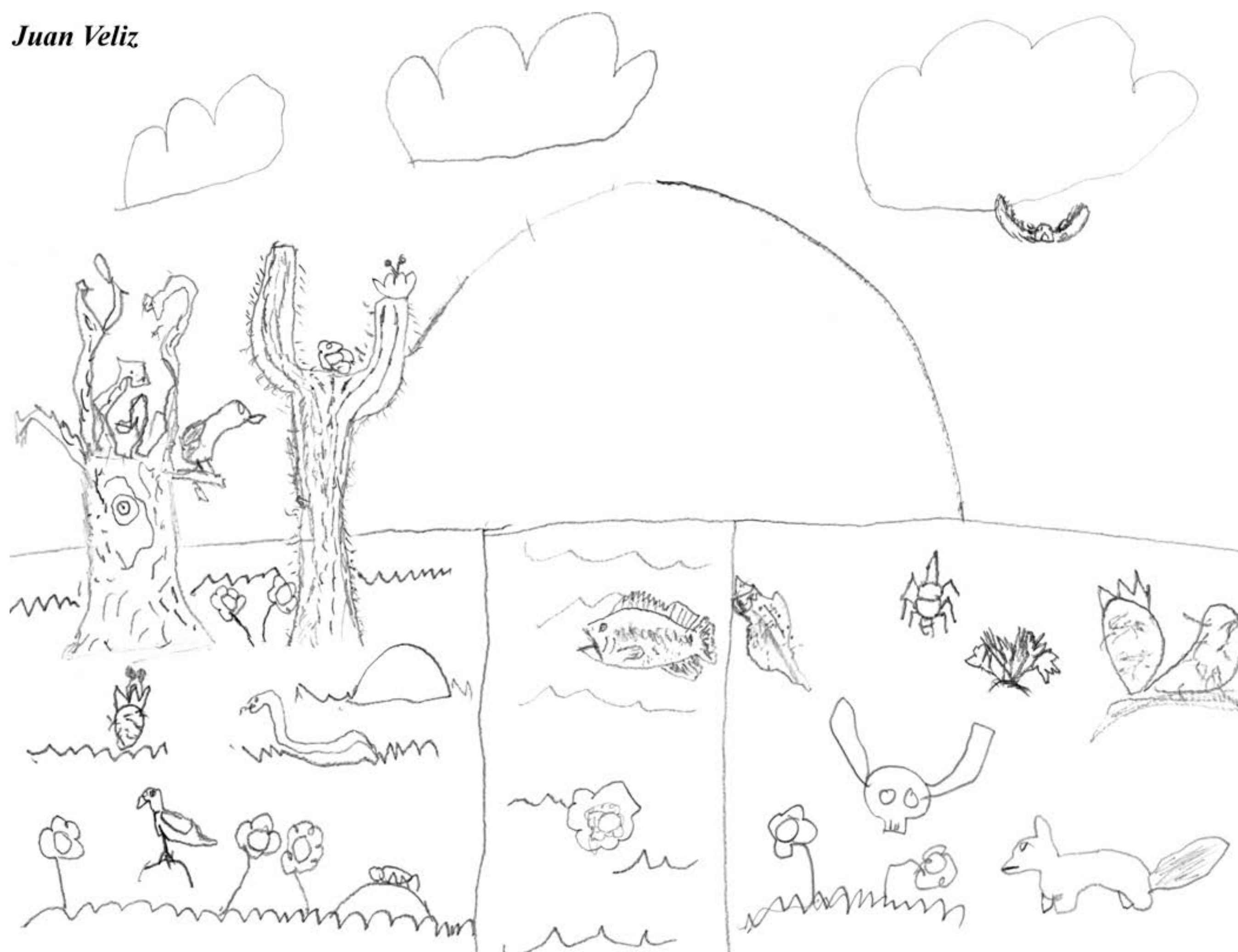
Texas Register

Volume 39 Number 44 *October 31, 2014* *Pages 8469 –*



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Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $259.00 ($382.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
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Open Meetings

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

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

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

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

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

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

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

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

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

THE GOVERNOR

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

Appointments

Appointments for September 26, 2014

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Jennifer H. "Jen" Wylie of Tuscola (replacing Melissa C. Keller of Lakeway who resigned).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2015, Elvia L. Espino of Irving (replacing Heather N. Shults of White Settlement who resigned).

Appointed to the Communities in Schools Advisory Committee for a term to expire at the pleasure of the Governor, Jewel "Julie" Crosswell of Houston (replacing Catherine Bernell Estrada of Fort Worth).

Appointments for October 9, 2014

Appointed as Presiding Judge of the Seventh Administrative Judicial Region for a term to expire four years from the date of qualification, Morton Valdean "Dean" Rucker, II of Midland. Judge Rucker is being reappointed.

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2017, John W. Thomas of Abilene (replacing Jose A. "Joe" Rivas of Denton who resigned).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Ruth L. Mason of Houston (replacing Susan Vardell of Whitesboro whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Michael Peace of Poteet (replacing John C. Morris of Austin whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Brandon Pharris of Beaumont (replacing Cynthia Johnston of Dallas whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Andrew D. Crim of Fort Worth (Mr. Crim is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Mateo Delgado of El Paso (Mr. Delgado is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Stephen H. Gersuk of Plano (Mr. Gersuk is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2019, Lora Taylor of Houston (Ms. Taylor is being reappointed).

Appointed to the Houston-Galveston Regional Review Committee for a term to expire at the pleasure of the Governor, Phillip S. Spenrath of El Campo (replacing Phillip Miller of El Campo).

Appointed to the Houston-Galveston Regional Review Committee for a term to expire at the pleasure of the Governor, Julie Masters of Dickinson (replacing Kerry L. Neves of Dickinson).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2018, Courtney M. Townsend, Jr. of Galveston (replacing Harry K. Wallfisch of Galveston whose term expired).

Appointed to the Texas Board of Physical Therapy Examiners, effective October 25, 2014, for a term to expire January 31, 2017, Barbara Sanders of Austin (replacing Kathleen A. Luedtke-Hoffmann of Garland who resigned).

Appointed to the Texas Medical Board for a term to expire April 13, 2019, Surendra Kumar Varma of Lubbock (replacing Devinder S. Bhatia of Houston who resigned).

Appointments for October 10, 2014

Appointed to the Texas Board of Nursing for a term to expire January 31, 2015, Neissa Brown Springmann of Austin (replacing Shelby H. Ellzey of Midlothian who resigned).

Appointed to the Aerospace & Aviation Advisory Committee for a term to expire at the pleasure of the Governor, Janine K. Iannarelli of Houston (replacing Kevin Pagan of McAllen).

Appointed to the Aerospace & Aviation Advisory Committee for a term to expire at the pleasure of the Governor, Catherine H. "Cathy" Ferrie of North Richland Hills (replacing Michael L. Coats of Houston).

Appointed to the Aerospace & Aviation Advisory Committee for a term to expire at the pleasure of the Governor, Amela Kreho Wilson of Plano (replacing Janie Danhof Haga of Cedar Hill).

Appointed to the Aerospace & Aviation Advisory Committee for a term to expire at the pleasure of the Governor, Sharon Denny of McKinney (replacing Gwendolyn S. Evans of Dallas).

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire September 1, 2016, William O. "Bill" Geise of Austin (replacing Diane Smith of Cedar Park whose term expired).

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire September 1, 2016, Louri O'Leary of Austin (Ms. O'Leary is being reappointed).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2020, Peter K. Munson, Sr. of Pottsboro (reappointed).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2020, Rodney W. Satterwhite of Midland (reappointed).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2020, Karen Roberts Washington of Dallas (reappointed).

Appointed to the Houston-Galveston Regional Review Committee for a term to expire at the pleasure of the Governor, Nathan N. "Nate" McDonald of Bay City (replacing George Deshotels of Matagorda.

Appointed as Justice of the Eighth Appellate District, Place 3, for a term until the November 2016 General Election and until his successor shall be duly elected and qualified, Steven L. "Steve" Hughes of El Paso. Mr. Hughes is replacing Justice Guadalupe Rivera who resigned.

Appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2016, Elizabeth C. "Christy" Jack of Fort Worth (Ms. Jack is being reappointed).

Appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2016, Roberto "Robert" Dominguez of Elsa (replacing Leonardo "Leo" Longoria of McAllen whose term expired).

Appointments for October 17, 2014

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2015, Eric L. Burnett of Portland (replacing Stephen H. Thomas of Portland who resigned).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Kathryn R. Timmerman of Austin (replacing Charles "Chuck" Wall, Jr. of Austin who resigned).

Appointed to the Texas Health Services Authority Board of Directors for a term to expire June 15, 2015, Shannon K.S. Calhoun of Goliad (replacing James L. Martin of Austin who resigned).

Rick Perry, Governor

TRD-201404840

Executive Order

RP 79

Relating to the creation of the Texas Task Force on Infectious Disease Preparedness and Response

WHEREAS, infectious diseases are responsible for more deaths worldwide than any other single cause; and

WHEREAS, the State of Texas has a responsibility to safeguard and protect the health and well-being of its citizens from the spread of infectious diseases; and

WHEREAS, on September 30, 2014, the first case of Ebola diagnosed in the United States occurred in Dallas, Texas; and

WHEREAS, addressing infectious diseases requires the coordination and cooperation of multiple governmental entities at the local, state and federal level; and

WHEREAS, public health and medical preparedness and response guidelines are crucial to protect the safety and welfare of our citizens; and

WHEREAS, Texas has nationally recognized infectious disease experts and other highly trained professionals across the state with the experience needed to minimize any potential risk to the people of Texas;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

1. Creation and Duties. The Texas Task Force on Infectious Disease Preparedness and Response (the "Task Force") is hereby created to:

• Provide expert, evidence-based assessments, protocols and recommendations related to the current Ebola response and a strategic emergency management plan for the incident command team and their partners at the state and local level of government.

• Develop a comprehensive plan to ensure Texas is prepared for the potential of widespread outbreak of infectious diseases, such as the Ebola virus and other emerging infectious diseases, and can provide rapid response that effectively protects the safety and well-being of Texans.

• Serve as a reliable and transparent source of information and education for Texas leadership and citizens. The Task Force will establish this plan by:

• Using the significant expertise of medical professionals in Texas and elsewhere;

• Collaborating with local government officials and local health officials;

• Utilizing, where possible, the Texas Emergency Preparedness Plan and structure;

• Identifying the various responses necessary in the event of an epidemic of infectious disease;

• Establishing a command and control structure that will ensure effective preparations and response that may be included in Chapter 418 of the Government Code or related statutes and that also ensure the authority of a Governor to take emergency action as needed; and

• Coordinating with appropriate entities to ensure public awareness and education regarding any pandemic threat.

2. Composition and Terms. The Task Force shall consist of the following members:

Dr. Brett Giroir, Executive Vice President and CEO, Texas A&M Health Science Center, shall serve as the Director of the Texas Task Force on Infectious Disease Preparedness and Response.

Other members include:

Dr. Gerald Parker, Vice President, Public Health Preparedness and Response, Texas A&M Health Science Center. Dr. Parker shall serve as the Deputy Director on the Task Force.

Dr. Tammy Beckham, Director, Veterinary Medical Diagnostic Laboratory and the Institute for Infectious Animal Diseases, Texas A&M University.

Dr. Peter Hotez, Founding Dean, National School of Tropical Medicine, Baylor College of Medicine; Professor, Departments of Pediatrics and Molecular Virology & Microbiology; President, Sabin Vaccine Institute.

Richard Hyde, Executive Director, Texas Commission on Environmental Quality.

Tim Irvine, Executive Director, Texas Department of Housing and Community Affairs.

Dr. Kyle Janek, Executive Commissioner, Texas Health and Human Services Commission.

Nim Kidd, Division Chief, Texas Division of Emergency Management.

Dr. Thomas Ksiazek, Virologist and expert in the field of epidemiology/ecology and laboratory diagnosis of hemorrhagic fevers and arthropod-borne viral diseases, The University of Texas Medical Branch at Galveston.

Dr. David Lakey, Commissioner, Texas Department of State Health Services.

Dr. James LeDuc, Ph.D., Director, Galveston National Laboratory; Professor of Microbiology and Immunology; Director, Program on Global Health, Institute for Human Infections and Immunity.

Dr. Scott Lillibridge, Professor of Epidemiology and Assistant Dean, Texas A&M Health Science Center School of Public Health.

Colonel Steve McCraw, Executive Director, Texas Department of Public Safety.

Major General John Nichols, Adjutant General, Texas National Guard.

Dr. Victoria Sutton, Associate Dean for Research and Faculty Development; Director, Center for Biodefense, Law and Public Policy, Texas Tech University School of Law.

Lt. General Joseph Weber, Executive Director, Texas Department of Transportation.

Michael Williams, Commissioner, Texas Education Agency.

The Governor may fill any vacancy that may occur and may appoint other members as needed. All appointees serve at the pleasure of the Governor.

Any state or local employees appointed to serve on the Task Force shall do so in addition to the regular duties of their respective office or position.

3. Report. The Task Force shall make written reports on its findings and recommendations, including legislative recommendations, to the Governor and the Legislature. The first report is due by December 1, 2014, which should include preliminary recommendations that require legislative action. A second report is due by February 1, 2015, and should contain, in part, any additional recommendations for legislative action during the 2015 legislative session. The Task Force may issue other regular reports as it deems necessary.

4. Meetings. The Task Force shall meet at times and locations as determined by the Director. The Task Force may meet telephonically. The Task Force may hold public hearings to gather information; when conducting public hearings the Task Force shall meet in various parts of Texas to encourage local input. The Task Force also may meet in executive session to discuss matters that are deemed confidential by state or federal statutes or to ensure public security or law enforcement needs.

5. Administrative Support. The state agencies involved shall provide administrative support for the Task Force.

6. Other Provisions. The Task Force shall adhere to guidelines and procedures prescribed by the Office of the Governor. All Task Force members shall serve without compensation or reimbursement for travel expenses.

7. Effective Date. This order shall take effect immediately.

This executive order supersedes all previous orders inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded or superseded by me or by a succeeding Governor.

Given under my hand this the 6th day of October, 2014.

Rick Perry, Governor

TRD-201404842

Proclamation 41-3386

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

WHEREAS, this state of disaster includes the counties of Andrews, Archer, Armstrong, Bandera, Baylor, Blanco, Borden, Briscoe, Burnet, Caldwell, Callahan, Carson, Childress, Clay, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Denton, DeWitt, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Frio, Galveston, Garza, Gillespie, Gray, Grayson, Guadalupe, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hockley, Hood, Hudspeth, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, King, Knox, Lamb, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, Matagorda, McLennan, Medina, Midland, Mitchell, Montague, Moore, Motley, Nolan, Palo Pinto, Parker, Parmer, Potter, Randall, Real, Roberts, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Walker, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Young and Zavala.

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

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

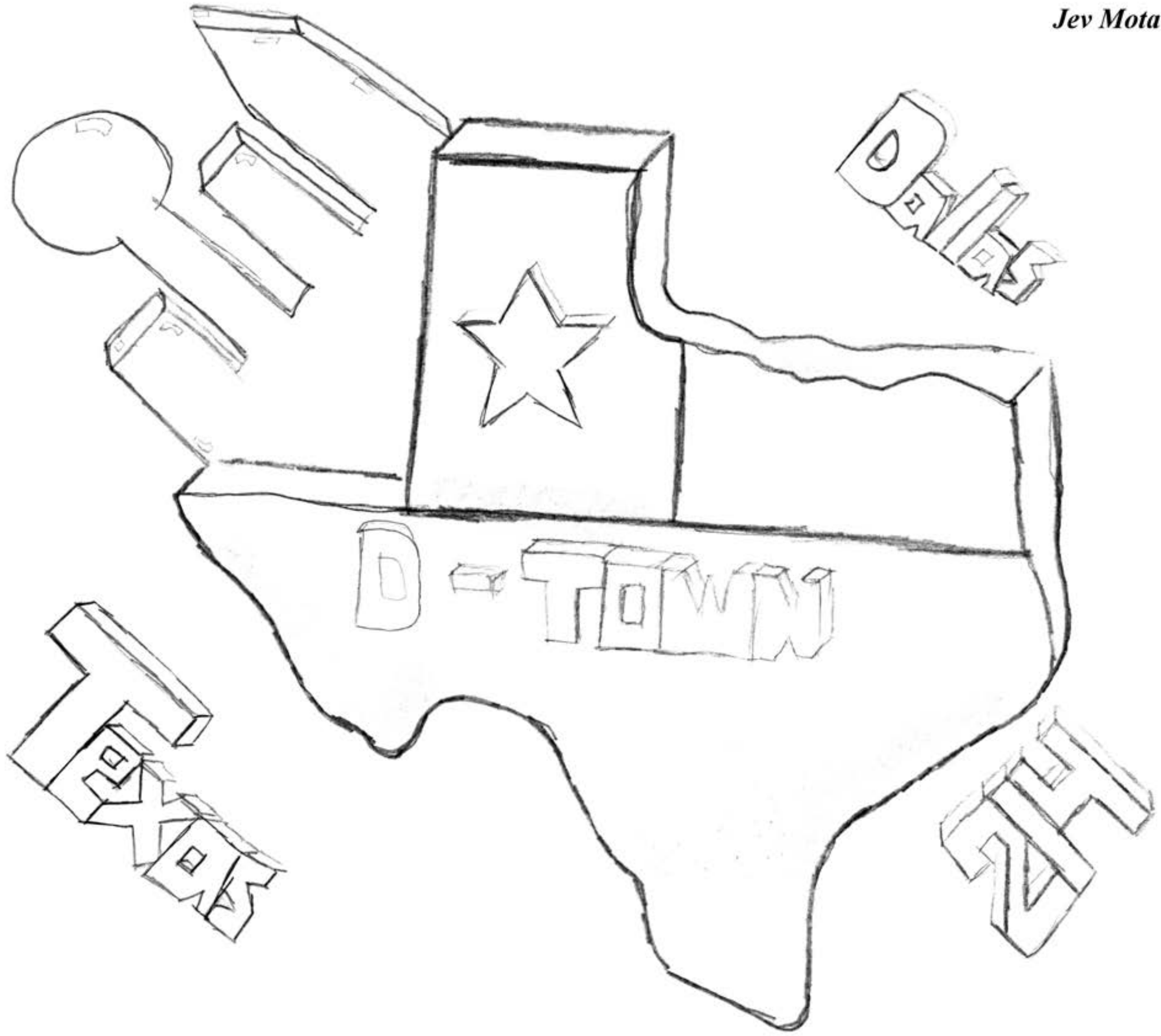
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of September, 2014.

Rick Perry, Governor

TRD-201404841

Jev Mota



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1227-GA

Requestor:

The Honorable Robert H. Trapp

San Jacinto County Criminal District Attorney

1 State Highway 150, Room 21

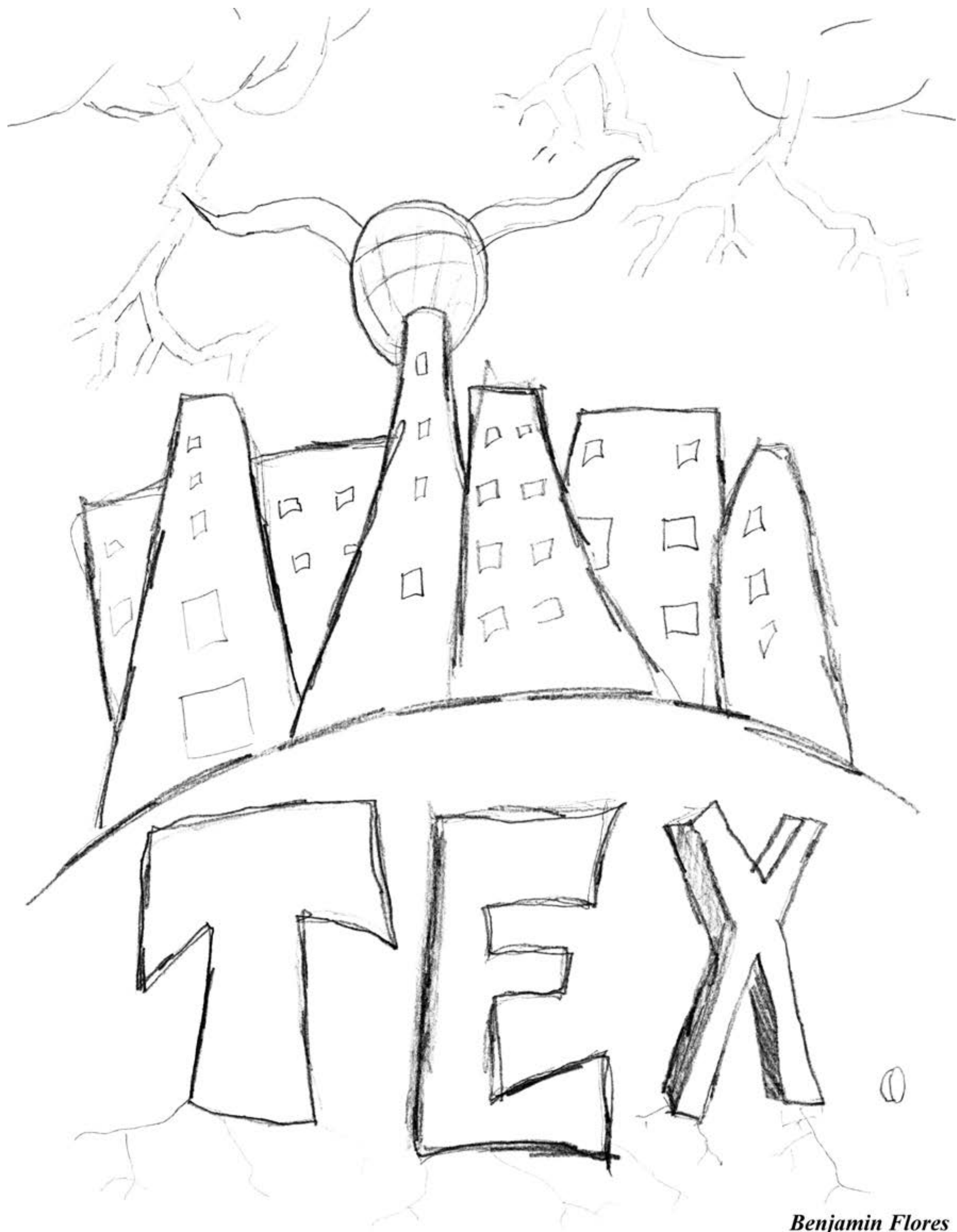
Coldspring, Texas 77331-0403

Re: Commencement of term of office of a person elected sheriff as a successor to an individual who was appointed to fill a vacancy in that office (RQ-1227-GA)

Briefs requested by November 10, 2014.

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

TRD-201404903
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 20, 2014



Benjamin Flores

PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.2, §26.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §26.2, concerning required records to maintain; and §26.4, concerning when you must order and set a burial marker or monument in a perpetual care cemetery. The amended rules are proposed to clarify recordkeeping requirements, require maintenance of records regarding the sale of undeveloped mausoleum spaces and regarding the certificate holder's regulatory or litigation involvement, and require records of all marker transactions. The amended rules also add a requirement that if a certificate holder specifies in writing that it will set a marker or monument at a date earlier than that set forth in §26.4, it must set the marker or monument by that date.

Chapter 712 of the Texas Health and Safety Code (Health Code) authorizes the department to grant and renew certificates of authority for perpetual care cemeteries. Pursuant to Health Code §712.044, the Texas Banking Commissioner (commissioner) is authorized to examine the books and records of a certificate holder relating to its perpetual care fund, undeveloped mausoleum spaces, and other matters. In order to renew a certificate of authority under §712.0037(a), the commissioner must determine that the certificate holder continues to meet the qualifications that apply to an applicant for a certificate of authority. Pursuant to §712.008(b)(1), the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery.

The proposed amendment to §26.2(b)(1)(D) clarifies that the certificate holder must maintain the original trust agreement and any amendments made since the last examination. The proposed amendment to §26.2(b)(1)(E) does two things. First, it clarifies that if the certificate holder is rated marginal or worse or if its last examination was a limited scope examination, it must retain a copy of its examination response. Second, it reflects that department Supervisory Memorandum 1014 was revised in 2011.

The proposed amendment to add §26.2(b)(1)(N) clarifies that the certificate holder must retain records to verify compliance with all the statutes in Health Code, Chapter 712, Subchapter D, which governs the sale of undeveloped mausoleum space, including those records specifically referred to in Health Code §712.044(a)(2) - (3).

The proposed amendment to add §26.2(b)(1)(O) requires the certificate holder to maintain all records relating to regulatory action or litigation to which the certificate holder is subject. This requirement gives the commissioner information necessary to determine whether the certificate holder meets the qualifications and requirements for holding a certificate of authority.

The department proposes a non-substantive amendment to §26.4(a)(4) to clarify a reference to §26.4(b)(1) by adding the words "of this section".

The proposed amendments to §26.4(c) and (d) state that if a certificate holder stipulates in writing that it will set a marker or monument at a date that is earlier than the date otherwise required by those subsections, it must honor the earlier date. This clarification is necessary because some certificate holders specify earlier dates.

The proposed amendment to §26.4(f) contains a non-substantive revision to simplify the wording and a substantive requirement that certificate holders keep a record of all marker transactions, including ones where the marker was purchased from someone other than the certificate holder. This record is necessary for the Department to monitor compliance with §26.4(c), (d) and (e).

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that the department will have necessary records available to verify that the certificate holder is complying with applicable statutes and rules. In regard to the proposed amendment to §26.4(c) and (d), the certificate holder, the marker or monument purchaser, and the department will all have clarity on when a marker or monument must be set.

For each year of the first five years that the rules will be in effect, there will be very minimal economic costs to persons required to comply with the rules as proposed. The certificate holders will be required to maintain a few records they may not currently maintain.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on December 1, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boule-

vard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Health Code §712.008, which authorizes the commission to adopt rules to enforce and administer Chapter 712 and which states that the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery.

Health Code §§712.0037, 712.044, 712.048(c), and 712.061 - 712.068 are affected by the proposed amended sections.

§26.2. What Records am I Required to Maintain?

(a) (No change.)

(b) What records must I maintain?

(1) You must maintain the following records in a general file that is readily accessible to the department:

(A) - (C) (No change.)

(D) the current trust agreement governing the fund and any amendments[, if amended] since the last examination;

(E) if the certificate holder received a uniform risk rating of 3, 4, or 5 at the last examination or if the last examination was a limited scope examination, the certificate holder's examination response and the examination report acknowledgments, signed by the certificate holder's board of directors, for the last examination report (See Texas Department of Banking Supervisory Memorandum 1014 (2011) [(2006)] for an explanation of the perpetual care cemetery rating system.);

(F) - (K) (No change.)

(L) each cemetery price list that you used at any time since the last examination; [and]

(M) your quarterly reconciliation of capital gains and losses in the fund since the last examination, if your trust agreement includes capital gains and losses in the definition of trust income;[.]

(N) all documents relating to the offer and sale of undeveloped mausoleum spaces as required under Health and Safety Code, Chapter 712, §712.044(a)(2) - (3) and Subchapter D; and

(O) all records relating to regulatory action or litigation to which the certificate holder is subject.

(2) - (5) (No change.)

(c) - (d) (No change.)

§26.4. When Must I Order and Set a Burial Marker or Monument in my Perpetual Care Cemetery?

(a) Definitions.

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

(4) "You" or "I" means a cemetery corporation that owns or operates a perpetual care cemetery. For purposes of subsection (b)(1) of this section the term also includes a representative or agent that receives payment for the marker or monument on your behalf, whether or not the agent or representative signs the purchase order.

(b) (No change.)

(c) When must I set the burial marker, once it has been delivered to my cemetery location? You must set the marker on or before the earlier of a date stipulated by the certificate holder in writing or the 15th day after the date as of which all of the following events have occurred:

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

(d) When must I set the burial monument, once it has been delivered to my cemetery location? You must set the monument on or before the earlier of a date stipulated by the certificate holder in writing or the 25th day after the date as of which all of the following events have occurred:

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

(e) (No change.)

(f) What marker list must I maintain? You [Must I keep a written log related to the burial marker or monument purchase and installation process to prove that I have complied with this section? No. However, you] must keep a list of all [each] marker transactions [purchased] since the last examination, and the purchaser's marker or monument contract file must include all documentation necessary to verify and substantiate the dates specified in subsections (b), (c), (d), and (e) of this section, as applicable, and your compliance with this section.

(g) - (i) (No change.)

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

Filed with the Office of the Secretary of State on October 17, 2014.

TRD-201404829
Catherine Reyer
General Counsel
Texas Department of Banking
Proposed date of adoption: December 12, 2014
For further information, please call: (512) 475-1300

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.11, concerning requirements to engage in the business of child support enforcement in Texas; §31.14, concerning the requirements for submission of the proposed contract for services with an agency's clients; and §31.32, concerning annual fee requirements. The rule amendments are proposed to update the name of one of the documents that may be submitted with an application; to eliminate one of the electronic formats used to submit forms included in applications and a conforming change to eliminate certain font types used for those forms; and to make uniform the date by which licensees must pay annual fees.

The proposed amendment to §31.11(b)(6) changes the name of the Texas Secretary of State form that may be submitted in support of an application from a certificate of good standing to a franchise tax account status. This change is proposed to reflect the current terminology for the form issued by the Secretary of State's office.

The proposed change to §31.11(b)(8) eliminates WordPerfect as one of the possible formats in which to submit a proposed contract. This change is proposed to make the format consistent with the more widely used and readable Word format. The proposed changes to §31.14(d)(1), (2)(O) and (P) are conforming

changes that eliminate font types that are not available in the Word format and correct a misspelling of the Arial font type.

The proposed amendment to §31.32 changes the time for payment of the annual fee from the anniversary of the date of registration to a fixed date of January 31 each year. The change is required to simplify recordkeeping and processing of renewals by the department.

Mr. Daniel Frasier, Director of Corporate Activities, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be minimal fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Frasier also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that the efficiency of the department in processing applications will be improved.

For each year of the first five years that the rules will be in effect, there will be minimal economic costs to persons required to comply with the rules as proposed.

There will be minimal adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on December 1, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.11, §31.14

The amendments are proposed under Finance Code, §396.051, which authorizes the Finance Commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101 and §396.103, are affected by the proposed amended sections.

§31.11. What must I do to legally engage in the business of child support enforcement in Texas?

(a) (No change.)

(b) Second, you must submit the following documents with your application:

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

(6) a certificate of account status from the Texas Comptroller of Public Accounts or a franchise tax account status [~~certificate of good standing~~] from the Texas Secretary of State, if you are a Texas business corporation or a foreign business corporation;

(7) (No change.)

(8) a paper and electronic (Word [~~or WordPerfect~~]) copy of the form contract your agency will use for an obligee to engage its services to enforce a child support obligation and the scores you calculated under §31.14(d) and the readability statistics you generated; and

(9) (No change.)

(c) - (d) (No change.)

§31.14. What are the requirements for the contract for services with my agency's clients?

(a) - (c) (No change.)

(d) How will I know if my agency's contract with clients is in "clear language"?

(1) The department will apply automated readability tests commonly available in Microsoft Word [~~or Corel WordPerfect~~] software to your proposed contract. Whenever you submit a proposed contract for the department to consider, you must disclose the readability scores you generated for it. Because mechanical readability formulas do not evaluate the substantive content of the contract, the department will exercise judgment when considering the readability statistics generated by these tests. However, absent explanatory circumstances or additional justification persuasive to the banking commissioner, your contract will ordinarily not be approved if:

(A) - (D) (No change.)

(2) The department considers "clear language" to be synonymous with the more commonly known concept of "plain language." In evaluating your proposed contract, the department will consider the extent to which you have incorporated clear language principles into its organization, language, and design. At a minimum, your proposed contract should substantially comply with each of the clear language writing principles identified in this paragraph.

(A) - (N) (No change.)

(O) The text of your proposed contract must be set in a serif typeface. Popular serif typefaces include Times, [~~Scala, Caslon,~~] Century Schoolbook, and Garamond.

(P) A sans serif typeface may be used for titles, headings, subheadings, captions, and illustrative or explanatory tables or sidebars to distinguish between different levels of information or provide emphasis. Popular sans serif typefaces include [~~Scala Sans,~~] Franklin Gothic, [~~Frutiger,~~] Helvetica, Arial [~~Ariel~~], and Univers.

(Q) - (R) (No change.)

(3) (No change.)

(e) (No change.)

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

Filed with the Office of the Secretary of State on October 17, 2014.

TRD-201404830
Catherine Reyer
General Counsel
Texas Department of Banking
Proposed date of adoption: December 12, 2014
For further information, please call: (512) 475-1300

SUBCHAPTER C. WHAT ARE MY AGENCY'S RESPONSIBILITIES AFTER REGISTRATION?

7 TAC §31.32

The amendments are proposed under Finance Code, §396.051, which authorizes the Finance Commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.108, is affected by the proposed amended section.

§31.32. Is there an annual fee requirement?

The $500 fee for cost of regulation must be paid annually to the department on or before January 31 [~~the anniversary date of your certificate of registration~~].

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 17, 2014.

TRD-201404831
Catherine Reyer
General Counsel
Texas Department of Banking
Proposed date of adoption: December 12, 2014
For further information, please call: (512) 475-1300

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §§89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders.

In general, the purpose of the proposal is to provide updated guidelines on the costs allowed for property tax loans. The major areas of amendment involve the replacement of tiers with a general fee cap for reasonable closing costs, the disclosure of affiliated businesses used by property tax lenders, and guidelines for the use of legitimate discount points.

The rule provisions regarding reasonable closing costs were initially adopted in 2008, with maximum amounts categorized into five tiers based on the size of the loan. Since that time, the property tax loan industry has seen growth and increased competition, resulting in changing costs over the last five years. The agency believed it to be an appropriate time to revisit the structure and amounts of costs outlined in §89.601, Fees for Closing Costs, as well as explore guidelines for post-closing costs.

The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the costs allowed for property tax loans. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting where several stakeholders provided verbal testimony regarding the issues presented in the ANPR. Subsequently, several stakeholders provided written comments, elaborating on their testimony from the stakeholders meeting.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal.

The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. Some suggestions, however, are not included in the agency's proposal. During the official comment period, stakeholders are welcome to resubmit any comments regarding issues not incorporated into the proposal.

As a result of the feedback provided from stakeholders, provisions concerning definitions, recordkeeping, and disclosures were in need of related amendments to fully incorporate the updated cost provisions. Thus, in addition to §89.601, this proposal also includes proposed amendments to §89.102, Definitions; §89.207, Files and Records Required; §89.504, Requirements for Disclosure Statement to Property Owner; and §89.802, Payoff Statements. Also, certain technical corrections are proposed in order to better align these rules with prior changes made to other sections within the chapter. The following paragraphs outline the purposes of each rule amendment.

The proposed amendments to §89.102, concerning Definitions, contain a few technical corrections, as well as the addition of the definition of "Affiliated business."

The first technical correction proposes removal of the title of Texas Finance Code, Chapter 351 ("Property Tax Lenders"), along with the proposed deletion of the short title and citation in two instances in the rule. When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary.

The second technical change proposes replacement of the verb "shall" with "will" in the introductory paragraph. Similar changes have been made to numerous rules in Chapter 89 in the past, as well as other chapters under the agency's authority. The agency believes that the latter language is reflective of a more modern and plain language approach in regulations.

The definition of "Affiliated business" is proposed for addition as new (renumbered) §89.102(1). The purpose of this definition is to implement recordkeeping requirements in §89.207 and disclosure requirements in §89.504, which will be discussed further under the purpose paragraphs for those sections.

Proposed new paragraph (1) provides that an "Affiliated business" is a person that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. The common ownership or controlling interest may occur either directly or indirectly. The 10% threshold has been selected to maintain consistency with the ownership disclosure requirements found in the following property tax lender licensing regulations: §89.302, concerning Filing of New Application; §89.303, concerning Transfer of License; and §89.304, concerning Change in Form or Proportionate Ownership. The disclosure of a 10% ownership or controlling interest is also well established in similar regulations for industries under the agency's authority. Additionally, with the proposal of new paragraph (1), the remaining definitions existing in §89.102 have been renumbered accordingly.

In §89.207, concerning Files and Records Required, the proposed amendments provide clarification regarding records that

must be retained relating to legitimate discount points, payments made to attorneys, and records regarding affiliated businesses. New provisions are proposed in §89.207(3)(A)(ix) concerning receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, and in §89.207(3)(A)(x) concerning legitimate discount points. The purpose of §89.207(3)(A)(ix) will be outlined under proposed new §89.601(c)(5), a new subparagraph regarding additional costs for preparing documents necessary to address a defect in title to real property. The purpose of §89.207(3)(A)(x) will be outlined under proposed new §89.601(d), a new subsection that provides guidelines for the use of legitimate discount points in connection with property tax loans.

A clarifying phrase has been added to §89.207(3)(I)(ii) requiring the maintenance of "specific descriptions of services performed by the attorney." On the issue of affiliated businesses, §89.207(3)(I)(iii) requires that amounts paid to affiliated businesses must be maintained in the individual property tax loan transaction file. Additionally, the proposal includes new paragraph (7) concerning general records that must be retained by the property tax lender regarding any relationship the lender may have with one or more affiliated businesses.

The purpose of the amendments proposed in §89.207(3)(I)(iii) and (7) is to enable the agency to verify that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." Certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to maintain records of their business relationships with affiliated businesses, as well as records of all amounts paid to affiliated businesses, the amended provisions ensure that property tax lenders can substantiate their relationship with affiliated businesses and the fact that costs are not paid to employees of the property tax lender.

In §89.207(3)(L)(i), concerning notices sent by attorneys involving judicial foreclosures under Texas Tax Code, §32.06, the proposal includes revisions to better track the statute. As proposed, the phrase "a non-salaried attorney of the licensee" would be replaced by the phrase "an attorney who is not an employee of the licensee."

Throughout §89.207, minor technical changes have been made to accommodate the new and revised provisions, including the renumbering of the last two paragraphs. In addition, the agency's acronym "OCCC," as currently defined in proposed §89.102(8) (as renumbered), is proposed to replace the use of "Office of Consumer Credit Commissioner" and "commissioner" in §89.207(9) (as renumbered). The first instance is simply for abbreviation purposes. In the second instance, the agency believes that the use of "OCCC" will provide better clarity as the context calls for action by the agency, as opposed to the commissioner specifically.

In §89.504, concerning Requirements for Disclosure Statement to Property Owner, the proposal adds subsection (f) relating to the disclosure of affiliated businesses. Proposed new subsection (f) requires property tax lenders that impose post-closing costs paid to affiliated businesses to include additional information in the disclosure form that the property tax lender must provide to the borrower before closing. In particular, the subsection requires the disclosure to include the name of the affiliated business, a statement that it is affiliated with the property tax lender, and a statement that costs paid to the affiliated business cannot be for services performed by employees of the property tax lender. The purpose of this amendment is to provide the borrower with additional information regarding the property tax lender's use of affiliated businesses, and to ensure that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." As discussed earlier, certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to disclose the identities of affiliated businesses, the amended provision ensures transparency and enables the borrower to make an informed decision before closing.

The majority of the proposed amendments are contained in §89.601, concerning Fees for Closing Costs. As established by the early comments received during and after the stakeholders meeting, almost all commenters agreed that the rules' existing five-tier system based on the total tax lien payment amount was not appropriate. With respect to a property tax loan on residential property, several commenters stated that the costs incurred do not have a correlation to the total amount of money paid by a property tax lender to the taxing units to obtain a transfer of the tax lien. Thus, all the language relating to the five tiers is proposed for deletion from §89.601. Specifically, the proposed deletions are as follows: the introductory sentence in subsection (c), the last sentence of subsection (c)(2), and subparagraphs (A) - (E) of subsection (c)(2).

In place of the five tiers, the proposal adds paragraphs (3) - (5) to subsection (c), which provide a general maximum fee limit, as well as two areas of exception to that general maximum fee limit for loans involving multiple parcels and costs for preparing documents to address title defects.

Data collected in annual reports from property tax lenders indicates a downward trend in closing costs for residential property tax loans between 2008 and 2013. In particular, a 2012 study by the commission indicated a decrease in average residential closing costs from $1,259 in 2008 to $866 in 2011. Finance Commission of Texas, *Legislative Report: Property Tax Lending Study* at 21 fig. 3 (2012). The average closing costs for residential property tax loans in 2013 was $707. Furthermore, many property tax lender stakeholders provided oral and written testimony stating that they charge well below the current maximums in the rule. Consequently, proposed new §89.601(3) sets the general maximum fee for closing costs at $900.

For property tax loans including the payment of taxes for more than one parcel of real property, proposed new §89.601(c)(4) states that a property tax lender may charge $100 for each additional parcel, in addition to the general maximum fee limit in paragraph (3).

A new provision is also proposed in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. The provision allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in paragraph (3). The fee for these documents is limited to recording costs paid to a governmental entity and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. The purpose of this provision is to ensure that property tax lenders can be compensated for costs

incurred to address title defects. Several precommenters identified situations where title defects required different types of documents to be prepared, executed, and recorded, such as deeds and affidavits of heirship. The fee is limited to recording costs and attorney's fees in order to ensure that property tax lenders do not violate Texas Government Code, §83.001(a), which generally prohibits a person other than an attorney from "charg[ing] or receiv[ing], either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien."

