2014-0921-PWS-E; IDENTIFIER: RN100552454; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: lime manufacturing plant with a non-transient, non-community groundwater system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notice and submit a copy of the public notification to the executive director regarding the failure to conduct increased coliform monitoring for the month of May 2012 and by failing to conduct routine coliform monitoring for the months of October 2012 and January 2013; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter and by failing to provide public notice of the failure to submit a copy of the DLQOR to the executive director; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect annual lead and copper tap samples at the required five sample sites and provide the results to the executive director by the tenth day of the month following the end of the monitoring period; and TWC, §5.702 and 30 TAC §205.6, by failing to pay all General Permits Stormwater fees and associated late fees for TCEQ Financial Administration Account Number 20040354 Fiscal Year 2014; PENALTY: $1,261; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: LJ & KS CORPORATION dba Handi Stop 101; DOCKET NUMBER: 2014-1272-PST-E; IDENTIFIER: RN102261054; LOCATION: College Station, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1),

by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Marathon Petroleum Company LP; DOCKET NUMBER: 2014-0882-AIR-E; IDENTIFIER: RN100210608; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: oil refinery; RULES VIOLATED: 30 TAC §116.715(a), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Flexible Permit Number 22433, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and THSC, §382.085(b), by failing to identify the individually listed compounds or mixtures of air contaminants released during the emissions event that occurred on March 8, 2014; PENALTY: $52,747; Supplemental Environmental Project offset amount of $52,747 applied to Eleventh Street Benzene Monitor Project; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: MEZGER ENTERPRISES, LIMITED; DOCKET NUMBER: 2014-1041-WQ-E; IDENTIFIER: RN104221940; LOCATION: Leuders, Shackleford County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(28) COMPANY: MOBILE HOME SUPPLY, INCORPORATED; DOCKET NUMBER: 2014-0933-MSW-E; IDENTIFIER: RN106906233; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: mobile home sales and supply store; RULES VIOLATED: 30 TAC §330.15(a), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers, or in enclosed or lockable containers; PENALTY: $5,249; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(29) COMPANY: Montgomery County Municipal Utility District Number 112; DOCKET NUMBER: 2014-1156-MWD-E; IDENTIFIER: RN104815238; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §217.63(c) and §305.125(1) and (4), and Texas Pollutant Discharge Elimination System Permit Number WQ0014671001, Permit Conditions Numbers 2.d and 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: NEW MZ ENTERPRISES INCORPORATED dba Pantry Food & Gas; DOCKET NUMBER: 2014-0812-PST-E; IDENTIFIER: RN102378577; LOCATION: Brookshire, Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; PENALTY: $13,230; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: PRICEWISE LLC dba Ontrak; DOCKET NUMBER: 2014-1078-PST-E; IDENTIFIER: RN102389509; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§115.242(3), 115.245(2), and 115.246(a)(4) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, by failing to verify proper operation of the Stage II equipment at least once every 12 months and by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §334.45(c)(3)(A), by failing to have emergency shutoff valves properly anchored at the base of the dispensers; PENALTY: $5,282; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: RICHARD CLARK ENTERPRISES, L.L.C. dba Pinedale Mobile Home Community; DOCKET NUMBER: 2014-1009-PWS-E; IDENTIFIER: RN102681863; LOCATION: Pinehurst, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect semiannual lead and copper tap samples at the required ten sample sites and provide the results to the executive director for the January 1 - June 30, 2010, July 1 - December 31, 2010, January 1 - June 30, 2011, July 1 - December 31, 2011, July 1 - December 31, 2012, January 1 - June 30, 2013 and July 1 - December 31, 2013 monitoring periods; PENALTY: $3,628; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Riviera Water Control and Improvement District; DOCKET NUMBER: 2014-0249-MWD-E; IDENTIFIER: RN105377535; LOCATION: Riviera, Kleberg County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §319.4 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013374002, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for *Escherichia coli;* TWC, §26.121(a)(1), 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0013374002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits and by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013374002, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2013, by September 30, 2013; PENALTY: $7,475; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(34) COMPANY: SUPER HEIMER VIEW, INCORPORATED dba Exclusive Cleaners; DOCKET NUMBER: 2014-0937-DCL-E; IDENTIFIER: RN102167004; LOCATION: Houston, Harris County; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: 30 TAC

§337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.14, THSC, §374.102, and TWC, §5.702, by failing to pay outstanding dry cleaner registration fees for TCEQ Financial Account Number 24002297 and associated late fees for Fiscal Year 2005; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: T.S. 71, LIMITED dba Hill Country Grocery; DOCKET NUMBER: 2014-0999-PST-E; IDENTIFIER: RN101654879; LOCATION: Austin, Travis 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: $4,999; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(36) COMPANY: Zurra Enterprises, Incorporated dba Flash Mart; DOCKET NUMBER: 2014-0918-PST-E; IDENTIFIER: RN101546612; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff are securely anchored at the base of the dispensers; PENALTY: $6,596; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201405014
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 28, 2014

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Enforcement Orders

A order was entered regarding Robert Paul Evans and Robert J. Evans, Jr. dba Terrell Sand & Recycling, Docket No. 2012-1129-MSW-E on October 21, 2014, assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HD Recycling, LLC, Docket No. 2012-1359-MSW-E on October 22, 2014, assessing $12,302 in administrative penalties with $11,102 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Whitharral Water and Sewer Service Supply Corporation, Docket No. 2012-1869-MWD-E on October 22, 2014, assessing $19,795 in administrative penalties with $16,195 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Myra Anum Enterprises Inc dba OBS Mart, Docket No. 2013-0688-PST-E on October 22, 2014, assessing $8,879 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QUICK PAY ENTERPRISES, INC., Docket No. 2013-1319-PST-E on October 22, 2014, assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2013-1600-AIR-E on October 22, 2014, assessing $104,962 in administrative penalties with $20,991 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of O'Brien, Docket No. 2013-1642-MLM-E on October 22, 2014, assessing $6,194 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HD Recycling, LLC, Docket No. 2013-1654-MSW-E on October 22, 2014, assessing $105,207 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MISSION PETROLEUM CARRIERS, INC., Docket No. 2013-1984-PST-E on October 22, 2014, assessing $13,859 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIPS 66 COMPANY, Docket No. 2013-2001-AIR-E on October 22, 2014, assessing $68,494 in administrative penalties with $13,698 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 City of Conroe, Docket No. 2013-2028-MWD-E on October 22, 2014, assessing $8,400 in administrative penalties with $1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Travis Lowman, Docket No. 2013-2082-MLM-E on October 22, 2014, assessing $5,323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mexitron LLC, Docket No. 2013-2148-EAQ-E on October 22, 2014, assessing $11,250 in administrative penalties with $2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHLEY AND FAGAN INVESTMENTS CO. INC., Docket No. 2013-2225-PWS-E on October 22, 2014, assessing $1,615 in administrative penalties with $1,615 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Debbie Block, Docket No. 2014-0006-PWS-E on October 22, 2014, assessing $14,595 in administrative penalties with $2,916 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Flower Mound, Docket No. 2014-0104-WQ-E on October 22, 2014, assessing $8,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COUNTRY PLACE\NORTHWEST HOME OWNERS' ASSOCIATION, INC., Docket No. 2014-0168-PWS-E on October 22, 2014, assessing $969 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ericksdahl Water Supply Corporation, Docket No. 2014-0220-PWS-E on October 22, 2014, assessing $976 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Comex Environmental, L.L.C. dba Comex Environmental Katy, Docket No. 2014-0225-MSW-E on October 22, 2014, assessing $16,163 in administrative penalties with $3,232 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials Texas Inc., Docket No. 2014-0308-AIR-E on October 22, 2014, assessing $15,000 in administrative penalties with $3,000 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 Bill Cate, Docket No. 2014-0331-AGR-E on October 22, 2014, assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River County Water Supply Corporation, Docket No. 2014-0353-PWS-E on October 22, 2014, assessing $525 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 Bill Dechert, Docket No. 2014-0361-MSW-E on October 22, 2014, assessing $23,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2014-0375-AIR-E on October 22, 2014, assessing $400,000 in administrative penalties.