As a result of proposed new §89.601(c)(3) - (5), the remaining paragraph has been renumbered and includes corresponding technical corrections.

A new provision is proposed in §89.601(d) regarding the charging of legitimate discount points in connection with a property tax loan. Subsection (d) states that legitimate discount points are not subject to the general maximum fee. Paragraph (1) explains that in order for discount points to be legitimate, they must truly correspond to a reduced interest rate, they cannot be necessary to originate the loan, and the borrower must be provided with a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points. The purpose of the provision is to describe the circumstances in which discount points are subject to the 18% maximum effective interest rate described in Texas Tax Code, §32.06(e), as opposed to the maximum closing cost limitation described in §89.601(c). Texas courts have generally held discount points to be a form of prepaid interest. *See, e.g., Fin. Comm'n of Tex. v. Norwood,* 418 S.W.3d 566, 596 (Tex. 2013) (holding that legitimate discount points are interest and are not subject to the Texas Constitution's 3% cap on fees necessary to originate a home equity loan); *Tarver v. Sebring Capital Credit Corp.,* 69 S.W.3d 708, 713 (Tex. App.--Waco 2002, no pet.) (holding the same). Like other forms of prepaid interest, discount points must be spread over the term of the loan in order to determine whether the loan is usurious. *See* Tex. Fin. Code §302.101; *Tanner Dev. Co. v. Ferguson,* 561 S.W.2d 777, 786-87 (Tex. 1977). However, in order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. *See Norwood,* 418 S.W.3d at 596 (explaining that "true discount points are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower"). This provision is intended to ensure transparency in connection with discount points and to enable the borrower to make an informed decision before closing.

The provision in proposed new §89.601(d)(2) states that any discount point or other origination fee that does not meet the definition in paragraph (1) will be subject to the general maximum fee limit. Proposed new §89.601(d)(3) specifies that legitimate discount points must be included in the calculation of the effective rate and upon prepayment in full, must be spread as per Texas Finance Code, §302.101.

In §89.802, concerning Payoff Statements, the proposed amendments add subparagraph (C) to paragraph (9) concerning the itemization of the total payoff amount. The proposed amendments to §89.802 further clarify that any refunds resulting from unearned legitimate discount points must be itemized on the payoff statement.

In reference to the affiliated business disclosure statement required by proposed §89.504(f) and the itemization of unearned legitimate discount points proposed in §89.802(9)(C), the agency believes that these revisions are appropriately contained in the rule text as opposed to the corresponding forms in each rule. Only certain property tax lenders use affiliated businesses or offer discount points. Thus, to avoid potential confusion, the proposal focuses these voluntary practices in the rule text, without placing optional language in the forms used by the entire industry.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that for each year of the first five years the amended rules are in effect the public benefit anticipated will be that the commission's rules will provide updated guidelines regarding the costs allowed for property tax loans based on current market conditions, and will provide more consistency in the transfer of tax liens. Additional benefits of the proposal include enhanced transparency concerning the disclosure of affiliated businesses and more detailed recordkeeping procedures that increase both the agency's ability to enforce and licensees' ability to comply with the rules. It is the agency's belief that the proposed rule changes will benefit consumers as well as property tax lenders.

With respect to the use of affiliated businesses or discount points in connection with a property tax loan, additional economic costs may be incurred by a person required to comply with this proposal. Licensees will have the option of not using affiliated businesses and not offering discount points, in which case there will be no fiscal implications for those licensees. For licensees who opt to use affiliated businesses or who decide to offer discount points in relation to their property tax loans, there may be certain costs involved to provide proper disclosures to consumers and to maintain documents in accordance with the proposed amendments.

Regarding the disclosure of affiliated businesses, there may be some nominal costs to licensees in order to comply with the rule changes, such as expenses related to modifying disclosure forms to include a substantially similar statement to the one provided in proposed §89.504(f) and employee time and training to implement the changes. It is anticipated that revising a licensee's internal form to include the affiliated business disclosure would not exceed one hour of employee time per licensee.

Concerning both the use of affiliated businesses and discount points, additional economic costs may be incurred by licensees in order to maintain the documents required by the amendments proposed in §89.207. These costs are anticipated to be minimal, as sound business practice would dictate the maintenance of the receipts, invoices, and other documents required by the rule.

Regarding the proper use of legitimate discount points outlined in §89.601(d), present law already requires the itemization and spreading of legitimate discount points. In particular, §89.207(3)(A)(vi) requires that the refunding of unearned discount points be itemized on payoff statements. Texas Finance Code, §302.101 mandates the spreading of discount points over the loan. Hence, the proposed rule provisions relating to itemization and spreading provide clarification on these existing legal requirements on the use of legitimate discount points. With respect to these two concepts as contained in the proposal, the agency does not anticipate any additional costs to persons who are required to comply with these amendments.

Additional economic costs may be incurred by a person required to comply with the amended fees for closing costs proposed in §89.601. The anticipated costs related to the fee limitations are not predictable, as the current practice in the property tax lender industry includes a wide range of fees. The variance for closing cost fees is both above and below the fee maximum proposed within this rule.

Based on annual report data collected from property tax lenders by the agency, for approximately 75% of all property tax loans conducted during calendar year 2013, the average closing costs were less than $900. Furthermore, 60% of property tax lender licensees originated these loans. These statistics represent strong majorities of the loan volume and licensee base having the ability to operate within the proposed fee limitations.

As supported by testimony provided by stakeholders during and after the meeting, it is the agency's understanding that higher cost property tax loans usually involve troubled properties with extensive title work. The agency believes that the fee cap exceptions built into the proposed rule for loans involving multiple parcels and for costs to prepare documents to address title defects should largely accommodate the loans where closing costs had exceeded $900.

Although it is anticipated that some lenders will have to reduce their fees in order to comply, it is the agency's expectation that most lenders will be able to continue charging the same amount, as their fees are less than the fees permitted by the proposal. For the small percentage of lenders whose current fees are greater than the fees proposed, those lenders would incur the difference between the fees as proposed and their current fees as a cost to continue engaging in a property tax loan that is secured by real property designed for single-family use.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the proposed amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to small businesses.

Comments on the proposal may be submitted in writing 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. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §89.102

All of the amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.102 are proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[~~, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220),~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliated business--A person that:

(A) shares common management with a property tax lender;

(B) shares, directly or indirectly, more than 10% common ownership with a property tax lender; or

(C) is controlled, directly or indirectly, by a property tax lender through a controlling interest greater than 10%.

(2) [~~(1)~~] Borrower--The borrower in a property tax loan is the property owner.

(3) [~~(2)~~] Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) [~~(3)~~] Date of consummation--The date of closing or execution of a loan contract.

(5) [~~(4)~~] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351[~~, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~].

(6) [~~(5)~~] Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(7) [~~(6)~~] Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(8) [~~(7)~~] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(9) [~~(8)~~] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

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 17, 2014.

TRD-201404849
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7621

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.207

All of the amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.207 are proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) - (2) (No change.)

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) - (viii) (No change.)

(ix) receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, as described by §89.601(c)(5) of this title (relating to Fees for Closing Costs);

(x) written documentation of any legitimate discount points offered to the borrower, as described by §89.601(d) of this title, including the written proposal described by §89.601(d)(1)(C);

(B) - (H) (No change.)

(I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; [~~and~~]

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and (a)(5), including specific descriptions of services performed by the attorney; and [~~;~~]

(iii) records identifying all amounts paid to an affiliated business described by paragraph (7) of this section, including a designation that an amount was paid to an affiliated business and a statement of which affiliated business was paid;

(J) - (K) (No change.)

(L) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c):

(I) (No change.)

(II) if sent by an [a ~~non-salaried~~] attorney who is not an employee of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by an [a ~~non-salaried~~] attorney who is not an employee of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(IV) if sent by an [a ~~non-salaried~~] attorney who is not an employee of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(V) - (VIII) (No change.)

(ii) (No change.)

(M) (No change.)

(4) - (6) (No change.)

(7) Records of affiliated businesses. A property tax lender must maintain records describing its relationship with any affiliated business with which the property tax lender regularly contracts for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender. The records must include any agreements between the property tax lender and the affiliated business, as well as any filings with the Texas Secretary of State that show the relationship between the property tax lender and the affiliated business.

(8) [(7)] Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(9) [(8)] Retention and availability of records. All books and records required by this section must be available for inspection at any time by OCCC [Office of Consumer Credit Commissioner] staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the OCCC [commissioner] access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of 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.

Filed with the Office of the Secretary of State on October 17, 2014.

TRD-201404848
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7621

SUBCHAPTER E. DISCLOSURES

7 TAC §89.504

All of the amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.504 are proposed under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are proposed under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) - (e) (No change.)

(f) Disclosure of affiliated businesses. If a property tax lender regularly contracts with one or more affiliated businesses for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender, then the disclosure statement must include a statement substantially similar to the following: "The property tax lender can impose certain additional charges after closing. Some of these charges may be paid to (INSERT NAME OF AFFILIATED BUSINESS OR BUSINESSES), which is affiliated with the property tax lender. The costs paid to the affiliated business cannot be for services performed by employees of the property tax lender."

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 17, 2014.

TRD-201404847
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7621

SUBCHAPTER F. COSTS AND FEES

7 TAC §89.601

All of the amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.601 are proposed under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.601. Fees for Closing Costs.

(a) - (b) (No change.)

(c) Total maximum fees for closing costs. [For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."]

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section. [~~The following subparagraphs contained in this paragraph outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.~~]

[~~(A) For a total tax lien payment amount that is less than $2,500, the maximum fee for closing costs is $1,000.~~]

[~~(B) For a total tax lien payment amount that is equal to or greater than $2,500 but less than $5,000, the maximum fee for closing costs is $1,250.~~]

[~~(C) For a total tax lien payment amount that is equal to or greater than $5,000 but less than $7,500, the maximum fee for closing costs is $1,500.~~]

[~~(D) For a total tax lien payment amount that is equal to or greater than $7,500 but less than $10,000, the maximum fee for closing costs is $1,750.~~]

[~~(E) For a total tax lien payment amount that is equal to or greater than $10,000, the maximum fee for closing costs is $2,000, or 10% of the total tax lien payment amount, whichever is greater.~~]

(3) General maximum fee limit. The general maximum fee for closing costs is $900.

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge $100 for each additional parcel, in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) Cost for preparing documents to address title defect. If one or more documents must be prepared in order to address a defect in title on the real property subject to the property tax loan, then the property tax lender may charge a reasonable fee for costs directly incurred in preparing, executing, and recording any necessary documents, in addition to the general maximum fee limit described in paragraph (3) of this subsection. The fee for preparing documents is limited to recording costs paid to a governmental entity and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. In order for the fee for these documents to be authorized, any documents must comply with all applicable laws, including recording requirements. In particular, any affidavit of heirship must comply with the substantive and procedural requirements of Texas Estates Code, Chapter 203, and must be recorded in the deed records of a county as provided in Texas Estates Code, §203.001(a)(2). The fee for preparing documents is not authorized under this paragraph if the fee includes any of the following:

(A) recording costs that are not paid to a governmental entity;

(B) attorney's fees that are not reasonable;

(C) costs that are not necessary in order to address a defect in title on the real property; or

(D) costs that are not substantiated by receipts or invoices that are maintained under §89.207(3)(A)(ix) of this title (relating to Files and Records Required).

(6) [~~(3)~~] Reasonable closing costs. The maximum fees contained in paragraphs (3), (4), and (5) [~~paragraph (2)~~] of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Discount points. Legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by subsection (c) of this section.

(1) Discount points are legitimate if:

(A) the discount points truly correspond to a reduced interest rate;

(B) the discount points are not necessary to originate the loan; and

(C) before closing, the property tax lender provides the property owner with a written proposal describing the options offered to the property owner, including all of the following:

(i) an offer of a property tax loan that includes a contract rate without discount points;

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points;

(iii) the difference between the contract rate without discount points and the lower contract rate, expressed as a percentage or as a number of points;

(iv) the cost of the discount points expressed as a dollar amount; and

(v) the percentage amount equal to the cost of the discount points divided by the principal balance of the loan.

(2) If a property tax lender directly or indirectly charges, contracts for, or receives a discount point or other origination fee at closing that is not a legitimate discount point under paragraph (1) of this subsection, then the point or fee is subject to the maximum fee limit described by subsection (c) of this section. A property tax lender may not use the term "discount point" to describe a fee other than a legitimate discount point.

(3) To determine whether a property tax loan exceeds the 18% maximum effective rate of interest described in Texas Tax Code, §32.06(e), legitimate discount points must be included in the calculation of the effective rate. Upon prepayment in full, a property tax lender must spread legitimate discount points in accordance with Texas Finance Code, §302.101.

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 17, 2014.

TRD-201404846
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7621

SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.802

All of the amendments are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to

ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.802 are proposed under §32.06(a-4)(4) of the Tax Code, which authorizes the commission to prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.802. Payoff Statements.

(a) - (b) (No change.)

(c) Required elements. A payoff statement under this section must include:

(1) - (8) (No change.)

(9) an itemization of the total payoff amount, which must include:

(A) the unpaid principal balance on the property tax loan;

(B) the accrued interest as of the balance date; [~~and~~]

(C) any refundable amount resulting from unearned legitimate discount points described by §89.601(d) of this title (relating to Fees for Closing Costs); and

(D) [~~(C)~~] any other fees that are part of the total amount due under the property tax loan, with a specific description for each fee;

(10) - (13) (No change.)

(d) - (l) (No change.)

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

Filed with the Office of the Secretary of State on October 17, 2014.

TRD-201404845
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7621

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §24.8

The Public Utility Commission of Texas (commission) proposes an amendment to §24.8, relating to Administrative Completeness. The proposed amendment will extend the time for Staff to review an application for administrative completeness from 10 working days to 30 calendar days. Project Number 43423 is assigned to this proceeding.

Tammy Benter, Director of the Water Utility 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 section.

Ms. Benter 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 improve administrative review by giving Staff sufficient time to review an application before it is deemed administratively complete and sufficient. 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. Benter 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 (APA), Texas Government Code §2001.022.

Comments on the proposed amendment 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 20 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 43423.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2014) 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; and Texas Water Code §13.041 (West 2008 and Supp. 2014) which provides the Public Utility Commission the authority to regulate and supervise the business of each water and sewer utility in its jurisdiction and to adopt and enforce rules reasonably required in the exercise and jurisdiction, including rules governing practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052 and Texas Water Code §13.041.

§24.8. Administrative Completeness.

(a) Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within 30 calendar [~~ten working~~] days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease,

rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the applicant shall be notified by mail of that determination. If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) - (c) (No change.)

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404855
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 936-7223

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. MEDICAL BILL REPORTING

28 TAC §§134.802 - 134.805, 134.807, 134.808

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to Title 28 TAC §134.802, concerning Definitions; §134.803, concerning Reporting Standards; §134.804, concerning Reporting Requirements; §134.805, concerning Records Required to be Reported; §134.807, concerning State Specific Requirements; and §134.808, concerning Insurance Carrier EDI Compliance Coordinator and Trading Partners.

These amendments are necessary to clarify some of the technical requirements associated with insurance carriers' reporting medical charge and payment data to the Division as required by statutory provisions of Labor Code §413.007 and §413.008. These amendments highlight the requirements associated with the submission of data where Texas differs from the International Association of Industrial Accident Boards and Commission's EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002 (IAIABC Guide). The amendments clarify the existing data reporting requirements, with minimal changes to the current technical infrastructure associated with medical electronic data interchange (EDI) reporting. Lastly, these proposed rules highlight some requirements to improve data quality, such as compound medication reporting and diagnosis-related groups (DRG) reporting.

Labor Code §413.007 and §413.008 require the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols to be used in adopting and administering medical policies and fee guidelines, as well as in detecting patterns and practices in the industry. In addition, these provisions require insurance carriers to provide specific information regarding health care treatment, services, fees, and charges.

These proposed amendments also fulfill the purposes of Labor Code §413.007 by requiring insurance carriers to submit to the Division accurate data in a medical EDI record. The accuracy of the data impacts whether or not records can be used for the purposes set forth in Labor Code §413.007. Imposing requirements relating to data accuracy helps ensure the quality and integrity of the data in the database. The availability of quality data will better able the commissioner to adopt medical policies and fee guidelines and the Division to administer the medical policies, fee guidelines, and rules. The availability of quality data will also better assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the database in a meaningful way to allow the Division to control medical costs. In addition, quality data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes.

Labor Code §413.011, in part, requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve this standardization, Labor Code §413.011, in part, requires the commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053. Insurance carriers are required to utilize, in part, the information obtained from those billing forms the commissioner has adopted by reference in compliance with Labor Code §413.011 when reporting accurate medical EDI records to the Division under 28 TAC Chapter 134. The proposed amendments to Chapter 134 highlight the requirement that insurance carriers must utilize all sources, including but not limited to, the explanation of benefits, claim file, source medical bill, and billing forms adopted by reference in Title 28 TAC Chapter 133 when reporting accurate medical EDI data to the Division.

The Legislature in Labor Code §§402.00111, 402.00128(b)(12), and 402.061 has given the commissioner rulemaking authority to promulgate rules to regulate the workers' compensation system and enforce the Act. The Division interprets this grant of rulemaking authority to include the authority to adopt rules to implement the legislative directives in Labor Code §413.007 and §413.008.

The Division considered and incorporated stakeholder feedback throughout the informal draft and proposal process. As part of the development process for these proposed rules, the Division posted an informal working draft of amendments to Chapter 134

on its website on July 31, 2014. These proposed rule amendments incorporate several recommendations from commenters.

The following paragraphs include a description of all of the proposed amendments necessary to implement Labor Code §413.007 and §413.008 and to make the other changes that the Division, with input from stakeholders, determined are necessary for effective reporting and compliance.

Section 134.802 addresses Definitions. Section 134.802(a)(1) defines the term "application acknowledgment code" to incorporate the definition of the term from the IAIABC Guide. The Division clarifies that an insurance carrier will receive either an "accepted" or "rejected" application acknowledgment code from the Division once a medical EDI record is submitted. For example, a code of "rejected" means that invalid modifiers and qualifiers have been submitted, whereas a code of "accepted" means that valid modifiers and qualifiers have been submitted. These application acknowledgment codes are necessary to prevent incomplete records from populating the database and will put the insurance carrier on notice that either a record was accepted or that another record must be submitted to the Division that is complete.

New §134.802(a)(2) defines the term "claim adjustment reason code (CARC)" to track the definition of the term from the IAIABC Guide. This defined term was recommended by stakeholders during the informal comment period of the draft rules. The Division clarifies that the term "claim adjustment reason code" is synonymous with the term "service adjustment reason code," as used in the IAIABC Guide. Insurance carriers and trading partners may access the complete code set, except for the Texas-specific codes, on the Washington Publishing Company website at www.wpc-edi.com.

New §134.802(a)(3) defines the term "claim administrator claim number" to clarify that only one claim administrator claim number may be used through the life of the workers' compensation claim as indicated in the IAIABC Guide. A claim administrator claim number is a unique identifier that is necessary to appropriately match medical EDI data to the workers' compensation claim. The Division clarifies that the claim administrator claim number must not change with the acquisition of claims, claim transfer to a different third party administrator, or business mergers. The insurance carrier is responsible for ensuring that its agents, including trading partners, have the required data for submission in a medical EDI record.

The existing §134.802(a)(1) definition of the term "Division" is redesignated as §134.802(a)(4). The existing definition of the term "EDI" in §134.802(a)(2) is redesignated as §134.802(a)(5).

New §134.802(a)(6) defines the term "element requirement table" to track the definition in the IAIABC Guide with changes to replace the term "maintenance type code" with the term "bill submission reason code" for consistent use of the term in Title 28 TAC Chapter 134 and the tables adopted by reference. This defined term was recommended by stakeholders during the informal comment period of the draft rules. The Division clarifies that the term "maintenance type code" is not used in the Texas EDI Medical Data Element Requirement Table.

New §134.802(a)(7) defines the term "IAIABC" as the abbreviation for the International Association of Industrial Accident Boards and Commissions. This definition was recommended by stakeholders and is necessary to clarify the term as used in Title 28 TAC Chapter 134.

The existing definition of the term "medical EDI record" in §134.802(a)(3) is redesignated as amended §134.802(a)(8). The term "accurate" and the phrase "obtained from all sources, including the medical bill, explanation of benefits, and insurance carrier's claim file" were added to reiterate the existing requirement that medical EDI data submitted to the Division must be accurate and obtained by the insurance carrier from source data. Insurance carriers possess the required data for a medical EDI record and should employ sufficient quality control activities to ensure that the data submitted to the Division, including the data sent by a trading partner, accurately reflects the information associated with the payment action.

The existing definitions for "Medical EDI Transmission," "Medical EDI Transaction," "Person," and "Trading Partner" were renumbered from paragraphs (4), (5), (6), and (7) to paragraphs (9), (10), (11), and (12), respectively.

New §134.802(a)(13) defines the term "W3" as a Texas-specific claim adjustment reason code used to designate the medical EDI record as a reconsideration or appeal. The definition of the term is necessary to clarify the use of the term in Title 28 TAC Chapter 134, the Texas EDI Medical Data Element Requirement Table, and the Texas EDI Medical Difference Table.

Amended §134.802(b) provides an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Section 134.803 addresses Reporting Standards. Amended §134.803(a) deletes the phrase "International Association of Industrial Accident Boards and Commissions (IAIABC)" because the term is defined in new §134.802(a)(7). Amended §134.803(a) adds the term "IAIABC Guide" to mean the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002.

Amended §134.803(b) proposes to adopt by reference amendments to the Texas EDI Medical Data Element Requirement Table, Version 2.0, dated September 2015, the Texas EDI Medical Data Element Edits Table, Version 2.0, dated September 2015, and the Texas EDI Medical Difference Table, Version 3.0, dated September 2015. *Texas EDI Medical Difference Table,* Version 3.0 (September 2015):

The Texas EDI Medical Difference Table outlines the technical deviations used for medical EDI reporting in Texas from the IAIABC Guide under the current infrastructure implemented by the Division.

The Division clarifies the requirement to submit the identification code qualifier of a social security number in the NM108 data element in Loop 2010CA. The IAIABC Guide allows for different values; however the Division clarifies that the identification code qualifier "34", identifying the social security number, is the only acceptable value in the NM108 data element. The Division also clarifies that for Texas medical EDI reporting, the employee's social security number associated with the workers' compensation claim is required to be reported. If the employee's social security number is unknown, then the insurance carrier must report the social security number in accordance with Title 28 TAC §102.8.

The Division amended the requirement to submit the DN53 in the DMG03 data element. Although the IAIABC Guide provides that the use of the DN53 is situational, it is required to be submitted for Texas medical EDI reporting. The Division changed the requirement of this element from "situational" to "required"

to reflect the difference of the data submission requirement in Texas from the IAIABC Guide. Currently, DN53 is only required when reporting professional, institutional, or dental medical EDI records. The Division clarifies that insurance carriers must report DN53 on all medical EDI records, including those relating to pharmacy medical bills.

The Division amended the comments for the provider agreement code DN507 in data element CLM16 to clarify that the value of "Y" is not accepted in Texas. This amendment is necessary to ensure valid data is submitted to the Division because under the IAIABC Guide, "Y" is defined as "preferred provider organization (PPO)" and that definition is not used in Texas medical EDI reporting. The Division also clarified that "P" excludes services performed within a certified network. Additionally, the Division clarified that "N" means no contractual fee arrangement existed between the insurance carrier and provider for services performed. A non-substantive amendment deleted the phrase "contract or out of network services" to add the clarifying phrase "contractual fee arrangement for services performed". The phrase "services performed within a" was added to replace "networks" to clarify the exclusion is for services within a certified network, rather than for certified networks.

The Division amended the requirement that segment CN1, contract information, be submitted to the Division from "optional" to "situational". This amendment is necessary because the contract information must be reported to the Division when an insurance carrier calculated a reimbursement amount by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (Medicare IPPS) as required under Title 28 TAC §134.404, concerning Hospital Facility Fee Guidelines - Inpatient. An insurance carrier may reimburse an amount subject to calculation using Medicare IPPS on institutional bills when medical services were provided in an inpatient acute care hospital. This additional requirement is necessary for the Division to identify when a DRG was used by the insurance carrier to calculate the reimbursement amount.

The Division added the requirement that the contract type code be reported in the data element CN101, contract type code, with a value of "01". In the IAIABC Guide, a value of "01" identifies the contract type code as a DRG. This additional requirement is necessary for the Division to identify that a DRG was used by the insurance carrier to calculate the reimbursement amount.

The Division added the requirement that the DRG code be reported in DN518 as reference identification in the CN104 data element when the DRG code is used. This requirement will allow the Division to identify the DRG used by the insurance carrier to calculate the reimbursement amount.

The Division added the requirement that the decimal point is required to be reported in data elements H101-2, H102-2, H103-2, H104-2, and H105-2 when reporting the principal diagnosis code or the ICD-9-CM or the ICD-10-CM Diagnosis Code. Failure to provide the decimal point when submitting diagnosis or admitting codes will result in the medical EDI record being rejected by the Division. This is necessary because the formatting of the Division's code sets require a decimal point to be reported.

The Division amended the bill level adjustment data reporting from "optional" to "not used" in Loop 2320 because the Division requires the submission of medical EDI data adjustment information at the line level of medical bills, rather than at the bill level. This amendment is necessary for ease of compliance for system participants, as the Division does not use this data and therefore is not necessary to achieve the purposes of Labor Code §413.007.

The Division amended the revenue billed code, DN559, reporting requirement in the SV201 data element and the revenue paid code in the SVD04 data element to clarify that the revenue code valid for Medicare billing will be accepted and is not limited to a three-digit format. The phrase "provided it is submitted in three-digit format" is deleted from the comments section of the SV201 and SVD04 data elements to allow for the submission of valid codes that are more than 3 digits. This amendment is necessary to allow submission of valid code formats.

The Division amended the requirement to report a claim adjustment reason code in Loop 2430 for data element CAS02, and the situational reporting requirements for the CAS05, CAS08, CAS11, and CAS14 data elements to clarify that a Texas specific claim adjustment reason code may be used when reporting actions related to a request for reconsideration or appeal. The code "W3" must be used as the claim adjustment reason code when reporting any reconsideration or appeal of a medical bill, as required in §134.804(a), concerning reporting requirements. Additionally, the Division amended the description for Loop 2430 from "claim" adjustment reason code to "service" adjustment reason code for consistency with the Texas EDI Medical Data Elements Table and the Texas EDI Medical Data Requirement Table. The Division clarifies that under §134.802(a)(2), the term "claim adjustment reason code" is synonymous with "service adjustment reason code."

Texas EDI Medical Data Element Edits Table, Version 2.0 (September 2015):

The Texas EDI Medical Data Elements Table sets out the review the Division will perform for each data element to use for validation of data submitted to the Division. This table is necessary because it will notify insurance carriers of the applicable edits and will ensure the data sent to the Division is complete and contains valid data.

The Division added two columns to the table to provide for an error message of an "invalid event sequence/relationship" and an error message of "must be greater than or equal to the date payer received the bill" for error codes 063 and 073, respectively. These additional columns are necessary to notify insurance carriers and trading partners that the medical EDI data submitted was rejected by the Division and provides a meaningful error code and message to enable the resubmission of corrected data. This amendment is necessary to assist system participants in complying with the requirement that rejected medical EDI records must be corrected and resubmitted within the time frame required by existing Title 28 TAC §134.804(e).

The Division deleted the "mandatory field not present (001)" for the jurisdiction claim number data element DN05 because it is a conditional data element that becomes required to be submitted only when the insurance carrier has received the jurisdiction claim number from the Division. The Division clarifies that the jurisdiction claim number is a unique identifier that is necessary for the Division to appropriately match medical bill data to the workers' compensation claim. The source of this data element is from the payer and not the medical bill. The insurance carrier receives the jurisdiction claim number in the acknowledgment that is sent by the Division to the insurance carrier upon acceptance of a first report of injury claims EDI record. The jurisdictional claim number is useful for matching medical data to the workers' compensation claim because this number does not change.

The Division amended the data elements DN152 and DN153 to remove the requirements that the data must be reported as a mandatory field and that the data must be alphanumeric. The requirement that the employee's social security number be reported negates the need for the Division to collect data elements DN152 and DN153.

The Division amended the data element of DN507, provider agreement code, to clarify that the value of "Y" is not acceptable in Texas and to ensure the data is rejected by the Division if a "Y" value is transmitted in the medical EDI data. This element will be subject to the Code/ID Invalid (058) edit. This amendment is necessary to ensure valid data is submitted to the Division because under the IAIABC Guide, "Y" is defined as "preferred provider organization (PPO)," and that definition is not used in Texas medical EDI reporting.

The Division amended the data element of DN508, bill submission reason code, to add the invalid event sequence/relationship (063) edit. This edit will enable the Division to reject medical EDI records if the medical EDI record is submitted to the Division out of sequence. For example, an insurance carrier will receive an acknowledgement code of "reject" if a cancellation or replacement medical EDI record is submitted to the Division prior to an original medical EDI record being accepted. The Division must receive an original medical EDI record before it can be cancelled or replaced. This amendment was necessary because the Division will begin to reject a replacement of a medical EDI record when the original medical EDI record was not accepted.

The Division amended the data element of DN512, date insurer paid bill by adding an edit requiring that the insurer paid bill reported date is greater than or equal to the date the payer received the bill (073). This amendment will ensure that the Division rejects medical EDI records reported by the insurance carrier when the date the claim is paid is prior to the date the insurer received the bill. This amendment is necessary to help ensure the quality and integrity of the data maintained by the Division.

The Division amended the data element of DN515, contract type code. The Division added the Code/ID Invalid (058) because the Division will only accept a value of "01" for this data element and all other values will be rejected. This amendment is necessary to facilitate communication with the insurance carrier that an invalid value for contract type code was submitted to the Division in the medical EDI record.

The Division amended the data element of DN518, DRG code, to add the Code/ID invalid (058) edit because the Division will perform a check of valid DRG codes and will reject the transaction if the value is not valid. This amendment is necessary to identify the DRG code used by the insurance carrier to calculate the reimbursement amount and to help ensure the quality and integrity of the data maintained by the Division.

The Division amended the data element of DN535, admitting diagnosis code, to add the requirement that a decimal point be reported. This amendment is necessary to clarify that a carrier must report the decimal point for the Division to process the data collected in a meaningful manner. Failure to provide the decimal point when submitting diagnosis or admitting codes will result in the medical EDI record being rejected by the Division. The formatting of the Division's code sets require a decimal point to be reported.

The Division amended the data element of DN559, revenue billed code, and DN576, revenue paid code, to remove the requirement that the data be submitted in a three-digit format, because this edit limited other codes from being submitted. This amendment is necessary to allow submission of valid code formats no matter the number of digits.

The Division amended the data element of DN717, HCPCS modifier billed code, by removing the mandatory field not present (001) validation because there may not be any HCPCS modifiers on a medical bill. The Division added the Code/ID Invalid (058) edit to facilitate communication with the insurance carrier that the HCPCS modifier submitted to the Division was not valid. HCPCS modifier billed code is needed, if known, to improve the accuracy of identifying the service that was performed or determining the appropriate reimbursement rate. These amendments are necessary because the Division does validate HCPCS modifiers and will reject Medical EDI records containing invalid HCPCS modifiers.

The Division amended the data element of DN732, service adjustment reason code, by removing the Code/ID invalid (058) validation to facilitate the resubmission of medical EDI records for historical medical bills. This amendment is necessary to allow insurance carriers to submit medical EDI records for historical medical bills without receiving a rejection.

Texas EDI Medical Data Element Requirement Table, Version 2.0 (September 2015)

The Texas EDI Medical Data Element Requirement Table outlines the data elements that are required to be submitted to the Division, including the situational rules for conditional data elements. The table also sets out the usage requirements for data elements in the IAIABC Guide, including defining the mandatory trigger for conditional data elements. This table is necessary because it identifies the data that must be included in the database required by Labor Code §413.007.

The data element DN42, employee social security number, was previously identified on the table as a conditional element, with a mandatory trigger of reporting only when the injured employee's social security number was available to the insurance carrier. The social security number data element is changed to mandatory because this data should always be reported either with a known social security number or if no social security number has been assigned, then the insurance carrier must include the information as required under Title 28 TAC §102.8.

The data element DN53 was previously identified on the table as a conditional data element because it was only required when reporting professional, institutional, or dental medical EDI records. The data element DN53 must be reported on all medical EDI records, including those relating to pharmacy medical bills. This amendment is necessary for ease of compliance for system participants to provide the information when reporting all medical EDI records, rather than prescribing a list of exceptions.

The data elements DN152 and DN153, were previously listed on the table as conditional elements to be reported when the social security number is not reported. Because Title 28 TAC §102.8 provides the reporting format for social security numbers, the DN152 and DN153 data elements are no longer applicable for medical EDI reporting purposes to the Division.

The data element DN154, employee ID assigned by jurisdiction, was previously listed on the table as optional, but is amended to be not applicable. This change is necessary because the Division does not issue an employee ID assigned by jurisdiction, and therefore, the data is unnecessary for medical EDI reporting in Texas.

The data element DN156, employee passport number, was previously listed on the table as optional, but is amended to be not applicable. Because Title 28 TAC §102.8 provides the reporting format for social security numbers, the employee passport number data element is no longer applicable for medical EDI reporting purposes to the Division.

The data element DN515, contract type code, was previously listed on the table as optional, but is amended to be conditional, because it is required to be reported to the Division when an insurance carrier calculated a reimbursement amount by applying the most recently adopted and effective Medicare IPPS. An insurance carrier may reimburse an amount subject to calculation using Medicare IPPS on institutional bills where medical services were provided in an inpatient acute care hospital. This amendment is necessary for the Division to identify the DRG code used by the insurance carrier to calculate the reimbursement amount.

The data element DN518, DRG code, was previously listed on the table as optional, but is amended to be conditional because it is required to be reported to the Division when an insurance carrier calculated a reimbursement amount by applying the most recently adopted and effective Medicare IPPS. An insurance carrier may reimburse an amount subject to calculation using Medicare IPPS on institutional bills where medical services were provided in an inpatient acute care hospital. The change will allow the Division to identify the DRG code used by the insurance carrier to calculate the reimbursement amount. This amendment is therefore necessary because it will ensure that the database contains complete records that relate to medical charges, actual payments, and treatment protocols as required by Labor Code §413.007(a). This amendment will also help the Division to ensure that the database contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs.

The data elements DN543, bill adjustment group code, DN544, bill adjustment reason code, DN545, bill adjustment amount, and DN546, bill adjustment units, were previously listed on the table as optional, and are amended to be not applicable. The Division amended the data element reporting as "not applicable" because the Division does not use the data in these elements and therefore are not necessary to achieve the purposes of Labor Code §413.007.

The data element DN731, service adjustment group code, is conditional once the requirement in the mandatory trigger is met. The Division amended the mandatory triggers to emphasize the existing requirement that the information is required to be reported when (i) the DN552 total charge per line does not equal the DN574, total paid per line; (ii) when reporting actions related to a request for reconsideration or appeal of a medical bill; (iii) or when both the total charge per line does not equal the total paid per line and it is an action related to a request for reconsideration or appeal.

The data elements DN732, service adjustment reason code, DN733, service adjustment amount, and DN734, service adjustment units, are amended to require they be reported to the Division when the data element of DN731 is reported, because they have the same mandatory trigger as DN731.

Amended §134.803(c) deletes redundant language regarding information on how to obtain the IAIABC Guide and clarifies that the amended tables proposed to be adopted by reference may be accessed on the Division's website.

Amended §134.803(e) adds an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Section 134.804 addresses Reporting Requirements. Amended §134.804(a) adds the phrase "or appeal" to clarify that an "00" original medical EDI record must be submitted for an appeal taken on an individual medical bill.

The term "payment" is deleted to clarify that original medical EDI records on all subsequent actions, not just payment actions, must be reported to the Division. The phrase "Texas-specific claim" is added and the term "service" is deleted to clarify that the adjustment reason code of "W3" is a Texas-specific claim adjustment reason code. The phrase "to designate the medical EDI record as a reconsideration or appeal" is added to clarify that the "W3" claim adjustment reason code is used by the Division to identify requests for reconsideration and appeals of original medical bills. Additionally, §134.804(a) specifies that "W3," the Texas-specific claim adjustment reason code, must be used in the explanation of benefits as required under existing Title 28 TAC §133.250.

Amended §134.804(b) requires that an '00' original medical EDI record be submitted to the Division by an insurance carrier before an '01' cancel medical EDI record may be submitted. This edit will enable the Division to reject medical EDI records if the medical EDI record is submitted to the Division out of sequence. For example, an insurance carrier will receive an acknowledgement code of "reject" if a cancellation or replacement medical EDI record is submitted to the Division prior to an original medical EDI record being accepted. This amendment was necessary because the Division will begin to reject a replacement of a medical EDI record when the original medical EDI record was not accepted. The Division must receive an original medical EDI record before it can be replaced or canceled.

Amended §134.804(c) requires that an '00' original medical EDI record t be submitted by an insurance carrier to the Division before an '05' replacement medical EDI record may be submitted. The Division must accept an original medical EDI record before it can be replaced.

Amendments to §134.804(b) and (c) are necessary because submitting medical EDI records to the Division in the proper sequence will ensure the Division maintains the most current medical EDI records submitted by insurance carriers.

Amended §134.804(d) deletes the phrase "are responsible for the" and "submission of" and adds the phrases "must submit" and "to the Division" for clarity and to conform to current agency style. The Division notes that this change is not substantive and in no way should be construed to mean that carriers are not responsible for the actions of their agents.

Amended §134.804(d)(2) adds the phrase "medical EDI data may be obtained from all sources, including" and the phrase "an insurance carrier's claim file" to reiterate the existing requirement that insurance carriers must submit accurate medical EDI records to the Division. Insurance carriers must ensure that the medical EDI data submitted to the Division is obtained from all sources, including but not limited to, the claim file, original medical bill, and explanation of benefits. The phrase "where applicable" and "the same" are deleted because they are redundant and to conform to current agency style. Amended §134.804(d)(2) also deletes the word "as" and the word "and" for clarity and to conform to current agency style.

Amended §134.804(d) is necessary to fulfill the purposes of Labor Code §413.007, that, in part, requires insurance carriers to submit to the Division accurate data in a medical EDI record. The accuracy of the data impacts whether or not individual records can be used for the purposes set forth in Labor Code §413.007. Insurance carriers possess the source data for a medical EDI record and should employ sufficient quality control activities to ensure that the data submitted to the Division, including the data sent by a trading partner, accurately reflects the information associated with the payment action.

The availability of quality data will better able the commissioner to adopt medical policies and fee guidelines and the Division to administer the medical policies, fee guidelines, and rules. The availability of quality data will also better assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the database in a meaningful way to allow the Division to control medical costs. In addition, quality data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes.

Additionally, Labor Code §413.008 provides, in part, that on request from the Division for specific information, an insurance carrier shall provide any information in the carrier's possession, custody, or control that reasonably relates to the Division's duties and to health care treatment, services, fees, and charges.

Amended §134.804(f) adds an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Section 134.805 addresses Records Required to be Reported. Amended §134.805(a)(2) reiterates the existing requirement that insurance carriers must submit medical EDI records relating to duplicate bills to the Division if the duplicate medical bill was processed for payment. This amendment is necessary to clarify that insurance carriers are required to submit medical bill payment data on all medical bills that are processed, which may include duplicate medical bills. Under existing 28 TAC §133.200(a)(1), insurance carriers must not return bills to the provider that are complete, unless the medical bill is a duplicate bill.

New §134.805(a)(5) and (6) highlight the existing requirement that insurance carriers must submit medical EDI records to the Division when the insurance carrier reimburses an injured employee, or an employer, for health care. New §134.805(a)(5) and (6) reference the existing requirements in Title 28 TAC §133.270 and §133.280, respectively.

Amended §134.805(d) adds an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Section 134.807 addresses State Specific Requirements. Amended §134.807(f)(2) emphasizes the current requirement that an insurance carrier must report the same prescription number for each reimbursable component of the compound medication, including the compounding fee. This amendment is necessary to ensure that each reimbursable component of the compound medication, including the compounding fee, is linked to the accurate prescription number. The availability of quality data will also better assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the database in a meaningful way to allow the Division to control medical costs.

New §134.807(f)(5) highlights the existing requirement that if the injured employee's social security number is unknown, it must be reported in accordance with Title 28 TAC §102.8(a)(1). This amendment is necessary to ensure that insurance carrier's consistently report required medical EDI records in accordance with existing Division rules.

New §134.807(f)(6) adds the requirement that the data element DN53 must be reported on all medical EDI records, including those relating to pharmacy medical bills. This amendment is necessary for ease of compliance for system participants to provide the information when reporting all medical EDI records, rather than prescribing a list of exceptions.