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 SAHELI FOOD INC. dba Melbo's Food Store, Docket No. 2014-0421-PST-E on October 22, 2014, assessing $31,582 in administrative penalties with $6,316 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 Anheuser-Busch, LLC, Docket No. 2014-0454-AIR-E on October 22, 2014, assessing $17,100 in administrative penalties with $3,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AES Deepwater, LLC, Docket No. 2014-0498-AIR-E on October 22, 2014, assessing $17,124 in administrative penalties with $3,424 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLEVELAND REGIONAL MEDICAL CENTER, L.P., Docket No. 2014-0508-IHW-E on October 22, 2014, assessing $8,533 in administrative penalties with $1,706 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 5885892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2014-0640-AIR-E on October 22, 2014, assessing $18,562 in administrative penalties with $3,712 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kempenaar Real Estate, Ltd. dba Still Meadow Dairy, Docket No. 2014-0706-AGR-E on October 22, 2014, assessing $11,475 in administrative penalties with $2,295 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rhome, Docket No. 2014-0842-MWD-E on October 22, 2014, assessing $6,375 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.

An agreed order was entered regarding United States Department of Justice, Docket No. 2012-2012-PST-E on October 22, 2014, assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HD Recycling, LLC, Docket No. 2013-0208-WQ-E on October 22, 2014, assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KM Aviation, Inc., Docket No. 2013-0758-AIR-E on October 22, 2014, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth D. Wiley dba Wiley's Food Store, Docket No. 2013-1550-PST-E on October 22, 2014, assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARHAN INTERNATIONAL, LLC dba Britt's Markette, Docket No. 2013-1581-PST-E on October 22, 2014, assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Justin Hasara dba Hasara Land Services, Docket No. 2013-1772-AIR-E on October 22, 2014, assessing $4,524 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matus Construction Group, LLC, Docket No. 2013-1950-WQ-E on October 22, 2014, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOYOLA GROCERIES INC. dba Loyola Grocery, Docket No. 2013-1980-PST-E on October 22, 2014, assessing $7,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Whispering Oaks Water Coop, Docket No. 2014-0012-PWS-E on October 22, 2014, assessing $3,838 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOLA WATER SUPPLY CORPORATION, Docket No. 2014-0139-PWS-E on October 22, 2014, assessing $644 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colleen Lenahan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHISH AND ANNA INC dba Hamshire Quick Mart, Docket No. 2014-0278-PST-E on October 22, 2014, assessing $4,142 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colleen Lenahan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCI CONSTRUCTION, LTD., Docket No. 2014-0430-WQ-E on October 22, 2014, assessing $938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201405062
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 29, 2014

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Notice of Comment Period and Hearing on Draft Municipal Solid Waste Landfill General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Municipal Solid Waste Landfill General Operating Permit (GOP) Number 517. In addition to the federally required renewal, the draft GOP contains revisions based on recent federal and state rule changes, which include updates to the requirements tables; the addition of new requirements tables; and updates to the terms. This renewal also corrects typographical errors, and updates language for administrative preferences.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. The hearing will be held in Austin on December 4, 2014, at 2:00 p.m. in Building E, Room 201S of the TCEQ offices, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOP may be obtained from the TCEQ website at *http://www.tceq.texas.gov/permitting/air/nav/titlev_news.html,* or by contacting the TCEQ Office of Air, Air Permits Division at (512) 239-1250. Written comments may be mailed to Ms. Mandolin Shannon, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087. All comments should reference draft GOP 517. Comments must be received by 5:00 p.m., December 8, 2014. For further information, contact Ms. Shannon at (512) 239-6541.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-201405011
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 28, 2014

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 8, 2014. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 8, 2014. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: DAKOTA A1, LLC d/b/a 47 Travel Stop; DOCKET NUMBER: 2013-1637-PST-E; TCEQ ID NUMBER: RN101434132; LOCATION: 28129 Interstate Highway 20, Wills Point, Van Zandt County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the facility's USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the facility's UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: MUNSON POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2014-0080-PWS-E; TCEQ ID NUMBER: RN103128161; LOCATION: the intersection of Farm-to-Market Road 84 and Elmridge Road, Grayson County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; 30 TAC §290.271(b)

and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill-paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with the compliance monitoring data; and 30 TAC §290.113(e), by failing to provide the results of quarterly sampling Stage 1 Disinfectant Byproduct contaminant levels to the executive director; PENALTY: $1,552; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Quickways Inc; DOCKET NUMBER: 2013-1554-PST-E; TCEQ ID NUMBER: RN103020871; LOCATION: 330 Northwest Highway, Grapevine, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,437; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Richard Billings d/b/a Oak Hills Ranch Water Company; DOCKET NUMBER: 2013-1350-MLM-E; TCEQ ID NUMBER: RN101209914; LOCATION: 234 Sandy Oaks Drive, Seguin, Guadalupe County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii), (iv), (3)(D), and (vii), by failing to provide facility records to commission personnel at the time of the investigation; Texas Health and Safety Code (THSC), §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 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 §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorination room and immediately available to the operator in the event of an emergency; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well prior to any treatment; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; 30 TAC §290.43(c)(2) and (3), by failing to maintain the facility's ground storage tank in strict accordance with current American Water Works Association standards; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence; 30 TAC §290.11(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using amperometric titration, N, N-diethyl-p-phenylenediamine (DPD) Ferrous titration or DPD colorimetric; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; THSC, §341.035(a) and 30 TAC §290.39(e)(1) and (h), by failing to submit engineering plans and specifications and receive written approval prior to the construction of a new public water supply system; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(c)(3)(A), by failing to submit well completion data for review and approval prior to placing Well Number 1 into service; and 30 TAC §288.30(5)(B), by failing to provide a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $6,746; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Tuong Cong Huynh d/b/a AM Mini Mart 15; DOCKET NUMBER: 2012-0507-PST-E; TCEQ ID NUMBER: RN102374204; LOCATION: 9202 Rosehaven Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by personnel; PENALTY: $16,212; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201405026
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 28, 2014

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to

comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 8, 2014. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 8, 2014. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in writing.

(1) COMPANY: ARRIOLA OPERATING & CONSULTING INC; DOCKET NUMBER: 2014-0537-AIR-E; TCEQ ID NUMBER: RN106565906; LOCATION: 2565 County Road 221, Floresville, Wilson County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: $5,491; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Charles F. Bell; DOCKET NUMBER: 2014-0545-PST-E; TCEQ ID NUMBER: RN102434602; LOCATION: 1596 Farm-to-Market Road 969, Elgin, Bastrop County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.54, by failing to temporarily remove from service a UST system for which the normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason; and 30 TAC §334.601(b), by failing to comply with UST operator training requirements; PENALTY: $15,750; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239 3400.