New §134.807(f)(7) clarifies the requirement that the provider agreement code be reported on all medical EDI records and is consistent with the existing requirement for data element DN507 in the Texas EDI Medical Data Element Requirement Table. The code must only contain one of the following values; "H" for services performed within a Certified Workers' Compensation Health Care Network; "P" for services performed under a contractual fee arrangement, excluding services performed within a certified network; or "N" for no contractual fee arrangement for services performed. New §134.807(f)(7) also provides that "Y" is not a valid value in Texas because the IAIABC Guide uses "Y" as a DN507, provider agreement code, for services performed by a preferred provider organization agreement.

New §134.807(f)(8) provides that when an insurance carrier calculated a reimbursement amount by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) as required in §134.404, the DN515, contract type code, must be reported as "01", and the valid diagnosis related group code for DN518 must be reported. New §134.807(f)(8) is necessary to enable the Division to administer the fee guidelines, in part, through analysis of medical EDI data submitted to the Division.

New §134.807(f)(9) provides that an insurance carrier shall only report up to four diagnosis codes on a medical EDI record because the guidance in the IAIABC Guide adopted by the Division only allows four codes to be reported.

New §134.807(f)(10) provides that an insurance carrier shall only report up to four diagnosis code pointers and that the pointers must be reported numerically. If the diagnosis code pointer reported on a medical bill is not an "A, B, C or D", the extra pointers must be reported with a value of "1". This is necessary because the structure of reporting in the IAIABC Guide adopted by the Division only allows four diagnosis code pointers to be reported numerically, and therefore excess diagnosis code pointers must be reported to the default value of "1". This amendment was recommended by stakeholders during the informal comment period of the draft rules.

New §134.807(g) adds an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Section 134.808 addresses Insurance Carrier EDI Compliance Coordinator and Trading Partners. Amended §134.808(c) and (d) delete the phrase "by fax or email at TxCOMP.Help@tdi.state.tx.us" because the Texas Department of Insurance has changed its internet domain name and email

extensions. This amendment is necessary to ensure that the insurance carrier or trading partner has access to the Division's current email and website contact information. Insurance carriers must submit the notice required under amended §134.808(c) and (d) to the Division pursuant to the instructions on the form.

Amended §134.808(e)(1) deletes the word "bills" and adds the phrase "medical EDI records" for consistent use of the term in the section. Additionally, the term "medical EDI records" is defined in new §134.802(a)(7).

Amended §134.808(g) adds an effective date of September 1, 2015 to provide stakeholders sufficient time to make the system changes outlined in the rules while ensuring that there is no delay in the Division's collection of medical state reporting data.

Matthew Zurek, Executive Deputy Commissioner of Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed sections will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments, except to the extent set forth below in the Public Benefit/Cost Note portion of this proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments.

Mr. Zurek has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be (i) clarification of existing rules to facilitate ease of compliance and submission of accurate data; (ii) increased accuracy of medical EDI records submitted to the Division; and (iii) availability of quality data that will better able the commissioner to adopt medical policies and fee guidelines and the Division to administer the medical policies, fee guidelines, or rules. The availability of quality data will also better assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the database in a meaningful way to allow the Division to control medical costs. In addition, quality data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

Mr. Zurek anticipates that there will be probable costs to persons required to comply with several of the proposed amended sections during each year of the first five years that the rules will be in effect. As stated in this proposal, much of this rule merely reiterates existing requirements. Those changes would not have any associated costs. Insurance carriers and trading partners will experience some cost in the modification of automated systems to report the DRG code modifiers under amended §134.807, to adjust their systems to ensure proper sequencing of medical EDI records submitted to the Division under amended §134.804, and minimal modifications to automated systems to comply with the proposed amendments to §§134.802 - 134.805, 134.807, and 134.808. While many insurance carriers and trading partners already report the DRG code, several insurance carriers may need to update their databases and automated systems with the new data elements and updates may be necessary to comply with the proposed amended sections and amended tables proposed to be adopted by reference.

Division records show that there are approximately 40 insurance carriers and trading partners currently submitting medical EDI records to the Division. Each of these entities will need to initiate an automation project to design the minimal changes, modify their existing database, modify the extract, transform and load processes, and test the changes prior to implementation. It is estimated that this type of automation project will require approximately 30 hours of work by a computer programmer.

The Division determined that the total estimated cost for an insurance carrier or trading partner to make minimal modifications to their automated systems to comply with §§134.802 - 134.805, 134.807, and 134.808 could vary based on the cost of a computer programmer wages. According to the Wage Information Network available from the Labor Market and Career Information of the Texas Workforce Commission, computer programmers receive a median wage of $64.97 per hour. The combined cost to implement these minimal automation changes would be approximately $1,950 for persons required to comply with the proposed amended sections. Additional costs are not anticipated after implementation and any costs in subsequent fiscal years would be restricted to standard system maintenance.

Insurance carriers and trading partners that have not implemented systems that comply with the current IAIABC Guide and existing requirements under Title 28 TAC Chapter 134, Subchapter I, will experience additional programming and development costs, but those changes are not related to the requirements contained in the proposed amendments and new sections.

Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(1) defines a "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

In accordance with Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on small and micro-businesses in order to comply with the requirement to submit DRG code modifiers under amended §134.807, to adjust their systems to ensure proper sequencing of medical EDI records submitted to the Division under amended §134.804, and to make other changes to their systems in compliance with the amendments to 28 TAC Chapter 134 contained in this proposal.

According to Division records, there are approximately 40 insurance carriers and trading partners currently submitting medical EDI records to the Division. The Division does not know the total number of persons affected by the proposal or the number that will be small or micro-businesses under Government Code §2006.002(c), however, the Division estimates that the majority of persons required to comply with amendments to Title 28 TAC Chapter 134 do not qualify as small or micro-businesses for the purposes of Government Code §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Because the Division has determined that the proposed amendments may have an adverse economic effect on small or micro-businesses, this proposal contains the required economic impact statement and a regulatory flexibility analysis, as detailed under Government Code §2006.002.

The adverse impact is partially driven by the low number of client companies for which trading partners provide medical EDI transaction processing and submission. Given the lower customer base, it will likely be more difficult for these businesses to spread any development and deployment costs in a manner which would mitigate potential financial impact. However, it is noted that these businesses choose to offer these services to insurance carriers and none are mandated to comply with these requirements if they choose to no longer participate in medical EDI transaction processing.

The Division, in accord with Government Code §2006.002(c)(1), has considered two alternative methods of achieving the purpose of the proposed rule that would not adversely affect small or micro-businesses. The two alternative methods are (i) not adopting the proposed amendments; and (ii) exempting the requirements of the proposed amendments.

Not adopting the proposed amendments. The Division rejected this approach because the current regulatory framework already requires the reporting of this data consistent with the requirements of Labor Code §413.007, which requires the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols. The proposed changes highlight the data reporting requirements in order to improve the quality of the data.

Exempting small and micro-businesses from the requirements of the proposed amendments and new sections. The Division rejected this option because trading partners choose to participate in electronic data interchange as a mechanism to secure new business and sustain existing business. The reporting requirement is primarily on the insurance carriers, not the trading partners, which are generally not small or micro-businesses. Exempting small and micro-businesses from the proposed amendments would result in inaccurate and incomplete data, which eliminates the ability of the Division to meet the statutory obligation to maintain a statewide database.

Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state. These proposed amendments fulfill the purposes of Labor Code §413.007 because these rules require insurance carriers to submit to the Division accurate data in a medical EDI record. The accuracy of the data impacts whether or not individual records can be used for the purposes set forth in Labor Code §413.007. Imposing requirements relating to data accuracy helps ensure the quality and integrity of the data in the database. The availability of quality data will better able the commissioner to adopt medical policies and fee guidelines and the Division to administer the medical policies, fee guidelines, or rules. In addition, quality data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes.

The purpose of the clarifications in amendments to Title 28 TAC Chapter 134 is to consistently and uniformly impose requirements relating to data accuracy. This helps ensure the quality and integrity of the data in the database, and to assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the database in a meaningful way to allow the Division to control medical costs, thereby protecting the economic welfare of the state. To waive or modify the requirements of the proposed clarification for small and micro-businesses would result in a disparate effect on system participants by the proposed rule amendments and would not be equally protective of the economic welfare of the state. Therefore, the Division has further determined that there are no regulatory alternatives, including the waiving or modifying of the requirements of proposed amendments to Title 28 TAC Chapter 134, which will sufficiently protect the economic interests of consumers and the economic welfare of the state.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, submit written comments on the proposal no later than 5:00 p.m., Central Time, on December 1, 2014. All comments should be submitted by email at rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

If you want to request a public hearing on the proposal, you must submit the request separately to the Office of Workers' Compensation Counsel before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

The amendments are proposed under the authority of Labor Code §§402.00111, 402.061, 402.00128, 413.007, 413.008, 413.052, 413.053, 414.002, and 414.004.

Labor Code §402.00111 (Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking) provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.061 (Adoption of Rules) provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §402.00128 (General Powers and Duties of Commissioner) provides, in part, that the Commissioner of Workers' compensation may prescribe the form, manner, and procedure for the transmission of information to the Division, and furthermore, may exercise other powers and perform other duties as necessary for the implementation and enforcement of the Labor Code.

Labor Code §413.007 (Information maintained by the Division) provides that the Division shall maintain a statewide database of medical charges, actual payments and treatment protocols. Labor Code §413.007 further provides that the Division shall ensure the database contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols that can be used in a meaningful way to allow

the Division to control medical costs as provided by the Texas Workers' Compensation Act.

Labor Code §413.008 (Information from Insurance Carriers; Administrative Violation) provides that, on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the carrier's possession, custody or control that reasonably relates to the Division's duties and to health care treatment, services, fees and charges.

Labor Code §413.052 (Production of Documents) and §413.053 (Standards of Reporting and Billing) require the commissioner to establish procedures to compel the production of documents, and to establish standards of reporting and billing governing both form and content.

Labor Code §414.002 (Monitoring Duties) provides, in part, that the Division shall monitor persons, including insurance carriers, for compliance with Division rules, Labor Code, Title 5, Subtitle A, and other laws relating to workers' compensation.

Labor Code §414.004 (Performance Review of Insurance Carriers) further provides, in part, that the Division shall regularly review the workers' compensation records of insurance carriers to ensure compliance with Labor Code, Title 5, Subtitle A. Each insurance carrier, insurance carrier's agent, and those with whom the insurance carrier has contracted to provide, review, or monitor services under Labor Code, Title 5, Subtitle A, are required to cooperate with the Division, making available to the Division any records or other necessary information, and allowing the Division to access information at reasonable times.

The proposed rules affect the following statutes: Labor Code §§402.00111 (Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking), 402.061 (Adoption of Rules), 413.007 (Information maintained by the Division) and 413.008 (Information from Insurance Carriers; Administrative Violation).

§134.802. Definitions.

(a) The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Application Acknowledgment Code--A code used to identify the accepted or rejected status of the transaction being acknowledged.

(2) Claim Adjustment Reason Code (CARC)--A code that is used on a medical EDI record and an explanation of benefits to communicate why the amount paid for a medical bill or service line does not equal the amount charged. The term is synonymous with service adjustment reason code in the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002.

(3) Claim Administrator Claim Number--An identifier that distinguishes a specific claim within a claim administrator's claim processing system and is used throughout the life of the claim.

(4) [~~(1)~~] Division--The Texas Department of Insurance, Division of Workers' Compensation or its data collection agent.

(5) [~~(2)~~] EDI--Electronic data interchange.

(6) Element Requirement Table--A receiver specific list of requirement codes for each data element depending on the bill submission reason code.

(7) IAIABC--The International Association of Industrial Accident Boards and Commissions.

(8) [~~(3)~~] Medical EDI Record--The accurate data associated with a single medical bill which is being reported in a Medical EDI Transaction obtained from all sources, including the medical bill, explanation of benefits, and insurance carrier's claim file.

(9) [~~(4)~~] Medical EDI Transmission--The data that is contained within the interchange envelope.

(10) [~~(5)~~] Medical EDI Transaction--The data that is contained within the functional group.

(11) [~~(6)~~] Person--An individual, partnership, corporation, hospital district, insurance carrier, organization, business trust, estate trust, association, limited liability company, limited liability partnership or other entity. This term does not include an injured employee.

(12) [~~(7)~~] Trading Partner--A person that has entered into an agreement with the insurance carrier to format electronic data for transmission to the division, transmits electronic data to the division, and responds to any technical issues related to the contents or structure of an EDI file.

(13) W3--A Texas-specific claim adjustment reason code to designate the medical EDI record as a reconsideration or appeal.

(b) This section is effective September 1, 2015 [~~September 1, 2011~~].

§134.803. Reporting Standards.

(a) Except as provided in this subchapter, the commissioner adopts by reference the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002 (IAIABC Guide) [~~(IAIABC EDI Implementation Guide)~~] published by the IAIABC [~~International Association of Industrial Accident Boards and Commissions (IAIABC)~~].

(b) The commissioner adopts by reference the *Texas EDI Medical Data Element Requirement Table,* Version 2.0 [~~1.0~~], dated September 2015 [~~June 2011~~], the *Texas EDI Medical Data Element Edits Table,* Version 2.0 [~~1.0~~], dated September 2015 [~~June 2011~~], and the *Texas EDI Medical Difference Table,* Version 3.0 [~~2.0~~], dated September 2015 [~~January 2013~~]. All tables are published by the division.

(c) The [~~Information on how to obtain or inspect copies of the IAIABC EDI Implementation Guide and the~~] adopted division tables may be found on the division's website: http://www.tdi.texas.gov/wc/edi/index.html [~~http://www.tdi.texas.gov/wc/indexwc.html~~].

(d) In the event of a conflict between the IAIABC Guide [~~IAIABC EDI Implementation Guide~~] and the Labor Code or division rules, the Labor Code or division rules shall prevail.

(e) This section is effective September 1, 2015.

§134.804. Reporting Requirements.

(a) Insurance carriers shall submit an '00' original medical EDI record for each action (initial processing, request for reconsideration or appeal, or subsequent orders) taken on an individual medical bill. Original medical EDI records shall be reported within 30 days after the date of the action. Each iteration of an '00' original medical EDI record must contain a different unique medical bill identification number. The amount paid on each action related to a medical bill must contain only the amount issued for that event and must not contain a cumulative amount reflecting all events related to an individual medical bill. Original medical EDI records on subsequent [~~payment~~] actions must contain a Texas-specific claim [~~service~~] adjustment reason code of 'W3' to designate the medical EDI record as a reconsideration or appeal. The

Texas-specific claim adjustment reason code must be included on the explanation of benefits issued pursuant to §133.250 of this title (relating to Reconsideration for Payment of Medical Bills). [when a payment is made following a request for reconsideration or appeal and the service adjustment amount associated with this code value may be populated with zero.]

(b) Insurance carriers shall submit an '01' cancel medical EDI record if the '00' original medical EDI record should not have been sent or contained the incorrect insurance carrier identification number. Cancel medical EDI records shall be reported within 30 days after the earliest date the insurance carrier discovered the reporting error. The '01' cancel medical EDI record must contain the same unique bill identification number as the '00' original medical EDI record that was previously submitted and accepted. An '00' original medical EDI record must be accepted by the division before an '01' cancel medical EDI record may be submitted.

(c) Insurance carriers shall submit an '05' replacement medical EDI record when correcting data on a previously submitted medical EDI record. Replacement medical EDI records shall be submitted within 30 days after the earliest date the insurance carrier discovered the reporting error. The '05' replacement medical EDI record must contain the same unique bill identification number as the associated '00' original medical EDI record. An '00' original medical EDI record must be accepted by the division before an '05' replacement medical EDI record may be submitted.

(d) Insurance carriers must submit [are responsible for the] timely and accurate [submission of] medical EDI records to the division. For the purpose of this section, a medical EDI record is considered to have been accurately submitted when the record:

(1) received an Application Acknowledgment Code of accepted;

(2) [where applicable,] contained accurate medical EDI [the same] data; medical EDI data may be obtained from all sources, including [as] the [source] medical bill, [and] explanation of benefits, and insurance carrier's claim file; and

(3) to the extent supported by the format, contained all appropriate modifiers, code qualifiers, and data elements necessary to identify health care services, charges and payments.

(e) Insurance carriers are responsible for correcting and resubmitting rejected medical EDI records within 30 days of the action that triggered the reporting requirement. The insurance carrier's receipt of a rejection does not modify, extend or otherwise change the date the transaction is required to be reported to the division. The resubmitted medical EDI record must contain the same unique bill identification number as the previously rejected medical EDI record.

(f) This section is effective September 1, 2015 [September 1, 2011].

§134.805. Records Required to be Reported.

(a) Insurance carriers shall submit medical EDI records when the insurance carrier:

(1) pays a medical bill;

(2) reduces or denies payment for a medical bill, including duplicate bills;

(3) receives a refund for a medical bill; [or]

(4) discovers that a medical EDI record should not have been submitted to the division and the medical EDI record had previously been accepted by the division;[.]

(5) reimburses an injured employee for health care paid in accordance with §133.270; or

(6) reimburses an employer for health care paid in accordance with §133.280.

(b) Regardless of the Application Acknowledgment Code returned in an acknowledgment, medical EDI records are not considered received by the division if the medical EDI record:

(1) contains data which does not accurately reflect the code values used or actions taken when the insurance carrier processed the medical bill; or

(2) fails to contain a conditional data element and the mandatory trigger condition existed at the time the insurance carrier processed the medical bill.

(c) Except in situations where the health care provider included an invalid service or procedure code on the medical bill, rejected medical EDI records are not considered received and shall be corrected and resubmitted to the division as provided in §134.804(e) of this title (relating to Reporting Requirements). Medical EDI records submitted in the test environment are not considered received and do not comply with the reporting requirements of this section.

(d) This section is effective September 1, 2015 [September 1, 2011].

§134.807. State Specific Requirements.

(a) A medical EDI transmission shall not exceed a file size of 1.5 megabytes. A transaction set shall not contain more than 100 medical EDI records in a claimant hierarchical loop.

(b) Insurance carriers shall submit medical EDI transactions using Secure File Transfer Protocol (SFTP). All alphabetic characters used in the SFTP file name must be lower case and the file must be compressed/zipped. Files that do not comply with these requirements or the naming convention may be rejected and placed in appropriate failure folders. Insurance carriers must monitor these folders for file failures and make corrections in accordance with §134.804(e) of this title (relating to Reporting Requirements).

(c) SFTP files must comply with the following naming convention:

(1) Two digit alphanumeric state indicator of 'tx';

(2) Nine digit trading partner Federal Employer Identification Number (FEIN);

(3) Nine digit trading partner postal code;

(4) Nine digit insurance carrier FEIN or 'xxxxxxxxx' if the file contains medical EDI transactions from different insurance carriers;

(5) Three digit record type '837';

(6) One character Test/Production indicator ('t' or 'p');

(7) Eight digit date file sent 'CCYYMMDD';

(8) Six digit time file sent 'HHMMSS';

(9) One character standard extension delimiter of '.'; and

(10) Three digit alphanumeric standard file extension of 'zip' or 'txt'.

(d) The transaction types accepted by the division include '00' original, '01' cancel, and '05' replacement.

(e) Insurance carriers are required to use the following delimiters:

(1) Date Element Separator--'*' asterisk;

(2) Sub-element Separator--':' colon; and

(3) Segment Terminator--'~' tilde.

(f) In addition to the requirements adopted under §134.803 of this title (relating to Reporting Standards), state reporting of medical EDI transactions shall comply with the following formatting requirements:

(1) Loop 2400 Service Line Information must not contain more than one type of service. Only one of the following data segments may be contained in an iteration of this loop: SV1 Professional Service, SV2 Institutional Service, SV3 Dental Service or SV4 Pharmacy Service.

(2) When reporting compound medications, Loop 2400 Service Line Information SV4 Pharmacy Drug Service must include a separate line for each reimbursable component of the compound medication. The same prescription number for each reimbursable component of the compound medication, including the compounding fee, must be reported. The compounding fee must be reported using a default NDC number equal to '99999999999' as a separate service line.

(3) When reporting pharmacy medical EDI records, the following data element definition clarifications apply:

(A) DN501 Total Charge Per Bill is the total amount charged by the pharmacy or pharmacy processing agent;

(B) DN511 Date Insurer Received Bill is the date the insurance carrier received the bill;

(C) DN512 Date Insurer Paid Bill is the date the insurance carrier paid the pharmacy or pharmacy processing agent;

(D) DN638 Rendering Bill Provider Last/Group Name is the name of the dispensing pharmacy;

(E) DN690 Referring Provider Last/Group Name is the last name of the prescribing doctor; and

(F) DN691 Referring Provider First Name is the first name of the prescribing doctor.

(4) When ICD-10-CM and ICD-10-PCS codes are contained on the medical bill, the insurance carrier must report these codes in the associated ICD-9-CM data elements using the ICD-9-CM code qualifiers.

(5) If the injured employee's social security number is unknown, it must be reported in accordance with §102.8(a)(1) of this title (relating to Information Requested on Written Communications to the Division).

(6) The DN53 data element must be reported on all medical EDI records.

(7) The provider agreement code must be reported on all medical EDI records, must not be reported with the value of "Y", and must only contain one of the following values:

(A) "H" for services performed within a Certified Workers' Compensation Health Care Network;

(B) "P" for services performed under a contractual fee arrangement, excluding services performed within a certified network; or

(C) "N" to indicate no contractual fee arrangement for services performed.

(8) When an insurance carrier calculated a reimbursement amount by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) as required in §134.404 of this title (relating to Hospital Facility Fee Guideline--Inpatient), the DN515 (Contract Type Code) must be reported as "01" and the valid Diagnosis Related Group Code for DN518 must be reported.

(9) An insurance carrier shall only report up to four (4) diagnosis codes on each medical EDI record.

(10) An insurance carrier shall only report to the Division up to four diagnosis code pointers and those pointers must be reported numerically. If a medical bill containing more than four diagnosis pointers is reported to the insurance carrier, each diagnosis pointer after the first four shall be reported to the Division with the value of "1".

(g) This section is effective September 1, 2015.

§134.808. Insurance Carrier EDI Compliance Coordinator and Trading Partners.

(a) Insurance carriers may submit medical EDI records directly to the division or may contract with an external trading partner to submit the records on the insurance carrier's behalf.

(b) Each insurance carrier, including those using external trading partners, must designate one individual to the division as the EDI Compliance Coordinator and provide the individual's name, working title, mailing address, email address, and telephone number in the form and manner prescribed by the division. The EDI Compliance Coordinator must:

(1) be a centrally-located employee of the insurance carrier who has the responsibility for EDI reporting;

(2) receive and appropriately disperse data reporting information received from the division; and

(3) serve as the central compliance control for data reporting under this subchapter.

(c) At least five working days prior to sending its first transaction to the division under this subchapter, the insurance carrier shall send a notice to the division [~~by fax or email at TxCOMP.Help@tdi.state.tx.us~~]. The notice shall be in the form and manner established by the division. The notice shall include the name of the insurance carrier, the insurance carrier's FEIN, the insurance carrier's TxCOMP customer number, the name of the trading partner(s) authorized to conduct medical EDI transactions on behalf of the insurance carrier, the FEIN of the trading partner(s), and the EDI Compliance Coordinator's signature. The insurance carrier shall report changes within five working days of any amendment to data sharing agreements, including the addition or removal of any trading partners. The failure to timely submit updated information may result in the rejection of medical EDI records.

(d) At least five working days prior to sending its first test transaction to the division under this subchapter, the insurance carrier or trading partner sending the medical EDI transmission shall send a notice to the division [~~by fax or email at TxCOMP.Help@tdi.state.tx.us~~]. The notice shall be in the form and manner established by the division. The notice shall include the entity's name, FEIN, nine-digit postal code, address, and the technical contact's name, address, phone number, and email address. The insurance carrier or trading partner shall report changes within five working days of any amendment to the information required to be reported.

(e) Insurance carriers and trading partners must successfully complete testing prior to transmitting any production data. Trading partners must receive approval to submit data for at least one insurance carrier prior to initiating the testing process. Insurance carriers

and trading partners must submit each transaction type during the testing process which can be successfully processed by the division. The division will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has:

(1) successfully submitted ten percent of its anticipated monthly volume per service type, not to exceed 100 medical EDI records [~~bills~~] per service type;

(2) received and reviewed the acknowledgments generated by the division; and

(3) correctly resubmitted rejected records identified in the acknowledgments.

(f) Insurance carriers are responsible for the acts or omissions of their trading partners. The insurance carrier commits an administrative violation if the insurance carrier or its trading partner fails to timely or accurately submit medical EDI records.

(g) This section is effective September 1, 2015 [~~September 1, 2011~~].

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 17, 2014.

TRD-201404843
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 804-4703

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 §3.280

The Comptroller of Public Accounts proposes new §3.280, concerning aircraft. The new section replaces, in part, §3.297 of this title (relating to Carriers), which is being repealed and proposed as new to reflect policy clarifications and reorganize existing information for improved clarity and readability. Those portions of §3.297 that pertain to aircraft are relocated to new §3.280 to create a section dedicated solely to aircraft. Further, the portions of current §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) that pertain to aircraft are also relocated to new §3.280.

Subsection (a) provides definitions. Paragraph (1) defines the term "affiliated entity." This definition is based upon the definitions of the terms "affiliate" and "person" provided in Texas Business Organizations Code, §1.002.

Several of the terms defined in subsection (a) relate to the use of aircraft in connection with agricultural operations. Paragraph (2) defines the term "agricultural aircraft operation." Pursuant to Tax Code, §151.316(a)(11), this definition is the same as the definition given in 14 CFR Section 137.3. Pursuant to Tax Code, §151.328(a)(5), paragraph (3) defines the term "agricultural use" by reference to Tax Code, §23.51. Paragraph (8) defines the term "exotic animals." The term references the definitions of the terms exotic fowl and exotic livestock given in Texas Agriculture Code, §161.001(a). Paragraphs (14), (20), and (28) define the terms "livestock," "predator control," and "wildlife," respectively, all of which appear in Tax Code, §151.328(a)(5) but are not defined therein. For purposes of this subsection, the term "livestock" is defined to refer to horses, mules, donkeys, llamas, alpacas, and animal life of a kind that ordinarily constitutes food for human consumption. This definition reflects the meaning of the term "livestock" as it appears in §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, Ice Used by Commercial Fishermen and Others, Work Animals (including Guard Dogs), and Fertilizer). The definition of the term "predator control" refers to Texas Parks and Wildlife Code, Chapter 43, Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft). The definition of the term "wildlife" is based upon the definition of the term in Texas Parks and Wildlife Code, §43.103(6).

Paragraph (4) addresses the statutory change to the definition of "aircraft" in Tax Code, §151.328(c) enacted by House Bill 3319, 80th Legislature, 2007, which amended the types of flight simulation training devices that are defined as aircraft. The definition further incorporates prior comptroller determinations that "balloons" and "gliders" do not meet the definition of an aircraft for sales and use tax purposes. See, for example, Comptroller's Decision No. 33,078 (1995) and STAR Accession No. 8510L0667A14 (October 1, 1985).

Paragraph (5) defines the term "certificated or licensed carrier." This term appears in Tax Code, §151.328(a), but is not defined therein. The proposed definition is derived from the definition of the term "licensed and certificated carrier" in current §3.297, which is proposed for repeal, but is tailored to apply specifically to aircraft. This definition makes clear that only carriers who operate under Federal Aviation Regulations, Part 121, 125, or 135 are certificated or licensed carriers for purposes of this section. Letters of authorization, certificates of inspection, and airworthiness certificates are not appropriate evidence of authority to operate as a certificated or licensed carrier because such letters and certificates relate to the carrier device itself rather than to a person's right to operate a carrier business. Provisions related to other types of carriers are provided in §3.297.

Paragraph (6) defines the term "component part" using language derived from both §3.297 and Southwest Airlines Co. v. Bullock, 784 S.W.2d 563 (Tex. App.--Austin 1990, no writ). The definition for the term "qualified flight instruction" in paragraph (21) is also adapted, in part, from §3.297. Additional language is added to the definition to make clear that qualified flight instruction does not include training in aerobatic maneuvers. See STAR Accession No. 200210542L (October 30, 2002) (partially superseded on other grounds).

Paragraph (10) defines the acronym "FAA."

Paragraph (12) defines the term "hangar." The term was previously used in §3.297, but was not defined. The new definition, which is based upon Comptroller's Decision No. 43,525 (2006), is intended to assist taxpayers in determining when an aircraft brought into this state is subject to use tax.

Finally, several of the terms identified in subsection (a) are based upon definitions provided in other sections of this title. The terms "consumable supplies," "extended warranty or service contract," "maintenance," "manufacturer's written warranty," "repair," "restore," and "service provider" provided in paragraphs (7), (9), (16), (17), (23), (24), and (27), respectively, are defined by cross-reference to the definitions of those terms given in §3.292. The term "remodeling" in paragraph (22) is defined by providing a cross-reference to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). The terms "fair market value," "normal course of business," and "sale in the regular course of business," provided in paragraphs (11), (18), and (25), respectively, are defined by providing a cross-reference to the definitions in §3.285 of this title (relating to Resale Certificate; Sales for Resale). The definitions of "incorporated materials" in paragraph (13), "lump-sum contract" in paragraph (15), and "separated contract" in paragraph (26) are based, in part, on §3.291 of this title (relating to Contractors). Paragraph (19) defines the term "person" by providing a cross-reference to the definition in §3.286 of this title (concerning Seller's and Purchaser's Responsibilities, Including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Subsection (b) provides information about the taxability of the sale, lease, or rental of aircraft, aircraft engines, and component parts.

Subsection (c) provides information concerning use tax. Paragraph (1) reiterates that use tax is due when an aircraft purchased, leased, or rented outside of Texas is brought into Texas for use in Texas. See Tax Code, §151.101 and §151.105.

Subsection (c)(2) addresses when an aircraft is considered to be hangared in this state. The paragraph identifies some factors the comptroller may use to determine whether an aircraft is hangared in Texas for longer than a temporary period. Subparagraphs (A), (B), and (C) are incorporated from §3.297, which is proposed for repeal, while subparagraphs (D) and (E) are added pursuant to Comptroller's Decision Nos. 43,525 (2006) and 101,452 (2010).

Subsection (c)(3) states an aircraft is subject to use tax in Texas, even if it is not hangared in this state, if it is used for its intended purpose inside this state for more than 50% of the time for the 12-month period following the date that the owner or operator takes possession of the aircraft. This subsection is derived from current §3.297(c)(3), which is proposed for repeal. Subparagraph (B) further explains that in calculating the amount of time an aircraft is in this state, the comptroller will consider time on the ground as well as flight time. This provision is based on §151.011(a), which defines "use" as "the exercise of a right or power incidental to the ownership of tangible personal property."

Subsection (c)(4) memorializes longstanding comptroller guidance that an aircraft is not considered to be hangared in this state if it is brought into Texas for the sole purpose of repair, remodeling, maintenance, or restoration. See Tax Code, §151.011(f) and STAR Accession No. 9401L1283G12 (January 26, 1994).

Subsection (c)(5) addresses transactions that are not sales in the regular course of business. The proposed rule follows the plain language of Tax Code, §151.101, which provides that "[a] tax is imposed on the storage, use, or other consumption in this state of a taxable item." This subsection sets forth the comptroller's determination that, when an aircraft purchased out of state is transferred from one affiliated entity to another prior to coming into Texas, she may assess the use tax due against the person who purchased the aircraft from a retailer or against the person actually making use of the aircraft in this state. The comptroller's determination follows a recent Texas Supreme Court decision in which the court expressed approval of the substance over form doctrine. See Combs v. Roark Amusement & Vending, L.P, 422 S.W.3d 632 (Tex. 2013) ("The United States Supreme Court has long observed that statutory determinations in tax disputes should reflect the economic realities of the transactions in issue."). This subsection also explains that a sale in the regular course of business will not constitute a taxable use. See Tax Code, §151.011(c).

Subsection (c)(6) states that a taxpayer may be entitled to a credit for tax paid to another state and refers taxpayers to §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers) for more information about taking a credit for tax paid on an aircraft to another state.

Subsection (d) addresses the sales and use tax exemptions in Tax Code, §151.328 that are specific to aircraft. This subsection reflects the comptroller's general policy that purchasers may issue a resale certificate, but are not required to do so in order to later claim the sale for resale exemption on a purchase. "Only sellers of taxable items are required to accept and maintain resale or exemption certificates to prove tax-free sales." Comptroller's Decision No. 46,537 (2009) (emphasis added). As one Comptroller's Decision has explained: "[W]hen a seller is audited, the Comptroller requires the seller to produce a resale or exemption certificate to prove tax-free sales. On the flip side, a purchaser issues a resale or exemption certificate when claiming an exemption. However, the purchaser is not required by law to keep a copy of the resale or exemption certificate, which means it must rely on a tax exemption statute to prove that its purchases were not taxable. As a result, the Comptroller states that the '[f]ailure on the purchaser's part to give an exemption [certificate] at the time of purchase has never been considered a bar that would prevent the purchaser from showing that the purchase was in fact exempt.' This policy incorporates the recognition that to require the actual issuance of a certificate to claim any statutory exemption would defeat the legislative intent behind the exemption." Comptroller's Decision No. 49,141 (2008) (internal citations omitted). Paragraph (1) incorporates the exemptions provided by Tax Code, §151.328(a)(1) and (e) for the sale, lease, or rental, to a certificated or licensed carrier, of aircraft, component parts, and tangible personal property necessary for the normal operation of, and pumped or poured into, an aircraft. Paragraph (1)(A) provides that an aircraft purchased under this exemption must be listed on the carrier's operations specifications. See, for example, Comptroller's Decision No. 102,678 (2010). Paragraph (1)(D) makes clear that the exemption does not extend to, and sales and use tax is due on, the sale, lease, or rental of taxable items that support the overall operation of a certificated or licensed carrier. In addition, subsection (d)(1)(E) incorporates from existing §3.297, which is proposed for repeal, the exemption from sales tax created by Tax Code, §151.330(h) for the sale of tangible personal property to a certificated or licensed carrier in Texas for use solely outside Texas if the carrier, using its own facilities, ships the items to a point outside this state under a bill of lading. Subsection (d)(1)(E) restates the language of the statute.

Subsection (d)(2) incorporates from §3.297, and expands upon, the exemption created by Tax Code, §151.328(a)(2) and (e) for the sale, lease, or rental, to a qualified flight school or instructor, of aircraft, component parts, and tangible personal property necessary for the normal operation of, and pumped or poured into,

an aircraft. Paragraph (2)(E) also incorporates from §3.297 an exemption from sales tax for the rental of an aircraft by a student enrolled in a program providing qualified flight instruction.

Subsection (d)(3) incorporates from §3.297 the sales and use tax exemption created by Tax Code, §151.328(a)(3) for the sale, lease, or rental of an aircraft to a foreign government. The paragraph further states that sales or use tax is due on the sale or lease of component parts or materials that are incorporated in this state into an aircraft owned by a foreign government, unless the sale or lease is otherwise exempt under Tax Code, Chapter 151.

Subsection (d)(4) restates Tax Code, §151.328(a)(4), (f), and (g), which creates an exemption from tax for the sale or lease of an aircraft in this state to a person for use and registration in another state or nation before any use in this state. This subsection also memorializes the holding of Energy Education of Montana, Inc. v. Comptroller of Public Accounts, 2013 Tex. App. LEXIS 5047 (Tex. App- Austin 2013, pet. denied). Subsection (d)(4)(A)(i) is added to establish that performing repairs, remodeling, maintenance, or restoration on the aircraft in Texas prior to flying the aircraft out of Texas does not cause a loss of the exemption. See STAR Accession No. 9401L1283G12 (December 26, 1994). Given the unique, highly mobile nature of aircraft, the comptroller has determined that aircraft purchased under the fly-away exemption should not be subject to the general rules regarding divergent use of property purchased under an exemption, and should instead be treated as aircraft purchased out-of-state. Subsection (d)(4)(B) is added to explain that an aircraft purchased under the fly-away exemption that is subsequently used in this state will be subject to tax to the extent provided in subsection (c), concerning use tax. Finally, subsection (d)(4)(C) provides that the tax exemption does not apply to short-term hourly rentals, and that filing a fixed term operating lease for the use of an aircraft with the Aircraft Registration Branch of the FAA pursuant to the Code of Federal Regulations constitutes registration for the purposes of the exemption.

Subsection (d)(5) provides an exemption for the sale of an aircraft for agricultural use, pursuant to Senate Bill 958, 81st Legislature, 2009, which amended Tax Code, §151.328 to exempt from tax the sale of an aircraft in this state to a person for use exclusively in connection with an agricultural use, and certain services provided on such aircraft. See also subsections (a)(3) and (f)(3). Subsection (d)(5)(C) states that selling a gunner's seat on an aircraft used in agriculture operations to a person who will take depredating feral hogs or coyotes is subject to Texas sales and use tax as an amusement service. See Tax Policy News, June 2012 (STAR Accession No. 201207530L). The comptroller has long held that hunting is not a taxable amusement service. See, for example, §3.298(a)(2)(H) of this title; see also STAR Accession No. 200807120L (July 17, 2008) ("No tax is due on a separate charge for hunts or hunting guide services.") Using a helicopter to take feral hogs or coyotes is not hunting. A Texas hunting license is not required to take nuisance feral hogs and coyotes; rather, a special permit must be obtained from the Texas Parks and Wildlife Department. See Parks and Wildlife Code, §43.1075. Further, it is a violation of state law to sport hunt from an aircraft. See Parks and Wildlife Code, §43.1095(c).

Subsection (d)(6) implements House Bill 3144, 81st Legislature, 2009 and Senate Bill 958, 81st Legislature, 2009, both of which amended Tax Code, §151.316 to exempt from sales and use tax the sale, lease, or rental of machinery and equipment exclusively used in an agricultural aircraft operation. Subsection (d)(6)(C) implements House Bill 268, 82nd Legislature, 2011, which added Tax Code, §151.1551 requiring an agricultural aircraft operation to obtain an Agriculture/Timber registration number from the comptroller and to provide that registration number to the seller when purchasing taxable items exempt under Tax Code, §151.316.

Subsection (e) provides information for calculating the tax due when an aircraft or other taxable item that was sold, leased, or rented tax-free under a resale or exemption certificate is subsequently put to a divergent use. This information is taken from §3.285 and §3.287 of this title (relating to Exemption Certificates).

Subsection (f) provides information concerning the tax responsibilities of service providers repairing, remodeling, maintaining, or restoring aircraft, aircraft engines, or component parts. Paragraphs (1) - (3) pertaining to the tax responsibilities of service providers are incorporated from existing §3.292(i), which is proposed for repeal.

Subsection (f)(2)(A)(ii) implements Senate Bill 1, 82nd Legislature, First Called Session, 2011, which amended Tax Code, §151.006 to allow a tax exemption for the purchase of taxable items that are transferred in the performance of a nontaxable service under a contract with certain branches of the federal government.

Subsection (f)(4) incorporates longstanding comptroller guidance concerning the taxability of the repair, remodeling, maintenance, or restoration of aircraft brought into this state by out-of-state owners or operators pursuant to Tax Code, §151.330(a). This guidance was previously provided in STAR Accession Nos. 8804L0873G11 (April 6, 1988) and 200008645L (August 28, 2000). The provisions in paragraph (5), concerning the repair, remodeling, maintenance, or restoration of component parts removed from and returned to an aircraft pursuant to the repair, remodeling, maintenance, or restoration of that aircraft, also incorporate longstanding comptroller guidance. See STAR Accession No. 200810222L (October 9, 2008).

Subsection (g)(1) and (2) are incorporated from existing §3.297, which is proposed for repeal. These paragraphs grant an exemption for persons providing electrochemical plating or a similar process used in overhauling, retrofitting, or repairing jet turbine aircraft engines and their components, as provided by Tax Code, §151.318(n). Paragraph (3) addresses the exemption for the sale of electricity or natural gas used in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier provided by Tax Code, §151.317(a)(7). This paragraph is also incorporated from existing §3.297, which is proposed for repeal.

Subsection (h)(1) and (2), concerning manufacturer's written warranty and extended warranties, respectively, are incorporated from §3.292(i), which is proposed for repeal. Paragraph (3) memorializes comptroller guidance provided in STAR Accession No. 200105244L (May 17, 2001) concerning "goodwill repairs" to aircraft and component parts.