(3) COMPANY: CROCKETT ENTERPRISES INC d/b/a Easy Shop; DOCKET NUMBER: 2014-0172-PST-E; TCEQ ID NUMBER: RN101893097; LOCATION: 921 South 4th Street, Crockett, Houston County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A) and TCEQ Agreed Order Docket Number 2012-2491-PST-E, by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $10,604; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: HAZ-PAK, INC; DOCKET NUMBER: 2013-0750-MLM-E; TCEQ ID NUMBER: RN100571249; LOCATION: 121 South Broadway Avenue, Suite 559, Tyler, Smith County; TYPE OF FACILITY: hazardous waste transporting company; RULES VIOLATED: 30 TAC §335.14 and 40 Code of Federal Regulations §263.22, by failing to retain copies of all manifests for hazardous waste; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; and 30 TAC §324.11(2) and §324.4(1), by failing to register with the commission prior to transporting used oil; PENALTY: $2,995; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: House of Boats, Inc; DOCKET NUMBER: 2013-1424-MLM-E; TCEQ ID NUMBER: RN102346285; LOCATION: 160 Cover Harbor North, Rockport, Aransas County; TYPE OF FACILITY: temporary boat storage; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.26(c) and 30 TAC §281.25(a)(4), by failing to renew authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System Multi Sector General Permit Number TXR050000 and 40 CFR §279.22(c)(1) and 30 TAC §324.1, by failing to label or mark clearly containers used to store used oil with the words "Used Oil"; PENALTY: $14,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: I 35 SANDPIT, INC and Finis L. Shipman; DOCKET NUMBER: 2013-0671-MLM-E; TCEQ ID NUMBER: RN102869484; LOCATION: 4372 South Interstate 35 West, Alvarado, Johnson County; TYPE OF FACILITY: sand mining and recycling operation; RULES VIOLATED: 30 TAC §335.6(h), by failing to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities; 30 TAC §335.24(j), by failing to provide a written cost of estimate for closure of the site; 30 TAC §37.921 and §335.24(k), by failing to establish and maintain financial assurance for closure of the site; and Texas Health and Safety Code, §382.0518(a) and §382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization to construct and operate sources of air emissions; PENALTY: $12,496; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Ian W. Allen and Tracy W. Lawson; DOCKET NUMBER: 2014-0210-MSW-E; TCEQ ID NUMBER: RN103777587; LOCATION: 11301 Line Road, San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Laura Evans, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: LGI LAND, LLC; DOCKET NUMBER: 2013-2128-MLM-E; TCEQ ID NUMBER: RN105567705; LOCATION: Benders Landing and Riley Fuzzel Road, Spring, Montgomery County; TYPE OF FACILITY: residential development site; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; and TWC, §26.121(a), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Construction General Permit TX15LL16 Part III, Section F(6), by failing to prevent the unauthorized discharge of sediment into or adjacent to waters in the state due to the failure to

implement/maintain best management practices; PENALTY: $32,750; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Loyal Lybarger d/b/a Ponderosa Mobile Home Park; DOCKET NUMBER: 2014-0442-PWS-E; TCEQ ID NUMBER: RN101456333; LOCATION: 10423 Olga Lane Trailer 12, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports (DLQORs) to the executive director each quarter by the tenth day of the month; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR had been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit DLQORs to the executive director each quarter by the tenth day of the month following the end of each quarter, and by failing to provide public notification regarding the failure to submit DLQORs; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated fees for TCEQ Financial Administration Account Number 91012957 for Fiscal Years 2012 - 2014; PENALTY: $1,960; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Pamela Sue Hughes d/b/a Big Q Mobile Home Estates; DOCKET NUMBER: 2014-0159-PWS-E; TCEQ ID NUMBER: RN102319464; LOCATION: 1715 90th Street, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five samples sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample and by failing to provide public notification regarding the failure to collect a raw groundwater source sample; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect increased monitoring samples for the month of June 2013; PENALTY: $2,678; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(11) COMPANY: Rocky Wadlington d/b/a Farrar Water Supply Corporation; DOCKET NUMBER: 2014-0360-PWS-E; TCEQ ID NUMBER: RN101441095; LOCATION: intersection of Limestone County Road 846 and Limestone County Road 848 near Donie, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ DO Docket Number 2011-1230-PWS-E, Ordering Provision Number 3.a.ii., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and provide the results to the executive director; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to provide the executive director a copy of the Disinfectant Level Quarterly Operating Report, conduct routine coliform monitoring, and conduct nitrate monitoring; 30 TAC §290.108(e), by failing to provide the results of triennial radionuclides sampling to the executive director; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 91470007; PENALTY: $2,365; STAFF ATTORNEY: Laura Evans, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Wendell Reese d/b/a Pecan Shadows Water Supply Company; DOCKET NUMBER: 2013-2019-PWS-E; TCEQ ID NUMBER: RN102691052; LOCATION: 1.2 miles west of Farm-to-Market Road 457 on Pecan Shadows Street, Matagorda County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ DO Docket Number 2012-0424-PWS-E, Ordering Provisions Numbers 3.a.i. and 3.b., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with the compliance monitoring data; 30 TAC §290.106(c) and (e), and TCEQ DO Docket Number 2012-0424-PWS-E, Ordering Provisions Numbers 3.a.ii. and 3.a.iii., by failing to collect annual and quarterly nitrate samples and report the results to the executive director; 30 TAC §290.106(c) and (e), and §290.108(c) and (e), and TCEQ DO Docket Number 2012-0424-PWS-E, Ordering Provisions Numbers 3.a.ii. and 3.a.iii., by failing to collect triennial metal and radionuclide samples and report the results to the executive director; 30 TAC §§290.106(e), 290.107(e), and 290.113(e), and TCEQ DO Docket Number 2012-0424-PWS-E, Ordering Provisions Numbers 3.a.ii. and 3.a.iii., by failing to ensure that all delinquent drinking water chemical monitoring reports were submitted to the executive director; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.122(c)(2)(A), by failing to post public notification of the failure to collect routine distribution water samples; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.107(c) and (e), by failing to collect annual synthetic organic chemical contaminants samples and report the results to the executive director; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and report the results to the executive director; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for the TCEQ Financial Administrative Account Number 91610014; PENALTY: $4,790; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201405027
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 28, 2014

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 336, Radioactive Substance Rules, §336.1310, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would amend §336.1310 by reducing the maximum disposal rate that a licensee may charge generators for disposal of Class A Low-Level Waste - Shielded.

The commission will hold a public hearing on this proposal in Austin, Texas on December 4, 2014, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-031-336-WS. The comment period closes on December 8, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Bobby Janecka, Radioactive Material Licensing Section, (512) 239-6415.

TRD-201404982
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 24, 2014

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Notice of Water Quality Applications

The following notices were issued on October 17, 2014, through October 24, 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

BROWNSVILLE PUBLIC UTILITIES BOARD which operates the Silas Ray Power Plant, a steam electric and gas turbine power-generating station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003096000, which authorizes the discharge of cooling tower blowdown at a daily average flow not to exceed 390,000 gallons per day via Outfall 001, and stormwater, low volume waste, and previously monitored effluents (low volume waste) on an intermittent and flow-variable basis via Outfall 002. The facility is located at 94 West 13th Street, approximately 1500 feet west of the intersection of West Fronton Street and West 13th Street, on the west side of the City of Brownsville, Cameron County, Texas 78520.

LOWER COLORADO RIVER AUTHORITY which operates Lower Colorado River Authority - General Office Complex, has applied for a renewal of TPDES Permit No. WQ0003516000, which authorizes the discharge of once-through cooling water at a daily average flow not to exceed 1,250,000 gallons per day. The facility is located at 3700 Lake Austin Boulevard, Austin, Texas 78703.

CITY OF DALLAS has applied to for a renewal of TPDES Permit No. WQ0010060006, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 110,000,000 gallons per day. The permit authorizes the disposal of sludge at the dedicated land disposal site located adjacent to the plant site. The facility is located on the east bank of the Trinity River at 10011 Log Cabin Road in the City of Dallas in Dallas County, Texas 75253.

CITY OF VEGA has applied for a renewal of THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) Permit No. WQ0010308001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day via surface irrigation of 127 acres of non-public access 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 approximately 2.25 miles northeast of the intersection of Interstate Highway 40 and U.S. Highway 385 in Oldham County, Texas 79092.

CITY OF KRESS has applied for a renewal of TCEQ Permit No. WQ0010409001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 108,000 gallons per day via surface irrigation of 40 acres of non-public access 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 approximately 1 mile southeast of the intersection of State Highway 87 and Farm-to-Market Road 145 in Swisher County, Texas 79052.

NORTH FOREST MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010905001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 230,000 gallons per day. The facility is located at 16230 Ella Boulevard, approximately 1.4 miles southwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960 West in Harris County, Texas 77090.

CITY OF BLANKET has applied for a renewal of TPDES Permit No. WQ0014618001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 7889 County Road 620, Blanket, in Brown County, Texas 76432.

MUNSON PARK MANAGEMENT LLC has applied for a renewal of TCEQ Permit No. WQ0014651001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 9.18 acres. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site will be located immediately south of the southern terminus of Loop Court, 2,800 feet northwest of the intersection of State Highway 360 and State Highway 2244 at 209 South Wild Basin Road, in Travis County, Texas 78746.

3 B AND J WASTEWATER COMPANY INC has applied for a new TPDES Permit No. WQ0014911002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility was previously permitted under

TPDES Permit No. WQ0014911001 which expired December 1, 2013, but was not constructed. The facility will be located approximately 0.45 mile northwest of the intersection of County Road 248 and Westridge Lane in Williamson County, Texas 78622.

CITY OF GOLIAD has applied for a renewal of TPDES Permit No. WQ0010458001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located at 510 South Mt. Auburn Street, Goliad, in Goliad County, Texas 77963.

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.

TCEQ has initiated a minor amendment of the TPDES Permit No. WQ0010495010 issued to City of Houston to correct the 2-hour peak flow from 4,708 gallons per minute (gpm) to 7,083 gpm. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 9030 Clinton Drive, approximately 4,000 feet north and 500 feet west of the intersection of Loop 610 and Buffalo Bayou in Harris County, Texas 77029.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0010568003 issued to City of League City, to change the five-day Biochemical Oxygen Demand to five-day Carbonaceous Biochemical Oxygen Demand. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 660,000 gallons per day. The facility is located at 6125 Bay Area Boulevard, on the western bank of Magnolia Creek; approximately 1,200 feet south of Clear Creek, approximately 2,200 feet north of Farm-to-Market Road 518 and approximately 3 miles west of Interstate Highway 45 in Galveston County, Texas 77573.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201405061
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 29, 2014

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Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft October 2014 Update to the WQMP for the State of Texas.

Download the draft October 2014 WQMP Update at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on December 8, 2014.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201405012
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 28, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2014 for Candidates and Officeholders

Sally A. Tootle, 2420 40th St., Orange, Texas 77630

Teresa J. Hawthorne, P.O. Box 670844, Dallas, Texas 75367-0844

Theresa M. Thombs, 4916 Tamara Ct., North Richland Hills, Texas 76180

Mary K. Huls, PMB 123, 3118 FM 528 RD, Webster, Texas 75598-4507

Andrew D. Vaughn, 1101 W. Dallas St., Canton, Texas 75103-1013

Genevieve Gregory, 482 Waterfall Cir., Lancaster, Texas 75146-2932

Fred Robert Vernon II, 15303 W. Little York Rd., Houston, Texas 77084-1403

Craig A. Bonham, P.O. Box 59061, Dallas, Texas 75229-1061

Deadline: Semiannual Report due July 15, 2014 for Committees

Lashonda M. Johnson, Moving Texas Forward, 11318 Starlight Bay St., Pearland, Texas 77584-8282

TRD-201404953
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: October 23, 2014

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 11, 2014, through October 27, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 31, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, December 24, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: City of Corpus Christi; Location: The project is located in Corpus Christi Bay, at the North Beach between the Corpus Christi Ship Channel and Rincon Channel in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Corpus Christi, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.818086 North; Longitude: 97.389369 West. Project Description: The applicant proposes to place up to 150,000 cubic yards of beach quality sand (compatible with existing beach) on an approximately 3,900-foot stretch of North Beach, a downtown recreational area on the western shoreline of Corpus Christi Bay. Of the total material to be placed, approximately 130,000 cubic yards will be imported from an inland source and the remaining 20,000 cubic yards will be excavated and redistributed from the northern (accretional) end of the existing beach. Material will be placed over a total of approximately 21.6 acres of existing beach within jurisdictional areas below the Annual High Tide Line; of the total placement area, 20.3 acres are below the Mean High Water Line. Sand will be excavated from a total of approximately 4.2 acres of jurisdictional areas below the Annual High Tide Line; of the area excavated 4.0 acres will be from below the Mean High Water Line. CMP Project No: 15-1061-F1. Type of Application: U.S.A.C.E. permit application #SWG-1998-00131. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201405068
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 29, 2014

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, with accompanying "Fill Map", dated February 27, March 4, April 16 and May 19, 2014, by James M. Naismith, Licensed State Surveyor, delineating a portion of the littoral boundary of the Enrique Villareal Grant, Abstract 1, on the northwesterly shore of Corpus Christi Bay and adjacent filled area in Submerged Land Tract 59. The survey is associated with the re-nourishment of North Beach, authorized under Texas General Land Office lease CL840004 and Coastal Erosion Planning and Response Act (CEPRA) Project 1569, situated at said North Beach, beginning at the northeasterly boundary of Breakwater Avenue and extending northeasterly to the existing rock groin near Sandbar Drive, coordinates N27.823978° W97.384960° WGS84.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201404950
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 23, 2014

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated July 2, 2014, by David L. Nesbitt, Licensed State Land Surveyor, delineating the line of Mean High Water, along the southwestern shore of Old Town Lake, same line being the littoral boundary of the George H. Hall Survey, Abstract 235. The survey is in support of a proposed beach re-nourishment, authorized by SD20140009 (Texas General Land Office) and Coastal Erosion Planning and Response Act (CEPRA) Project No. 1591. The surveyed line (centroid coordinates N28°33'02", W96°32'08") is situated on the

southwest shore of Old Town Lake, near the town of Magnolia Beach, begins at a point near Zimmerman Road and extends northwesterly approximately seven hundred (700) feet.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201404952
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 23, 2014

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate for the Blind Children's Vocational Discovery and Development Program

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on the proposed Medicaid payment rate for the Blind Children's Vocational Discovery & Development Program.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rate is proposed to be effective September 1, 2014.

Methodology and Justification. The proposed payment rate was calculated in accordance with the program's state plan, which addresses the reimbursement methodology for case management services for children who are blind and visually impaired.

Briefing Package. A briefing package describing the proposed payment will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404967
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: October 24, 2014

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Public Notice

The Centers for Medicare & Medicaid Services (CMS) issued a final rule for home and community-based settings, effective March 17, 2014. Under 42 CFR §441.301, states must meet new requirements for home and community-based services and supports. The new rule defines requirements for, among other things, qualities for home and community-based settings; assurances of compliance with the requirements; and transition plans to achieve compliance with the requirements. The purpose of these regulations is to ensure that individuals receive 1915(c) waiver services in the most integrated settings and that the services support full access to the greater community including opportunities to seek competitive employment and work in an integrated setting, engage in community life, and control personal resources in a manner similar to individuals who do not receive 1915(c) waiver services.