Subsection (i) addresses the occasional sale exemption provided in Tax Code, §151.304. Additional guidance appears in §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

Subsection (j) addresses the sale, lease, or rental of an aircraft for resale. Paragraph (1) provides the requirements sellers must meet in order for there to be a sale for resale in good faith. These requirements are derived from §3.285 and §3.294 of this title and are reflected in prior Comptroller's Decisions, such as, Comptroller's Decision No. 105,680 (2013). Paragraph (2) explains when a person purchasing, leasing, or renting an aircraft, aircraft engine, or component part may provide a properly completed resale certificate in lieu of paying tax on the purchase, lease, or rental. Paragraph (3) addresses longstanding agency policy that the purchaser of an aircraft must transfer exclusive possession of the aircraft to a lessor in order to qualify for the sale for resale exemption. See, for example, Comptroller's Decision Nos. 15,996 (1987) and 13,848 (1985). Rather than explaining when a lease does not qualify the purchaser/lessor for the sale for resale exemption, this paragraph clarifies what a purchaser/lessor must do in order to transfer exclusive possession- lease the aircraft to a third party under an agreement that transfers to the lessee both operational control of the aircraft, as defined by the FAA at 14 CFR 1.1, and control over when, by whom, and for whom the aircraft is used, for the entire term of the lease. A service or management agreement with a Part 135 carrier does not transfer control of the aircraft from the lessor to the lessee. Similarly, an agreement under which the owner of the aircraft retains or reserves rights over the aircraft, including, but not limited to, the right to use the aircraft at any time, does not transfer control of the aircraft. See, for example, Comptroller's Decision No. 102,771 (2013). Paragraph (4) memorializes current comptroller guidance regarding the lease of aircraft in the normal course of business. See, for example, Comptroller's Decision Nos. 101,302 (2011). Paragraph (5) memorializes the comptroller's determination, based on a review of information provided by the Conklin and De Decker Associates, Inc. Aircraft Cost Evaluator, that the fair market value rental rate of aircraft is 1.0% of the purchase price. The paragraph provides that, if the effective monthly lease rate for an aircraft is less than 1.0% of the purchase price of the aircraft, the aircraft will be presumed not to have been leased or rented in the normal course of business, in the absence of evidence to the contrary. See, for example, Comptroller's Decision Nos. 101,302 and 103,610 (2012). Paragraph (6) addresses the circumstance under which a purchaser cannot claim a sale for resale exemption. Finally, paragraph (7) addresses the circumstances under which a purchaser must pay tax on the divergent use of an aircraft purchased for resale.

Finally, subsection (k) addresses the application of local sales and use tax to the sale, lease, and rental of aircraft.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the clarity and organization of sales tax provisions related to aircraft. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§151.006 (Sale for Resale), 151.011 (Defining Use and Storage), 151.0101(a)(5) (Taxable Services), 151.101 (Use Tax Imposed), 151.105 (Importation for Storage, Use, or Consumption Presumed), 151.1551 (Registration Number Required for Timber and Certain Agricultural Items), 151.304 (Occasional Sales), 151.316 (Agricultural Items), 151.317(a)(7) (Gas and Electricity), 151.318(n) (Property Used in Manufacturing), 151.328 (Aircraft), and 151.330 (Interstate Shipments, Common Carriers, and Services).

§3.280. Aircraft.

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

(1) Affiliated entity--A person, including an organization formed under the laws of this or another state, who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person, entity, or organization.

(2) Agricultural aircraft operation--The operation of an aircraft licensed by the FAA under 14 Code of Federal Regulations, Part 137.

(3) Agricultural use--This term has the meaning given in Tax Code, §23.51 (Appraisal of Agricultural Land; Definitions).

(4) Aircraft--A fixed-wing, heavier-than-air craft that is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings; a helicopter; or an airplane flight simulation training device approved by the FAA under Appendices A and B, 14 Code of Federal Regulations, Part 60. The term does not include balloons, gliders, rockets, or missiles.

(5) Certificated or licensed carrier--A person authorized by the FAA, in compliance with the certification and operation specification requirements of 14 Code of Federal Regulations, Parts 121, 125, or 135, to operate an aircraft to transport persons or property for hire. Letters of authorization, certificates of inspection, and airworthiness certificates are not appropriate evidence of authority to operate as a certificated or licensed carrier. Refer to §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles) for provisions related to other types of carriers.

(6) Component part--Tangible personal property that is intended to be permanently affixed to, and become a part of, an aircraft; is necessary to the normal operations of the aircraft, or is required by FAA regulations; and is secured or attached to the aircraft. The term includes tangible personal property that is necessary to the normal operations of the aircraft that can be removed temporarily from the aircraft for servicing, such as, engines, seats, radar equipment, and other electronic devices used for navigational or communications purposes, and air cargo containers, food carts, fire extinguishers, survival rafts, and emergency evacuation slides. Items such as pillows, blankets, trays, ice for drinks, kitchenware, and toilet articles are not component parts.

(7) Consumable supplies--This term has the meaning given in §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(8) Exotic animals--Exotic livestock and fowl that are not indigenous to this state as defined by Agriculture Code, §161.001(a). Examples include, but are not limited to, nilgai antelope, blackbuck antelope, axis deer, fallow deer, sika deer, aoudad, ostriches, and emus.

(9) Extended warranty or service contract--This term has the meaning given in §3.292 of this title.

(10) FAA--Federal Aviation Administration, an agency of the United States Department of Transportation.

(11) Fair market value--This term has the meaning given in §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(12) Hangar--To store an aircraft for any purpose, including parking, housing, repairing, or otherwise, for longer than a temporary period. The term includes attaching or tying down an aircraft on an airport apron, parking ramp, or any other location used to store aircraft.

(13) Incorporated materials--Tangible personal property that is attached or affixed to, and becomes a part of, an aircraft, aircraft engine, or component part in such a manner that the property may lose its distinct identity as separate tangible personal property.

(14) Livestock--Horses, mules, donkeys, llamas, alpacas, and animal life of a kind that ordinarily constitutes food for human consumption. The term livestock does not include exotic animals, wildlife, or pets.

(15) Lump-sum contract--A written agreement in which the agreed price is one lump-sum amount and in which the charge for incorporated materials is not separated from the charge for skill and labor. Separated invoices or billings issued to the customer will not change a written lump-sum contract into a separated contract unless the terms of the contract require separated invoices or billings.

(16) Maintenance--This term has the meaning given in §3.292 of this title.

(17) Manufacturer's written warranty--This term has the meaning given in §3.292 of this title.

(18) Normal course of business--This term has the meaning given in §3.285 of this title.

(19) Person--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

(20) Predator control--A form of wildlife and exotic animal management regulated by the Texas Department of Parks and Wildlife pursuant to Parks and Wildlife Code, Chapter 43, Subchapter G (Permits to Manage Wildlife and Exotic Animals from Aircraft) used to protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. Feral hog eradication using an aircraft is one form of predator control.

(21) Qualified flight instruction--Training recognized by the FAA that is designed to lead to a pilot certificate or rating issued by the FAA, or is otherwise required by rule or regulation of the FAA, and that is conducted under the direct or general supervision of a flight instructor certified by the FAA. Qualified flight instruction includes FAA-required check flights, maintenance flights, and test flights, but does not include demonstration flights for marketing purposes or training in aerobatic maneuvers.

(22) Remodeling--This term has the meaning given in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(23) Repair--This term has the meaning given in §3.292 of this title.

(24) Restore--This term has the meaning given in §3.292 of this title.

(25) Sale in the regular course of business--This term has the meaning given in §3.285 of this title.

(26) Separated contract--A written agreement in which the agreed price is divided into a separately stated charge for incorporated materials and a separately stated charge for skill and labor. An agreement is a separated contract if the charge for incorporated materials and the charge for labor are separately stated on an invoice or billing that, according to the terms of the contract, is deemed to be a part of the contract. Adding the separated charge for incorporated materials and the separated charge for labor together to give a lump-sum total does not transform a separated contract into a lump-sum contract. An aircraft repair, remodeling, maintenance, or restoration contract that separates the charge for incorporated materials from the charge for labor is a separated contract even if the charge for labor is zero.

(27) Service provider--This term has the meaning given in §3.292 of this title.

(28) Wildlife--Animals, other than insects, that normally live in a state of nature and are not ordinarily domesticated.

(b) Sales Tax.

(1) The sale, lease, or rental of an aircraft, aircraft engine, or component part in this state is the sale, lease, or rental of tangible personal property, and is subject to sales tax, unless otherwise exempt under Tax Code, Chapter 151. The lease or rental of an aircraft complete with pilot or crew at fair market value for a single charge, whether lump-sum or separated, is a nontaxable transportation service, rather than the lease or rental of an aircraft. For more information about leases and rentals, refer to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(2) Sales tax is due on the total sales, lease, or rental price of the aircraft, aircraft engine, or component part. The total sales, lease, or rental price includes separately stated charges for any service or expense connected with the sale, lease, or rental, including transportation or delivery charges. The total sales, lease, or rental price does not include separately stated cash discounts or the value of any tangible personal property taken as a trade-in by the seller in lieu of all or part of the price of the aircraft in the normal course of business. For more information on determining the taxable sales price of an item of tangible personal property, refer to Tax Code, §151.007 and §3.294 of this title.

(c) Use Tax.

(1) General rule. An aircraft that is purchased, leased, or rented outside this state and brought into this state to be hangared or otherwise used in this state is subject to Texas use tax as provided in this subsection. For more information about the application of the use tax to aircraft engines and component parts, refer to §3.346 of this title (relating to Use Tax).

(2) Determining that an aircraft is hangared in Texas. An aircraft is subject to use tax in Texas when the comptroller determines that the aircraft is stored in this state for longer than a temporary period during the 12 months following the date that the owner or operator takes possession of the aircraft. In making this determination, some factors that the comptroller will consider include, but are not limited to:

(A) where the aircraft is rendered for ad valorem taxes;

(B) declarations made to the FAA, an insurer, or another taxing authority concerning the place of storage of the aircraft;

(C) whether the owner or operator of the aircraft owns, leases, or occupies hangar or other storage space in this state;

(D) whether the owner or operator of the aircraft is a resident of this state; and

(E) whether the owner or operator of the aircraft is engaged in business in this state, as that term is defined by §3.286 of this title.

(3) Use in Texas more than 50% of the time. An aircraft that is not hangared in this state is subject to use tax in Texas when it is used more than 50% of the time inside this state during the 12 months following the date that the owner or operator takes possession of the aircraft.

(A) The owner or operator of the aircraft must maintain records sufficient to show where the aircraft was hangared outside this state, where the aircraft was stored inside this state, if at all, and the percentage of time the aircraft was used both inside and outside this state.

(B) In determining the percentage of time the aircraft was used in this state, the comptroller will consider all time spent on the ground in this state and all flight time in this state, including the portion of interstate flights in Texas airspace, and the comptroller may examine all flight, engine, passenger, airframe, and other logs and records maintained on the aircraft.

(4) Repairing, remodeling, maintaining, or restoring aircraft in Texas. An aircraft is not considered to be hangared in this state if the aircraft is purchased, leased, or rented outside this state and then brought into this state for the sole purpose of repairing, remodeling, maintaining, or restoring the aircraft. Such repair, remodeling, maintenance, or restoration includes flights solely for troubleshooting, testing, or training, and flights between service locations under an FAA-issued ferry permit. Any use of the aircraft for business or pleasure travel during the time that the aircraft is being repaired, remodeled, maintained, or restored means the aircraft was not brought into Texas for the sole purpose of repair, remodel, maintenance, or restoration. Flight and maintenance logs and passenger lists must be provided to establish the actual use of the aircraft. Refer to subsection (f)(4) of this section for more information concerning repair, remodeling, maintenance, and restoration of aircraft, aircraft engines, or component parts purchased outside of Texas.

(5) Sale or transfer not in the regular course of business. When a person purchases an aircraft outside this state and, within one year of the purchase, transfers title or possession of the aircraft to an affiliated entity for hangaring or other use in this state by any means other than a sale in the regular course of business, both the purchaser and the affiliated entity are considered to be storing, using, or consuming the aircraft in this state and the comptroller may recover use tax against either person. The liability for use tax continues until the tax is paid to the state. A sale in the regular course of business does not constitute use of the aircraft in this state.

(6) Use tax credit. The purchaser or lessee of an aircraft, aircraft engine, or component part is allowed to claim a credit against Texas use tax due on the aircraft, aircraft engine, or component part for any legally imposed sales or use tax due and paid on the property by the purchaser or lessee to another state or any political subdivision of another state. For information on taking a credit for tax paid to another state, refer to §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(d) Tax exemptions specific to aircraft. In addition to the other exemptions from tax provided under Tax Code, Chapter 151, the following tax exemptions apply specifically to the sale, lease, rental, and use in this state of aircraft, aircraft engines, and component parts. A person claiming a sales tax exemption under this subsection may provide the seller with a properly completed exemption certificate at the time of the transaction. For more information, refer to §3.287 of this title (relating to Exemption Certificates). For information about exemptions related to the repair, remodeling, maintenance, and restoration of aircraft, aircraft engines, or component parts, refer to subsection (f) of this section.

(1) Certificated or licensed carriers.

(A) Sales and use tax is not due on the sale, lease, or rental of an aircraft to a certificated or licensed carrier if the aircraft is used by the carrier to transport persons or property for hire and is specifically identified in the carrier's Operations Specifications as required by 14 Code of Federal Regulations, §119.49. Any use of the aircraft other than that described in this paragraph is subject to tax as a divergent use pursuant to subsection (e) of this section, unless otherwise exempt under Tax Code, Chapter 151.

(B) Sales and use tax is not due on the sale, lease, or rental of component parts of an aircraft, provided that the aircraft is owned or operated by a certificated or licensed carrier and is specifically identified in the carrier's Operations Specifications as required by 14 Code of Federal Regulations, §119.49.

(C) Sales and use tax is not due on tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft, provided that the aircraft is owned or operated by a certificated or licensed carrier and is specifically identified in the carrier's Operations Specifications as required by 14 Code of Federal Regulations, §119.49.

(D) Sales and use tax is due on the sale, lease, or rental of machinery, tools, and equipment that support the overall operation of a certificated or licensed carrier, such as baggage loading or handling equipment, reservation or booking machinery and equipment, garbage and other waste disposal equipment, and office supplies and equipment, unless otherwise exempt under Tax Code, Chapter 151.

(E) Sales tax is not due on the sale of tangible personal property transferred to a certificated or licensed carrier in this state, if the carrier, using its own facilities, ships the items to a point outside this state under a bill of lading, and the items are purchased for use by the carrier in the conduct of its business as a certificated or licensed carrier solely outside this state.

(2) Flight schools, instructors, and students.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft by a person who:

(i) holds a flight school or flight instructor certificate issued by the FAA;

(ii) holds a sales and use tax permit issued under Tax Code, Chapter 151; and

(iii) uses the aircraft to provide qualified flight instruction.

(B) Any use of the aircraft other than that described in this paragraph is subject to tax as a divergent use pursuant to subsection (e) of this section, unless otherwise exempt under Tax Code, Chapter 151.

(C) Sales or use tax is not due on component parts of an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(D) Sales or use tax is not due on tangible personal property that is necessary for the normal operations of, and is pumped, poured, or otherwise placed in, an aircraft owned or operated by a flight school or flight instructor to provide qualified flight instruction.

(E) A student enrolled in a program providing qualified flight instruction may claim an exemption from sales tax on the short-term hourly rental of an aircraft for qualified flight instruction, including solo flights and other flights. When completing an exemption certificate claiming this sales tax exemption, the student must identify the flight school by name and address or, if the student is not enrolled in a flight school program, the student must identify the student's flight instructor and the instructor's address. The student must also retain copies of written tests and instructor's endorsements. Without evidence that the student is in pursuit of a FAA-certified pilot certificate or flight rating, aircraft rentals are subject to sales tax.

(3) Foreign governments. Sales tax is not due on the sale, lease, or rental of an aircraft to a foreign government. Sales tax is due on the sale or lease of component parts or materials incorporated in this state into an aircraft owned by a foreign government, unless otherwise exempt under Tax Code, Chapter 151. Refer to subsection (f) of this section for information concerning the repair, remodeling, maintenance, and restoration of aircraft, aircraft engines, and component parts.

(4) Fly-away exemption.

(A) Sales tax is not due on the sale or lease of an aircraft in this state to a person for use and registration in another state or nation before any use in this state other than:

(i) performing repairs, remodeling, maintenance, or restoration on the aircraft in this state, including necessary flights for troubleshooting, testing, or flights between service locations under an FAA-issued ferry permit; or

(ii) flight training in the aircraft.

(B) Any use of the aircraft in this state other than that described in subparagraph (A) of this paragraph before the aircraft is flown out of this state for use and registration in another state or nation will result in the loss of the exemption. Any use of the aircraft in this state after the aircraft has left the state will result in the loss of the exemption, and tax will be due on the purchase price, unless the owner or operator can show that:

(i) for the 12 months following the date that the aircraft left the state, the aircraft was hangared solely outside this state and is used for its intended purpose more than 50% of the time outside this state, pursuant to subsection (c) of this section; or

(ii) the aircraft is otherwise exempt from sales and use tax under this section or Tax Code, Chapter 151.

(C) The fly-away exemption does not apply to the short-term hourly rental of an aircraft in this state, even if the person renting the aircraft intends to use the aircraft in another state. The filing of a fixed-term operating lease for the use of an aircraft with the Aircraft Registration Branch of the FAA pursuant to 14 Code of Federal Regulations, §91.23, constitutes registration for the purposes of qualifying for the fly-away exemption under this paragraph.

(D) Exemption certificate required.

(i) A purchaser claiming the fly-away exemption under this paragraph must provide the seller with a properly completed Texas Aircraft Exemption Certificate Out-of-State Registration and Use, Form 01-907, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form. The seller may only accept the certificate if the seller lacks actual knowledge that the claimed exemption is invalid. Within 30 days of the sale of the aircraft, a copy of the completed certificate signed by both the seller and the purchaser must be provided to the Comptroller of Public Accounts, Business Activity Research Team, P.O. Box 13003, Austin, Texas, 78711-3003.

(ii) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation in which the aircraft is intended to be used and registered.

(iii) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed $500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.

(5) Agricultural use.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft for use exclusively in connection with an agricultural use, as defined in this section, when used for:

(i) predator control;

(ii) wildlife or livestock capture;

(iii) wildlife or livestock surveys;

(iv) census counts of wildlife or livestock;

(v) animal or plant health inspection services; or

(vi) crop dusting, pollination, or seeding.

(B) For purposes of this paragraph only, use of an aircraft is considered to be "for use exclusively in connection with an agricultural use" if 95% of the use of the aircraft is for a purpose described by subparagraph (A) of this paragraph. Travel of less than 30 miles each way to a location to perform a service described by subparagraph (A) of this paragraph will not disqualify the sale, lease, or rental of an aircraft from the exemption, and will not be regarded as divergent use pursuant to subsection (e) of this section.

(C) Selling the use of a gunner's seat on an aircraft that is exempt under this paragraph to a person participating in aerial wildlife management, as authorized by Parks and Wildlife Code, §43.1075 (Using Helicopters to Take Certain Animals), will not result in a loss of the exemption. The sale of the gunner seat is subject to sales tax as a taxable amusement service pursuant to Tax Code, §151.0028 and §3.298 of this title (relating to Amusement Services).

(D) A person who claims an exemption under this paragraph must maintain and make available to the comptroller upon request flight records for all uses of the aircraft, as well as any other records requested by the comptroller, such as Aerial Wildlife Management Permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter G. Failure to maintain adequate records will result in the loss of this exemption.

(6) Agricultural aircraft operations.

(A) Sales or use tax is not due on the sale, lease, or rental of an aircraft used exclusively in an agricultural aircraft operation, as defined in this section. The exemption extends to all machinery, equipment, and tangible personal property that is necessary and essential to the agricultural aircraft operation and without which the use of the aircraft in agricultural aircraft operations could not be accomplished. This exemption does not include firearms, ammunition, or other equipment or tangible personal property used to perform predator control, wildlife census counts, or any other activity not included in the definition of agricultural aircraft operation in this section.

(B) For purposes of this paragraph only, an aircraft is considered to be exclusively used in an agricultural aircraft operation if 100% of its use is for that purpose.

(C) Exemption certificate required. A person claiming the exemption under this paragraph must have a valid Texas Agricultural and Timber Exemption Registration Number issued by the comptroller, and must issue a properly completed Texas Agricultural Sales and Use Tax Exemption Certification, Form 01-924, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form, or a signed confirmation letter with a current Texas Agricultural and Timber Exemption Registration Number.

(e) Divergent use.

(1) Sales and use tax is due when an aircraft, aircraft engine, or component part sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information regarding divergent use, refer to §3.285 of this title and §3.287 of this title.

(A) The tax due is based on the fair market value of a rental of the aircraft or other taxable item for the period of time used in a divergent manner.

(B) The person using the aircraft or other taxable item has the burden of providing evidence sufficient to determine the fair market value of a rental of the item and the amount of time the item was used in a divergent manner. If the person using the item is unable to determine a reasonable fair market value during the period of divergent use, the measure of the tax is the original purchase price of the aircraft or other taxable item.

(C) At any time, the person using the item in a taxable manner may stop paying tax on the fair market value of a rental and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for sales or use tax previously paid on the fair market value of a rental.

(2) Agricultural use and agricultural aircraft operations. No divergent use may be made of an aircraft exempted under subsection (d)(5) of this section, relating to agricultural use, or subsection (d)(6) of this section, relating to agricultural aircraft operations, without a total loss of the exemption. Similarly, no divergent use of machinery, equipment, or tangible personal property exempted under subsection (d)(6) of this section, except for an exempt agricultural use under Tax Code, §151.316 (Agricultural Items), can be made without a total loss of that exemption. In the case of such divergent use, the measure of the tax due is the original purchase price of the aircraft or other taxable item.

(f) Repair, remodeling, maintenance, and restoration.

(1) Labor to repair, remodel, maintain, or restore aircraft in this state is not subject to sales or use tax. The sale or use of materials incorporated into an aircraft, aircraft engine, or component part being repaired, remodeled, maintained, or restored in this state is subject to sales and use tax either by the service provider or the purchaser of the service, as provided in paragraph (2) of this subsection, unless otherwise exempt in this subsection.

(2) Tax responsibilities of service providers.

(A) Incorporated materials. Whether the service provider owes tax on the purchase of materials that will become incorporated materials as part of the repair, remodeling, maintenance, or restoration of the aircraft, aircraft engine, or component part depends upon whether the service provider is operating under a lump-sum or separated contract.

(i) Separated contracts. If the services are performed under a separated contract, the service provider is regarded as the seller of the incorporated materials. If the service provider has a sales and use tax permit, the service provider may issue a properly completed resale certificate to the supplier in lieu of paying sales tax on the purchase of the incorporated materials. The service provider must then collect sales tax from the customer on either the agreed contract price for the incorporated materials, or the amount the service provider paid for the incorporated materials, whichever amount is greater. The service provider may also use incorporated materials removed from an inventory of items upon which sales or use tax was paid at the time of purchase. In such a case, sales tax is to be collected from the customer on the agreed contract price of the incorporated materials as though the incorporated materials had been purchased tax-free with a resale certificate. The service provider must remit sales tax to the comptroller on the difference between the agreed contract price for the incorporated materials and the price paid to the supplier by adjusting the "taxable sales" on its sales tax return or by taking a credit on its sales tax return pursuant to §3.338 of this title.

(ii) Lump-sum contracts. If the services are performed under a lump-sum contract, the service provider is the ultimate consumer of all incorporated materials. The service provider may not collect sales tax from the customer. The service provider must pay sales or use tax to the suppliers of the incorporated materials at the time of purchase, unless the service provider works under both lump-sum and separated contracts, uses incorporated materials removed from a valid tax-free inventory that was originally purchased tax-free by use of a resale certificate, and chooses to perform the service under a lump-sum contract. In such a case, the service provider incurs a tax liability based upon the purchase price of the incorporated materials and must report and remit the tax to the comptroller. The service provider owes sales or use tax on the purchase of incorporated materials even when the services are performed for a customer that is exempt from sales and use tax, unless the incorporated materials are purchased for the purpose of reselling them to the United States in a contract, or a subcontract of a contract, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office. See §3.285 of this title.

(B) Tools, equipment, and consumable supplies. Sales and use tax is due on the purchase, lease, or rental of tools, equipment, and consumable supplies used by the service provider but not incorporated into the aircraft, aircraft engine, or component part at the time of the service, regardless of the type of contract used to perform the service, and the service provider may not collect sales or use tax from the customer on any charges for such items.

(3) Exemption for certificated or licensed carriers, flight schools or instructors, and persons operating aircraft for agricultural purposes.

(A) The total charge for services to repair, remodel, maintain, or restore aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or instructor providing qualified flight instruction, or a person operating aircraft for an agricultural use is exempt from sales and use tax, whether the charge is lump-sum or separately stated, when purchased by the aircraft owner or operator, the aircraft manufacturer, or a repair, remodeling, maintenance, or restoration facility.

(B) Sales and use tax is not due on the sale, lease, or rental of machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, maintenance, or restoration of

aircraft, aircraft engines, or component parts by or for a certificated or licensed carrier, a flight school or a flight instructor providing qualified flight instruction, or person conducting an agricultural aircraft operation, provided the purchaser issues the seller a properly completed exemption certificate. This includes equipment, such as battery chargers and diagnostic equipment, used to sustain or support safe and continuous operations and to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration.

(4) Aircraft used exclusively outside this state. The following guidelines apply to aircraft brought into this state by out-of-state owners or operators for repair, remodeling, maintenance, or restoration.

(A) Separated contracts. Sales or use tax is not due on the separately stated charge for labor to repair, remodel, maintain, or restore an aircraft, aircraft engine, or component part performed under a separated contract. The cost of incorporated materials is:

(i) subject to sales tax when the owner or operator takes delivery of the aircraft in this state; or

(ii) not subject to sales tax when the aircraft is delivered to an out-of-state location by the service provider.

(B) Lump-sum contracts. Sales tax is not owed by the owner or operator of an aircraft repaired, remodeled, maintained, or restored under a lump-sum contract. The service provider does owe sales or use tax on the incorporated materials, whether the service provider delivers the aircraft out of state or the owner or operator takes delivery of the aircraft in this state.

(5) The repair, remodeling, maintenance, or restoration of component parts removed from and returned to an aircraft pursuant to the repair, remodeling, maintenance, or restoration of that aircraft is to be treated in accordance with the provisions of this paragraph. The repair, remodeling, maintenance, or restoration of a component part removed from an aircraft that is not returned to the aircraft in connection with the repair, remodeling, maintenance, or restoration of the aircraft is subject to the provisions of §3.292 of this title.

(g) Jet turbine aircraft engines.

(1) Sales or use tax is not due on the sale, lease, or rental of the following items used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts:

(A) machinery, equipment, or replacement parts or accessories with a useful life in excess of six months; and

(B) supplies, including aluminum oxide, nitric acid, and sodium cyanide.

(2) A person claiming an exemption under paragraph (1) of this subsection must maintain documentation sufficient to show that no exclusion under Tax Code, §151.318 applies. Also refer to §3.300 of this title.

(3) Sales tax is not due on the sale of electricity or natural gas used in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier. For more information, refer to §3.295 of this title (relating to Natural Gas and Electricity).

(h) Warranties.

(1) Manufacturer's written warranty or recall campaign.

(A) Sales or use tax is not due on incorporated materials or services furnished by the manufacturer to repair an aircraft, aircraft engine, or component part under a manufacturer's written warranty or recall campaign.

(B) Records must be kept by a service provider showing that the incorporated materials or services were used in repairing an item under a manufacturer's written warranty or recall campaign.

(C) A service provider may purchase incorporated materials used in a repair under a manufacturer's written warranty or recall campaign tax-free by issuing a properly completed exemption certificate to the seller.

(2) Extended warranties and service contracts.

(A) Sales tax is not due on the sale of an extended warranty or service contract that covers an aircraft, aircraft engine, or component part.

(B) A service provider performing services under an extended warranty or service contract must collect sales or use tax on incorporated materials as required under subsection (f)(2)(A) of this section, unless the aircraft, aircraft engine, or component part is owned by a certificated or licensed carrier or a flight school or instructor providing qualified flight instruction.

(3) Goodwill repairs. A service provider does not owe tax on incorporated materials purchased for use in repairing an aircraft, aircraft engine, or component part pursuant to an implied warranty within seven calendar days of the purchase of the aircraft being repaired. A service provider otherwise owes sales or use tax on incorporated materials used in performing a repair on an aircraft, aircraft engine, or component part other than an aircraft, aircraft engine, or component part owned by a certificated or licensed carrier or a flight school or instructor providing qualified flight instruction, even if the service provider does not charge the purchaser for the repair.

(i) Occasional sales. The purchase of an aircraft, aircraft engine, or component part is exempt from sales and use tax if the purchase meets the definition of an occasional sale provided by §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

(j) Sales for resale.

(1) A person selling, leasing, or renting an aircraft, aircraft engine, or component part may accept a properly completed and signed resale certificate from the purchaser at the time of sale in lieu of collecting tax on the sale if the person does not know, and does not have reason to know, that the sale is not a sale for resale. For more information on good faith acceptance of a resale certificate, refer to §3.285(e) of this title.

(2) A person purchasing, leasing, or renting an aircraft, aircraft engine, or component part may only provide the seller or lessor with a properly completed resale certificate if the person:

(A) holds a valid sales and use tax permit as required by §3.285 of this title at the time of the transaction;

(B) acquires the aircraft, aircraft engine, or component part for the sole purpose of leasing or renting it to another person, or for the purpose of transferring title to the aircraft to another person, for consideration in the normal course of business;

(C) does not intend to lease the aircraft with a crew or pilot; and

(D) does not intend to make a personal or business use of the aircraft, aircraft engine, or component part.

(3) Sole purpose of leasing or renting aircraft to another person. A person purchases an aircraft for the sole purpose of leasing or renting the aircraft to another person in the normal course of business when the person enters into lease agreements that transfer to the lessee operational control of the aircraft, as defined by the FAA at 14 Code of Federal Regulations 1.1, and control over when, by whom, and for whom the aircraft is used, for the duration of the lease term. An agreement under which the purchaser of the aircraft reserves the right to use the aircraft at any time, retains the right to control the scheduling or the chartering of the aircraft to a third party, or remains responsible for the insurance, maintenance, or storage of the aircraft does not transfer control of the aircraft to the lessee. A management agreement or service agreement under which another party manages the aircraft for the purchaser does not transfer control of the aircraft to the lessee.

(4) Normal course of business. In determining whether a lessor has purchased an aircraft for the sole purpose of leasing or renting it to another person in the normal course of business, the comptroller will review all the facts and circumstances, taken as a whole, including whether the lessee is an affiliated entity. Where the lease agreement is between affiliated entities, the lessor must show that a similar transaction would take place between unrelated entities. Factors to be considered include, but are not limited to, the following:

(A) whether the lessor markets the aircraft for rent to unrelated parties;

(B) whether the lease payments received by the lessor are sufficient to meet any loan obligations, if applicable, and defray all overhead and operating expenses;

(C) whether the aircraft has appreciated in value; and

(D) the terms of any insurance policies on the aircraft.

(5) For purposes of this subsection, if the effective monthly lease rate for an aircraft is less than 1.0% of the purchase price of the aircraft, the lease is presumed, in the absence of evidence to the contrary, to be leased at a rate that is below fair market value and not within the normal course of business. The owner of the aircraft may rebut this presumption with contemporaneous evidence that the transaction was executed at a fair market value.

(6) A person who knows at the time of purchase that the aircraft, aircraft engine, or component part will be used for purposes other than retention, demonstration, or display while holding the aircraft for sale, lease, or rental cannot claim a sale for resale exemption. For example, an aircraft owner who intends to retain the ability to determine when the aircraft will be used by others, or to approve pilots and crews that will be used by others, has not purchased the aircraft for the sole purpose of leasing or renting it to another person, as required by §3.294 of this title, and no resale exemption can be claimed on the purchase of the aircraft.

(7) Divergent use. When aircraft held in a valid tax-free inventory is used for any purpose other than retention, demonstration, or display while holding it for resale, lease, or rental, the purchaser is liable for sales tax based on the fair market value of a rental of the aircraft for the period of time used. For more information regarding divergent use, see §3.285 of this title.

(k) Local tax. Local sales and use taxes, including taxes imposed by a city, county, transit authority, or special purpose district, apply to aircraft in the same manner as any other tangible personal property.

(1) Sales consummated in Texas. Generally, local sales taxes are allocated to the local taxing jurisdictions in which the seller's place of business is located, and the seller must collect the local sales tax, without regard to whether the aircraft is actually delivered to, or intended for use in, a Texas location in a different local taxing jurisdiction. If the seller does not collect the applicable local tax, the purchaser must accrue and remit local tax to the comptroller. The criteria set forth in subsection (c)(2) of this section may be considered in determining where an aircraft is first stored or used.

(2) Sales consummated outside of the state. When an aircraft is purchased or leased outside the state and brought into this state, local use tax is due based on the local taxing jurisdiction(s) in which the aircraft is first stored or used. The purchaser must accrue and remit to the comptroller any local use tax due.

(3) For more information regarding the local tax collection and reporting responsibilities of sellers and purchasers, refer to Tax Code, Title 3 (Local Tax), Subtitle C (Local Sales and Use Taxes).

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404895
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

34 TAC §3.285

(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 Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of existing §3.285, concerning resale certificate; sales for resale. The existing §3.285 is being repealed in order to update the content of the existing section under a new §3.285 to reflect the changes made to Tax Code, §151.006 by House Bill 3319, 80th Legislature, 2007, and Senate Bill 1, 82nd Legislature, First Called Session, 2011; the interpretation of sale for resale provided by the decisions of the Texas Supreme Court in Combs v. Health Care Services Corp, 401 S.W.3d 623 (Tex. 2013) and Combs v. Roark Amusement & Vending, L.P., 422 S.W.3d 632 (Tex. 2013); to incorporate longstanding comptroller policies that are not addressed in the existing rule; and to make various other revisions to improve the clarity and organization of the section.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by accommodating the adoption of a new rule incorporating current legal and judicial provisions and would provide improved clarity and organization. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528,

Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, §§151.006, 151.025, 151.054, 151.151, 151.152, 151.154, and 151.302.

§3.285. Resale Certificate; Sales for Resale.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404896
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

34 TAC §3.285

The Comptroller of Public Accounts proposes new §3.285, concerning resale certificate; sales for resale. The new section replaces existing §3.285, which is being repealed. New §3.285 updates the content of the existing section to reflect the changes made to Tax Code, §151.006 by House Bill 3319, 80th Legislature, 2007, and Senate Bill 1, 82nd Legislature, First Called Session, 2011, which was effective October 1, 2011; to incorporate guidance regarding sales for resale provided by the Texas Supreme Court in Combs v. Health Care Services Corp., 401 S.W.3d 623 (Tex. 2013) and Combs v. Roark Amusement & Vending, L.P., 422 S.W.3d 632 (Tex. 2013); to memorialize longstanding comptroller policies that are not addressed in the existing section; and to make various other revisions to improve the clarity and organization compared to the current section that is being proposed for repeal.

Subsection (a) restates the definitions of the terms "Mexico" and "United States" from the version of the section that is proposed for repeal. See paragraphs (7) and (13). Subsection (a) also defines several additional terms which are not expressly defined in the current section that is proposed for repeal. These include "care of tangible personal property," "control of tangible personal property," and "custody of tangible personal property," which are defined in paragraphs (1) - (3). These definitions follow Sharp v. Clearview Cable TV, Inc., 960 S.W.2d 424 (Tex. App.--Austin 1998, pet. denied) and several Comptroller's Decisions interpreting that case, including Comptroller's Decision Nos. 100,294 (2012), 43,728 (2004), and 41,730 (2004).

Subsection (a)(4) defines the term "fair market value." This definition is provided to memorialize the comptroller's understanding of this term, which appears in the Tax Code and the Texas Administrative Code, but which was not previously defined. The proposed definition reflects longstanding comptroller policy that fair market value is the price for which tangible personal property or a service would be sold on the open market. This defined term is used in subsection (a)(8), defining the term "normal course of business;" subsection (a)(9), defining the term "sale in the regular course of business;" subsection (c), addressing divergent use; and subsection (d)(2), addressing the taxability of items removed from a valid tax-free inventory.

Subsection (a)(5) defines the term "federal government." The definition is consistent with the definition of that term provided in §3.322 of this title (relating to Exempt Organizations). This term is defined in order to clarify the meaning of Tax Code, §151.006(a)(5), which states that a sale for resale includes the sale of tangible personal property to a purchaser who will transfer title to the property to the federal government.

The term "integral part" appears in current §3.285 but is not defined therein. A proposed definition of the term is provided in subsection (a)(6) to give taxpayers additional guidance as to when one taxable item may be transferred as an integral part of another taxable item.

Subsection (a)(8) defines the term "normal course of business." This definition reflects current comptroller policy as established by Comptroller's Decision Nos. 18,493 (1986), 45,207 (2005), and 101,302 (2011), among others. This definition does not limit activities "in the normal course of business" to sales that generate a profit. For example, the use of "loss leaders," inventory reduction sales, or other means of selling items below cost in order to draw in customers are among the usual and customary activities of retailers. Under the proposed section, if a taxable item is resold outside of the normal course of business, the comptroller will still respect the sale, but the seller will not be allowed to claim the sale for resale exemption on the initial purchase of the taxable item.

The term "regular course of business" appears in the Tax Code in several contexts, and no uniform definition of the term is provided. Those sections of the Tax Code relating directly to sales for resale and resale certificates use the phrases "normal course of business" and "regular course of business" interchangeably. See Tax Code, §§151.006 ("Sale for Resale"); 151.054(b) (Gross Receipts Presumed Subject to Tax); 151.104(b) (Sale for Storage, Use, or Consumption Presumed); 151.151 (Resale Certificate); 151.152 (Resale Certificate: Form); and 151.154 (Resale Certificate: Liability of Purchaser). In other contexts, however, the terms are not synonymous. See, for example, Tax Code, §151.025(d) (Records Required to be Kept) ("[T]he combined charge is subject to tax unless the provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business.") (Emphasis added).

To provide greater clarity, the comptroller proposes to define the term "sale in the regular course of business" in subsection (a)(9). This term appears in Tax Code, §151.011 ("Use" and "Storage") but is not defined therein. It is used in this section in the definition of the term "tax-free inventory." The proposed definition in subsection (a)(9) establishes that a transaction undertaken outside of the day-to-day operations of a business is not a sale in the regular course of business, even if it might otherwise be a normal business activity.

It is the comptroller's intent that the terms "normal course of business" and "regular course of business" be given the same meaning for purposes of sales for resale and resale certificates only. The comptroller is revising existing language taken from current §3.285 to replace the ambiguous term "regular course of business" with the defined term "normal course of business" or the

defined term "sale in the regular course of business," as appropriate.

Subsection (a)(10) defines the term "seller" by providing a cross-reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules). Paragraph (11) restates the Tax Code's definition of the term "taxable item." See Tax Code, §151.010 (Taxable Item).

The term "tax-free inventory" is defined in subsection (a)(12). In addition to being used throughout this section, this term appears in §§3.280 (relating to Aircraft), 3.290 (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment), and 3.291 (relating to Contractors) of this title. This definition is based upon Tax Code, §151.011(e) ("Use" and "Storage"), which establishes that the keeping or retaining of tangible personal property "for sale in the regular course of business" does not constitute a taxable use of that tangible personal property, as well as longstanding comptroller policy established in decisions such as Comptroller's Decision Nos. 31,088 (1995) and 32,194 (1998).

Subsection (a)(12)(B) states that a purchaser may only purchase a stock of tangible personal property tax-free if the purchaser makes sales of "the same or similar types of tangible personal property." The "same or similar" requirement reflects the comptroller's interpretation of a sale in the regular course of business in the context of a tax-free inventory. It is derived from prior comptroller guidance imposing limitations on the types of property that can be included in a tax-free inventory. See, for example, STAR Accession No. 9509L1368C07 (September 12, 1995) ("[The tax-free inventory provision] only applies to items that the client resells and not to office supplies, construction equipment, etc.") and Comptroller's Decision No. 19,030 (1986) ("[T]hree over-the-counter sales of oil field anchors made during the entire audit period do not qualify Petitioner to maintain a complete tax-free inventory of anchors. Tax Code Section 151.151 simply cannot be stretched far enough to cover this situation.")

Subsection (b) revises the definition of the term "sale for resale." The revision reflects the changes enacted by House Bill 3319, 80th Legislature, 2007 and Senate Bill 1, 82nd Legislature, First Called Session, 2011, as well as guidance regarding the interpretation of Tax Code, §151.006 (Sale for Resale) provided by the decisions of the Texas Supreme Court in Combs v. Health Care Services Corp., and Combs v. Roark Amusement & Vending, L.P.

In order to claim an exemption from the sales tax that would otherwise be due on a purchase, a purchaser claiming the sale for resale exemption must show that the item is purchased for resale "in the normal course of business." Exemptions from tax are disfavored and strictly construed. See, for example, North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 804 S.W.2d 894, 899 (Tex. 1991); Sharp v. Tyler Pipe Indus., 919 S.W.2d 157, 161 (Tex. App.--Austin 1996, writ denied). The comptroller's proposed interpretation of the phrase "normal course of business" is provided in subsection (a)(8). As explained in that definition, a sale for less than fair market value may fall within the normal course of business, provided that the sale is one of the usual or customary activities undertaken in an enterprise or endeavor generally involving the sale, lease, rental, or trade of tangible personal property, or the provision of a service, at fair market value. If a taxable item is purchased for resale outside of the normal course of business, the initial purchase of that item does not fall within the scope of the resale exemption, because the initial purchase of a taxable item is exempted from taxation on the premise that the taxable item will subsequently be resold in the normal course of business--a transaction that will fall within the category of transactions that are subject to sales tax, unless otherwise exempted under Chapter 151. This is in keeping with the Legislature's general policy goals underlying the sale-for-resale exemption--"to avoid pyramiding of sales tax on successive transactions preceding sale to the ultimate purchaser." DTWC Corp. v. Combs, 400 S.W.3d 149, 153 (Tex. App.--Austin, no pet.).