Each state that operates a waiver under 1915(c) or a State Plan Amendment (SPA) under 1915(i) of the Social Security Act that was in effect on or before March 17, 2014, is required to file a Statewide Transition Plan, herein after referred to as the Statewide Settings Transition Plan. The Statewide Settings Transition Plan must be filed within 120 days of the first waiver renewal or amendment that is submitted to CMS after the effective date of the rule (March 17, 2014), but not later than March 17, 2015. The Statewide Settings Transition Plan must either provide assurances of compliance with 42 CFR §441.301 or set forth the actions that the State will take to bring each 1915(c) Home and Community-Based Service (HCBS) waiver and 1915(i) State Plan Amendment into compliance, and detail how the State will continue to operate all section 1915(c) Home and Community-Based Service waivers and section 1915(i) State Plan Amendment in accordance with the new requirements.

A Settings Transition Plan for Community Based Alternatives (CBA) was included in the August 22, 2014, submission of the CBA waiver Amendment 3, and will be included in each of the next waiver submissions to CMS as follows: Community Living Assistance and Support Services (CLASS) renewal; Deaf Blind with Multiple Disabilities (DBMD) amendment; Home and Community-based Services (HCS) amendment; Medically Dependent Children Program (MDCP) amendment; Texas Home Living (TxHmL) amendment; and Youth Empowerment Services (YES) amendment. Once additional guidance is received, the State will commence assessment and transition planning activities for the Texas Healthcare Transformation Quality Improvement Program (THTQIP) 1115 demonstration waiver and will include the Statewide Settings Transition Plan in the first appropriate submission to CMS. The State only has one 1915(i) State Plan Amendment, the Home and Community-Based Services, Adult Mental Health Program (HCBS-AMH). This State Plan Amendment was submitted on July 22, 2014, after 42 CFR §441.301 went into effect. Accordingly,

the submission of a statewide transition plan does not apply to this program.

The Statewide Transition Plan is composed of the following three main components: (1) Assessment Process; (2) Remedial Strategy; and (3) Public Input. The Statewide Transition Plan includes a time frame and milestones for state actions, such as the various assessment and remedial actions.

Prior to filing with CMS, the State must seek input from the public for its proposed Statewide Settings Transition Plan, preferably from a wide range of stakeholders representing consumers, providers, advocates, families, and others. The public input requires the State to provide at least a 30-day public notice and comment period regarding the Statewide Settings Transition Plan that the State intends to submit to CMS for review and consideration.

The Statewide Settings Transition Plan will be posted on the Health and Human Services Commission (HHSC), Department of Aging and Disability Services (DADS), and the Department of State Health Services (DSHS) websites which include a website address for comments. The websites, as well as dedicated electronic mail boxes are available to provide information about the new rules and accept feedback and will remain active throughout the transition. Based on public input during all phases of the transition process, Health and Human Services Commission (HHSC), Department of Aging and Disability Services (DADS) and the Department of State Health Services (DSHS) are committed to using feedback to guide remediation and assessment strategies until the transition is complete.

The Statewide Settings Transition Plan may be accessed in its entirety at the following hyperlinks:

http://www.hhsc.state.tx.us/medicaid/hcbs/index.shtml

http://www.dads.state.tx.us/providers/HCBS/index.cfm

http://www.dshs.state.tx.us/mhsa/yes/

For more information or to obtain free copies of the Statewide Settings Transition Plan, you may contact Kathy Cordova by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 487-3402, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201405067
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: October 29, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of BITUMINOUS CASUALTY CORPORATION to BITCO GENERAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Rock Island, Illinois.

Application to change the name of BITUMINOUS FIRE AND MARINE INSURANCE COMPANY to BITCO NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Rock Island, Illinois.

Application to change the name of VALIANT INSURANCE COMPANY to HAMILTON INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by SELECTED FUNERAL AND LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Hot Springs, Arkansas.

Application for admission to the State of Texas by VANTAPRO SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Little Rock, Arkansas.

Application to do business in the State of Texas by AETNA BETTER HEALTH OF TEXAS INC., a domestic health maintenance organization. The home office is in Dallas, Texas.

Application for CHILDREN'S MEDICAL CENTER HEALTH PLAN, a domestic health maintenance organization, to use the service mark CHILDREN'S HEALTH CHILDREN'S MEDICAL CENTER HEALTH PLAN. The home office is in Irving, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201405066
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 29, 2014

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Texas Lottery Commission

Instant Game Number 1613 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1613 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1613 shall be $3.00 per Ticket.

1.2 Definitions in Instant Game No. 1613.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive except for dual-imaged games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and BLACKENED SQUARE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1613 – 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
	

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1613), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1613-0000001-001.

K. Pack - A Pack of "BONUS CASHWORD" Instant Game Tickets contain 125 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1613 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BONUS CASHWORD" Instant Game is de-

termined once the latex on the Ticket is scratched off to expose up to 141 (one hundred forty-one) possible Play Symbols. The player must scratch the YOUR LETTERS and BONUS play areas. The player uses the YOUR LETTERS and the BONUS LETTERS to form words in the BONUS CASHWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. There will only be one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within words are not eligible for a prize. Using the word "STONE" as an example, all the YOUR LETTERS Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". "TON", "ONE" or any other portion of the sequence of "STONE" would not count as a complete "word". A complete "word" must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Play Symbols in this game do not have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have 141 (one hundred forty-one) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. There is no correlation between an exposed word on a Ticket and its status as a winner or non-winner.

C. Each grid will contain exactly the same number of letters.

D. Each grid will contain exactly the same number of words.

E. No duplicate words on a Ticket.

F. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

G. All words will contain a minimum of 3 letters.

H. No word will contain more than 9 letters.

I. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

J. No duplicate Play Symbols in the CALLER AREA.

K. There will be a minimum of 3 vowels (A, E, I, O and U) in the CALLER AREA.

L. A minimum of 15 Play Symbols in the CALLER AREA will match at least one letter in the crossword grid.

M. At least one Play Symbol in the BONUS area will match to at least one letter in the crossword grid.

N. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or Non-Winning Ticket.

O. No consonant Play Symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

P. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

Q. On winning Tickets, at least 1 Play Symbol in the BONUS area will match at least one letter in a completed word.

R. On Non-Winning Tickets, each crossword grid will have at least 2 completed words.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,080,000 Tickets in the Instant Game No. 1613. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1613 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	2,808,960	8.93
$5	3,611,520	6.94
$10	501,600	50.00
$20	300,960	83.33
$100	45,562	550.46
$500	10,450	2,400.00
$5,000	58	432,413.79
$50,000	42	597,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1613 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1613, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201404987
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 27, 2014

♦ ♦ ♦

Instant Game Number 1645 "Caesars®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1645 is "CAESARS®". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1645 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1645.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ORANGE SLICE SYMBOL, GOLD BAR SYMBOL, DIAMOND SYMBOL, CROWN SYMBOL, COIN SYMBOL, TROPHY SYMBOL, CLOVER SYMBOL, STAR SYMBOL, BELL SYMBOL, RING SYMBOL, POT OF GOLD SYMBOL, CHERRY SYMBOL, LIGHTNING BOLT SYMBOL, CHEST SYMBOL, BAR SYMBOL, SCALE SYMBOL, KEY SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1645 - 1.2D

PLAY SYMBOL	CAPTION
ORANGE SLICE SYMBOL	ORANGE
GOLD BAR SYMBOL	GOLD
DIAMOND SYMBOL	DIAMOND
CROWN SYMBOL	CROWN
COIN SYMBOL	COIN
TROPHY SYMBOL	TROPHY
CLOVER SYMBOL	CLOVER
STAR SYMBOL	STAR
BELL SYMBOL	BELL
RING SYMBOL	RING
POT OF GOLD SYMBOL	POTGOLD
CHERRY SYMBOL	CHERRY
LIGHTNING BOLT SYMBOL	LIGHTN
CHEST SYMBOL	CHEST
BAR SYMBOL	BAR
SCALE SYMBOL	SCALE
KEY SYMBOL	KEY
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV

26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
2 CARD SYMBOL	TWO
3 CARD SYMBOL	THR
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SEV
8 CARD SYMBOL	EGH
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JAK
Q CARD SYMBOL	QUE
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THREE
4 DICE SYMBOL	FOUR
5 DICE SYMBOL	FIVE
6 DICE SYMBOL	SIX
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$100,000	100THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1645), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1645-0000001-001.

K. Pack - A Pack of "CAESARS®" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket

001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CAESARS®" Instant Game No. 1645 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "CAESARS®" Instant Game is determined once the latex on the Ticket is scratched off to expose 48 (forty-eight) Play Symbols. ROULETTE: The player must scratch the entire Roulette Wheel. If a player matches the YOUR NUMBER Play Symbol to any of the six numbers Play Symbols revealed under the Roulette Wheel, the player wins the prize for that number. SLOTS: If a player reveals three matching Play Symbols in the same PULL, the player wins the PRIZE for that PULL. 7/11: The player must add both numbers for each ROLL. If the total is 7 or 11, the player wins the PRIZE for that ROLL. 2 OF A KIND: If a player reveals two matching card Play Symbols, the player wins the PRIZE. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 48 (forty-eight) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Players can win up to sixteen (16) times on a Ticket in accordance with the approved prize structure.

B. GENERAL: Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. ROULETTE: Consecutive Tickets will have different Roulette Wheel Play Symbols.

E. ROULETTE: Non-winning Prize Symbols will never appear more than two (2) times.

F. ROULETTE: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

G. SLOTS: Non-winning Play Symbol(s) will not match winning Play Symbol(s).

H. SLOTS: There will be no occurrence of three (3) matching adjacent non-winning Play Symbols vertically or diagonally except when restricted by other parameters, play action or prize structure.

I. SLOTS: Non-winning Play Symbols will never appear more than two (2) times.

J. SLOTS: There will be no matching PULLS in this game. Two (2) PULLS are matching if they have the same Play Symbols in the same relative positions.

K. SLOTS: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

L. 7/11: There will be no more than two (2) matching non-winning Prize Symbols.

M. 7/11: There will be no matching ROLLS in this game. Two (2) ROLLS match if they have the same Play Symbols in the same relative positions.

N. 7/11: No ROLL will have an occurrence of two (2) adjacent vertical Play Symbols which sum to seven (7) or eleven (11), unless restricted by other parameters, play action or prize structure.

O. 7/11: Non-winning Prize Symbol(s) will never be the same as winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "CAESARS®" Instant Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CAESARS®" Instant Game prize of $1,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CAESARS®" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CAESARS®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CAESARS®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of

the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1645. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1645 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	964,800	8.33
$10	643,200	12.50
$20	214,400	37.50
$25	107,200	75.00
$50	107,200	75.00
$100	25,728	312.50
$500	536	15,000.00
$1,000	113	71,150.44
$100,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1645 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1645, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201404991
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 27, 2014

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Instant Game Number 1663 "50X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1663 is "50X THE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1663 shall be $10.00 per Ticket.

1.2 Definitions in Instant Game No. 1663.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $75.00, $100, $200, $500, $1,000, $10,000, $50,000 and $ONE MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1663 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY

$50.00	FIFTY
$75.00	SVY FIV
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$50,000	50 THOU
$ONE MILL	ONE MIL

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000, $50,000 or 1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1663), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1663-0000001-001.

K. Pack - A Pack of "50X THE CASH" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "50X THE CASH" Instant Game No. 1663 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "50X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 55 (fifty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at

the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

C. No matching WINNING NUMBERS Play Symbols on a Ticket.

D. A Ticket may have up to three matching non-winning Prize Symbols unless restricted by the prize structure.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 30 and $30).

G. The "5X" (win x 5), "10X" (win x 10), "20X" (win x 20) and "50X" (win x 50) Play Symbols will only appear as dictated by the prize structure.

H. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X THE CASH" Instant Game prize of $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $50.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X THE CASH" Instant Game prize of $1,000, $10,000, $50,000 or $1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X THE CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "50X THE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "50X THE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 16,080,000 Tickets in the Instant Game No. 1663. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1663 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,768,800	9.09
$15	321,600	50.00
$20	1,286,400	12.50
$25	301,500	53.33
$30	321,600	50.00
$50	321,600	50.00
$100	224,450	71.64
$200	8,442	1,904.76
$500	536	30,000.00
$1,000	268	60,000.00
$10,000	12	1,340,000.00
$50,000	5	3,216,000.00
$1,000,000	6	2,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1663 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1663, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201405028
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 28, 2014

♦ ♦ ♦

Instant Game Number 1664 "10X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1664 is "10X THE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1664 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1664.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 5X SYMBOL, 10X SYMBOL, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $1,000 and $50,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1664 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $200.

H. High-Tier Prize - A prize of $1,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1664), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1664-0000001-001.

K. Pack - A Pack of "10X THE CASH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "10X THE CASH" Instant Game No. 1664 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "10X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

C. No matching WINNING NUMBERS Play Symbols on a Ticket.

D. A Ticket may have up to two matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 2 and $2).

G. The "5X" (win x 5) and "10X" (win x 10) Play Symbols will only appear as dictated by the prize structure.

H. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "10X THE CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "10X THE CASH" Instant Game prize of $1,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "10X THE CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "10X THE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "10X THE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 22,080,000 Tickets in the Instant Game No. 1664. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1664 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	2,384,640	9.26
$4	1,413,120	15.63
$5	529,920	41.67
$10	264,960	83.33
$20	176,640	125.00
$50	101,200	218.18
$100	17,940	1,230.77
$200	8,280	2,666.67
$1,000	276	80,000.00
$50,000	14	1,577,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.51. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1664 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1664, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201405029
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 28, 2014

♦ ♦ ♦

Instant Game Number 1665 "20X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1665 is "20X THE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1665 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1665.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $10,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1665 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND

$1,000	ONE THOU
$10,000	10 THOU
$250,000	TFY THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $60.00, $100 or $250.

H. High-Tier Prize - A prize of $1,000, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1665), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1665-0000001-001.

K. Pack - A Pack of "20X THE CASH" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "20X THE CASH" Instant Game No. 1665 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "20X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

C. No matching WINNING NUMBERS Play Symbols on a Ticket.

D. A Ticket may have up to three matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. The "5X" (win x 5), "10X" (win x 10) and "20X" (win x 20) Play Symbols will only appear as dictated by the prize structure.

G. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "20X THE CASH" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $60.00, $100 or $250, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $60.00, $100 or $250 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20X THE CASH" Instant Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20X THE CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "20X THE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "20X THE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,400,000 Tickets in the Instant Game No. 1665. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1665 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	2,176,000	9.38
$10	1,768,000	11.54
$15	272,000	75.00
$20	544,000	37.50
$25	283,050	72.07
$50	261,800	77.92
$60	16,320	1,250.00
$100	9,520	2,142.86
$250	1,360	15,000.00
$1,000	230	88,695.65
$10,000	35	582,875.14
$250,000	11	1,854,545.45

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1665 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1665, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201405030
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 28, 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 (TLLRWDCC #1-0072-01)

9760 SW 344th Street

Homestead, Florida 33035

The amendment request will be placed on the Compact Commission web site, www.tllrwdcc.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@tllrwdcc.org.

TRD-201404947
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 22, 2014

♦ ♦ ♦

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:

Philotechnics, Ltd. (TLLRWDCC #1-0069-01)

201 Renovare Boulevard

Oak Ridge, Tennessee 37830

The amendment request will be placed on the Compact Commission web site, www.tllrwdcc.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@tllrwdcc.org.

TRD-201404948
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 22, 2014

♦ ♦ ♦

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:

Xcel Energy-Monticello Nuclear Generating Plant (1-0045-03)

2807 West Co. Rd. 75

Monticello, Minnesota 55362-9637

The amendment request will be placed on the Compact Commission web site, www.tllrwdcc.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@tllrwdcc.org.