Subsection (b)(1) identifies five general categories of sales for resale. The first category of sales for resale involves the sale of tangible personal property or a taxable service to a purchaser who is engaged in the business of selling, leasing, or renting taxable items and who acquires the taxable item for the purpose of reselling it in the United States or Mexico in the normal course of business. The requirement that the purchaser be engaged in the business of selling, leasing, or renting taxable items is not expressly stated in the current version of the section that is proposed for repeal. This requirement is mandated, however, by three statutory provisions.

The first of these statutory provisions is Tax Code, §151.104(b), which has long stated, "A sale is exempt if the seller receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate..." The second is Tax Code, §151.006(a)(1), as amended in 2011, which now provides that the purchaser in a sale for resale transaction must purchase the taxable item for the purpose of reselling it "with or as a taxable item...in the normal course of business." Given that a purchaser can only resell a taxable item in the normal course of business if the purchaser is engaged in business activities involving the sale of taxable items, the requirement that a purchaser making a sale for resale be engaged in the business of selling, leasing, or renting taxable items is clearly implied.

The third statutory provision that supports the comptroller's policy is Tax Code, §151.006(c), which was enacted by the legislature in 2011, and which states that a sale for resale does not include the sale of a taxable item to a purchaser for the purpose of performing a nontaxable service. While a person who performs taxable services is engaged in the business of selling taxable items, a person who performs nontaxable services is not. Thus, the requirement that the purchaser be engaged in the business of selling, leasing, or renting taxable items reflects the intent of the legislature in enacting Tax Code, §151.006(c), which was to exclude sales to purchasers providing nontaxable services from the scope of the sale for resale exemption.

Subsection (b)(1)(A) also requires that the purchaser acquire the taxable item for the purpose of selling it "with or as a taxable item." This phrase was added to Tax Code, §151.006(a)(1) by Senate Bill 1, 82nd Legislature, First Called Session, 2011. This affirms the comptroller's longstanding policy that a sale for resale may only be made to a purchaser engaged in the business of selling, leasing, or renting taxable items who intends to resell the tangible personal property or taxable service acquired with or as a taxable item--a transaction that is subject to sales and use tax as provided in Tax Code, Chapter 151.

Finally, subsection (b)(1)(A) provides that the taxable item that is purchased for resale must be resold in the form or condition in which it is acquired; as an attachment to or integral part of other tangible personal property; or as an integral part of another taxable service. This restates Tax Code, §151.006(a)(1) and (3). Clause (ii) of this subparagraph also incorporates the limitation

set out in Tax Code, §151.302(c) that wrapping, packing, and packaging supplies cannot be purchased for resale. In addition, clause (iii) incorporates the requirement that tangible personal property that is purchased as a sale for resale and used by the purchaser in performing a taxable service must be transferred to the care, custody, and control of the purchaser of the service. See Tax Code, §151.302(b). No such statutory limitation is created with respect to taxable services that are used by the purchaser in providing another taxable service.

Subsection (b)(1)(B) addresses the second general category of sales for resale, which is the purchase of tangible personal property for the sole purpose of maintaining the tangible personal property temporarily in a valid tax-free inventory. The contents of this subparagraph are not expressly stated in the current version of the section that is proposed for repeal. The subparagraph is added to memorialize the comptroller's longstanding policy that a sale for resale includes the sale of tangible personal property for the purpose of maintaining the tangible personal property in a tax-free inventory. This is based on Tax Code, §151.011(e) and Comptroller's Decision Nos. 31,088 (1995) and 32,194 (1998).

Subsection (b)(1)(C) addresses the third general category of sales for resale, which is the purchase of tangible personal property for the sole purpose of leasing or renting the tangible personal property to another person. This subsection follows the language of Tax Code, §151.006(a)(2). Subsection (b)(1)(D) implements House Bill 3319, 80th Legislature, 2007, which added Tax Code, §151.006(b) creating a fourth category of sales for resale for certain wireless communications devices. Finally, subsection (b)(1)(E) reflects the sale for resale exemption created by Tax Code, §151.006(a)(4) for the sale of a taxable service to a purchaser who acquires the service for performance on tangible personal property that the purchaser holds for sale, lease, or rent in the normal course of business.

Subsection (b)(2) implements Tax Code, §151.006(c), enacted by the Senate Bill 1, 82nd Legislature, First Called Session, 2011. This paragraph states that the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of performing a nontaxable service is not a sale for resale. It creates an exception, however, for nontaxable services performed for one of the federal agencies identified in paragraph (3)(B) of this subsection. This paragraph also clarifies that a nontaxable service is a service that is not specifically enumerated in Tax Code, §151.0101 (Taxable Services). The sale of a taxable service that is exempted from sales tax by Tax Code, Subchapter H (Exemptions) is still the sale of a taxable service. As the Supreme Court explained in Combs v. Roark Amusement & Vending, L.P., "[U]nder chapter 151, an item exempt from taxation may nevertheless be included in the universe of taxable items."

Subsection (b)(3) addresses two types of sales for resale that apply only in the context of federal contracts. The Tax Code provisions that create these sales for resale, Tax Code, §151.006(a)(5) and §151.006(c), were both enacted by the legislature in 2011. The first category, described in subparagraph (A), reflects the legislature's adoption of Day & Zimmermann, Inc. v. Calvert, 519 S.W.2d 106 (Tex. 1975), but only to the extent that the sales of tangible personal property are made to a purchaser for the purpose of transferring the tangible personal property to the federal government under a contract for the performance of a taxable service. The second category, described in subsection (b)(3)(B), is an exception to the general rule that a purchaser providing a nontaxable service cannot make a sale for resale. Under Tax Code, §151.006(c), the sale of tangible personal property or a taxable service to a purchaser who acquires the taxable item for the purpose of transferring the taxable item to the federal government in a contract, or a subcontract of a contract, with certain specifically enumerated federal agencies, is a sale for resale. Tax Code, §151.006(a)(5) and §151.006(c) reverse the comptroller's longstanding policy of extending the Day & Zimmerman holding to Texas state and local governmental entities. See Combs v. Health Care Services Corp., 401 S.W.3d 623, 631 (Tex. 2013) ("Since at least Day & Zimmerman, items consumed while performing a contract with a title-transfer provision have clearly been covered by the sale-for-resale exemption. If the Legislature considered this a loophole worth closing, it could have done so. In fact, lawmakers in 2011 narrowed it via Section 151.006(c), which reserves this sale-for-resale exemption to contractors that are partnering with federal national security-related agencies.")

Finally, subsection (b)(4) memorializes longstanding comptroller policy that the sale of tangible personal property to a purchaser who acquires the tangible personal property for the purpose of reselling or transferring the tangible personal property outside of the United States or Mexico does not fall within the definition of a sale for resale. See, for example, Comptroller's Decision No. 29,343 (1993), which states, "Sales of goods destined for another country must qualify for exemption under §151.307 rather than §151.302." The paragraph provides additional information regarding the taxability of purchases made for resale outside of the United States and Mexico and refers such purchasers to §3.323 of this title (relating to Imports and Exports).

Subsection (c) addresses divergent use by providing information about a purchaser's tax responsibilities in the event that the purchaser makes a taxable use of an item purchased tax-free for resale. Paragraph (1) restates the last sentence of subsection (e)(1) of the current section that is proposed for repeal (relating to the improper use of items purchased for resale). The remainder of this subsection generally restates information provided in subsection (e)(2) - (6) of the current section. New paragraph (1)(C) states that the purchaser has the burden of proof as to the fair market value of the taxable service or the fair market value of a rental of tangible personal property and the amount of time the taxable item was used in a divergent manner. New paragraph (1)(E) states that more detailed information regarding divergent use and the fair market rental value of aircraft is provided in §3.280 of this title.

Subsection (d) addresses valid tax-free inventories. Subsection (d)(1) states that tangible personal property that a purchaser knows at the time of purchase will be used or consumed by the purchaser may not be maintained in a valid tax-free inventory. It also restates the language in §3.291 of this title (Contractors) providing that a purchaser may issue a properly completed resale certificate instead of paying tax on items that are purchased for a tax-free inventory when the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. This subsection also explains the tax consequences to a purchaser who makes a taxable use of tangible personal property held in a valid tax-free inventory. Subsection (d)(2)(C) memorializes comptroller policy, which is not reflected in the current section that is proposed for repeal, that tax is not due on tangible personal property that is totally destroyed or permanently disposed of in a manner other than for use or sale in the normal course of business. See Comptroller's Decision No. 28,901 (1993) and STAR Accession No. 9606L1417A08 (June 10, 1996).

Subsection (e) establishes the circumstances in which a seller may accept a resale certificate in lieu of tax on the sale of a taxable item. Subsection (e)(1) restates the provision in Tax Code, §151.054(a) that all gross receipts of a seller are presumed to have been subject to the sales tax unless a properly completed resale or exemption certificate is accepted by the seller.

Tax Code, §151.054(c) states that a sale is exempt if the seller accepts a resale certificate from the purchaser in good faith. Subsection (e)(2) of this section memorializes longstanding comptroller policy regarding the elements required for such good faith acceptance. See STAR Accession No. 9105L1110D06 (May 20, 1991) and Comptroller's Decision Nos. 35,834 (1997), 48,258 (2009), and 105,608 (2012). Subparagraph (C) revises the statement in the current section that, in order to accept a resale certificate in good faith, a seller must lack actual knowledge that the sale is not a sale for resale and must take responsibility for notice of the type business generally engaged in by the purchaser as shown on the resale certificate. For clarity and readability, these requirements are now described as follows: "the seller does not know, and does not have reason to know, that the sale is not a sale for resale." See, Comptroller's Decision No. 48,258 (2009) ("The Comptroller has construed her rule to require 'no reason or basis for the seller to suspect that the certificate is invalid.' It reflects the "should have known" concept.") (internal citations omitted). Subparagraph (D) reflects well-established comptroller policy that a copy of a purchaser's sales tax permit, or the use of a purchaser's permit number or tax number on an invoice, does not meet the requirements of a properly completed resale certificate.

Subsection (e)(3) addresses auditor verification of resale certificates. All certificates obtained on or after the date that the comptroller's auditor actually begins work on the audit at the seller's place of business, or on the seller's records after the entrance conference, are subject to verification. All incomplete certificates will be disallowed. These statements are taken from subsection (b)(4) of the current section, which is proposed for repeal. p>Subsection (e)(4) restates the statutory bar that precludes the comptroller from accepting resale certificates provided by a taxpayer after the 60-day period has expired. The statutory basis for this provision is found at Tax Code, §151.054(e).

Subsection (e)(5) memorializes comptroller policy which is not reflected in the current section that a broker or dealer who only buys and sells raw commodities, such as natural gas, raw cotton bales, or raw aluminum, in bulk is not required to hold a sales tax permit and is not required to issue a resale certificate when making such purchases. A broker or dealer may issue a resale certificate, if requested by the seller, even if the broker or dealer does not hold a tax permit. See, for example, STAR Accession Nos. 8909L0957A03 (September 29, 1989), 9608300L (August 15, 1996), and 200710196L (October 18, 2007).

Subsection (e)(6) cross-references §3.281 of this title (relating to Records Required; Information Required) and provides that resale certificates are subject to the record-keeping requirements set out in that section. Certificates maintained by a seller in an electronic format must be unalterable.

Subsection (f) addresses blanket exemption certificates. Current §3.285(c) that is proposed for repeal states that a retailer may accept a blanket resale certificate from "a purchaser who purchases only items for resale." (Emphasis added). Under the current rule, few entities qualify to use a blanket sale for resale certificate. See, for example, Comptroller's Decision No. 41,244 (2003) ("[T]he certificate and letter do not meet the requirements of a valid resale certificate. Even if COMPANY B and COMPANY A were connected, neither entity would meet Rule 3.285(c)'s requirement that an issuer of a blanket resale certificate be a 'purchaser who purchases only items for resale,' inasmuch as both entities are retailers of books but users of store equipment.") The proposed language in draft §3.285(f) is intended to reflect economic realities and current comptroller practice by construing "only" to refer to purchases in a single transaction. The seller may make taxable sales to such a purchaser, provided that taxable purchases and items that are purchased for resale under the blanket certificate may not be billed on the same invoice. Subsection (f) also explains that a seller may not rely on a blanket exemption certificate that no longer states a valid basis for exemption due to a change in the law. This requirement is derived from the comptroller's previous determination that a seller cannot accept in good faith a resale certificate that is no longer facially valid due to a change in the law. See, for example, Comptroller's Decision Nos. 37,381 (2000) and 35,834 (1997).

Subsection (g) addresses the content and form of resale certificates. It first identifies all of the information that a purchaser must include in a resale certificate. The subsection then provides information about the proper form for a resale certificate. It explains how taxpayers can obtain copies of the Texas Sales and Use Tax Resale Certificate issued by the comptroller. This subsection provides that resale certificates do not have to be in the exact form provided by the comptroller.

Subsection (h) provides guidance to both purchasers located outside of Texas and Texas sellers accepting resale certificates from such purchasers. Paragraph (1) explains when a Texas seller may accept a resale certificate from an out-of-state purchaser, and paragraph (2) identifies the information that must be included on a resale certificate issued by an out-of-state purchaser. Paragraph (3) identifies the additional information that must be included on resale certificates issued by Mexican purchasers. Sales for resale made to foreign purchasers from countries other than Mexico are addressed in paragraph (4).

Subsection (i) provides a cross-reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules) to assist resellers located outside of Texas in obtaining information about their obligations under Texas law.

Finally, subsection (j) restates information provided in the current §3.285, which is proposed for repeal, regarding improper use of a resale certificate. Paragraph (1) describes the actions that constitute improper use of a resale certificate. Paragraph (2) explains that it is a criminal offense to intentionally or knowingly make, present, use, or alter a resale certificate for the purpose of evading Texas sales or use tax, and then provides a cross reference to §3.305 of this title (Criminal Offenses and Penalties). The comptroller has determined that a description of criminal penalties associated with such an offense is not necessary in this section as criminal offenses and penalties are addressed in detail in §3.305.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating current legal and judicial provisions and providing improved clarity and or-

ganization. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§151.006, ("Sale for Resale"), 151.010 (Taxable Item), 151.011 ("Use" and "Storage"), 151.025 (Records Required to be Kept), 151.054 (Gross Receipts Presumed Subject to Tax), 151.104 (Sale for Storage, Use, or Consumption Presumed), 151.151 (Resale Certificate), 151.152 (Resale Certificate: Form), 151.154 (Resale Certificate: Liability of Purchaser), and 151.302 (Sales for Resale).

§3.285. Resale Certificate; Sales for Resale.

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

(1) Care of tangible personal property--The primary responsibility to properly maintain the tangible personal property. Care of tangible personal property may require active maintenance of the tangible personal property, or may be limited to a contractual commitment to refrain from intentionally causing harm to the tangible personal property, depending upon the circumstances.

(2) Control of tangible personal property--The right to determine when, how, and by whom the tangible personal property is used.

(3) Custody of tangible personal property--Possession of and the right to remove or relocate tangible personal property, or the right to personalize tangible personal property in some manner. Custody requires more than mere physical possession, but may be less than complete ownership of the tangible personal property.

(4) Fair market value--The sales price at which an unrelated purchaser and seller in a good faith, arm's-length contractual relationship would agree to transfer tangible personal property or a service. Fair market value may be determined by reference to the prices charged by similarly situated sellers in comparable transactions on the open market.

(5) Federal government--The government of the United States of America and its unincorporated agencies and instrumentalities, including all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government unless otherwise designated in this section.

(6) Integral part--An essential element without which the whole would not be complete. One taxable item is an integral part of another item if the taxable item is necessary, as opposed to merely desirable, for the completion of the second item, and if the second item could not be provided as a whole without the taxable item.

(7) Mexico--Within the geographical limits of the United Mexican States.

(8) Normal course of business--The usual or customary activities undertaken in furtherance of an enterprise or endeavor involving the sale, lease, rental, or trade of tangible personal property, or the provision of a service, at fair market value for the purpose of attempting to derive a gain, benefit, advantage, income, or profit. Activities undertaken in the normal course of business may include the sale of items at below cost for the purpose of inventory reduction or to attract customers.

(9) Sale in the regular course of business--A sale made at fair market value in an arm's length transaction that is part of the day-to-day operations of a business. The term does not include the transfer of title or possession of tangible personal property by means of a contribution, distribution, liquidation, dissolution, merger, or similar action to an affiliated entity for storage, use, or other consumption by the affiliated entity in this state.

(10) Seller--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

(11) Taxable item--Tangible personal property and taxable services. Except as otherwise provided by Tax Code, Chapter 151, the sale or use of a taxable item in an electronic form instead of on physical media does not alter the item's tax status.

(12) Tax-free inventory--A stock of tangible personal property purchased tax-free for resale, whether from out-of-state or by issuing a properly completed resale certificate, by a purchaser who, at the time of purchase:

(A) holds a valid Texas sales and use tax permit;

(B) makes sales in the regular course of business of the same or similar types of tangible personal property; and

(C) does not know that the tangible personal property will not be resold in the normal course of business.

(13) United States--Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Sale for resale.

(1) Each of the following is a sale for resale:

(A) the sale of a taxable item to a purchaser engaged in the business of selling, leasing, or renting tangible personal property, or selling taxable services, who acquires the taxable item for the purpose of reselling it in the United States or Mexico in the normal course of business as a taxable item, or with another taxable item:

(i) in the form or condition in which the taxable item is acquired;

(ii) as an attachment to, or as an integral part of, tangible personal property, except for certain tangible personal property described in §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies); or

(iii) as an integral part of a taxable service, except that if the purchaser acquires tangible personal property that the purchaser uses in providing the taxable service, then the purchase is not a sale for resale unless the purchaser transfers care, custody, and control of that tangible personal property to the purchaser of the taxable service;

(B) the sale of tangible personal property for the sole purpose of maintaining the tangible personal property temporarily in a valid tax-free inventory in the normal course of business;

(C) the sale of tangible personal property to a purchaser who acquires the tangible personal property for the sole purpose of leasing or renting the tangible personal property to another person in the United States or Mexico in the normal course of business, but not if the lease or rental of the tangible personal property is incidental to, or part of, the leasing or renting of real property, as described in §3.294(k) of this title (relating to Rental and Lease of Tangible Personal Property);

(D) the sale of a wireless voice communication device, such as a cellular telephone, to a purchaser who acquires the device for the purpose of transferring the device as an integral part of a taxable telecommunication service when the purchase of the service is a condition for receiving the device, regardless of whether there is a separate charge for the device or whether the purchaser is the provider of the taxable service. See §3.344 of this title (relating to Telecommunications Services) for information about telecommunication services; and

(E) the sale of a taxable service to a purchaser who acquires the service for performance on tangible personal property that the purchaser holds for sale, lease, or rental in the normal course of business.

(2) Nontaxable services. The sale of a taxable item to a purchaser who acquires the taxable item for the purpose of performing a nontaxable service is not a sale for resale, except if the nontaxable service is performed for one of the federal agencies identified in paragraph (3)(B) of this subsection. For purposes of this section, a nontaxable service is a service that is not specifically enumerated in Tax Code, §151.0101 (Taxable Services). A taxable service that is exempted from sales tax by Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations) is not a nontaxable service.

(3) Federal contracts. The sale of a taxable item under the following circumstances is a sale for resale.

(A) The sale of tangible personal property, but not taxable services, to a purchaser who acquires the tangible personal property for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, for a service that is specifically enumerated in Tax Code, §151.0101, solely with the federal government, provided that the purchaser:

(i) transfers title to the tangible personal property to the federal government under the contract or subcontract and applicable federal acquisition regulations; and

(ii) allocates and bills the cost of the tangible personal property to the contract or subcontract as a direct or indirect cost.

(B) The sale of tangible personal property or a taxable service to a purchaser who acquires the taxable item for the purpose of transferring the taxable item to the federal government in a contract, or a subcontract of a contract, with any branch of the Central Intelligence Agency, Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office, to the extent the tangible personal property or taxable service is allocated and billed to the contract or subcontract. This is an exception to the general rule that a sale for resale does not include the sale of a taxable item to a purchaser who acquires the item for the purpose of performing a nontaxable service.

(4) Foreign purchasers. A sale for resale does not include the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling or transferring the taxable item outside the territorial limits of the United States or Mexico.

(A) Foreign purchasers other than purchasers from Mexico, including purchasers from Canada, must pay tax at the time of sale when taking possession of a taxable item in this state for use outside the territorial limits of the United States, unless the sale is exempt under Chapter 151 and the purchaser issues the seller a properly completed exemption certificate pursuant to §3.287 of this title (relating to Exemption Certificates). Otherwise, in order for the sale of a taxable item purchased in this state for resale or a nonexempt use outside the territorial limits of the United States to be exempt from Texas sales tax, the sale must comply with the requirements of §3.323 of this title (relating to Imports and Exports).

(B) Purchasers from Mexico should refer to subsection (h) of this section.

(c) Taxable use of items purchased tax-free for resale.

(1) Divergent use; paying tax on fair market rental value. When tangible personal property or a taxable service purchased under a resale certificate is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, or rental, or for transfer as an integral part of a taxable service, the purchaser is liable for sales tax based on the value of the tangible personal property or taxable service for the period of time used.

(A) The value of tangible personal property is the fair market value of a rental of the tangible personal property. The value of a taxable service is the fair market value of the taxable service.

(B) If the fair market value cannot be determined, sales tax is due based upon the original purchase price of the taxable item.

(C) The purchaser has the burden of proof as to the fair market value of a taxable service or the fair market value of a rental of tangible personal property and the amount of time the tangible personal property was used in a divergent manner.

(D) A purchaser who makes a use of a taxable item may stop paying sales tax on the value of the taxable item, and instead pay sales tax on the original purchase price, at any time. When the purchaser elects to pay sales tax on the original purchase price, credit will not be allowed for sales tax previously paid based on value.

(E) Aircraft. For guidance on divergent use and determining the fair market rental value of aircraft, see §3.280 of this title (relating to Aircraft).

(2) Donation of taxable item. A purchaser who gives a properly completed resale certificate in lieu of paying tax on the purchase of a taxable item is not liable for sales tax if the purchaser later donates the taxable item to an organization exempt under Tax Code, §151.309 or §151.310(a)(1) or (2), provided that the purchaser did not make any use of the taxable item prior to its donation.

(3) Use of taxable item as a trade-in. A purchaser who issues a properly completed resale certificate for the purchase of a taxable item is liable for sales tax if the purchaser uses the taxable item as a trade-in on the purchase of another taxable item. Tax must be paid on the original purchase price of the taxable item used as a trade-in.

(d) Valid tax-free inventory.

(1) A purchaser may not maintain in a valid tax-free inventory tangible personal property that the purchaser knows, at the time of purchase, will be used or consumed by the purchaser. A purchaser may issue a properly completed resale certificate instead of paying tax on items that are purchased for a tax-free inventory if the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. The purchaser must collect,

report, and remit tax to the comptroller as required by §3.286 of this title when the purchaser sells, leases, or rents taxable items.

(2) Taxability of items removed from a valid tax-free inventory.

(A) Texas sales or use tax is due on tangible personal property removed from a valid tax-free inventory for use in this state based on the value of the tangible personal property for the period of time used, except when the use is for the purpose of retention, demonstration, or display. The value of tangible personal property is the fair market value of a rental of the tangible personal property. If the fair market value cannot be determined, sales tax is due based upon the original purchase price of the taxable item. The purchaser has the burden of proof as to the fair market value of tangible personal property and the amount of time the tangible personal property was used in a divergent manner. Also see subsection (c)(1) of this section.

(B) Texas sales or use tax is not due on tangible personal property removed from a valid tax-free inventory for use by the purchaser outside the state.

(C) Texas sales or use tax is not due on tangible personal property removed from a valid tax-free inventory that is totally destroyed or permanently disposed of by the purchaser in a manner other than for use or sale in the normal course of business: for example, documented theft, casualty damage or loss, or disposal in a landfill. This does not apply to consumable items that are completely used up or destroyed by the purchaser in the course of performing a service in this state.

(e) Acceptance of resale certificate.

(1) All gross receipts of a seller are presumed to be subject to sales or use tax. A seller may overcome this presumption by obtaining a properly completed resale or exemption certificate from the purchaser, subject to the limitations in paragraph (3) of this subsection. A copy of a purchaser's sales tax permit, or the use of a purchaser's permit number or tax number on an invoice, does not meet the requirements of a properly completed resale certificate. See also §3.287 of this title.

(2) A seller does not owe tax on a sale, lease, or rental of a taxable item if the seller accepts a properly completed resale certificate in good faith. A resale certificate is deemed to be accepted in good faith if:

(A) the resale certificate is accepted at or before the time of the transaction;

(B) the resale certificate is properly completed, meaning that all of the information required by either subsections (g) or (h) of this section, whichever is applicable, is legible, including the signature of the purchaser; and

(C) the seller does not know, and does not have reason to know, that the sale is not a sale for resale. It is the seller's responsibility to be familiar with this state's sales tax law as it applies to the seller's business and to take notice of the information provided by the purchaser on the resale certificate. For example, a jewelry seller should know that a resale certificate from a landscaping service is invalid because a landscaping service is not in the business of reselling jewelry.

(3) All resale certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business, or on the seller's records after the entrance conference, are subject to independent verification by the comptroller. All incomplete resale certificates will be disallowed regardless of when they were obtained.

(4) Written notice requesting the production of all resale certificates shall be given by the comptroller upon the filing by the seller of a petition for redetermination or claim for refund. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the resale certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any resale certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Resale certificates delivered after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title.

(5) A resale certificate is not required to be issued by a broker or dealer that buys and sells only raw commodities in bulk, such as natural gas, raw cotton bales, or raw aluminum, from producers or other commodity brokers or dealers solely for resale in the normal course of business. However, a properly completed resale certificate, absent a sales tax permit number, may be issued by the purchaser of such raw commodities even if the purchaser does not hold a sales and use tax permit provided the purchaser states that all of the sales of the listed commodities are solely for resale to customers in the normal course of business and the seller does not have actual knowledge that the statement is incorrect.

(6) Resale certificates are subject to the provisions of §3.281 of this title (relating to Records Required; Information Required). A seller is required to keep resale certificates for a minimum of four years from the date on which the resale certificate is made and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending. Resale certificates may be maintained by a seller in an electronic format, provided that the electronic documents must be unalterable.

(f) Blanket resale certificate. A blanket resale certificate describing the general nature of the taxable items purchased for resale may be issued to a seller by a purchaser who purchases items for resale. Each invoice from the seller must clearly identify the taxable items purchased tax-free for resale under the blanket resale certificate and must be attached, or refer directly, to the blanket resale certificate. Items purchased for resale under the blanket resale certificate cannot be billed on the same invoice as other taxable purchases. A seller may rely on a blanket resale certificate until the certificate is revoked in writing by the issuer or no longer states a valid basis for exemption due to a change in the law.

(g) Content and form of resale certificates.

(1) Contents of a resale certificate. A properly completed resale certificate must contain:

(A) the name and address of the purchaser;

(B) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1 or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (h)(2)(E) of this section;

(C) a description of the taxable items generally sold, leased, or rented by the purchaser in the normal course of business and a description of the taxable items to be purchased tax-free by use of the resale certificate. The item to be purchased may be generally described on the resale certificate or itemized in an order or invoice attached to the resale certificate;

(D) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller;

(E) the date of sale; and

(F) the name and address of the seller.

(2) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. Copies of both certificates are available online at http://window.state.tx.us/taxinfo/taxforms/ or may be obtained by calling the comptroller's toll-free number 1-800-252-5555. A seller may also accept as a resale certificate the Uniform Sales and Use Tax Certificate-Multijurisdiction promulgated by the Multistate Tax Commission and available online at http://www.mtc.gov. The Streamlined Sales and Use Tax Agreement Certificate of Exemption may not be accepted as a resale certificate.

(h) Resale certificates issued by purchasers outside Texas.

(1) Acceptance of resale certificates from purchasers outside of Texas.

(A) A seller in Texas may accept a properly completed resale certificate in lieu of tax from an out-of-state purchaser engaged in business within the United States who makes purchases that constitute sales for resale.

(B) A properly completed resale certificate may be accepted from an out-of-state purchaser even if the Texas seller ships or delivers the taxable item directly to a recipient located inside Texas at the direction of the out-of-state purchaser. The Texas seller is not responsible for determining whether the out-of-state purchaser is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(2) Content of resale certificates. A properly completed resale certificate obtained from an out-of-state purchaser must contain:

(A) the name and address of both the seller and the purchaser;

(B) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller;

(C) the date of sale;

(D) the state in which the purchaser intends to resell the taxable item;

(E) the sales tax permit number, if any, or the registration number assigned to the purchaser by the state in which the purchaser is authorized to do business or a statement that the purchaser is not required to be permitted or registered in the state in which the purchaser is authorized to do business;

(F) as an attachment, an invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold; and

(G) the type business engaged in by the purchaser, the type items sold in the purchaser's normal course of business, and the taxable items to be purchased tax-free by use of the resale certificate.

(3) A resale certificate obtained from a Mexican purchaser must contain, in addition to the requirements in paragraph (2) of this subsection, the purchaser's Federal Taxpayers Registry (RFC) identification number for Mexico. The purchaser must also give a copy of their Mexican Registration Form to the Texas seller.

(4) Foreign purchasers other than purchasers from Mexico, including purchasers from Canada, may issue a properly completed resale certificate, as described in paragraph (2) of this subsection, in lieu of paying tax on the purchase of taxable items delivered or shipped to a location outside of this state but within the territorial limits of the United States. However, a foreign purchaser cannot issue a resale certificate for taxable items purchased for resale outside of the territorial limits of the United States. For items to be exported outside the territorial limits of the United States, see subsection (b)(4) of this section.

(i) Out-of-state or foreign purchasers. An out-of-state or foreign purchaser who acquires goods or services from a Texas seller for resale in Texas should refer to §3.286 of this title.

(j) Improper use of a resale certificate; criminal offenses.

(1) A resale certificate may only be signed by a purchaser at the time of purchase if the purchaser intends to resell, lease, or rent the taxable item, or transfer the taxable item as an integral part of a taxable service, in the normal course of business. A purchaser may not issue a resale certificate at the time of purchase for a taxable item if the purchaser knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense. For more information, see §3.305 of this title (relating to Criminal Offenses and Penalties).

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404897
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

34 TAC §3.292

The Comptroller of Public Accounts proposes amendments to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property. The proposed amendments delete information in current subsections (a)(8) and (i) relating to the repair, remodeling, maintenance, and restoration of aircraft because this information is being included in new §3.280 (relating to Aircraft). The proposed amendments also update information relating to vessels to better distinguish between services provided on noncommercial vessels, which are covered by this section, and services provided on commercial vessels, which are being included in new §3.297 (relating to Carriers, Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

Subsection (a) is amended to add definitions for several terms which appear in the current section but are not expressly de-

fined therein. These include "care of tangible personal property," "control of tangible personal property," and "custody of tangible personal property," which are defined in paragraphs (1), (4), and (5) by reference to §3.285 of this title (relating to Resale Certificate; Sales for Resale). The definitions provided in §3.285 follow Sharp v. Clearview Cable TV, Inc., 960 S.W.2d 424 (Tex. App.--Austin 1998, pet. denied) and several Comptroller's Decisions interpreting that case, including Comptroller's Decision Nos. 100,294 (2012), 43,728 (2004), and 41,730 (2004). New subsection (a)(3) is added to define the term "consumable supplies." The proposed definition is intended to provide guidance and assist taxpayers in distinguishing between materials that are transferred to the customer as part of the provision of a service and materials that are consumed by a service provider when repairing, remodeling, maintaining, or restoring the tangible personal property of another. Paragraphs (7), (10), and (11) are added to memorialize longstanding agency policy that the terms "fabrication," "processing," and "remodeling" have the same meaning for the purposes of this section as the meaning given those terms in §3.300 (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). New subsection (a)(13) is added to define the term "restore" in accordance with previous comptroller guidance. See, for example, Comptroller's Decision No. 28,052 (1992) (defining restoration as "the bringing back to its original condition property which had faded, declined, or deteriorated"). New subsection (a)(16), defining the term "vessel," references the definition of the term in new §3.297 of this title. Finally, subsection (a)(17) is added to define the term "warrantor" in accordance with the commonly-understood meaning of the term. The existing definitions are renumbered as appropriate.

Subsection (a)(2), previously subsection (a)(1), defining the term "commercial vessel," is amended to cross-reference new §3.297.

Subsection (a)(6), formerly subsection (a)(2), defining the term "extended warranty or service policy," is amended to define the term "extended warranty or service contract." The definition is further amended to clarify that it describes both contracts sold to purchasers for an amount in addition to the charge for the underlying tangible personal property and contracts sold to owners of tangible personal property.

Subsection (a)(8) (formerly subsection (a)(3)), defining the term "maintenance," and subsection (a)(12) (formerly subsection (a)(6)), defining the term "repair," are amended to clarify that the terms refer to work done on tangible personal property belonging to another. Subsection (a)(9), formerly subsection (a)(4), defining the term "manufacturer's written warranty," is amended to clarify that, for purposes of this section, the term refers to a warranty provided at no additional charge to the purchaser of the tangible personal property. Subsection (a)(15), formerly subsection (a)(7), defining the term "service provider," is amended to clarify that the term applies to a person who repairs, remodels, maintains, or restores tangible personal property belonging to another. Subsection (a)(14) is added to define the term "service policy." Although a service policy is treated the same as an extended warranty or service contract, this definition is added to address circumstances in which the purchaser of the policy is not the original purchaser of the tangible personal property. A service policy may be sold at any point after purchase of the tangible personal property, and the policy is effective without regard to a manufacturer's warranty.

Subsection (b), which explains the basic rules of taxability in the context of the repair, remodeling, maintenance, and restoration of tangible personal property, is amended to provide paragraph headings throughout the section to assist taxpayers in locating information. New subsection (b)(1) is added to draw emphasis to information that was previously provided at subsection (b). The subsection also includes a cross-reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties).

Subparagraphs (A), (B), and (C) are added to subsection (b)(1) to address, respectively, the taxability of services related to aircraft, motor vehicles, and commercial vessels, locomotives, and rolling stock. Subparagraph (D) is also added to address the taxability of services performed on tax-exempt equipment. The information contained in new subsection (b)(1)(D) was previously provided in subsection (g). All of former subsection (g) was reincorporated into subsection (b)(1)(D), except for former subsection (g)(2)(F), concerning timber operations. This subsection became inapplicable as of January 1, 2008, pursuant to Tax Code, §151.3162(d), when the exemption in Tax Code, §151.3162(b) became effective.

Former subsection (b)(1) is deleted because the information currently provided in this paragraph is stated more clearly in the new subsection (b)(1). Subsection (b)(2) is amended for clarity and to include a cross reference to §3.285 of this title. Subsection (b)(3) and (4) are also amended to improve clarity and readability and to include cross references to §3.285 of this title, §3.287 of this title (relating to Exemption Certificates), and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

The heading of subsection (c) is amended to clarify that the subsection addresses the taxability of tools as well as consumable supplies and equipment. The subsection is further amended to clarify that a service provider owes sales or use tax on those consumable supplies, tools, and equipment that are not both integral to the performance of the service and transferred to the care, custody, and control of the purchaser of the service.

Taken together, subsection (b)(2) and subsection (c), as amended, more accurately state the two-part test that must be met before a provider of taxable services can purchase tangible personal property for resale. They give effect to Tax Code, §151.006(a)(1) and §151.302(b).

Subsection (d), which addresses taxability issues that arise in the context of repairs made under warranty, is reorganized for clarity. The heading of the subsection is changed from "Repairs under warranties," to "warranties," and the first paragraph is amended to refer taxpayers with questions about the repair of motor vehicles and aircraft to §3.290 and §3.280 of this title, respectively. Subsection (d)(1) is amended to improve readability.

Subsection (d)(2) is amended for clarity and to use certain defined terms, such as "extended warranty or service contract," "service policy," and "warrantor." New subsection (d)(2)(E) explains longstanding policy concerning the taxability of charges for parts and labor not covered by a warranty. This information is currently provided at §3.292(d)(2)(D).

New subsection (d)(3) is added to reflect longstanding agency policy as to what happens when tangible personal property is replaced or taken in trade under the terms of a warranty rather than repaired, remodeled, or restored. New subsection (d)(4) is added to memorialize previous agency guidance regarding

goodwill repairs performed on tangible personal property. See, for example, STAR Accession No. 200105224L (May 17, 2001).

Subsections (e) and (f) are amended for clarity and readability. No substantive change to policy is intended as a result of these changes.

The information previously provided in subsection (g) concerning services performed on exempt tangible personal property is moved to new subsection (b)(1)(D). New subsection (g), formerly subsection (h), is amended for clarity and readability. In addition, subsection (g)(3)(B) is amended to correct the cross reference to federal authority that allows the President of the United States to declare a disaster area.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by enhancing the rule's readability, providing clarity and guidance to taxpayers with respect to several defined terms, and memorializing longstanding agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§151.006 (Sale for Resale), 151.0101(a)(5) (Taxable Services), 151.058 (Property Used to Provide Taxable Services and Sale Price of Taxable Services), 151.151 (Resale Certificate), 151.302 (Sales for Resale), 151.3111 (Services on Certain Exempted Personal Property), and 151.331 (Rolling Stock; Train Fuel and Supplies).

§3.292. Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

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

(1) Care of tangible personal property--This term has the meaning given in §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) [(1)] Commercial vessel--This term has the meaning given in §3.297 of this title (relating to Carriers, Vessels, Locomotives and Rolling Stock, and Motor Vehicles)[A ship of eight or more tons displacement that is used exclusively in a commercial enterprise including commercial fishing, but excludes any ship used for sports fishing or pleasure].

(3) Consumable supplies--Nondurable tangible personal property used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another that is not transferred into the care, custody, and control of the purchaser of the service, and that, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment, solvents used to clean equipment parts, and grit used for sandblasting.

(4) Control of tangible personal property--This term has the meaning given in §3.285 of this title.

(5) Custody of tangible personal property--This term has the meaning given in §3.285 of this title.

(6) [(2)] Extended warranty or service contract--A [policy--This] contract that is sold to the purchaser [buyer] of tangible personal property [the product] for an [additional] amount in addition to the charge for the tangible personal property, or that is sold to an owner of tangible personal property, to extend the terms of the manufacturer's written warranty or provide a warranty in addition to or in place of the manufacturer's written warranty, the [. The] provisions of which may [the contract] become effective after the manufacturer's written warranty, if any, expires.

(7) Fabrication--This term has the meaning given in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(8) [(3)] Maintenance--All work performed on operational and functioning tangible personal property belonging to another that is necessary to sustain or support safe, efficient, continuous operations, or to keep the tangible personal property in good working order by preventing [the] decline, failure, lapse, or deterioration [of tangible personal property].

(9) [(4)] Manufacturer's written warranty--A guarantee by the manufacturer, provided at no additional charge to the purchaser of tangible personal property, that the item is operable [product] at the time of sale [is operable] and will remain operable for a specified period of time [The manufacturer's warranty is provided without additional cost to the buyer].

(10) Processing--This term has the meaning given in §3.300 of this title.

(11) Remodeling--This term has the meaning given in §3.300 of this title.

[(5) Remodel--To modify the style, shape, or form of tangible personal property belonging to another without causing a loss of its identity or without causing the item to operate in a new or different manner.]

(12) [(6)] Repair--To mend or restore to working order or operating condition tangible personal property belonging to another that was broken, damaged, worn, defective, or malfunctioning.

(13) Restore--To return to or bring back into a former or original state tangible personal property belonging to another that is still operational and functional, but that has faded, declined, or deteriorated.

(14) Service policy--A contract sold for the repair, remodeling, maintenance, or restoration of tangible personal property. The provisions of the policy are effective without regard to any manufacturer's warranty.

(15) [(7)] Service provider--A [Repairman--Any] person who repairs, remodels, maintains, or[, under either lump-sum or separated contracts,] restores tangible personal property belonging to another[, repairs, performs maintenance services, or replaces a component of an inoperable or malfunctioning item].

(16) Vessel--This term has the meaning given in §3.297 of this title.

(17) Warrantor--A person who has a contractual obligation to repair, remodel, maintain, or restore tangible personal property belonging to another.

[(8) Private aircraft--An aircraft that is operated or used for a purpose other than as a certificated carrier of persons or property or by a flight school for the purpose of training pilots. Persons repairing aircraft belonging to or operated by a certificated carrier of persons or property or flight schools should refer to §3.297 of this title (relating to Carriers).]

(b) Taxability of services [Services] to repair, remodel, maintain, or restore tangible personal property [other than aircraft, commercial vessels, and motor vehicles].

(1) General rule. Subject to the exceptions identified in this section, service providers [Persons] who repair, [restore,] remodel, [or] maintain, or restore tangible personal property belonging to another are providing taxable services covered by this section. A service provider is a retailer and must obtain a sales and use tax permit and collect sales or use tax from the purchaser of the service on the entire charge for a taxable service, including any charge for materials, parts, labor, consumable supplies, or equipment, and any charge connected to the repair, remodeling, restoration, or maintenance service, including separately stated charges for inspecting, monitoring, or testing. Fabrication, processing, inspecting, monitoring, and testing services that are not connected to the repair, remodeling, maintenance, or restoration of tangible personal property are not taxable. For more information, refer to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties). [Persons who remodel motor vehicles are also covered by this section.]

(A) Aircraft. Persons who repair, remodel, maintain, or restore [private] aircraft should refer to §3.280 of this title (relating to Aircraft) [subsection (i) of this section].

(B) Motor vehicles. Service providers who remodel motor vehicles are providing taxable services covered by this section. Persons who repair, maintain, or restore motor vehicles should refer to §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

(C) Commercial vessels, locomotives, and rolling stock. Persons who repair, remodel, maintain, or restore commercial vessels, locomotives, or rolling stock should refer to §3.297 of this title. Service providers who repair, remodel, maintain, or restore vessels other than commercial vessels, including a taxable boat or motor as defined by Tax Code, §160.001, are providing taxable services covered by this section.

(D) Exempt equipment. A service to repair, remodel, maintain, or restore tangible personal property that would be exempt under Tax Code, Chapter 151, if it were sold, leased, or rented at the time the service is performed, due to the nature of the property, its use, or a combination of its nature or use, is exempt from sales and use taxes. For more information, refer to Tax Code, §151.3111 (Services on Certain Exempted Personal Property). However, tax is due on services to repair, remodel, maintain, or restore tangible personal property that was exempt at the time of purchase but would not be exempt at the time the service is performed. For example, services to repair, remodel, maintain, or restore the following are taxable:

(i) tangible personal property purchased from an organization exempted by Tax Code, Chapter 151;

(ii) tangible personal property exempted from use tax because sales tax was paid on the purchase;

(iii) tangible personal property acquired tax-free in a transaction qualifying as an occasional sale under Tax Code, §151.304, or as a joint ownership transfer exempted under Tax Code, §151.306. See §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters); or

(iv) items purchased tax-free during a sales tax holiday as provided by §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes and School Supplies); or §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products).

[(1) A service provider is a retailer and must obtain a tax permit and collect sales or use tax on the entire charge for materials, parts, labor, consumable supplies, equipment, and any charges connected to the repair, remodeling, restoration, or maintenance service.]

(2) A service provider may issue a properly completed resale certificate instead of paying sales or use tax on the purchase of tangible personal property that is integral to performing the service and is [to the supplier when purchasing materials that will be] transferred to the care, custody, and control of the purchaser of the service. See §3.285 of this title [a customer].

(3) A service provider working [must collect sales or use tax on services (labor)] under an agreement that provides that the purchaser of the service [customer] will furnish the parts and materials required for the service must collect sales or use tax on the charge for the services [repair].

(4) A service provider may accept a properly completed [an] exemption certificate instead of collecting sales or use tax when performing a taxable service for a purchaser who is [customer] exempt from sales and use tax under Tax Code, Chapter 151 or when performing services [tax or] on an item that is exempt from tax[, see subsection (g) of this section]. Refer to §3.287 of this title (relating to Exemption Certificates). A person holding tangible personal property for sale, lease, or rental may issue a properly completed resale certificate in lieu of tax for labor and parts used to repair, remodel, maintain, or restore that tangible personal property. Refer to §3.285 of this title and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(c) Consumable supplies, tools, and equipment. Sales or use tax must be paid by the service provider on consumable supplies, tools, and equipment that are purchased for use in the performance of the service and [repair but that] are not both integral to the performance of the taxable service and transferred to the care, custody, and control of the purchaser of the service [customer].

(d) Warranties. For information on warranties for the repair of motor vehicles, refer to §3.290 of this title. For information concerning warranties for the repair of aircraft, refer to §3.280 of this title [Repairs under warranties].

(1) Manufacturer's written warranty or recall campaign [warranties]. No tax is due on parts or labor furnished by the manufacturer to repair tangible personal property under a manufacturer's written warranty or recall campaign.

(A) Records must be kept by the service provider to document that the service and parts were used in repairing an item under a manufacturer's written warranty or recall campaign.

(B) The service provider may purchase parts to be used in repairs under a manufacturer's written warranty or recall campaign tax-free by issuing an exemption certificate to the seller [supplier].

(2) Extended warranties, [and] service contracts, and service policies [for tangible personal property (motor vehicles and private aircraft see subsection (i)(4) of this section)].

(A) Tax is due on the sale of an extended warranty, service contract, or service policy [for the repair or maintenance of tangible personal property].

(B) The warrantor [person who warrants the item and is obligated to perform services under the terms of the agreement] may issue a resale certificate for parts or services [service] to be used in performing the [repair or maintenance] services covered by the contract, as long as the parts or service are integral to performing the service and the parts are also transferred to the care, custody, and control of the purchaser.

(C) If the warrantor [person obligated to perform the services] uses a third-party service provider [repairman] to perform the service [do the work], the third-party service provider [repairman] may accept a resale certificate from the warrantor in lieu of tax.

(D) The [repairman or] warrantor [performing the service] must collect tax on any charge to the purchaser [customer] for labor or parts not covered by the extended warranty, service contract, or service policy.

(E) If the warrantor uses a third-party service provider to fulfill the warranty and the service provider makes a charge for parts or labor not covered under the warranty, the service provider must collect tax on such a charge.

(3) Replacements and reimbursements.

(A) Trade-in. If the warrantor is a seller of tangible personal property, and if the terms of a warranty agreement provide for either the replacement or the repair, remodeling, maintenance, or restoration of tangible personal property, then tangible personal property accepted by the warrantor under the terms of the warranty in exchange for, or towards the purchase of, an item of the type sold by the warrantor in the regular course of business will be considered a trade-in. The provisions of Tax Code, §151.007(c)(5) apply to such a transaction and any amount or credit provided for the trade-in that reduces the taxable amount of the sale of the replacement item.

(B) A contract that provides that a warrantor will reimburse a purchaser for payments made to replace, repair, remodel, maintain, or restore faulty, damaged, lost, or stolen tangible personal property, including the amount of any sales and use tax, is not taxable. For example, if a purchaser uses a credit card to purchase an item and the terms of the contract between the purchaser and credit card company provide that the charge for any damaged items will be reimbursed by the credit card company, the amount reimbursed to the purchaser is not taxable.

(4) Goodwill repairs. A service provider does not owe tax on parts purchased for use in a repair performed on tangible personal property within seven calendar days of purchase pursuant to an implied warranty. A service provider otherwise owes tax on parts used in performing a repair on tangible personal property, even if the service provider does not charge the purchaser for the repair.

(e) Services performed on real property [Contractors and persons who perform real property repair and remodeling]. Persons who build new improvements to real property, or repair, restore, or remodel residential real property belonging to others, should refer to §3.291 of this title (relating to Contractors). Persons who repair or remodel nonresidential real property belonging to others, should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Fabricating or processing tangible personal property. Persons who fabricate or process tangible personal property belonging to [for] another should refer to §3.300 of this title [(relating to Manufacturing; Custom Manufacturing; Fabricating; Processing)].

[(g) Services performed on certain tangible personal property.]

[(1) Labor to repair, remodel, maintain, or restore certain tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under Tax Code, Chapter 151, because of the nature of the property, its use, or a combination of its nature or use is exempted from sales and use taxes.]

[(2) The exemption provided in paragraph (1) of this subsection does not apply to:]

[(A) tangible personal property sold by an organization exempted by Tax Code, Chapter 151;]

[(B) tangible personal property exempted from use tax because sales tax was paid on the purchase;]

[(C) tangible personal property acquired tax free in a transaction qualifying as an occasional sale under Tax Code, §151.304, or as a joint ownership transfer exempted under Tax Code, §151.306;]

[(D) taxable boat or motor defined by Tax Code, §160.001;]

[(E) clothing and footwear purchased tax-free during a sales tax holiday; or]

[(F) machinery and equipment used in timber operations.]

(g) [(h)] Exemption for [labor to repair tangible personal property in a] disaster areas [area].

(1) Labor to repair, restore, remodel, or maintain tangible personal property is exempt if:

(A) the amount of the charge for labor is separately stated from any charge for materials on the invoice, contract, or similar document provided by the service provider to the purchaser [itemized]; and

(B) the service is performed on tangible personal [repair is to] property that was damaged within a disaster area by the condition that caused the area to be declared a disaster area.

(2) The exemption does not apply to tangible personal property transferred from the service provider to the purchaser as part of the repair.

(3) In this subsection, "disaster area" means:

(A) an area declared a disaster area by the Governor of Texas under Government Code, Chapter 418 (Emergency Management); or

(B) an area declared a disaster area by the President of the United States under 42 United States Code, Chapter 68 (Disaster Relief) [§5141].

[(i) Responsibilities of repairman or remodelers of private aircraft.]

[(1) Responsibilities under a lump-sum contract.]

[(A) Labor to maintain, repair or remodel private aircraft is not taxable. A person maintaining, repairing or remodeling a

private aircraft for a lump-sum price is not a retailer of a taxable item and may not issue a resale certificate for parts or material used or consumed in such repair or remodel.]

[(B) Under a lump-sum contract, the repairman or remodeler is the ultimate consumer of consumable supplies, tools, equipment, and all materials incorporated into the private aircraft. The lump-sum repairman or remodeler must pay the tax to suppliers at the time of purchase. The repairman will not collect tax from customers on the lump-sum charge or any portion of the charge. Under this type of contract, the repairman will pay the tax on materials even when the property is repaired for an exempt customer.]

[(C) A lump-sum repairman may use materials from inventory that were originally purchased tax free by use of a resale certificate. In those instances, the repairman incurs a tax liability based upon the purchase price of the materials and must report and remit the tax to the comptroller.]

[(2) Responsibilities under a separated maintenance, repair or remodeling contract. Under a separated contract, the repairman of a private aircraft is a retailer and may issue a resale certificate in lieu of tax to suppliers for materials that will be incorporated into the private aircraft of the customer; the repairman must then collect tax from the customer on the agreed contract price of the materials, which must not be less than the amount the repairman paid to suppliers. The repairman must obtain a tax permit to be able to issue a resale certificate in lieu of tax when materials are purchased. The repairman may also use materials from inventory upon which tax was paid to the supplier at the time of purchase. In these instances, tax will be collected from the customer on the agreed contract price of the materials as if the materials had been purchased with a resale certificate; however, the repairman will remit tax to the comptroller only on the difference between the agreed contract price and the price paid to the supplier. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers). A repairman of private aircraft is the ultimate consumer of consumable supplies, tools, and equipment used that are not incorporated into the private aircraft being repaired. The repairman must pay tax to suppliers at the time of purchase. The repairman may not collect tax from customers on any charges for these items.]

[(3) Repairing jet turbine aircraft engines. Persons engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).]

[(4) Warranties.]

[(A) Manufacturer warranties. Manufacturer's warranties are treated in the same manner as those for tangible personal property (see subsection (d)(1) of this section).]

[(B) Extended warranties and service contracts. A repairman performing services under an extended warranty covering a private aircraft must collect tax on the parts as required under paragraph (2) of this subsection.]

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404898
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

34 TAC §3.297

(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 Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §3.297, concerning carriers. A new §3.297 is being proposed to reflect policy clarifications and to reorganize information to improve clarity and readability. In addition, all provisions in current §3.297 related to aircraft are being moved to new §3.280 of this title (relating to Aircraft).

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by accommodating the adoption of new rules that will provide improved clarity and organization. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal does not implement, but concerns, Tax Code, §§151.317(a)(7) (Gas and Electricity), 151.318(n) (Property Used in Manufacturing), 151.328 (Aircraft), 151.329 (Certain Ships and Ship Equipment), 151.330 (Interstate Shipments, Common Carriers, and Services Across State Lines, 151.331 (Rolling Stock; Train Fuel and Supplies), 151.3291 (Boats and Boat Motors) and 152.089 (Exempt Vehicles).

§3.297. Carriers.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404899
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

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34 TAC §3.297

The Comptroller of Public Accounts proposes new §3.297, concerning carriers, commercial vessels, locomotives and rolling stock, and motor vehicles. The new section replaces the current §3.297 of this title (relating to Carriers), which is being repealed to reflect policy clarifications and to reorganize information to improve clarity and readability. In addition, all provisions in current §3.297 related to aircraft are moved to new §3.280 of this title (relating to Aircraft).

Subsection (a) contains definitions of key terms used throughout this section. The definitions for the terms "carrier," "common carrier," "contract carrier," and "private carrier" in paragraphs (1), (5), (6), and (14) are derived from Comptroller's Decision Nos. 8,984 (1983) and 35,637 (2001). Paragraph (2), defining the term "carrier device" as a type or mode of transportation used by a carrier, is based on Comptroller's Decision No. 35,424 (2000).

The definition for the term "licensed and certificated carrier" in paragraph (7) is relocated from current §3.297, which is proposed for repeal, and is amended to clarify that letters of authorization and certificates of inspection or safety are not the appropriate documents for authorizing a person to operate as a common or contract carrier because these documents relate to the carrier device itself rather than a person's right to operate a carrier business. Paragraph (12) defining "operating exclusively in foreign or interstate coastal commerce" is also relocated from current §3.297.

Paragraphs (3), (4), (9), (17), (18), (19), and (21) define terms related to vessels. Paragraph (3) defines the term "Chapter 160 boat." This definition is adapted from the definition of the term "taxable boat" in §3.741 of this title (relating to Imposition and Collection of Tax). The definition is intended to make clear that a vessel that is 65 feet or less in length is subject to tax under Tax Code, Chapter 160, rather than Tax Code, Chapter 151. This definition also states that, for purposes of this section, the length of a vessel is measured from the tip of the bow in a straight line to the stern. This measurement is based upon Tax Code, Chapter 160, which defines the term "boat" by reference to Parks and Wildlife Code, §31.003(1), as revised by House Bill 1106, 83rd Legislature, 2013.

Paragraph (4) defines the term "commercial vessel" as a vessel that displaces eight or more tons of fresh water and is used exclusively and directly in a commercial or business enterprise. This definition is based on the language in Tax Code, §151.329 and §151.0101(a)(5)(B), current §3.292(a)(1) of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property), and STAR Accession No. 200206205L (June 24, 2002). Paragraph (9) defines the term "marine cargo container" using the definition memorialized in current §3.297, which is proposed for repeal. Paragraphs (17) and (18), defining the terms "sea stores" and "ship's stores," respectively, are based on the language in STAR Accession No. 9506L1352B01 (June 16, 1995). The definition for the term "stevedoring" in paragraph (19) is derived from Comptroller's Decision No. 28,365 (1992). The definition in paragraph (21) for the term "vessel" is adapted from Parks and Wildlife Code, §31.003(2), Comptroller's Decision Nos. 8,864 & 9034 (1980), and STAR Accession Nos. 7708T0083C10 (August 8, 1977) and 8906L0943C10 (June 7, 1989).

The terms "locomotive," "rolling stock," and "train" appear in Tax Code, §151.331(a) but are not defined therein. For purposes of this section, subsection (a)(8) defines the term "locomotive" as self-propelled railroad equipment consisting of one or more units powered by steam, electricity, or diesel electric designed to operate on stationary steel rails or electromagnetic guideways. The definition is derived, in part, from definitions in 49 Code of Federal Regulations §218.5 and §229.5. Paragraph (16) defines the term "rolling stock," in part, as a non-self-propelled unit of railroad equipment mounted on wheels designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways. This portion of the definition is derived from Comptroller's Decision No. 36,869 (2000) and 49 Code of Federal Regulations §215.5. "Rolling stock" is further defined to include self-propelled specialized roadway maintenance equipment and trackmobile rail car movers pursuant to Comptroller's Decision No. 21,658 (1988) and STAR Accession No. 9208L1190C01 (August 31, 1992). However, "rolling stock" is defined to exclude equipment mounted on steel rails that are used for intra-plant transportation that and are not part of or connected to traditional railroad. Examples include cranes operated on steel rails or tracks used to load or unload ships. See Reynolds Metals Co. v. Combs, 2009 Tex. App. LEXIS 2466 (Tex. App. Austin April 8, 2009 pet. denied). Finally, paragraph (20) provides a definition for the term "train" as one or more locomotives coupled to one or more units of rolling stock operated by a railroad that is based on the definition in 49 Code of Federal Regulations §220.5.

Paragraph (15) defines the term "railroad" based on the definition in 49 Code of Federal Regulations §229.5, and §220.5, and Comptroller's Decision Nos. 39,781 and 41,577 (2004). The term includes narrow gauge shortline railroads, such as tourist, historical, or amusement park railroads pursuant to Comptroller's Decision No. 36,869 (2000) and STAR Accession Nos. 7012L0782G14 (December 23, 1970) and 9003L0996A01 (March 30, 1990). The term is further defined to include private industrial railroads operated on steel rails connected directly to traditional railroad, but not private industrial railroads inside an installation not connected directly to traditional railroads pursuant to Comptroller's Decision Nos. 39,781 and 41,577 (2004).

Finally, several terms in subsection (a) are defined by reference to other sections of this title. Paragraph (10) defines the term "motor vehicle" by providing a cross-reference to the definition in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment). Paragraph (11) defines the term "normal course of business" by providing a cross-reference to the definition in §3.285 of this title (relating to Resale Certificate; Sales for Resale). Paragraph (13) defines the term "person" by providing a cross-reference to the definition in §3.286 of this title (concerning Seller's and Purchaser's Responsibilities, Including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Subsection (b) contains general rules of taxation applicable to all carriers and carrier devices. The language in this subsection is carried over from subsection (a)(3), (4), and (5) of current §3.297, which is proposed for repeal.

Subsection (c) contains specific rules of taxation relating to the sale and repair of vessels and their component parts. Paragraph (1) explains that boat sales or use tax is due on the sale or use of a Chapter 160 boat. Paragraph (1) expands upon the existing statement of comptroller policy in §3.297(b)(1), which is proposed for repeal, and adds additional language from Tax Code,

§151.3291 and §3.741 of this title (relating to the Imposition and Collection of Tax). Paragraph (2) explains that sales or use tax under Tax Code, Chapter 151, is due on the sale or use a vessel that is not a Chapter 160 boat. Paragraph (2) also explains that sales and use tax under Tax Code, Chapter 151, is due on each lease or rental of a vessel in this state, unless otherwise exempt, including the lease or rental of a Chapter 160 boat.

Paragraph (3), regarding the exemption from the limited sales and use tax for commercial vessels sold, leased, or rented by the builder of the vessel, is based upon current §3.297(b)(1).

Subsection (c)(4) sets forth the sales and use tax exemptions related to the operation and maintenance of commercial vessels. Subsection (c)(4)(A), concerning materials, equipment, and machinery that become component parts of a commercial vessel, is based on Tax Code, §151.329(1). The discussion in subsection (c)(4)(B) of the taxability of labor and materials used to repair, remodel, restore, maintain, or clean a commercial vessel, or a component part of a commercial vessel, is derived from current §3.297(b)(2), which is proposed for repeal. Additional language is added from Comptroller's Decision No. 12,354 (1982) (providing that equipment used to repair commercial vessels is not exempt) and STAR Accession Nos. 8609L0761F12 (September 16, 1986) and 200207233L (July 3, 2002) (exempting the cleaning of commercial vessels).

Paragraph (5), relating to vessels operating exclusively in foreign or interstate coastal commerce, is derived from current §3.297(b)(3), which is proposed for repeal. Paragraph (5)(D), concerning stevedoring services, is incorporated from current §3.297(b)(4).

Paragraph (6), concerning component parts is derived from current §3.297(b)(2)(B), with additional language added to memorialize prior comptroller guidance. See STAR Accession Nos. 9107T1125E10 (July 19, 1991) (setting-out what constitutes the attachment of a component part to a commercial vessel), 8706L0819B10 (June 1, 1987) (identifying navigation equipment as a component part), 9210L1197D11 (October 2, 1992) (listing long-line fishing gear, rigging equipment, turnbuckle, shackle, thimble, eye swivel, etc. as component parts), 201001518L (January 6, 2010) (including permanent coatings such as paint or varnish as a component part), and 8403T0557C14 (March 22, 1984) (stating that items required by federal or state law are component parts).

Subsection(c)(7) addresses the use of exemption certificates by owners and operators of vessels and provides a cross-reference to §3.287 of this title.

Subsection (d) contains specific rules of taxation relating to locomotives, rolling stock, railroad tracks. Paragraph (1), regarding the taxability of the sale, lease, rental, or use of locomotives and rolling stock, is incorporated from subsection (f)(1) of current §3.297, which is proposed for repeal. Paragraph (2), concerning the exemption of sales or use tax on the sale of labor and incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock, is based, in part, on language from Tax Code, §151.331 and §151.3111 and STAR Accession No. 9003L0996A01 (March 30, 1990). Paragraph (3), describing the exemption from tax for electricity, natural gas, and other fuels used or consumed in the repair, maintenance, or restoration of rolling stock, is incorporated from current §3.297(f)(3), with additional explanatory language derived from §3.295 of this title (relating to Natural Gas and Electricity).

Subsection (d)(4), relating to the exemption for the sale or use of supplies essential to the operation of locomotives and trains, is derived from current §3.297(f)(2), with additional language added to memorialize prior comptroller guidance. See Comptroller's Decision No. 33,003 (2000) (concerning federally required telecommunication and signaling devices or equipment), and STAR Accession Nos. 9202L1155C02 (February 1, 1992) (listing rails, ballast, cross ties, plates, spikes, bridges, and trestles as examples of essential supplies), 200002042L (February 11, 2000) (including roadbed moisture barriers as essential supplies), and 9003L0996A0 (March 30, 1990) and 9205L1169E01 (May 7, 1992) (stating that repairs, remodeling, maintenance, and restoration to nonessential structures that are improvements to real property, such as depots, are not exempt). Finally, paragraphs (5) and (6) outline the taxability of labor and incorporated materials used in both the new construction and the repair of railroad tracks and roadbeds pursuant to Comptroller's Decision No. 34,595 (1998) and STAR Accession Nos. 9112L1142C11 (December 11, 1991) and 9202L1155C02 (February 1, 1992).

Subsection (e) contains specific rules of taxation relating to motor vehicles. Paragraph (1) is incorporated from subsection (g) of current §3.297, which is proposed for repeal. Paragraph (2) is based on Tax Code, §151.010(a)(5)(C) and §3.290 of this title. Paragraph (3), regarding the taxability of repair parts purchased and affixed in this state to motor vehicles operated in interstate commerce, is based on Comptroller's Decision No. 9906 (1981) and STAR Accession No. 9609L1430D07 (September 30, 1996). Paragraph (4) is incorporated from current §3.297(a)(2).

Finally, subsection (f) refers taxpayers to §3.280 of this title for rules of taxation relating to aircraft.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the clarity and organization of the rule. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§151.0101 (Taxable Services), 151.329 (Certain Ships and Ship Equipment), 151.330 (Interstate Shipments, Common Carriers, and Services Across State Lines), 151.331 (Rolling Stock; Train Fuel and Supplies), 151.3291 (Boats and Boat Motors) and 152.089 (Exempt Vehicles).

§3.297. Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.

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

(1) Carrier--A common carrier or contract carrier, but not a private carrier.

(2) Carrier device--The type or mode of transportation used by a carrier to provide a service, for example, a vessel, train, motor vehicle, or pipeline.

(3) Chapter 160 boat--A vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern, that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors). The term does not include canoes, kayaks, rowboats, inflatable vessels, or other watercraft designed to be propelled by paddle, oar, or boat.

(4) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity involving the sale of a commodity, or the provision of a service, for the purpose of producing income and profit, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(5) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(6) Contract carrier--A person who provides to individual customers, pursuant to the terms of a bilateral agreement, the transportation of persons or property for compensation in the normal course of business.

(7) Licensed and certificated carrier--A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common or contract carrier. Letters of authorization and certificates of inspection or safety are not the appropriate documents for authorizing a person to operate as a common or contract carrier.

(8) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, or diesel electric, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled specialized roadway maintenance equipment or a self-propelled dual purpose roadway maintenance vehicle.

(9) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(10) Motor vehicle--This term has the meaning given in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

(11) Normal course of business--This term has the meaning given in §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(12) Operating exclusively in foreign or interstate coastal commerce--The transportation of goods or persons between a point in this state and a point in another state or foreign country. The term does not include trips between two points in this state or trips to and from this state and offshore areas or fishing areas on the high seas.

(13) Person--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

(14) Private carrier--A person, other than a common or contract carrier, who transports persons or property in the normal course of business, or who transports property for sale, lease, rent, or bailment when the person is the owner, lessee, or bailee of the property being transported.

(15) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas, without regard to whether the system uses new technologies not associated with traditional railroads;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails connected directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(16) Rolling stock--A non-self-propelled unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, gondolas, and non-self-propelled on-track railroad maintenance equipment.

(A) Rolling stock also includes:

(i) self-propelled specialized roadway maintenance equipment operated on traditional railroad tracks for the purpose of inspecting, maintaining, repairing, or constructing traditional railroad roadbeds and tracks; and

(ii) self-propelled dual-purpose railroad maintenance equipment designed for and to be operated primarily on traditional railroad tracks and used in conjunction with traditional railroad equipment. For example, trackmobile rail car movers used to move, position, or switch locomotives or rolling stock.

(B) Rolling stock does not include:

(i) locomotives; and

(ii) equipment mounted on stationary steel rails or tracks used for intra-plant transportation or other nontraditional railroad activities that are not part of, or connected to, a traditional railroad, such as cranes operated on steel rails or tracks used to load or unload ships.

(17) Sea stores--Tangible personal property loaded aboard a vessel necessary for the sustenance and maintenance of the vessel's passengers and crew during the vessel's voyage.

(18) Ship's stores--Tangible personal property loaded aboard a vessel necessary for the operation and maintenance of the vessel during its voyage.

(19) Stevedoring--The loading and unloading and stowing of cargo on vessels operating in foreign or interstate commerce while in port.

(20) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(21) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) General provisions.

(1) Taxable items brought into this state by a licensed and certificated carrier to be assembled into carrier devices are subject to use tax. For more information, see §3.346 of this title (relating to Use Tax).

(2) Sales tax is not due on the sale of tangible personal property in this state to a common carrier if the tangible personal property is shipped to a point outside this state using the purchasing carrier's facilities under a bill of lading and if the tangible personal property is to be used by the purchasing carrier in the conduct of its business as a common carrier outside this state.

(3) Sales and use tax is due on taxable items purchased, leased, or rented tax-free with a properly completed resale or exemption certificate under this section if the items are subsequently put to a use other than the one specified in the certificate. The tax due is based on either the original purchase price of the item or on the fair market rental value of the item for the period of time used pursuant to §3.285 of this title and §3.287 of this title (relating to Exemption Certificates).

(c) Vessels.

(1) Boat sales and use tax. The sale or use in this state of a Chapter 160 boat is subject to sales or use tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors), not Chapter 151 (Limited Sales, Excise, and Use Tax), even if the vessel meets the definition of a commercial vessel. See §3.741 of this title (relating to the Imposition and Collection of Tax) for information concerning the imposition of the boat and boat motor sales and use tax.

(2) Limited sales, excise, and use tax. The sale or use in this state of a vessel that is not a Chapter 160 boat is subject to limited sales and use tax pursuant to Tax Code, Chapter 151. The lease or rental in this state of any vessel, including a Chapter 160 boat, is subject to limited sales and use tax pursuant to Tax Code, Chapter 151 and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) Exempt sale or use by builder. Sales or use tax is not due on the sale, lease, or rental in this state of a commercial vessel by the builder of the vessel. This exemption applies only to the lease or rental of a commercial vessel that is also a Chapter 160 boat. This exemption does not apply to the sale of a commercial vessel that is also a Chapter 160 boat.

(4) Commercial vessels. Sales and use tax is not due on the sale or use of the following items in this state:

(A) the labor, materials, equipment, and machinery that enter into and become component parts of a commercial vessel, including a commercial vessel that is also a Chapter 160 boat; and

(B) the labor, parts, and materials used to repair, remodel, restore, renovate, convert, maintain, or clean a commercial vessel, including a commercial vessel that is also a Chapter 160 boat, or a component part of a commercial vessel. The exemption from tax in this paragraph does not apply to the purchase of machinery, equipment, tools, or other items that are used to perform the repair, remodeling, restoration, renovation, conversion, maintenance, or cleaning of a commercial vessel. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) for information about the implementation of sales and use tax on the repair, remodeling, maintenance, and restoration of a vessel that does not meet the definition of a commercial vessel.

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) Sales or use tax is not due on the sale or use of the following items in this state:

(i) the labor, materials, equipment, and machinery that enter into and become component parts of a vessel operating exclusively in foreign or interstate coastal commerce; and

(ii) materials and supplies, including ship's stores and sea stores, sold in this state to owners or operators of vessels operating exclusively in foreign or interstate coastal commerce for use and consumption in the operation and maintenance of such vessels.

(B) Operation of a vessel other than exclusively in foreign or interstate coastal commerce will result in the loss of the exemption provided by this subparagraph for the quarterly period in which the nonexempt operation occurs.

(C) Sales tax is due on taxable items sold in this state to passengers or individual seamen working on vessels operating exclusively in foreign or interstate coastal commerce.

(D) Stevedoring services. Sales or use tax is not due on materials and supplies, including, but not limited to, lumber, plywood, deck lathing, turnbuckles, and lashing shackles, purchased in this state by a person providing stevedoring services for a vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the vessel and are not removed before its departure.

(6) For purposes of this subsection, the term "component part" includes a marine cargo container and tangible personal property that is actually attached to, and becomes a part of, a vessel. Attached does not mean that an item must be permanently affixed to a vessel, but that the item is fastened to the vessel in such a manner that the item is considered to be a part of the vessel. For example, items such as radios, radar equipment, navigation equipment, wenches, long-line fishing gear, and rigging equipment (turnbuckle, shackle, thimble, and eye swivel) that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, are component parts even though the items can be removed without causing substantial damage to the item or to the vessel. Further, items that are required by federal or state law to be on board a vessel before the vessel can be put into operation, such as fire extinguishers, lifeboats, and lifejackets, that are secured in or lashed to the vessel are component parts of a vessel. The term "component part" does not include consumable supplies or items that are not attached to the vessel, such as bedding, linen, kitchenware, tables, chairs, ice, refrigerants for cooling systems, fuels or lubricants, first aid kits, tools, or polishes, waxes, glazes, or similar temporary

coatings, but does include permanent coatings such as paint or varnishes.

(7) Exemption certificate. A person claiming an exemption under this subsection must issue a properly completed exemption certificate to the seller that includes the title or position of the person issuing the certificate and the name of the vessel and, in the case of a sale of materials and supplies to the owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce, the foreign or interstate destination of the vessel. For more information regarding exemption certificates, refer to §3.287 of this title.

(d) Locomotives and rolling stock.

(1) Sales or use tax is not due on the sale, lease, rental, or use in this state of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale of labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock.

(3) Electricity, natural gas, and other fuels used or consumed in the repair, maintenance, or restoration of rolling stock in this state are totally exempt from, or are totally subject to, sales tax based upon the predominant use of the electricity, natural gas, or fuels consumed during the repair, maintenance, or restoration of the rolling stock.

(A) Electricity or natural gas used during a regular monthly billing period for both exempt and nonexempt purposes under a single meter is totally exempt or totally taxable based upon the predominant use of the natural gas or electricity from that meter. Predominant use is deemed to be over 50% of the total use from a single meter measured over a consecutive 12-month period.

(B) Persons claiming a sales tax exemption for the predominant use of electricity or natural gas through a single meter not dedicated exclusively for the repair, maintenance, or restoration of rolling stock or other nontaxable use must perform a utility study to establish the predominant exempt use and must issue a properly completed exemption certificate to the utility company stating that a valid and complete study has been performed which shows that more than 50% use of the natural gas or electricity is for the repair, maintenance, or restoration of rolling stock pursuant to Tax Code, §151.331(b). For guidance on performing a predominant use utility study, see §3.295(f) of this title (relating to Natural Gas and Electricity).

(4) Sales or use tax is not due on the sale or use in this state of fuel or supplies essential to the operation of locomotives and trains if required to comply with federal or state regulations. Examples include, but are not limited to, telecommunication and signaling devices or equipment, rails, ballast, roadbed moisture barriers, cross ties, plates, spikes, bridges, and trestles. The exemption in this paragraph does not extend to items used to construct, repair, remodel, or maintain improvements to real property, including, but not limited to, depots, maintenance facilities, loading facilities, and storage facilities. For more information, see §3.291 of this title (relating to Contractors) and §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(5) Sales or use tax is not due on the sale of labor and incorporated materials used in the construction of new railroad tracks and roadbeds. A contractor who purchases incorporated materials to perform new construction under a lump-sum contract that does not separately state the price for incorporated materials from the price for labor may issue a properly completed exemption certificate in lieu of sales tax when purchasing such materials. A contractor who has a sales and use tax permit and purchases incorporated materials to perform new construction under a separated contract that separately states the price for labor from the price for incorporated materials may issue a properly completed resale certificate in lieu of sales tax when purchasing such materials. The contractor must then receive a properly completed exemption certificate in lieu of sales tax from the contractor's customer for the incorporated materials. For more information, see §3.291 of this title.

(6) Sales or use tax is not due on the sale of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. The labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds is subject to sales and use tax as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title.

(A) A person who repairs, remodels, restores, or maintains existing railroad tracks and roadbeds under a lump-sum contract that does not separately state the price for incorporated materials from the price for labor is required to collect sales or use tax on the total amount charged to their customer. A person who has a sales and use tax permit may purchase the incorporated materials tax-free for resale by issuing a properly completed resale certificate to the seller of the materials pursuant to §3.285 of this title.

(B) A person who repairs, remodels, restores, or maintains existing railroad tracks and roadbeds under a separated contract that separately states the price for incorporated materials from the price for labor is required to collect tax from their customer on the separate charge for the labor and materials, unless the customer gives the service provider a properly completed exemption certificate in lieu of the sales tax for the incorporated materials pursuant to §3.287 of this title. Persons who have a sales and use tax permit may purchase the incorporated materials tax-free for resale by issuing a properly completed resale certificate to the seller of the materials pursuant to §3.285 of this title.

(e) Motor vehicles.

(1) The sale or use of a motor vehicle in this state is subject to tax pursuant to Tax Code, Chapter 152. For information relating to motor vehicles operated in interstate commerce, see Tax Code, §152.089 and §3.69 of this title (relating to Motor Vehicle Use Tax; Interstate Commerce; Motor Carriers).

(2) Sales and use tax is not due on the labor to repair a motor vehicle in this state. For more information, see §3.290 of this title.

(3) Sales tax is due on repair or replacement parts purchased in this state and affixed in this state to a motor vehicle, including motor vehicles operated in interstate commerce. For more information, see §3.290 of this title.

(4) Use tax is not due on repair or replacement parts acquired outside this state and affixed in this state to a self-propelled motor vehicle that is used by a common carrier that is a licensed and certificated carrier. Trailers, semitrailers, dollies, jeeps, stingers, auxiliary axles, and converter gears are not self-propelled motor vehicles. The exemption does not apply to items that are not repair or replacement parts, including but not limited to coolants, fluids, or lubricants, such as oil and grease.

(f) Aircraft. See §3.280 of this title (relating to Aircraft) for information about the taxation of aircraft, including aircraft owned or operated by a certificated or licensed carriers.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404900
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL
SUBCHAPTER E. REQUIREMENTS FOR DISPLAYING VEHICLE INSPECTION CERTIFICATE

37 TAC §§3.71 - 3.73, 3.76

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

The Texas Department of Public Safety (the department) proposes the repeals of §§3.71 - 3.73 and 3.76, concerning Requirements for Displaying Vehicle Inspection Certificate. The proposed repeals of §3.71 and §3.76 are necessary to eliminate language that is duplicative of language already contained in statute. Additionally, the repeals of §3.72 and §3.73 are filed simultaneously with proposed new §23.81 and §23.82 to implement the provisions of House Bill 2305, enacted by the 83rd Texas Legislature, and consolidate existing rules pertaining to vehicle inspection.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the public will be informed of new requirements concerning the vehicle inspection program, the rules will be updated to reflect all recent legislative changes, and reorganized to improve clarity of rules pertaining to vehicle inspection.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§3.71. Certain Registered Vehicles Exempt from Inspection.

§3.72. Acceptance of Out-of-State Vehicle Inspection Certificates.

§3.73. Movement of Uninspected Vehicles.

§3.76. Vehicles Displaying Dealer and Manufacturer's License.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404881
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER F. TEXAS REGISTERED VEHICLES NOT REQUIRING INSPECTION

37 TAC §3.91

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

The Texas Department of Public Safety (the department) proposes the repeal of §3.91, concerning NATO Agreement Vehicle Inspection Exemptions. Pursuant to Government Code, §2001.039, the department reviewed this subchapter and determined the repeal of this section is necessitated by House Bill 2305, enacted by the 83rd Texas Legislature, which renders the language of this rule unnecessary.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that the rules will be updated to reflect recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), §2001.039 and Texas Transportation Code, §548.002 are affected by this proposal.

§3.91. NATO Agreement Vehicle Inspection Exemptions.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404882
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

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SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §§3.141 - 3.145, 3.147 - 3.150

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

The Texas Department of Public Safety (the department) proposes the repeal of §§3.141 - 3.145 and 3.147 - 3.150, concerning Protection of State Buildings and Grounds. Pursuant to Government Code, §2001.039, the department reviewed this subchapter and determined the reasons for initially adopting this subchapter continue to exist. The repeal of this subchapter is filed simultaneously with proposed new §§8.1 - 8.6 and 8.8 - 8.11. These sections are being repealed and proposed as new to more clearly identify the purpose of the sections. In addition, the sections have been amended in form, style, wording, and organization to improve clarity and readability.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be that the rules will be updated to reflect all department structural changes and reorganized to improve clarity of rules pertaining to the Capitol Complex.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Commander Jose Ortiz, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to

adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3); §411.062; and §2001.039 are affected by this proposal.

§3.141. General.

§3.142. Use of Capitol Rotunda and Grounds.

§3.143. Access to State Buildings.

§3.144. Emergency Evaluations.

§3.145. Fire and Safety Inspection.

§3.147. Solicitation in State Buildings.

§3.148. Key and Locksmith Services.

§3.149. Access to General Services Areas in State Buildings.

§3.150. Security of State Office Buildings.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404861
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

CHAPTER 8. CAPITOL COMPLEX

SUBCHAPTER A. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §§8.1 - 8.6, 8.8 - 8.11

The Texas Department of Public Safety (the department) proposes new §§8.1 - 8.6 and 8.8 - 8.11, concerning Protection of State Buildings and Grounds. These new sections are filed simultaneously with the repeal of §§3.141 - 3.145 and 3.147 - 3.150. These sections were reviewed pursuant to Government Code, §2001.039. During this review, the department determined the reasons for initially adopting these sections continue to exist. These sections are being proposed as new to more clearly identify the purpose of the sections. In addition, the sections have been amended in form, style, wording, and organization to improve clarity and readability.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five years the proposal is in effect, there will be a fiscal implication for state government, but no fiscal implication for local government or local economies. If state agencies bear the cost of a new electronic security access card issuance and replacements, an annual fiscal impact of $70,760 is estimated. Thirty-seven (37) agencies currently supply their own access card stock, but do not supply corresponding materials required for issuance of new or replacement cards. The proposed amendments would eliminate the need for the participating state agencies to provide their own access card stock. This estimate assumes the department will supply all electronic security access cards and corresponding print materials to ensure uniformity in security specifications for security cards processed by the department. We are unable to determine if state agencies will pass along the cost of lost or damaged replacement cards to state employees and/or contractors. If the cost for lost cards is passed down to employees or contractors, the fiscal impact to state agencies will be partially reduced.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the rules will be updated to reflect all department structural changes and reorganized to improve clarity of rules pertaining to the Capitol Complex.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Commander Jose Ortiz, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3); §411.062; and §2001.039 are affected by this proposal.

§8.1. General.

(a) Under the authority of Texas Government Code, §§411.061 - 411.067, the department is authorized to protect the grounds, public buildings, and property of the state, to regulate parking, and to control entrance to state-owned buildings; and to regulate displays and other public use of state buildings.

(b) The department has designated Region 7 as the primary unit responsible for carrying out its responsibilities in the Capitol Complex.

(c) Within the Capitol Complex, the department will strive to provide a safe work environment for state officials and employees; to protect the grounds, public buildings, and property of the state; to regulate parking; to regulate entrance to and public use of state-owned buildings; and to investigate criminal activity occurring in these locations.

(d) These rules shall be applicable to state buildings and property within the Capitol Complex.

(e) The provisions of these rules pertaining to public buildings and grounds do not apply to buildings and grounds of:

(1) institutions of higher education, as defined by the Texas Education Code, §61.003, as amended;

(2) state agencies to which control has been specifically committed by law; and

(3) state agencies that have demonstrated ability and competence to maintain and control their buildings and grounds and to which the commission has delegated that authority.