TRD-201404981
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 24, 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 21, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of RB3, LLC d/b/a Reach Broadband for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 43604.

The requested amendment is a reduction of service area footprint to delete the Cities of Castroville, Devine, Goliad, Hondo, Karnes City, Kenedy, Lytle, Natalia, and Pleasanton, 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 43604.

TRD-201404994
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 27, 2014

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 17, 2014, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 37.154, 39.262, and 39.915 (Vernon 2008 and Supp. 2014) (PURA).

Docket Style and Number: Joint Application of Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.C., SU FERC, L.L.C. and SDTS FERC, L.L.C. for Regulatory Approvals Pursuant to PURA §§14.101, 37.154, 39.262, and 39.915, Docket Number 43589.

The Application: Sharyland Utilities, L.P. (Sharyland), Sharyland Distribution & Transmission Services, L.L.C. (SDTS), SU FERC, L.L.C. (SU FERC) and SDTS FERC, L.L.C. (SDTS FERC) (collectively, Applicants), filed a joint report and application to: (1) approve the transfer of the assets owned by SDTS FERC to SDTS, and the lease of those

assets to Sharyland; (2) to the extent required, find that the Application is in the public interest; and (3) approve the transfer of Certificate of Convenience and Necessity (CCN) No. 30191, currently held by SU FERC, to Sharyland.

The purpose of the application is to obtain approval for an internal corporate reorganization that will allow Applicants to merge SDTS FERC and SU FERC into their parent companies SDTS and Sharyland.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43589.

TRD-201404993
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 27, 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 21, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Starr County, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend its Certificates of Convenience and Necessity for the Proposed Del Sol to JackieHoward Double-Circuit 345-kV Transmission Line in Starr County, Docket Number 43149.

The Application: The application of Electric Transmission Texas, LLC (ETT) for a proposed 345-kV transmission line is designated as the Del Sol to JackieHoward Transmission Line Project. The facilities include construction of a new double-circuit capable 345-kV transmission line. Only one circuit will be installed initially. The transmission line will extend from the ETT Del Sol Substation to the Los Vientos Windpower IV, LLC JackieHoward Substation. The proposed transmission line is needed to connect wind generation to the ERCOT electrical grid.

The total estimated cost for the project is approximately $22.4 million with an additional $2 million in substation improvements. The proposed project is presented with a single routing option and is estimated to be approximately 10.8 miles in length. ETT has obtained agreement from all six directly affected landowners in support of a single consensus route. Any route or route segment presented in the application could, however, be approved by the commission.

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 5, 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 43149.

TRD-201404992
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 27, 2014

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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 24, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of E.N.M.R. 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 43621.

The Application: E.N.M.R. Telephone Cooperative, Inc. (E.N.M.R.) filed an application with the commission for revisions to its Local Exchange Tariff. E.N.M.R. proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the E.N.M.R. is $11,232 in gross annual intrastate revenues. E.N.M.R. has 518 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 24, 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 24, 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 43621.

TRD-201405065
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Tulia and Swisher County, through their agent, the Texas Department of Transportation (TxDOT), intend to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional engineering design services for the current aviation project as described below.

Current Project: City of Tulia and Swisher County; TxDOT CSJ No.: 1505TULIA. Scope: Provide engineering and design services to:

1. Rotomill overlay RW 18-36 and stub taxiway

2. Rotomill and overlay partial parallel taxiway

3. Rehabilitate and mark apron

4. Rehabilitate and mark T-hangar access taxiway

5. Stripe and mark airfield pavements

The DBE goal for the design of the current project is 13%. The goal will be re-set for the construction phase. TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the City of Tulia/Swisher County Municipal Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following:

Replace rotating beacon and tower; replace MIRL; Replace electrical vault; install perimeter fence; rehabilitate apron; rehabilitate RW 18-36; rehabilitate partial parallel taxiway; rehabilitate hangar access taxiway and construct hangar access apron.

The City of Tulia and Swisher County reserve the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "City of Tulia/Swisher County Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

FIVE completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 2, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of Aviation Division staff. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

TRD-201405052
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2014

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Brazoria County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Architectural/Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for professional engineering design services described below:

Airport Sponsor: Brazoria County, TxDOT CSJ No. 15HGANGLE;

Scope: Provide engineering and design services to design and construct hangar and auto parking.

The DBE goal for the design phase is set at 15%. The goal will be re-set during the construction phase. TxDOT Project Manager is Robert Johnson, P.E.

To assist in your qualification preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Texas Gulf Coast Regional Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

FIVE completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 2, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Robert Johnson, P.E., Project Manager.

TRD-201405053
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2014

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Notice of Availability of Draft Technical Reports for the State Highway 45 Southwest Project in Travis and Hays Counties

Draft technical reports concerning the proposed construction of State Highway 45 Southwest (SH 45SW) in Travis and Hays Counties, Texas, are available for public inspection. The draft technical reports consist of the following:

a. Potential for Impacts to Rare and Endangered Karst Invertebrates from the Proposed State Highway 45 Southwest Project, Travis and Hays Counties Texas.

b. State Highway 45SW: 2014 Golden-cheeked Warbler Technical Report.

c. Potential for Impacts to Endangered Eurycea salamanders from the Proposed State Highway 45 Southwest Project, Travis and Hays Counties Texas.

These draft technical reports support the findings presented in the Draft Environmental Impact Statement (DEIS) in that the potential environmental effects previously disclosed would not notably change as a result of the findings of these reports. Information from these reports resulted in minor adjustments to the roadway alignment that further reduce the potential environmental impacts of the proposed SH 45SW project.

The draft technical reports are on file and available for review at the: (1) TxDOT Austin District Office, 7901 N. I-35, Austin, Texas 78753; and the (2) TxDOT Environmental Affairs Division, 118 E. Riverside Drive, Austin, Texas 78704. Digital versions of the draft technical reports may be downloaded from the SH 45SW project website at www.sh45sw.com.

Written comments regarding the draft technical reports may be submitted to TxDOT - Austin District, Attention: Lucas Short, P.O. Drawer 15426, Austin, Texas 78761-5426. Comments will be accepted at the project website at www.sh45sw.com. The deadline to submit public comment is December 8, 2014.

TRD-201405069
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: October 29, 2014

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Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. State Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311, Discretionary Program, 43 TAC §31.36

These public transportation projects will be funded through the Federal Transit Administration (FTA) §5304, §5311(b)(3), §5311(f), and §5311 (Discretionary Program). It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2016. Project selection will be administered by the department's Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. Successful applicants will become sub-recipients of the department.

Purpose: The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. The objectives for these applications are to support the non-urbanized and small urban areas of Texas, to support services to meet the intercity travel needs of residents, or to support the infrastructure of the public transportation network through planning, marketing assistance, local match assistance, and capital and facility investment. In the process of meeting these objectives, projects are also to support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between non-urbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with federal and state law and regulations, and FTA guidelines in consultation with members of the public transportation and the intercity bus industries. Projects include funding for capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Applicants: Successful applicants shall be required to enter into a grant agreement as a sub-recipient of the department. Eligible sub-recipients include state agencies, local public bodies and agencies thereof, private-nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and

private for-profit operators. Eligible applicants are defined in 43 TAC, Chapter 31.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department currently provides funding for public transportation projects, funded through FTA §5304 State Planning Assistance, §5311(b)(3) Rural Transportation Assistance, §5311(f) Intercity Bus Program, §5311 Rural Discretionary programs. The department will also consider offering transportation development credits to assist with some local match needs for capital projects.

Review and Award Criteria: Applications will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no precondition on the number or on the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses including but not limited to specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

November 12, 2014: Statewide pre-application webinar.