§8.2. Definitions.

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

(1) Board--The State Preservation Board.

(2) Buildings and state buildings--State-owned buildings and property within the Capitol Complex.

(3) Capitol Complex--Property located in Austin, Texas, to the extent the property is owned by or under the control of the state; bounded on the north by the inside curb of Martin Luther King, Jr. Boulevard, on the east by the outside curb of Trinity Street, on the south by the outside curb of 10th Street, and on the west by the outside curb of Lavaca Street; the William P. Clements State Office Building located at 300 West 15th Street; and other locations under the jurisdiction of the Texas Department of Public Safety as may be approved by the director.

(4) Commission--The Texas Facilities Commission.

(5) Department--The Texas Department of Public Safety.

(6) Director--The director of the Texas Department of Public Safety.

(7) Electronic security access card--An electronic security access card issued by the Texas Department of Public Safety or other authorized state agency.

(8) Park or parking--To stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers.

(9) Region 7--Members of the Deputy Director's Special Staff, to include uniformed and non-uniformed, commissioned and non-commissioned employees of the Texas Department of Public Safety.

(10) Stand or standing--To halt an occupied or unoccupied vehicle, other than temporarily while receiving or discharging passengers.

§8.3. Use of Capitol Rotunda and Grounds.

(a) Public use of the Capitol Building, the Capitol Extension, the Capitol Grounds, and the Old General Land Office Building is governed by rules promulgated by the board.

(b) Members of Region 7 are hereby authorized to enforce those rules adopted by the board.

(c) Members of Region 7 will provide protective and security services to the Capitol Building, the Capitol Extension, the Capitol Grounds, and the Old General Land Office Building.

§8.4. Access to State Buildings.

(a) Public access. Public access to state buildings is generally unlimited. However, nothing in this chapter shall be understood as permitting the use of any public building, in any manner whatsoever, when such use is for a commercial purpose.

(b) Admission to state buildings. The public portions of state buildings are generally open to the public at all times, with the general exception of Saturdays, Sundays, state holidays, and from 6 p.m. to 7 a.m. on working days. Access to state buildings during the times they are not open to the public shall be by building pass card, electronic security access card, special permission, or emergency admission.

(1) Building pass cards and electronic security access cards. The chief executive of each agency, in the state building referenced in this subsection, shall be responsible for the control of building pass cards and electronic security access cards issued for their agency. The chief executive may delegate this responsibility to another person(s) in the agency, provided that the Capitol Regional Command Office is notified in writing of the name(s) with a sample of designees' signatures. Agency designees may not appoint other agency designees.

(2) Card application. Applications for such cards must be signed by the agency designee and completed by the employee. The employee will submit the application in person; or the agency designee may submit electronically through the designees approved and authorized state email address to the Capitol Regional Command Office for issuance. No card will be issued unless the application is complete and signed by the agency designee or submitted through the approved state email address on file for the designee. An employee may have both a building pass card and an electronic security access card. When this occurs, separate applications will be required. The electronic security access card is not a building pass card and will not be accepted in any other location other than the location for which it was issued.

(3) Agency designee. It is the responsibility of the agency designee to notify the Capitol Regional Command Office immediately of any termination of the employee. The agency designee shall return the employee's cards to the Capitol Regional Command Office.

(4) Special permission. Special permission is communicated by an appropriate public official or his representative to the Capitol Regional Command Office specifically approving one-time admission to a named individual. Such authorization should be in writing.

(5) Emergency admission. Emergency admission is solely within the discretion of the officer on duty, and such officer must accompany the admitted individual at all times while he or she is in the building.

(6) Recovery of costs for access cards. The department may recover the cost of materials and services rendered for the issuance of a new or replacement electronic security access card.

(c) Building register (admission log). A building register for each building shall be kept for the times it is closed to the public, and each person entering the building, except those entering with an elec-

tronic security access card, must complete the information called for in the register.

§8.5. Emergency Evacuation.

(a) Evacuation order. The commander of the Capitol Regional Command Office, or the ranking department officer on duty, may order evacuation of all or any part of the Capitol Building or other state buildings in the event of a fire, bomb threat, or any other threat to life and/or property. In the event of a potentially harmful situation at the Capitol Building which does not pose an imminent threat to the health or safety of the occupants and visitors nor to the buildings or grounds themselves, the department shall inform the board and take such action as approved by the board.

(b) Floor managers. A floor manager shall be appointed for each floor in each state building in the Capitol Complex. Occupying state agencies shall make their appointments in cooperation with the department and with other agencies and these floor managers shall assist the department in clearing the buildings during emergency evacuations.

(c) Use of elevators. No elevators shall be used during an emergency evacuation except to transfer handicapped persons from areas to be evacuated to places of safety and only then with the approval of a member of the department or a fire official.

(d) Evacuation of building floors. No one shall be allowed on floors to be evacuated during the period of the threat except department officers, floor managers, and duly authorized peace officers and firemen.

(e) Readmission to evacuated areas. A department officer shall give the all-clear signal and permit readmission to the evacuated areas only when the threat has passed.

(f) Notification. In all instances enumerated in subsection (a) of this section, the Fire and Safety Office of the State Preservation Board will immediately be notified by the Capitol Regional Command Office and should be represented at the scene.

§8.6. Fire and Safety Inspection.

Members of the department will continually be alert for conditions constituting fire or safety hazards. When such conditions are discovered, a written report will be made and a copy will be forwarded to the appropriate section of the commission. In areas under the jurisdiction of the Capitol fire marshal and State Preservation Board, such reports will also be forwarded to those entities.

§8.8. Solicitation in State Buildings.

(a) No individual, corporation, association, or organization may be permitted in state buildings for the purpose of:

(1) selling, or offering for sale, any real property, goods, or services; or

(2) soliciting gifts of money, or gifts of property, without regard to the charitable nature of such gifts, or the method of solicitation.

(b) Nothing in this section shall be understood to prohibit any agency head from authorizing any or all of the acts in subsection (a) of this section within the confines of that agency's space in state buildings.

(c) The placing or distributing of advertising literature, material, placards, banners, posters, etc., in state buildings is limited to the common areas, such as lobbies, and other areas as designated by the agency head, within the confines of that agency's space in state buildings. The activities described in this subsection shall not be conducted in a manner which disturbs or disrupts work activity or which compromises security of employees, visitors, or state property. Such activities may be conducted only during the times specified in §8.4(b) of this title (relating to Access to State Buildings).

(d) The activities prohibited in subsections (a) and (c) of this section are also prohibited on state parking lots and in state parking garages. Literature may be distributed at the entrances or exits to such facilities if the activity does not impede vehicular or pedestrian traffic.

(e) A state-sponsored fund raising event for a charitable organization may be approved under the circumstances detailed in this subsection.

(1) The charitable organization must have tax-exempt status with the Internal Revenue Service and/or the state comptroller.

(2) The event must be approved by the executive director of each agency housed within the building.

(3) All proceeds from the event must go to the charitable organization.

(4) The event must be organized, directed, and staffed by state employees only.

(5) No commercial advertisements may be displayed.

§8.9. Key and Locksmith Services.

(a) Provisions. The provisions of this section are designed to promote the care, protection, and security of the state buildings in the Capitol Complex. The department shall be responsible for administering the provisions of this section.

(b) Authority. Only the director and/or the commander of the Capitol Regional Command Office shall have the authority to duplicate keys or perform locksmith services for the doors of the state buildings referenced in subsection (a) of this section. In emergency situations such as fire or medical emergencies, it is imperative that department personnel have immediate access to all buildings and offices within the Capitol Complex.

(c) Control of interior door keys. The chief executive of each agency in the state buildings referenced in subsection (a) of this section shall be responsible for the control of interior door keys to the space assigned the agency. The chief executive may delegate this responsibility to another person(s) in the agency, provided that the Capitol Regional Command Office is notified in writing of the names of such designees. Agency key designees may not appoint other agency key designees.

(d) Requesting duplicate door keys. Any key designee needing duplicate door keys should notify the commander of the Capitol Regional Command Office, or his designee, of the request, indicating the building, room number, key number, and the number of keys required.

(e) Receipt of keys. The elected official or state agency chief executive officer or his or her respective designee may obtain the keys requested either for a door re-key or duplication of keys by signing a department service order indicating by his or her signature he or she has received the keys.

(f) Returning keys. Any and all keys issued to an elected official, state agency chief executive, or his or her respective employees must be returned to the Capitol Regional Command Office upon his or her termination of service to the state or upon termination of employment.

(g) Installation and maintenance of locking hardware. Service for the installation and maintenance of all locking hardware must be obtained through the commission. Installation of new or additional locking hardware must be compatible to and capable of being placed

under the department grand master and control system and must be coordinated through the department.

(h) Construction. All construction which involves adding, relocating, removing, or in any way modifying locking hardware that is in a facility that is under the jurisdiction of the department must be coordinated through the department and must be compatible to and capable of being placed under the department grand master and control system.

(i) Master keys. Master keys of any level may only be issued by the authority of the director and/or the commander of the Capitol Regional Command Office. Any request for a master key must be submitted in writing indicating the reasons for the request and must be signed by the elected official or the chief executive officer of the agency.

(j) Building entrance door keys. Building entrance door keys may only be issued by the authority of the director and/or the commander of the Capitol Regional Command Office. Any request for a building entrance door key must be submitted in writing indicating the reasons for the request and must be signed by the elected official or the chief executive officer of the agency.

(k) Charge for services. A fee may be charged to recover the cost of services rendered. Said fee to be established by the chief fiscal officer of the department and approved by the director.

§8.10. Access to General Services Areas in State Buildings.

(a) Persons other than commission employees requiring access to space assigned to the Buildings and Property Services Division of the commission (mechanical rooms, electrical equipment rooms, telephone rooms, mechanical chases, data closets, and roofs of buildings) in the state buildings under their care and control shall submit their requests, in writing, to the director of the commission.

(b) Upon written approval from the director of the commission, the department will notify the chief executive of the affected agency before approving and providing access as approved by the commander or his designee of the Capitol Regional Command Office.

§8.11. Security of State Office Buildings.

(a) The department is authorized to conduct security surveys of state-owned buildings to determine the need for security equipment and on-site security personnel. If it is determined that a need exists, these services may be provided if funding is available. The regulations detailed in this section will apply to security devices and personnel.

(1) Video security systems. In order to meet legal requirements pertaining to chain of custody of evidence, all video security systems located in public or common access areas (exterior doors, lobbies, loading docks, etc.) will be under the control of the department.

(2) Electronic security access. Electronic security access systems installed on exterior and interior building doors must be approved by, and in the case of exterior building doors controlled by the computer security system of the department. Capitol visitor screening equipment (x-ray machines and metal detector units) will be under the control of the department.

(3) Security personnel. When a verified need exists for on-site security personnel in a state-owned building, the department is authorized to assign its personnel to the location or after receiving a written request from the chief executive of the agency requesting security services, the department shall assist with developing a contract with a private security agency to provide the personnel. In order to ensure fair and equitable security for all agencies housed in a building, all contracts for private security personnel in a state building must be approved by the department.

(4) Funding. If the department does not have funds to provide services or equipment under this section, other state agencies may enter into interagency contracts to reimburse the department for such costs.

(b) Any unattended containers large enough to contain explosive devices are subject to searches by department security personnel.

(c) The provisions of this section do not apply to buildings and grounds which fall under the provisions of §8.1(e) of this title (relating to General).

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404862
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.6

The Texas Department of Public Safety (the department) proposes amendments to §15.6, concerning Motorcycle License. The proposed amendments provide clarification regarding requirements for Class M (motorcycle) licenses, including licenses restricted to motor-driven cycles and mopeds. Requirements for a Class M license restricted to three-wheeled motorcycles are added to assist with implementation of the 83rd Texas Legislature's amendments to Chapter 521 of the Transportation Code through Senate Bill 763 and House Bill 3838. In addition, obsolete language is revised or removed.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be increased knowledge and understanding of the requirements for the issuance of Texas motorcycle licenses.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Aimee Perez, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §521.005, which authorizes the department to adopt rules to administer Chapter 521 of the Transportation Code and §521.148.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.6. Motorcycle License.

A motorcycle license authorizes the driving of a motorcycle, motor-driven cycle or moped. Four [~~Three~~] types of motorcycle licenses are issued. One is for all motorcycles of any size engine; one is for three-wheeled motorcycles; one is for motor-driven cycles of 250 cubic centimeter piston displacement or less; and one is for mopeds of less than 50 cubic centimeter piston displacement. A driver qualifying to operate both motorcycle and Class A, B, or C type vehicles will be issued one license showing both classes with restrictions when applicable.

(1) Motorcycle. Requires a Class M license.

[~~(A) This authorizes operation of all motorcycles, motor-driven cycles, and mopeds.~~]

(A) [~~(B)~~] The minimum age is 16 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course. Parent or guardian authorization is required for applicants under 18 years of age. [~~the Department-Approved Basic Motorcycle Operator Training Course or Minor's Restricted Driver License (MRDL) approval.~~]

(B) This authorizes operation of all motorcycles, three-wheeled motorcycles, motor-driven cycles, and mopeds.

(2) Three-Wheeled Motorcycle. Requires restricted Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a department-approved motorcycle operator training course specific to the operation of a three-wheeled motorcycle. Parent or guardian authorization is required for applicants under 18 years of age.

(B) The Class M license will be restricted to driving a three-wheeled motorcycle.

(3) [~~(2)~~] Motor-Driven Cycle. Requires restricted Class M license.

(A) The minimum age is 15 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course. Parent or guardian authorization is required for applicants under 18 years of age. [~~the Department-Approved Basic Motorcycle Operator Training Course or Minor's Restricted Driver License (MRDL) approval.~~]

(B) The Class M license will be restricted to driving a motor-driven cycle with 250 cubic centimeter piston displacement [~~(Code I)~~].

(4) [~~(3)~~] Moped. Requires restricted Class M license.

(A) The minimum age is 15 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course. Parent or guardian authorization is required for applicants under 18 years of age. [~~parent or guardian authorization and pass the vision and written test. No road test is required.~~]

(B) The Class M license will be restricted to driving a moped [~~(Code K)~~].

(C) Satisfactory completion of a vision and written test are required. No road test is required.

(5) A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a department approved motorcycle operator training course.

[~~(4) The acceptance of the Department-Approved Motorcycle Operator Training Course includes a motorcycle training course completion card from a state or military training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum 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.

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404863
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

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SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.23

The Texas Department of Public Safety (the department) proposes amendments to §15.23, concerning Names. These amendments are intended to clarify options available to applicants when documenting a name to be used on the driver license and identification cards. The proposed amendments clarify that a court order from a court of record is necessary to document a name change not related to marriage, divorce,

annulment, or death of a spouse. In addition, the proposed amendments make changes to modernize the language.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be the establishment of clearer guidelines for the issuance of Texas driver license and identification cards.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Aimee Perez, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §§521.121, 521.141, and 521.142.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.23. Names.

The applicant's full name is required on all applications for a driver [~~driver's~~] license or [~~and~~] identification certificate. No name will be used that has not been documented. This section is applicable to male and female applicants. [~~certificates.~~]

(1) An applicant may choose to use any birth surname, adopt the surname of his or her spouse, adopt the surname of a previous spouse, or adopt a hyphenated version of his or her surname and a spouse's surname. [~~A married woman may choose the surname she wishes to use. She may use either her maiden name or she may adopt the surname of her husband or the surname of a previous husband (Attorney General's Opinion H-432). However, no name will be used that has not been documented.~~] If a married applicant [~~she~~] elects not to adopt a spouse's [~~her husband's~~] surname, the name [~~she~~] will be listed [~~simply list her name~~] as if unmarried on the application. If an applicant elects [~~she chooses~~] to adopt a spouse's [~~her husband's~~] surname, the application should list married name, first name, and middle name, or the applicant's birth surname [~~maiden name~~] may be used in lieu of middle name at the option of the applicant. An applicant with multiple surnames may choose the surname that is used. An applicant with a hyphenated surname may choose to use only one of the names as a surname. The first name of the applicant must be used as the first name on the application and on the transaction card, even if the applicant normally uses a middle name as the given name. Middle names will not be substituted for first names. [~~Examples: Mary Ellen Smith marries Brown; she may list her name as Brown, Mary Ellen or Brown, Mary Smith. In all cases, three full names will be used, unless the applicant does not have three names, including the maiden name.~~]

(A) When a change of name occurs as a result [~~because~~] of marriage, divorce, annulment, or by the death of a spouse [~~occurs~~], the licensee may choose to [~~either~~] keep the [~~her current~~] married name, [~~or~~] revert to the birth surname [~~her maiden name~~], or adopt a previous spouse's [~~husband's~~] surname. [~~However, no name will be used that has not been documented.~~] If the name is changed for reasons other than those set out in this subparagraph [~~above~~], a court order from a court of record verifying such change is required and the name shown on the order is acceptable.

(B) Persons who are currently licensed and request that they be allowed to change their name may apply for a duplicate and exercise the same privilege in name selection as an original applicant.

[~~(C) Paragraph (1) of this section is applicable to both sexes.~~]

(2) Foreign language names will be spelled as they appear on the identification documents presented. For example,[~~--thus:~~] Perez, Juan must be used on the license or certificate. The English version (Perez, John) will not be substituted for the actual name. [~~Latin American males and single females will list surname (of father), given first name, and middle name. Married Latin American females may list their names the same way as described in paragraph (1) of this section.~~]

(3) Ecclesiastical names such as Brother Thomas, Sister Mary, or Father Kelly are not used.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404864
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) proposes amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. These amendments are intended to assist with implementation of the 81st Texas Legislature's amendments

to Chapter 521 of the Transportation Code through Senate Bill 1967 and House Bill 339. These amendments are intended to clarify conditions under which exam requirements will and will not be waived for licensed nonresidents. In addition, the language has been revised for easier understanding and clarity.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be increased transparency and better understanding of the examination requirements for licensed nonresidents.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Aimee Perez, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, §521.164, which authorizes the department to adopt rules for the waiver of certain examination requirements for licensed nonresidents, and §521.161.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.55. Waiver of Knowledge and/or Skills Tests.

(a) Knowledge and skills tests are waived for persons holding a valid out-of-state license when applying for a Texas license of the same or lower type. An applicant with a valid license will be required to pass the vision test. If an advance in grade is applied for, the applicant must pass the vision test and appropriate knowledge and skills tests. For applicants with an expired out-of-state license or no license, the complete examination will be given, including the skills test.

(b) The skills test will not be waived for applicants under the age of 18.

(c) Knowledge and/or skills tests are waived under the conditions detailed in this subsection:

(1) The skills test is waived for applicants who hold a valid driver license from another state, territory, province of Canada, or United States Armed Forces license.

[(2) The skills test will be waived for applicants that have completed the laboratory phase of driver education in Texas provided they are 16 years of age or 15 years of age if applying for a Minor's Restricted Driver License (MRDL). The skills test will not be waived when an applicant is 19 years of age or older. The applicant must present a properly completed DE-964 or DE-964E form. For applicants presenting driver education certificates from out-of-state, the skills test will not be waived unless they present a valid unrestricted out-of-state driver license.]

(2) [(3)] The skills test for a motorcycle license is waived for individuals age 18 and over who [that] have a valid, unrestricted Class A, B, or C Texas Driver License and have successfully completed a department approved motorcycle operator training course [the Department-Approved Basic Motorcycle Operator Training Course]. A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a department approved motorcycle operator training course. The skills test is not required for all applicants for a motorcycle license restricted to Moped. [the Department-Approved Basic Motorcycle Operator Training Course. This waiver provision applies only to a person age 16 or over who has completed the classroom phase of Driver Education and completed the Department-Approved Basic Motorcycle Operator Training Course or a person age 18 or over who has completed the Department-Approved Basic Motorcycle Operator Training Course and has a valid unrestricted Class A, B, or C Texas Driver License.] All other applicants for a motorcycle license must take and pass a skills test for a motorcycle license. Unrestricted Class A, B, and C license means a license that allows a person to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat. [of a "Licensed Operator Age 21 or Over in the Front Seat." All motorcycle applicants are required to complete and pass the Class M rules tests.]

(3) The Class M knowledge test is required for applicants for a Class M license restricted to Moped. The Class M knowledge test is waived for individuals applying for an unrestricted Class M license, a Class M license restricted to three-wheeled motorcycles, or a Class M license restricted to Motor-Driven Cycle if the individual successfully completes a motorcycle operator training course and presents:

(A) A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8); or

(B) A completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards.

[(4) For applicants with expired or no license, the complete examination will be given, including the skills test.]

[(5) If the same or lower class of license is applied for, the applicant must pass only the vision tests. The knowledge and skills tests will be waived for all applicants who present a valid out-of-state

~~license. If an advance in grade is applied for, the applicant must pass the vision tests and appropriate knowledge tests and skills test.~~]

(d) [~~(6)~~] The term "knowledge test" means written, computerized, or automated tests. The term "skills test" means driving or road test.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404865
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §§15.161, 15.162, 15.164 - 15.166

The Texas Department of Public Safety (the department) proposes amendments to §§15.161, 15.162, and 15.164 - 15.166, concerning Driver Responsibility Program. These amendments are intended to assist with implementation of the 81st Texas Legislature's amendments to Chapter 708 of the Transportation Code through House Bill 2730 and the 82nd Texas Legislature's amendments to Chapter 708 of the Transportation Code through House Bill 588.

The proposal amends §15.161 to provide clarification for the process the department follows to deduct points from an individual's record.

The proposal amends §15.162 to include an advance payment option for a single up-front payment of surcharges and to clarify the manner in which payments are posted to surcharge accounts.

The proposal amends §15.164 to add a Low Balance Amnesty Program which will waive active surcharge balances that meet the balance requirements set by the department. In addition, the existing amnesty program is renamed the Reduction Amnesty Program and a clarification is added to specify actions the department will take if the reduced amount is not received by the end of the amnesty period.

The proposal amends §15.165 to update the language so that it is consistent with language for §15.166, Indigency Program to create equity between the two programs. In addition, the proposal removes the requirement that applications for the incentive program be notarized.

The proposal amends §15.166 to provide for a waiver of surcharges for indigent individuals and remove the requirement that applications for the indigency program be notarized. In addition, text has been revised for clarity.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five years the proposal is in effect, there will be a fiscal implication for state government, but no fiscal implication for local government. There is no available data to support the number of individuals who would participate in the proposed advanced payment or reduction programs. Revenue estimates for the advanced payment option are based on the assumption that a percentage of individuals would elect to participate in the program. In addition, revenue estimates for the reduction programs are based on assumptions that a percentage of individuals not currently in compliance and a percentage of individuals already in compliance would enter into the reduction programs. The estimated revenue will change should more individuals not in compliance or individuals already in compliance, participate in the reduction programs.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be increased convenience to the customer through an alternative payment option and method in which payments are applied to accounts. Additionally, the proposed amendments increase incentives for compliance with the law, resulting in increased traffic safety.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Aimee Perez, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §708.002 which authorizes the department to adopt rules to implement the Driver Responsibility Program, Texas Transportation Code, §708.056 which authorizes the department to establish a procedure for the deduction of points, Texas Transportation Code, §708.153 which authorizes the department to develop rules to provide for the payment of a surcharge in installments, and Texas Transportation Code, §708.157 which authorizes the department to adopt rules to implement an amnesty program.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 708 are affected by this proposal.

§15.161. General Information.

(a) - (d) (No change.)

(e) When an individual meets the criteria for a point surcharge, an assessment will be conducted to determine if any additional qualifying moving violations have been reported to the driver record. For each consecutive twelve (12) month period [~~year~~] that an individual does not receive any points for a moving violation, one point will be deducted from the individual's total points [~~for the prior 36-month period~~].

(1) One time per year that is at least twelve (12) months from the last assessment date, the record will be reviewed for additional points or a point reduction. Records with an assessment of six (6) points or more will result in a point surcharge.

(2) If the individual's reduced point count equals 5 points or less, the review will not create a new surcharge.

§15.162. Surcharge Payments.

(a) - (b) (No change.)

(c) The total [~~annual~~] surcharges can be paid in full or by entering into an installment agreement.

(d) Advance payment option.

(1) The department will offer an option for a single up-front payment to a person who is assessed a surcharge to allow the person to pay in advance the total amount that will be owed for the 36-month period for which the surcharge will be assessed.

(2) The first two (2) initial notices will include both the advance payment amount and the annual amount. The initial notices will provide the last date to pay and the balance due.

(3) Subsequent annual assessment will end once an individual complies in full.

(4) If the total amount due for advance payment is not received by the due date, the surcharge account(s) will be assessed annually.

(e) Installment agreement.

(1) [~~(d)~~] To enter into an installment agreement, the individual must submit the minimum amount due. The vendor's acceptance of the minimum amount due constitutes an installment agreement. The individual is not required to provide written declaration of the installment agreement.

(2) [~~(e)~~] To prevent or lift a suspension, the full amount or minimum installment amount must be received.

(3) [~~(f)~~] Installment payments are due each month on the same date as the date of the Surcharge Notification. The department may permit an individual to make a one-time change to the day of the month in which an installment payment is due.

(4) [~~(g)~~] If an individual fails to provide a timely payment and defaults on the installment agreement, driving privileges will be suspended. The suspension will remain in effect until the surcharge and related fees are paid in full or the installment agreement is reinstated.

(5) [~~(h)~~] Installment payments must include the full name, Texas driver license/identification card or unlicensed number and the surcharge reference number.

(A) [~~(1)~~] If an individual has multiple surcharge notifications and does not provide the reference number, the payment will be applied to the oldest outstanding surcharge account(s) [~~requirement~~].

(B) [~~(2)~~] If the individual submits a payment and provides a reference number that has a zero balance or does not match their open account, the payment will be applied to the oldest outstanding surcharge account(s) [~~as requested even if this results in a default or suspension on another surcharge~~] owed by the same individual.

(C) If an individual has multiple surcharge notifications and provides an incorrect reference number for one of those notices, the payment will be applied to the oldest outstanding surcharge account(s).

(6) [~~(i)~~] Minimum payments are determined by dividing the total amount due by the maximum payments allowed and adding the partial payment fee.

(A) [~~(1)~~] For surcharge requirements of $249 or less an individual may make a maximum of twelve (12) payments.

(B) [~~(2)~~] For surcharge requirements of $250 through $499 an individual may make a maximum of twenty-four (24) payments.

(C) [~~(3)~~] For surcharge requirements of $500 and greater, an individual may make a maximum of thirty-six (36) payments.

(7) [~~(j)~~] An individual may pay the balance in fewer payments, but a payment of less than the minimum required will result in the suspension of driving privileges.

§15.164. Amnesty Program.

The department is authorized to provide for a periodic amnesty program under the Driver Responsibility Program, Texas Transportation Code, §708.157(a). Periodic amnesty reductions will be offered at the department's discretion[~~, and the public will be notified of each amnesty period~~].

(1) Amnesty will apply to individuals who have been in default for a specified amount of time and individuals who have balances below a specified amount prior to the [~~announcement of~~] amnesty period. The department will determine the amount of time in default and how often the amnesty period will be conducted during a calendar year [~~for each amnesty period~~].

(2) The Reduction Amnesty Program will reduce an individual's active surcharge balance to $250 or 10% of the total amount of surcharges assessed, whichever is less.

(A) [~~(2)~~] To be eligible for the Reduction Amnesty Program [~~amnesty~~] reduction, each individual will be required to complete an application online at www.txsurchargeonline.com or by telephone at 1-800-688-6882. [~~Each applicant eligible for amnesty will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250.~~]

(B) [~~(3)~~] The total amount is based on all offenses on the driver record at the beginning of each amnesty period. Annual surcharges that have not been assessed for the offenses will be waived. If a new offense is reported and a new surcharge assessed after the beginning of the amnesty period, the reduction will not apply to the new surcharge.

(C) [~~(4)~~] Once the department determines the applicant is eligible for the reduction amnesty, the department will rescind the suspension of driving privileges for each applicant that receives amnesty.

(D) [~~(5)~~] Payment of the reduced amount must be received by the end of the amnesty period.

(E) If payment of the reduced amount is not received by the end of the amnesty period, the reduced balance will be reverted, and the suspension of driving privileges will be reinstated.

(F) [(6)] A notice will be sent to each applicant receiving the reduction amnesty and will provide the last date to pay and the balance due.

(G) [(7)] If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(i) [(A)] If the prior payment(s) is less than the reduced payment, the driver will be required to pay only the difference.

(ii) [(B)] If prior payment(s) exceeds the reduced payment, the driver will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

[(8) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.]

(H) [(9)] If the reduced payment is received after the end of each amnesty period, the payment will be applied to the oldest outstanding surcharge account(s), and the individual must comply with the original surcharge assessment(s).

(I) [(10)] An individual will be eligible to receive reduction amnesty only once every three years.

(3) The Low Balance Amnesty Program will waive an individual's active surcharge balances that meet the balance requirements set by the department.

(A) To be eligible for the amnesty reduction, each individual must meet the low balance requirements set by the department during the amnesty period.

(B) Each waived amount is based on all offenses on the driver record at the beginning of the amnesty period that meet the low balance requirements set by the department. New surcharges assessed after the beginning of the amnesty period will not qualify for low balance amnesty.

(C) Once the department determines the applicant is eligible for amnesty, the department will waive the low balance that meets the department's balance requirements for that amnesty period.

(D) A notice will be sent to each applicant receiving low balance amnesty.

(4) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

§15.165. Incentive Program.

The department is required to provide for an incentive program under the Driver Responsibility Program, Texas Transportation Code, §708.157(b).

[(1) The incentive program is a one-time reduced payment of all surcharges to 50% of the assessed amount.]

(1) [(2)] For purposes of the incentive program, eligibility is defined as an individual living above 125% of the poverty level but less than 300% of the poverty level as defined annually by the United States Department of Health and Human Services. An individual must meet this definition to be eligible for a reduction. The determination of eligibility will be made by the department or its designee.

(2) [(3)] To request a reduction of the surcharge under this section, each individual must submit the department approved application. The application must be completed in full and signed by the applicant or their legally authorized representative [notarized] prior to submission. Individuals [Each applicant] eligible for the incentive program will be required to pay 50% of the total amount of surcharges assessed. The application is available online at www.txsurchargeonline.com or can be requested by phone at (866) 223-3583. The application may be submitted online or mailed [may be picked up in person at any driver license office].

(3) [(4)] The department may contract with a third-party for the verification of the information submitted on the application.

(4) [(5)] A notice will be sent to each applicant determined eligible for the incentive reduction. The notice will provide the last date to pay and the balance due. Payment of the reduced amount must be received within 180 days from the date of the notice. The incentive period starts on the date of the notice and ends 180 days later.

(5) The total amount is based on all offenses on the driver record at the beginning of the incentive period. Annual surcharges that have not been assessed for the offenses will be waived.

(6) During the 180-day payment period, the department will rescind the surcharge suspension(s) of driving privileges. If payment of the reduced amount is not received within 180 days, the suspension of driving privileges will be reinstated. The reduced amount will remain until it is paid in full.

(7) If a new offense that results in a surcharge is reported 91 days or more from the notice date, the individual must submit a new application to determine continued eligibility for an incentive reduction. Surcharges due for the new offense reported within 90 days will be included in the total amount of surcharges reduced under paragraph (5) of this section. An approval notice will be sent to the applicant and will provide the last date to pay and the new balance due. Payment for the new balance must be received within the 180-day payment period set out in the original notice.

(8) [(6)] If the applicant is not eligible for a reduction under this section, a letter of denial will be sent to the individual.

(9) [(7)] If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the applicant will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the applicant will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(10) [(8)] The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

§15.166. Indigency Program.

The department is required to provide for an indigency program under the Driver Responsibility Program, Texas Transportation Code, §708.157(c).

(1) For purposes of the Driver Responsibility Program, indigency is defined as living at or below 125% of the poverty level as defined annually by the United States Department of Health and Human Services. An individual must meet the definition of indigency to be eligible for a waiver [reduction]. The determination of indigency will be made by the department or its designee.

(2) To request a waiver [reduction] of the surcharge under this section, each individual must submit the department approved application. The application must be completed in full and signed by the applicant or their legally authorized representative [notarized] prior to submission. [Each applicant eligible for indigency will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250.] The application is available online at www.txsurchar-

geonline.com or can be requested by phone at (866) 223-3583. The application may be submitted online or mailed. [~~may be picked up in person at any driver license office.~~]

(3) The department may contract with a third-party for the verification of the information submitted on the application.

(4) A notice will be sent to each applicant determined eligible for the indigency waiver. [~~reduction. The notice will provide the last date to pay and the balance due, and payment of the reduced amount must be received within 180 days from the date of the notice. The indigency period starts on the date of the notice and ends 180 days later.~~]

[~~(5) The total amount is based on all offenses on the driver record at the beginning of the indigency period. Annual surcharges that have not been assessed for the offenses will be waived.~~]

[~~(6) During the 180-day payment period, the department will rescind the suspension of driving privileges. If payment of the reduced amount is not received within 180 days, the suspension of driving privileges will be reinstated. The reduced amount will apply until it is paid in full.~~]

(5) [~~(7)~~] If a new offense that results in a surcharge is reported 91 [~~90~~] days or more from the notice date, the individual must submit a new application to determine continued eligibility for an indigency waiver of the new surcharge. [~~reduction. Surcharges due for the new offense reported within 90 days will be included in the total amount of surcharges reduced under paragraph (5) of this section. A notice will be sent to the applicant and will provide the last date to pay and the new balance due. Payment for the new balance must be received within the 180-day payment period set out in the original notice.~~]

(6) [~~(8)~~] If the applicant is not eligible for a waiver [~~reduction~~] under this section, a letter of denial will be sent to the individual.

[~~(9) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.~~]

[~~(A) If the prior payment(s) is less than the reduced payment, the applicant will be required to pay only the difference.~~]

[~~(B) If prior payment(s) exceeds the reduced payment, the applicant will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.~~]

[~~(10) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.~~]

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404866
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §21.1

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

The Texas Department of Public Safety (the department) proposes the repeal of §21.1, concerning Standards for Vehicle Safety. The repeal of §21.1 is necessary to update the rules governing vehicle equipment safety standards and to generally improve the clarity of the related rules.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved clarity in the regulations pertaining to the equipment and vehicle safety standards in the state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which authorizes the department to adopt safety standards for vehicle equipment.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§21.1. Standards for Vehicle Safety.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404867
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

37 TAC §21.2, §21.3

The Texas Department of Public Safety (the department) proposes amendments to §21.2 and §21.3, concerning Equipment and Vehicle Safety Standards. The proposed amendments are intended to update the rules governing vehicle equipment safety standards and to generally improve the clarity of the related rules.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved clarity in the regulations pertaining to the equipment and vehicle safety standards in the state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which authorizes the department to adopt safety standards for vehicle equipment.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§21.2. Standards for Vehicle Safety [~~Performance~~].

(a) Standards--Federal Motor Vehicle Safety Standard (FMVSS). The [~~performance~~] standard for vehicle equipment established by the Texas Department of Public Safety shall be identical to the applicable federal standard.

(1) - (4) (No change.)

(b) Standards--Society of Automotive Engineers (SAE). The [~~performance~~] standard for vehicle equipment established by the Texas Department of Public Safety in which no federal standard is in effect shall be identical to the applicable standard adopted by the Society of Automotive Engineers.

(1) - (2) (No change.)

§21.3. Standards for Sunscreening[~~, Reflective,~~] and Privacy Window Devices.

(a) The words and terms detailed in this section, shall have the following meanings unless the context clearly indicates otherwise: [~~In this section, the following words and terms have the following meanings:~~]

(1) Sunscreening device--A glazing, film material, or device for reducing the effects of visible sunlight and/or preventing observation. This does not include glazing or film material without visible tinting providing protection from the effects of ultraviolet light because this type of sunlight is not visible to the human eye.

(2) Light transmission [~~transmittance~~]--The ratio of the amount of total visible light to pass through a product or material to the amount of total visible light falling on the product or material and the glazing.

(3) - (7) (No change.)

(b) Originally equipped, factory installed, and/or replacement windows meeting the specifications of the vehicle manufacturer. Equipment standards employed in the manufacture of new motor vehicles for first time sale are preemptive under federal law. Federal Motor Vehicle Safety Standard 205, incorporating American National Standards Institute (ANSI) Z26.1, allows inclusion of sunscreening device features into the glazing of vehicle safety glass. All sunscreening devices used as standard equipment, optional equipment, or in replacement parts, adhering to the federal standard at the time of vehicle manufacture are authorized. In general, the amount of sunscreening devices and other glazing features allowed under the federal standard depends on the location of the window and the vehicle type classification. Paragraphs (1) - (3) provide a summary of the federal restrictions for window glazing (tint).

(1) Windshields.

(A) The AS-1 area is the portion of the windshield based on driver seating configuration where the driver must have forward visibility.

(B) The windshield may also have a glazing shade band for driver comfort. This shading band is generally above the AS-1 area.

(C) An AS-1 line indicator, if present, denotes the boundary of the AS-1 area and the shading band. If the AS-1 line

indicator is not present, generally, the shade band should not extend further than approximately five inches from the top of the windshield.

(D) The safety glass used for all vehicle windshields below the AS-1 line must have a 70% light transmission [~~transmittance~~] value.

(E) The glazing in the shade band area may have less than a 70% light transmission [~~transmittance~~].

(2) Side Windows. The vehicle type determines the specific window requirements.

(A) Passenger vehicles.

(i) All moveable side windows must have a 70% light transmission [~~transmittance~~] value over the entire surface area of the window.

(ii) Fixed windows to the rear of the driver may have shading bands with less than 70% light transmission [~~transmittance~~] at the uppermost top as with the windshield.

(B) All buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles.

(i) Side windows to the immediate left and right of the operator must have a 70% light transmission [~~transmittance~~] value over the entire surface area of the window.

(ii) Side windows to the rear of the driver have no restrictions on sunscreening.

(3) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.

(B) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 70% light transmission [~~transmittance~~] value for the area used for driver visibility. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The glazing in the shade band area is authorized to have less than 70% light transmission [~~transmittance~~].

(c) After-market sunscreening devices. Standards and specifications described in this subsection apply to after-market sunscreening devices applied in conjunction with window glazing (vehicle safety glass) meeting federal standards.

(1) All installed after-market sunscreening devices will be measured in combination with the vehicle's original equipment (window glass).

(2) Windshields. No after-market sunscreening devices shall be installed, affixed, or applied to a vehicle windshield below the AS-1 line, or five inches from the top of the windshield if the AS-1 line annotation is not present.

(A) If an additional sunscreening device is used above the AS-1 area of the windshield, the light transmission [~~transmittance~~] value, in combination with the original windshield glazing, must be 25% or more.

(B) The luminous reflectance of any additional sunscreening devices used above the AS-1 area of the windshield must be 25% or less.

(C) An installed after-market sunscreening device used on the windshield may not be of a red, blue, or amber color.

(3) Side Windows. The vehicle type determines the specific windows affected.

(A) Passenger vehicles. All side windows of the vehicle must have at least a 25% light transmission [~~transmittance~~] value and luminous reflectance of 25% or less, over the entire surface area of the window.

(B) Buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles. Windows to the immediate left and right of the operator must have at least a 25% light transmission [~~transmittance~~] value and luminous reflectance of 25% or less, over the entire surface area of the window. Side windows to the rear of the driver, both left and right, have no minimum requirement for light transmission.

(4) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If the vehicle has left and right outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle [~~(no driver rear visibility requirement)~~], there is no minimum light transmission requirement.

(B) If the vehicle is not equipped with both a left and right side outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle, the rear window must have a 25% light transmission [~~transmittance~~] value for the area used for driver visibility value. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The shade band area is authorized to have less than 25% light transmission [~~transmittance~~]. The device must have a luminous reflectance of 25% or less.

(d) (No change.)

[~~(e) This section does not apply to:~~]

[~~(1) a motor vehicle that is not registered in this state;~~]

[~~(2) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes;~~]

[~~(3) a vehicle that is used to regularly to transport passengers for a fee and authorized to operate under license or permit by a local authority;~~]

[~~(4) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the vehicle operator's view of approaching traffic;~~]

[~~(5) a window that has a United States, state, or local certificate placed on or attached to it as required by law;~~]

[~~(6) an adjustable nontransparent sun visor mounted forward of the side windows and not attached to the glass; and~~]

[~~(7) a rearview mirror.~~]

(e) [~~(f)~~] Medical exceptions.

(1) Not withstanding the foregoing provisions of this section [~~subsection~~], a motor vehicle operated by or regularly used to transport any person with a medical condition which renders the person [~~them~~] susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmission values [~~transmittance to value~~] of less than 25%. An

untinted film or glaze may be applied to the area below the AS-1 line of [~~to the AS-1 area of~~] the windshield of a motor vehicle provided the total visible light transmission [~~transmittance~~] is not reduced by a value of 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle possesses [~~has in his possession~~] a certificate issued by the Texas Department of Public Safety.