December 4, 2014: Statewide pre-application webinar. To include response to written questions submitted by November 27, 2014.

January 7, 2015: Deadline for submitting written questions.

January 14, 2015: Target date for written responses to questions to be posted on the PTN website.

February 9, 2015: Deadline for receipt of applications.

April 1, 2015: Target date for the department to complete the evaluation, prioritization, and negotiation of applications.

May 28, 2015: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

September 1, 2015: Target date for most project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at: http://www.txdot.gov/business/governments/grants/public_transportation.htm. Proposers with questions relating to the RFP should email PTN_ProgramMgmt@txdot.gov.

TRD-201405044
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2014

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201405043
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2014

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Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (TxDOT) is requesting project proposals to support the targets and strategies of its Traffic Safety Program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These targets and strategies form the basis for the Federal Fiscal Year 2016 (FY 2016) Texas Highway Safety Plan (HSP).

Authority and responsibility for funding of the Traffic Safety Grant Program derives from the National Highway Safety Act of 1966 (23 USC §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Traffic Safety Section (TRF-TS) is an integral part of the department and works through TxDOT's 25 district offices for local projects. The program is administered at the state level by the department's Traffic Operations Division (TRF). The Executive Director of TxDOT is the designated Governor's Highway Safety Representative.

The following information related to the FY 2016 Traffic Safety Grants - Request for Proposals (RFP). Please review the FY 2016 RFP located online at: https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP/RFP2016.pdf

Proposals for Highway Safety Funding are due to the TRF-TS no later than **5:00 p.m. (CST), January 8, 2015.**

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by **5:00 p.m. (CST), on December 5, 2014.** A list of the questions with answers (Q&A document) will be posted at: https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html by **5:00 p.m. (CST), on December 12, 2014.**

A webinar on proposal submissions via eGrants will be hosted by the TRF-TS Austin headquarters staff. Please contact a TRF-TS Program Manager (PM), or Traffic Safety Specialist (TSS) at (512) 416-3204 or send an email to TRF_RFP@txdot.gov to acquire access information. Potential subgrantees should attend the session appropriate to the type of grant proposal they intend to submit. On Wednesday, November 12, 2014, Selective Traffic Enforcement Programs (STEP) are scheduled from 8:00 a.m. (CST) to 12:00 p.m. (CST) and General Traffic Safety Grants are scheduled from 1:00 p.m. (CST) to 5:00 p.m. (CST).

The Program Needs Section of the RFP includes a Performance Measures Chart which outlines the targets, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-TS is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs Subsection of the Program Needs Section of the RFP.

The proposals must be completed using eGrants. www.txdot.gov/apps/egrants.

TRD-201405045
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 28, 2014

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Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance and Department of State Health Services Veterans Mental Health Grant Program

Filing Authority. The availability of grant funds is authorized by Section 434.017, Texas Government Code, and Section 1001.203, Texas Health & Safety Code.

Eligible Applicants. The Texas Veterans Commission (TVC) and Department of State Health Services (DSHS) are requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for reimbursement grants using funds from the Fund for Veterans' Assistance (FVA) and DSHS to support the mental health needs of Veterans and their families. Under the Veterans Mental Health Grant, these needs include, but are not limited to: peer sessions; group sessions; Veteran family counseling; treatment for Post Traumatic Stress Disorder (PTSD) and/or Traumatic Brain Injury (TBI); and equine, co-occurring, and other types of counseling. The priorities for this RFA will be set forth in the RFA guidance.

Grant Funding Period. Grants awarded will begin on July 1, 2015, and end on June 30, 2016. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the grant agreement.

Grant Amounts. For this solicitation, the minimum grant award will be $5,000. The maximum grant award will be $500,000.

Number of Grants to be Awarded and Total Available. The total amount of grant funding available for this award is $1,500,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants.

Selection Criteria. Applications will be reviewed by TVC and DSHS staff for conformance to RFA guidelines. All eligible applications will be evaluated and recommended for funding by the FVA Advisory Committee. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://tvc.texas.gov/Apply-For-A-Grant.aspx* on or about Monday, November 10, 2014.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to *grants@tvc.texas.gov.* All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. CST on Thursday, January 8, 2015, at the Stephen F. Austin Building, 1700 N. Congress Ave. Ste. 800, Austin, Texas 78701 to be considered for funding.

TRD-201405064
Kathy I. Wood
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: October 29, 2014

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Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, Section 434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; veterans courts, excluding criminal defense; housing assistance for homeless veterans; family, child, and supportive services; legal services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; varied services in geographic areas to ensure no over-saturation or duplication of services in areas of the state; outstanding grant applications; and service categories of financial assistance and homeless/housing. These priorities will be reviewed by the Commission at its November 5, 2014, meeting. The priorities for this grant series, XV-B, will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2015, and end on June 30, 2016. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be $5,000. The maximum grant award will be $500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is $5,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and recommended for funding by the FVA Advisory Committee. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://tvc.texas.gov/Apply-For-A-Grant.aspx* on or about Monday, November 10, 2014. All applications must be submitted electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to *grants@tvc.texas.gov.* All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. CST on Thursday, January 8, 2015 at the Stephen F. Austin Building, 1700 N. Congress Ave, Ste. 800, Austin, Texas 78701 to be considered for funding.

TRD-201405063
Kathy I. Wood
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: October 29, 2014

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Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (TWDB) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program. Flood Protection Planning Grant applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the Flood Protection Planning Grant Program is for the State to provide financial assistance to local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $900,000 has been initially authorized for Fiscal Year 2015 assistance for flood protection planning from the TWDB's Research and Planning Fund. Up to fifty percent of the total cost of the project may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the TWDB retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete Flood Protection Planning Grant application including the required attachments must be filed with the TWDB prior to noon, 12:00 p.m., February 25, 2015. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the TWDB to obtain these rules and an application instruction sheet. Requests for information, the TWDB's rules and instruction sheet covering the research and planning fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at gilbert.ward@twdb.texas.gov or by calling (512) 463-6418. This information can also be found on the Internet at the following address: http://www.twdb.texas.gov.

TRD-201404980
Les Trobman
General Counsel
Texas Water Development Board
Filed: October 24, 2014

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Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, the submission of planning grant applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet regional water supply and/or wastewater facility needs, estimate the costs associated with implementing those alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning grant applications may be submitted by eligible political subdivisions from any area of the state. To be eligible for funding, at least two political subdivisions must participate in the proposed study and/or more than one service area must be evaluated. Applicants must also supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: studies related to the development of regional water supply plans, the evaluation

of water supply alternatives, and drought response plans, as described in Texas Water Code §16.053, are not eligible for funding under this Request for Applications. The purpose of this program is for the state to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet those needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants, collection systems or effluent reuse. The study should, at a minimum, include the following steps:

1. Develop Problem Statement;

2. Inventory Existing Conditions and Forecast Future Conditions and Needs;

3. Formulate Planning Alternatives;

4. Evaluate and Compare Each Alternative; and

5. Recommend Best Alternative.

If they do not exist, a water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program, where applicable.

Description of Funding Consideration. An amount not to exceed $400,000 has been initially authorized for Fiscal Year 2015 assistance for regional facility planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right not to award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 12:00 p.m., Thursday, January 29, 2015. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to David Carter, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board or consult the website below to obtain these rules and an application instruction sheet. Requests for information may be directed to David Meesey at the preceding mailing address, by e-mail at david.meesey@twdb.texas.gov or by calling (512) 936-0852. More information can be found on the Internet at the following address: http://www.twdb.texas.gov.

TRD-201404979
Les Trobman
General Counsel
Texas Water Development Board
Filed: October 24, 2014

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 ***(P)***

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