(2) The Texas Department of Public Safety shall issue such certificates only upon application by the affected individual accompanied by a signed statement from a licensed physician or licensed optometrist which:

(A) identifies with reasonable specificity the person seeking the certificate; and

(B) states that, in the physician's or optometrist's professional opinion, the equipping of the vehicle with sunscreening devices is necessary to safeguard the health of the person seeking the certificate. [~~Applications should be addressed to: Texas Department of Public Safety, Texas Highway Patrol, P.O. Box 4087, Austin, Texas 78773-0500.~~]

(3) Medical exemption certificates issued under this subsection shall be valid so long as the condition requiring the use of the sunscreening devices persists, until the prescription expires, or until the vehicle is sold, whichever first occurs.

(f) [~~(g)~~] Manufacturer and installer requirements.

(1) Each manufacturer shall obtain certification from the Texas Department of Public Safety of sunscreening devices used on the side windows of passenger vehicles and windows immediately to the left and right of the vehicle operator on all other vehicles. To obtain certification the manufacturer will provide test results that the product or material manufactured or assembled complies with the light transmission [~~transmittance~~] and luminous reflectance [~~reflectivity~~] requirements of this section.

(2) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the name or registration number of the [~~following information:~~] manufacturer [~~(name or registration number),~~] and a statement that complies with Texas Transportation Code, §547.609 [~~this chapter~~].

(3) Each manufacturer shall include instructions with the sunscreening device, product, or material for proper installation, including the affixing of the label required by this section.

(4) No installer or business shall apply or affix to the windows of any motor vehicle in this state a sunscreening device that is not in compliance with requirements of this section.

(5) At a minimum, installers shall affix the label described in subsection (f)(2) [~~(g)(3)~~] of this section between the sunscreening device and the lower rearward corner of the driver's left side window which is legible from the outside of the vehicle.

[~~(h) Refer to §23.42 and §23.78 of this title (relating to Inspection of Sunscreening Devices (Glass Tinting) by Official Vehicle Inspection Stations and Instructions and Guidelines) for adopted vehicle inspection procedures.~~]

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404868
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1 - 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) proposes amendments to §§23.1 - 23.3, 23.5, and 23.6, concerning Vehicle Inspection Station and Vehicle Inspector Certification. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Di-

vision, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.1. New or Renewal Vehicle Inspection Station Applications.

(a) - (g) (No change.)

(h) For a new or renewal vehicle inspection station application to be approved, the owner must:

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

(4) complete department provided [~~department-approved~~] training;

(5) - (7) (No change.)

(i) - (j) (No change.)

§23.2. Changes and Updates to Vehicle Inspection Station Information.

(a) (No change.)

(b) If a vehicle inspection station ceases operations related to vehicle inspection, the certificate holder must notify the department and immediately return all forms, [~~inspection certificates,~~] signs, equipment furnished by the department and/or state authorized vendor(s), and other official materials relating to the state inspection program. Failure to comply with the requirement of this section may result in criminal prosecution, as well as necessary civil recovery action and may impede any reappointment of the vehicle inspection station.

§23.3 New or Renewal Vehicle Inspector Applications.

(a) - (g) (No change.)

(h) For a new or renewal vehicle inspector application to be approved the applicant must:

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

(4) complete department provided [~~approved~~] training as outlined in this chapter;

(5) - (7) (No change.)

§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.

(a) - (b) (No change.)

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3(g) [~~(3)(g)~~], is permanently disqualifying.

(d) - (i) (No change.)

§23.6. Training.

(a) When attending the department's training course [~~a course offered by the department~~], the applicant must:

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

(b) (No change.)

(c) The applicant for a vehicle inspection station certification or vehicle inspector certification will be given an opportunity to pass the written exam up to three times. Failure to pass the exam within 30 days of the date of training will terminate the application process.

(d) (No change.)

[~~(e) The department may certify external vehicle inspector training schools to provide training to applicants.~~]

(e) [~~(f)~~] Each certified vehicle inspector must qualify, by training and examination provided [~~approved~~] by the department, for one or more of the endorsements listed in paragraphs (1) - (3) of this subsection which indicate the type of vehicle inspection reports [~~certificates~~] the inspector is certified to issue and the types of vehicle inspections the inspector is qualified to perform.

(1) S. May inspect any vehicle requiring a safety only vehicle inspection report [~~certificate~~], i.e., one-year, two-year, trailer, and motorcycle.

(2) C. May inspect any vehicle requiring a commercial inspection report [~~certificate~~], i.e., commercial motor vehicle and commercial trailer.

(3) E. May inspect any vehicle requiring an emissions test report [~~certificate~~], i.e., one-year safety/emissions and one-year emissions only (unique emissions test only [~~test-only~~] inspection report [~~certificate~~]).

(f) [~~(g)~~] The department representative may, if [~~when~~] the vehicle inspector performance warrants, require the certified vehicle inspector to take all or a portion [~~part~~] of the written or [~~and~~] demonstration test at any time, or may require attendance at a [~~any~~] vehicle inspection training program. Failure to pass a required test may result in suspension of the vehicle inspector's certificate.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404869
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

37 TAC §23.11, §23.12

The Texas Department of Public Safety (the department) proposes amendments to §23.11 and §23.12, concerning General Vehicle Inspection Station Requirements. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires

the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.11. General Vehicle Inspection Station Requirements.

(a) To be certified as a vehicle inspection station, the station's facilities must meet the standards listed in paragraphs (1) - (8) [(7)] of this subsection:

(1) - (4) (No change.)

(5) have an entrance to the approved inspection area of sufficient size to allow entry of any vehicle the station is endorsed to inspect (other than oversized vehicles as provided in subsection (c) of this section);

(6) [(5)] have a display area located in the customer waiting area [and of sufficient size as] approved by the department. Only official notices, licenses, letters from the department, procedure charts, or other documents authorized by the department may be exhibited in the display area;

(7) [(6)] have a secured area for storage of records and necessary supplies; and

(8) [(7)] have a designated customer waiting area protected from the elements.

(b) To be certified as a vehicle inspection station, the designated space approved for inspection purposes must meet the standards detailed in this subsection: [Inspection area--The designated space approved for inspection purposes. Inspection areas must meet the standards listed in paragraphs (1) - (6) of this subsection.]

(1) be [Be] an area of at least 12 feet wide by 24 feet long [of minimum space] and made [must be] of a hard surface such as asphalt or concrete (unless subject to subsection (c) of this section);[.]

(2) be [Be] clear of obstacles and debris that would interfere with the safe operation of a vehicle and inspection of required items;[.]

(3) have lighting sufficient [Be sufficiently lighted] to afford good visibility for performing all inspection procedures; and[.]

(4) be [Be] contained entirely within a building and protected from the elements.

[(5) Satisfy the applicable building and space requirements as described in this section.]

(c) [(6)] The inspection area for a motorcycle only station must be at least 8 [eight] feet wide by 10 [ten] feet long, level and hard surfaced.

(d) [(c)] A vehicle inspection station may have an additional area approved by the department for the inspection of oversized vehicles, such as motor homes and trailers. This area may be located outside the building.

§23.12. Standards of Conduct.

(a) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department provided [approved] device [during each inspection and] at the time of that inspection.

(b) The DPS Training and Operations Manual [operations manual] for official vehicle inspection stations and certified vehicle inspectors must be the instruction [manual] and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.

(c) - (i) (No change.)

(j) A certified vehicle inspector must conduct each inspection [and affix each inspection certificate,] in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(k) - (o) (No change.)

(p) At the conclusion of the inspection, the vehicle inspector must issue a vehicle inspection report to the owner or operator of the vehicle indicating whether the vehicle passed or failed.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404870
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

37 TAC §23.13

The Texas Department of Public Safety (the department) proposes amendments to §23.13, concerning Equipment Requirements for All Classes of Vehicle Inspection Stations. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that the proposed amendments may have an adverse economic effect on small businesses that constitute micro-businesses required to comply with this rule as proposed. House Bill 2305 requires that vehicle inspectors provide customers with a copy of the inspection report. This proposal requires vehicle inspection stations that do not already have a printer on premise to obtain one in order to provide a customer with a copy of the inspection report. This requirement will adversely impact approximately 6,300 vehicle inspection stations that constitute micro-businesses. Based on an estimated volume of 200 inspections per month, an estimated cost of a printer of $150.00, and an estimated cost of $0.07 per copy (reflecting costs associated with paper and ink cartridges), it is estimated these stations will incur an average expense of $486.00 over a 24-month period. Current statute limits the department's authority to adopt the alternative methods of either providing printers to the stations, reimbursing stations for the cost of printers, or allowing the stations to pass on to the customer (the vehicle owner) the costs associated with the printers. It should be noted that House Bill 2305's elimination of the inspection certificate will eliminate the costs to the inspection stations associated with maintaining an inventory of inspection certificates, including the costs of monitoring, ordering, and securing the certificates. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.13. Equipment Requirements for All Classes of Vehicle Inspection Stations.

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used and the vehicle inspector or station [~~license holder~~] must cease performing inspections until such equipment is replaced, recalibrated or repaired and returned to an operational status.

(c) To be certified as a vehicle inspection station, the [~~Each vehicle inspection~~] station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (8) [~~(9)~~] of this subsection:[~~.~~]

(1) a [~~A~~] measured and marked brake test area which has been approved by the department, or an approved brake testing device;[~~.~~]

(2) a [~~A~~] measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles, with the exception that the [~~except~~] 80 inch measuring device requirement does not apply to [~~measurement not required of~~] motorcycle-only vehicle inspection stations;[~~.~~]

[~~(3) A permanent ink marking pen for completing the reverse side of the windshield vehicle inspection certificate.~~]

[(4) A scraping device for removing the old vehicle inspection certificate.]

(3) [(5)] a [A] gauge for measuring tire tread depth;[.]

(4) [(6)] a [A] 1/4 inch round hole punch;[.]

(5) [(7)] a [A] measuring device for checking brake pedal reserve clearance. This requirement does not apply to[, except] vehicle inspection stations with only a motorcycle endorsement;[.]

(6) [(8)] a [A] department approved device for measuring the light transmission of sunscreening devices. This requirement does not apply to government inspection stations, or fleet inspection stations that [which] have provided the department biennial written certification that the [government inspection stations or fleet inspection] station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement; and[.]

(7) [(9)] a [A] department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This device is not required of [requirement does not apply to] government inspection stations or fleet inspection stations which have provided the department biennial written certification that the [government inspection stations or fleet inspection] station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This device is also not required of [requirement does not apply to] motorcycle-only or trailer-only inspection stations and certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified [by the department] as a non-emissions vehicle inspection station, the station must have:

(1) an approved and operational electronic station interface device; [and]

(2) a printer and supplies necessary for printing a vehicle inspection report on 8 1/2 x 11 paper; and

(3) [(2)] a telephone line, or internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device, or shared with other devices in a manner [as] approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance Program).

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404871
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §§23.21 - 23.27

The Texas Department of Public Safety (the department) proposes amendments to §23.21 and §23.22 and proposes new §§23.23 - 23.27, concerning Vehicle Inspection Station Operation. The proposed amendments and new sections are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposal also reflects such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.21. Electronic Vehicle Inspection Station Interface Device Access.

(a) All vehicle inspections performed in emissions and non-emissions testing inspection stations must be reported using an approved method or device at the time the inspection is conducted. Access to the system at certified vehicle inspection stations must be controlled using procedures, processes, and protocols as established by the department.

(b) The records maintained in the database are governmental records. Fraudulent use of the database may subject the person to criminal prosecution, as well as administrative action.

(c) Vehicle inspectors and all other authorized users are [~~must be~~] held accountable for the security and confidentiality of all assigned access processes including, but not limited to, passwords, protocols, tokens, or access/identification cards.

(d) Before each official vehicle inspection begins, the inspector must use a unique identifier protocol as established by the department that [~~which~~] links the inspection record with the certified vehicle inspector performing the inspection. The inspector of record entering his unique identifier is [~~must be~~] responsible for the inspection of all required items of inspection, must enter all information into the electronic station interface device at the time of inspection, and must complete other documents as required.

(e) Vehicle inspectors may not give, share, lend, or divulge this unique identifier protocol, including but not limited to: passwords, personal identification numbers (PIN), [~~tokens,~~] or access/identification cards to another person. Failure to comply with this section may result in suspension or revocation of the vehicle inspector's certification as well as any appropriate criminal action or administrative disciplinary action.

(f) The department may require certified vehicle inspectors to acknowledge the department's policy for use and protection of access procedures.

§23.22. Vehicle Inspection Reports [~~Certificates~~].

(a) The information required by this subsection must be accurately entered into the electronic station interface device: vehicle identification number, license plate information, vehicle year, vehicle make, vehicle model, and odometer reading.

(b) The vehicle inspection report:

[~~(a) When a certificate is issued to a vehicle which has passed an inspection, the inspection certificate:~~]

(1) must indicate whether the vehicle passed or failed the inspection [~~be issued in numerical sequence~~];

(2) must be printed and [~~completed,~~] signed [~~and affixed to the vehicle at the time of inspection~~] by the vehicle inspector who performed [~~performing~~] the inspection at the time of inspection; and[~~;~~]

[~~(3) must be entered into the electronic station interface device; and~~]

(3) [~~(4)~~] must indicate [~~have an unaltered numerical insert placed on the certificate indicating~~] the month and year of expiration of the inspection[~~, or have punched the month and year of expiration on the trailer/motorcycle, or commercial window/commercial trailer certificates~~].

(c) [~~(b)~~] If the electronic station interface device is not operational the station shall not perform inspections and the station must promptly notify the department.[~~:~~]

[~~(1) The vehicle inspector must follow the procedures for manually recording inspections.~~]

[~~(2) The vehicle inspection data must be reported using the electronic station interface prior to the performance of any additional inspections.~~]

[~~(c) If a vehicle inspection certificate is removed from the vehicle, it must be destroyed so that it cannot be reused. Certificates must not be transferred to another windshield or reissued.~~]

[~~(d) Vehicles that do not meet the inspection requirements must be issued a rejection receipt.~~]

§23.23. Method of Payment.

(a) Payment for safety automation fees, original application for or renewal of all certifications, replacement of any department issued property, and/or any other fee required by Texas Transportation Code, Chapter 548 or this chapter are due and payable at the time of order and/or billing.

(b) Within 30 days of being notified by the department that a fee for an application has been dishonored or reversed, the applicant must submit a cashier's check, or money order made payable to the "Department of Public Safety" in the amount of the dishonored or reversed fee, plus any applicable insufficient fund fees.

(c) If payment is dishonored or reversed prior to issuance of the certification, the application will be abandoned as "incomplete". If the certification has been issued prior to being dishonored or reversed, revocation proceedings will be initiated. The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due including any additional fees.

§23.24. Vehicle Inspection Station Issuance of Vehicle Inspection Reports.

The department requires vehicle inspection stations to use the electronic station interface device and department approved procedures to issue vehicle inspection reports.

§23.25. Vehicle Inspection Fees.

(a) The vehicle inspection fee is a charge for performing the vehicle inspection only, and may not exceed the amount set by Texas Transportation Code, Chapter 548 or this chapter.

(b) The vehicle inspection station may collect the station portion of the inspection fee at the time of the original inspection whether the vehicle is passed or rejected.

(c) Charges for additional services related to the repair, replacement or adjustment of the required items of inspection must be expressly authorized, or approved by the customer, and must be separately listed on the bill from the statutorily mandated inspection fee.

(d) A vehicle inspection station or vehicle inspector may not advertise, charge, or attempt to charge a fee in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

§23.26. Retention of Records.

(a) Records must be kept in a secured area within the vehicle inspection station.

(b) Records must be filed in a manner to ensure ready availability.

(c) Copies of vehicle inspection reports and out of state identification certificates must be kept by the vehicle inspection station for

at least one year from the date of completion. Electronic storage is permissible, in a manner consistent with §23.27 of this title (relating to Vehicle Inspection Station Record Audits.)

(d) The vehicle inspection station is not required to create duplicate paper records of electronically reported inspections or transactions.

§23.27. Vehicle Inspection Station Record Audits.

Vehicle inspection stations must grant access to the department representative, for the purpose of auditing records pertaining to the department's vehicle inspection program. Records must be made available to the department's representative at the station premises.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404873
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

37 TAC §§23.23 - 23.30

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

The Texas Department of Public Safety (the department) proposes the repeals of §§23.23 - 23.30, concerning Vehicle Inspection Station Operation. The proposed repeals of §§23.23 - 23.25 are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. These proposed repeals reflect the elimination of rules specific to the inspection certificate. The repeal of §§23.26 - 23.30 is filed simultaneously with proposed new §§23.23 - 23.27 to reorganize existing language and improve clarity of the subchapter.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the public will be informed of new requirements concerning the vehicle inspection program, the rules will be updated to reflect all recent legislative changes, and reorganized to improve clarity of the subchapter.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.23. Lost, Stolen, or Destroyed Emission Inspection Certificates.

§23.24. Responsibilities for Vehicle Inspection Certificates.

§23.25. Return of Unused Vehicle Inspection Certificates.

§23.26. Method of Payment.

§23.27. Vehicle Inspection Station Acquisition of Certificates.

§23.28. Vehicle Inspection Fees.

§23.29. Retention of Records.

§23.30. Vehicle Inspection Station Record Audits.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404872
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.42

The Texas Department of Public Safety (the department) proposes amendments to §23.42, concerning Commercial Vehicle Inspection Items. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.42. Commercial Vehicle Inspection Items.

(a) All items of inspection enumerated in this section must [~~shall~~] be [~~required to be~~] inspected in accordance with [~~according to~~] the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations [~~and Training~~] Manual prior to the issuance of a passing vehicle [~~an~~] inspection report [~~certificate~~].

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6. [~~(See attached graphic reflecting excerpts from the Operations and Training Manual, Chapter 6.)~~]

Figure: 37 TAC §23.42(b) (No change.)

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404874
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §§23.51 - 23.53, 23.55 - 23.57

The Texas Department of Public Safety (the department) proposes amendments to §§23.51 - 23.53, 23.55, and 23.56 and proposes new §23.57, concerning Vehicle Emissions Inspection and Maintenance Program. This proposal is intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposal also reflects such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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 environ-

ment 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.51. Vehicle Emissions Inspection Requirements.

(a) In affected counties, to be certified by the department as a vehicle inspection station, the station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as stations endorsed only to issue inspection reports for one or more of the listed categories of vehicles [~~following inspection certificates~~]: trailer [~~certificates~~], motorcycle [~~certificates~~], commercial motor vehicle windshield [~~certificates~~], or commercial trailer [~~certificates~~].

(b) A vehicle inspection station in a county not designated as an affected county shall not inspect a designated vehicle unless the vehicle inspection station is certified by the department to perform emissions testing, or unless the motorist presenting the vehicle signs an affidavit as prescribed [~~on a form provided~~] by the department stating the vehicle is exempted from emissions testing. [~~The affidavit will be held by the vehicle inspection station for collection by the department.~~] Under the exceptions outlined in paragraphs (1) - (3) of this subsection, a vehicle registered in an affected county may receive a safety inspection at a vehicle inspection station in a non-affected county.

(1) - (2) (No change.)

(3) The vehicle is registered in an affected county and is primarily operated in a non-affected county, but will not return to an affected county prior to the expiration of the current registration [~~inspection certificate~~]. Under this exception the vehicle will be reinspected at a vehicle inspection station certified to do vehicle emissions testing immediately upon return to an affected county. Examples of this exception include vehicles operated by students enrolled at learning institutions, vehicles operated by persons during extended vacations, or vehicles operated by persons on extended out-of-county business.[~~:~~]

[~~(A) Vehicles operated by students enrolled at learning institutions.~~]

[~~(B) Vehicles operated by persons during extended vacations.~~]

[~~(C) Vehicles operated by persons on extended out of county business.~~]

(c) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a vehicle inspection station certified by the department to perform vehicle emissions testing. The exceptions outlined in paragraphs (1) and (2) of this subsection apply to this provision.

(1) Commercial motor vehicles, as defined by Texas Transportation Code, §548.001, meeting the description of "designated vehicle" provided in this section. Designated commercial motor vehicles must be emissions tested at a vehicle inspection station certified by the department to perform vehicle emissions testing and must be issued an emissions test only inspection report [~~certificate~~], as authorized by Texas Transportation Code, §548.252 [~~§548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker,~~] prior to receiving a commercial motor vehicle safety inspection report [~~certificate~~] pursuant to Texas Transportation Code, Chapter 548. The emissions test only inspection report [~~certificate~~] must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection report [~~certificate~~] and will expire at the same time the newly issued commercial motor vehicle safety inspection report [~~certificate~~] expires.

(2) Vehicles presented for inspection by motorists in counties not designated as affected counties meeting other exceptions listed in this section.

(d) A vehicle with a currently valid safety inspection report [~~certificate~~] presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report [~~certificate~~]; or

(2) an emissions test and receipt of the emissions test only inspection report [~~certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker~~]. The emissions test only inspection report [~~certificate~~] will expire at the same time as the current safety inspection report [~~certificate~~] currently displayed on the vehicle at the time the emissions test only report [~~test-only certificate~~] is issued.

(e) (No change.)

[~~(f) Vehicles registered in affected counties will be identified by a distinguishing validation registration sticker or a registration sticker imprinted with the name of the county, as determined by the Texas Department of Motor Vehicles.~~]

(f) [~~(g)~~] Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be approved by the certified inspector, who will issue [~~thereafter affix to the windshield~~] a unique emissions inspection report [~~certificate~~] pursuant to Texas Transportation Code, §548.252 [~~§548.251~~]. The only valid inspection report [~~certificate~~] for designated vehicles shall be a unique emissions inspection report [~~certificate~~] issued by the department, unless otherwise provided in this chapter.

(g) [~~(h)~~] The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days.

(h) [~~(i)~~] Federal and state governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required

to comply with all vehicle emissions I/M requirements contained in the Texas I/M State Implementation Plan (SIP).

(i) [~~(j)~~] Any motorist in an affected county whose designated vehicle has been issued an emissions related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested at the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(j) [~~(k)~~] Inspection reports [~~certificate~~] previously issued in a newly affected county shall be valid and remain in effect until the expiration date thereof.

(k) [~~(l)~~] An emissions [~~only~~] test only inspection report [~~certificate~~] expires at the same time the vehicle's registration [~~annual vehicle safety inspection certificate it relates to~~] expires.

(l) [~~(m)~~] The department may perform quarterly equipment and/or gas audits on all vehicle emissions analyzers used to perform vehicle emissions tests. If a vehicle emissions analyzer fails the calibration process during the gas audit, the department may cause the appropriate vehicle inspection station to cease vehicle emissions testing with the failing emissions analyzer until all necessary corrections are made and the vehicle emissions analyzer passes the calibration process.

(m) [~~(n)~~] Pursuant to the Texas I/M SIP, the department may administer and monitor a follow up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in Code of Federal Regulations, Title 40, §51.353(c)(3).

(n) [~~(o)~~] Vehicle owners receiving a notice from the department requiring an emission test shall receive an out-of-cycle test, if the vehicle already has a valid safety and emission inspection report [~~certificate~~]. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (online) to the Texas Information Management System Vehicle Identification Database [~~information management system vehicle identification database (VID)~~]. Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and regardless of whether the vehicle has a valid safety inspection report [~~certificate~~] or a valid safety and emissions inspection report [~~certificate~~]. If the vehicle has a valid safety inspection report [~~certificate~~] or a valid safety and emissions inspection report [~~certificate~~], the owner may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report [~~certificate~~]; or

(2) [~~an emissions test and receipt of the emissions test only inspection certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker.~~] The emissions test only inspection report [~~certificate~~] will expire at the same time as the current safety inspection report [~~certificate displayed on the vehicle at the time the unique emissions test-only certificate is issued~~].

(o) [~~(p)~~] Pursuant to Texas Education Code, §51.207, public institutions of higher education located in affected counties may require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out of state.

(1) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test only [~~test-only~~] inspection report [~~certificate which will be affixed to the lower left hand corner of the windshield of the vehicle. Since this inspection certificate is not dated~~]:

(A) For vehicles registered in this state from counties without an emissions testing program, the emissions test only inspection report [~~certificate~~] will expire at the same time as the vehicle's current safety inspection report [~~certificate displayed on the vehicle at the time the emissions test only certificate is issued~~].

(B) For vehicles registered in another state, the emissions test only inspection report [~~certificate~~] will expire on the twelfth month after the month indicated on the date of the vehicle inspection report [~~(VIR)~~] generated by the emissions inspection. Under no circumstances is the vehicle inspection station authorized to remove an out-of-state inspection and/or registration certificate, including safety, emissions, or a combination of any of the aforementioned.

(2) The vehicle inspector shall notify the operator of a vehicle presented for an emissions inspection under this subsection of the requirement to retain the vehicle inspection report [~~VIR~~] as proof of emissions testing under Texas Education Code, §51.207.

§23.52. Emissions Testing Waiver.

(a) (No change.)

(b) Qualified emissions related repairs are those repairs to emissions control components, including diagnosis, parts and labor, which count toward a low mileage waiver or individual vehicle waiver. To be considered qualified emissions related repairs, the repairs:

(1) must [~~Must~~] be directly applicable to the cause for the emissions test failure;[~~.~~]

(2) must [~~Must~~] be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;[~~.~~]

(3) must [~~Must~~] not be tampering related repairs;[~~.~~]

(4) must [~~Must~~] not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and[~~.~~]

(5) must [~~Must~~] be performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas to include the labor cost and/or diagnostic costs. If repairs are not performed by a recognized emissions repair technician of Texas at a recognized emissions repair facility of Texas, only the purchase price of parts applicable to the emissions test failure qualify as a repair expenditure for the low mileage waiver or individual vehicle waiver.

(c) Low mileage waiver.

(1) A vehicle may be eligible for a low mileage waiver provided it:

(A) has failed both its initial emissions inspection and retest;

(B) has incurred qualified emissions-related repairs, as defined in paragraph (2) of this subsection, costing $100 or more;

(C) has been driven less than 5,000 miles in the previous inspection cycle; and

(D) is reasonably expected to be driven fewer than 5,000 miles before the next inspection is required.

(2) The requirements listed in subparagraphs (A) - (C) of this paragraph must be met to receive a low mileage waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs claimed have actually been performed.

(C) The valid retest vehicle inspection report [~~(VIR)~~] and valid vehicle repair form [~~(VRF)~~] for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the low mileage waiver amount, the vehicle repair form [~~VRF~~] shall be completed by a recognized emissions repair technician of Texas.

(d) Individual vehicle waiver.

(1) If a vehicle has failed an emissions test required by the vehicle emissions I/M program, an applicant may petition the designated representative of the department for an individual vehicle waiver in order for the vehicle to receive a state vehicle inspection report [~~certificate~~]. The applicant must demonstrate that all reasonable measures, such as diagnostics, repairs, or installation of replacement parts, have been implemented, but have failed to bring the vehicle into compliance with the program. The department will review the measures taken by the applicant to ensure they have been performed, further measures would be economically unfeasible during this inspection cycle and a waiver will result in a minimal impact on air quality. A vehicle may be eligible for an individual vehicle waiver provided:

(A) It failed both the initial emissions inspection and retest.

(B) The motorist has incurred qualified emissions related repairs, equal to or in excess of the maximum reasonable repair expenditure amounts, as defined in this section for the county in which the vehicle is registered.

(2) The applicable maximum reasonable repair expenditure amounts are:

(A) in affected counties, except El Paso county--$600; and

(B) in El Paso county--$450.

(3) The individual vehicle waiver shall be valid through the end of the twelfth month from the date of issuance. Motorists must apply for the individual vehicle waiver each testing cycle.

(4) The conditions listed in subparagraphs (A) - (C) of this paragraph must be met to receive an individual vehicle waiver:

(A) The vehicle must pass a visual inspection performed by a department representative to ensure the emissions repairs being claimed have actually been performed.

(B) The diagnosis, parts, and labor receipts for the qualified emissions related repairs must be presented to the department and support that the emissions repairs being claimed have been performed.

(C) The valid retest vehicle inspection report [~~(VIR)~~] and valid vehicle repair form [~~(VRF)~~] for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the individual vehicle waiver, the vehicle repair form [~~VRF~~] shall be completed by a recognized emissions repair technician of Texas.

§23.53. Time Extensions.

(a) (No change.)

(b) Low income time extension.

(1) The applicant must provide proof in writing, in a form approved by the department, that:

(A) The vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed vehicle inspection report [~~(VIR)~~].

(B) The vehicle has not been granted a low income time extension in the previous testing cycle.

(C) The applicant is the owner of the vehicle that is the subject of the low income time extension.

(D) The applicant receives financial assistance from the Texas Health and Human Services Commission or the Texas Department of Aging and Disability Services due to indigence or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation approved by the department that the applicant certifies as true and correct.

(2) After a vehicle receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension.

(c) Parts availability time extension.

(1) The applicant must demonstrate to the department that:

(A) Reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers.

(B) Emissions related repairs cannot be completed before the expiration of the registration [~~safety inspection certificate~~], or before the 30 day period following an out of cycle inspection because the repairs require an uncommon part.

(2) The applicant shall provide to the department:

(A) an original vehicle inspection report [~~VIR~~] indicating the vehicle failed the emissions test; and

(B) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address, and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a recognized emissions repair technician of Texas before a parts availability time extension can be issued.

(3) - (6) (No change.)

§23.55. Certified Emissions Inspection Station and Inspector Requirements.

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

(1) be certified by the department as an official vehicle inspection station;

(2) comply with this chapter, the DPS Training and Operations Manual [~~and Training Guide~~] for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;

(3) - (5) (No change.)

(6) enter into and maintain a business arrangement with the Texas Information Management System contractor to obtain a telecommunications link to the Texas Information Management System vehicle identification database [~~(VID)~~] for each vehicle emissions analyzer to

be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) - (c) (No change.)

(d) To qualify as a certified emissions inspector, an applicant must:

(1) be certified by the department as an official vehicle inspector;

(2) complete the training required for the vehicle emissions inspection program and receive the department's [~~current approved inspector's~~] certification for such training;

(3) comply with the DPS Training and Operations [~~Rules and Regulations~~] Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and

(4) complete all applicable forms and reports as required by the department.

§23.56. Waiver for Low Volume Emissions inspection Stations.

(a) This waiver allows a public inspection station to perform limited state required vehicle emissions testing on 1996 and newer model year vehicles using department approved onboard diagnostic (OBDII) testing equipment. Government and fleet inspection stations do not require this waiver. The low volume waiver is not available to vehicle inspection stations in Travis, Williamson, or El Paso counties.

(b) - (c) (No change.)

[~~(d) The low volume waiver is not available to vehicle inspection stations in Travis, Williamson, or El Paso counties.~~]

§23.57. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the department, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Texas inspection and maintenance (I/M) State Implementation Plan (SIP) are completely and properly performed in accordance with the rules and regulations adopted by the department and the Texas Commission on Environmental Quality (TCEQ).

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection vehicle inspection report(s), vehicle repair form(s), vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548, and the Texas I/M SIP.

(c) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Texas I/M SIP, this chapter, and the regulations of the department.

(d) No person may act as or offer to perform services as a recognized emissions repair technician of Texas or a recognized emissions repair facility of Texas without first obtaining and maintaining recognition by the department.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404876
D. Phillips Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

37 TAC §23.57, §23.58

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

The Texas Department of Public Safety (the department) proposes the repeal of §23.57 and §23.58, concerning Emissions Analyzer Access/Identification Card. The proposed repeal of §23.57 is intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. This proposed repeal reflects the elimination of rules specific to the inspection certificate. The repeal of §23.58 is filed simultaneously with proposed new §23.57 to reorganize existing language and improve clarity of the subchapter.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the public will be informed of new requirements concerning the vehicle inspection program, the rules will be updated to reflect all recent legislative changes, and reorganized to improve clarity of the subchapter.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.57. Emissions Analyzer Access/Identification Card.

§23.58. Prohibitions.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404875
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.61, §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.61 and §23.62, concerning Violations and Administrative Penalties. The proposed amendments are intended to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposed amendments reflect such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.61. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), or in the rules of the Texas Department of Public Safety, the terms used in this chapter have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms defined by the TCAA, the [~~following~~] words and terms detailed in this section, when used in this chapter, shall have the following meanings:

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

(4) Suspension--A temporary abatement [~~cessation~~] of the authority associated with the certification of a vehicle inspection station, or inspector.

(5) Warning--A written reprimand based on a category A violation, which if repeated will result in a more severe administrative sanction.

§23.62. Violations and Penalty Schedule.

(a) - (b) (No change.)

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle [~~an~~] inspection report [~~certificate~~] without inspecting one or more items of inspection.

(B) Issuing a vehicle [~~an~~] inspection report [~~certificate~~] without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

[~~(C) Failure to complete the reverse side of an inspection certificate.~~]

[~~(D) Failure to place an inspection certificate in the proper location on the vehicle.~~]

(C) [~~(E)~~] Issuing the [~~out of date,~~] wrong series or type of inspection report [~~certificate~~] for the vehicle presented for inspection [~~inspected~~].

(D) [~~(F)~~] Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) [~~(G)~~] Failure to properly safeguard inspection reports [~~certificate~~], department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) [~~(H)~~] Failure to maintain required records.

(G) [~~(I)~~] Failure to have at least one certified inspector on duty during the posted [~~normal working~~] hours of operations for the vehicle inspection station.

(H) [~~(J)~~] Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

[~~(K) Failure to issue certificates in numerical sequence for every vehicle inspected and approved.~~]

[~~(L) Failure to account for an inspection certificate.~~]

(I) [~~(M)~~] Failure to post hours of operation.

(J) [~~(N)~~] Failure to maintain the required facility standards.

(K) [~~(O)~~] Issuing a vehicle inspection report [~~certificate~~] to a vehicle with one failing item of inspection.

[~~(P) Transferring an inspection certificate from an old windshield to a new windshield on the same vehicle, or failing to properly affix the certificate to the windshield of a passenger vehicle, if one is present.~~]

[~~(Q) Failing to enter information, or entering incorrect vehicle information into an emission analyzer at a vehicle inspection station, where emission testing is required, resulting in reporting of erroneous information concerning the vehicle.~~]

(L) [~~(R)~~] Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) [~~(S)~~] Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) [~~(T)~~] Failure of inspector of record to ensure complete and proper inspection.

[~~(U) Issuing an out of state vehicle identification certificate to a vehicle where the inspection certificate is more than 30 days old.~~]

(O) [~~(V)~~] Failure to enter an inspection into the approved interface device at the time of the inspection.

[~~(W) Performing an inspection without a valid driver license.~~]

(P) [~~(X)~~] Conducting an inspection without the appropriate and operational testing equipment.

(Q) [~~(Y)~~] Failure to perform a complete inspection and/or issue a vehicle inspection report [~~rejection receipt~~].

[~~(Z) Failure to affix or affixing incorrect approved numeral insert to indicate date of issuance or expiration.~~]

(R) [~~(AA)~~] Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle [~~an~~] inspection report [~~certificate~~] without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report [~~certificate~~] to a vehicle with multiple failing items of inspection.

(C) - (I) (No change.)

[~~(J) Gross negligence resulting in the failure to safeguard certificates or department issued forms from theft or loss.~~]

(J) [~~(K)~~] Inspecting a vehicle at a location other than the department approved inspection area.

(K) [~~(L)~~] Altering a previously issued inspection report [~~certificate, including changing the expiration numeral insert or issuing an inspection certificate removed from another vehicle~~].

(L) [~~(M)~~] Issuing a vehicle [~~an~~] inspection report [~~certificate~~], while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) [~~(N)~~] Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) [~~(O)~~] Issuing a passing vehicle [~~an~~] inspection report [~~certificate~~] without inspecting multiple inspection items on the vehicle.

(O) [~~(P)~~] Issuing a passing vehicle [~~an~~] inspection report [~~certificate~~] by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) [~~(Q)~~] Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) [~~(R)~~] Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report [~~certificate~~] or any other department required form.

(R) [~~(S)~~] Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) [~~(T)~~] Issuing a passing vehicle [~~an~~] inspection report in violation of [~~certificate to a vehicle that is prohibited from receiving a certificate under~~] Texas Transportation Code, §548.104(d).

(T) [~~(U)~~] Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report [~~certificate~~] when in violation of this chapter, department regulations, or the Act.

(U) [~~(V)~~] Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report [~~certificate when~~] in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(3) Category C.

(A) Issuing more than one vehicle inspection report [~~certificate~~] without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report [~~certificate~~] to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report [~~certificate~~] to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report [~~certificate~~] to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle [~~an~~] inspection report [~~certificate~~] or [~~to~~] participate in the regulated operations [~~operation~~] of the vehicle inspection station.

(G) - (J) (No change.)

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emissions testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing [~~an~~] emissions inspection report [~~certificate~~] without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing [~~an~~] emissions inspection report [~~certificate~~] when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) - (K) (No change.)

(L) Violating a prohibition described in §28.57 of the title (relating to Prohibitions) [~~Issuing a safety only inspection certificate to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county~~].

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized [~~previous~~] violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification [~~appointment~~] as an official vehicle inspection station.

(g) Reinstatement. [~~After expiration of a period of suspension, reinstatement must be requested by submitting a written application to the department. In addition, the conditions detailed in paragraphs (1) - (4) of this subsection must be met:~~]

[~~(1) all qualifications for appointment;~~]

(1) [~~(2)~~] pass [~~passing~~] the complete written and demonstration test when required;

(2) [~~(3)~~] submit [~~submitting~~] the certification fee if certification has expired during suspension; and

(3) [~~(4)~~] pay [~~paying~~] all charges assessed related to the administrative hearing process, if applicable.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404877
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §§23.71 - 23.77

The Texas Department of Public Safety (the department) proposes new §§23.71 - 23.77, concerning Vehicle Inspection Advisory Committee. This proposal is necessary for the purpose of reorganizing and consolidating the rules governing the vehicle inspection advisory committee and to simplify and generally improve the clarity of the related rules.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be simplification and greater clarity in the rules governing the vehicle inspection advisory committee.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548; and §548.006.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 and §548.006.

§23.71. Purpose and Duties of Vehicle Inspection Advisory Committee.

The purpose of the advisory committee shall be to give the department's Vehicle Inspection Service employees the benefit of the members' collective business, environmental, and technical expertise and experience with respect to the department's rules relating to the operation of the vehicle inspection program and make recommendations relating to the content of rules involving the operation of the vehicle inspection program. Recommendations and advice of the committee are not binding on the department. The committee will have no supervision or control over public business or policy. The advisory committee's sole duty is to advise the department on the state's vehicle inspection program. This advice shall consist of review and comment on rules considered for adoption under Texas Transportation Code, Chapter 548 and Texas Health and Safety Code, Chapter 382. The Vehicle Inspection Advisory Committee has no executive or administrative powers or duties with respect to the operation of the department, and all such powers and duties rest solely with the department. Any other specific purposes and tasks of the advisory committee shall be identified by the director.

§23.72. Attendance.

A record of attendance at each meeting of the advisory committee shall be made. Except as otherwise provided by law, if a member of the advisory committee misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period, that member automatically vacates his or her position on the advisory committee.

§23.73. Presiding Officer.

The members appointed by the presiding officers of the Public Safety Commission and the Conservation Commission shall alternately serve as the presiding officer of the committee. The presiding officer will prepare a meeting agenda for each meeting of the advisory committee. A copy of the agenda shall be provided to the department fifteen (15) working days before any scheduled meeting so that the department can arrange for the necessary staff to be in attendance and provide notification to the committee members and the public. The presiding officer shall report the committee's advice and attendance to the director. The committee may elect an assistant presiding officer and a secretary from among its members and may adopt rules for the conduct of its own activities.

§23.74. Manner of Reporting.

The advisory committee shall provide a written report to the department a minimum of once per year, unless otherwise directed by the department. The report provided by the advisory committee shall be sufficient to allow the department to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence, including the cost of agency staff in support of the committee's activities.

§23.75. Subcommittees.

The presiding officer of the advisory committee may appoint subcommittees. One member of each subcommittee shall serve as the chairperson of that subcommittee. Subcommittee chairs shall make written reports regarding their subcommittee's work to the presiding officer of the advisory committee.

§23.76. Meetings.

The advisory committee shall meet at least once each quarter or at the request of the presiding officer. All advisory committee meetings shall be open to the public.

§23.77. Records.

Department staff shall record and maintain the minutes of each advisory committee and subcommittee meeting. The staff shall maintain a record of actions taken and shall distribute copies of approved minutes and other committee documents to the department, respective commissions, and to the advisory committee members.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404878
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

37 TAC §23.81, §23.82

The Texas Department of Public Safety (the department) proposes new §23.81 and §23.82, concerning Miscellaneous Vehicle Inspection Provisions. This proposal is filed simultaneously with the repeal of §3.72, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. The proposed new sections are intended to consolidate the rules relating to vehicle inspection and to implement the requirements of House Bill 2305, enacted by the 83rd Texas Legislature. The bill requires the elimination of the vehicle inspection certificate and its replacement with an electronic inspection report. The proposal also reflects such changes as well as minor changes proposed for the purposes of clarification.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that the public and law enforcement will be informed of new requirements concerning the vehicle inspection program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.81. Vehicle Inspection Report and Vehicle Registration.

(a) Pursuant to Texas Transportation Code, §548.256, a vehicle must have a passing inspection report in compliance with subsection (b) or a valid inspection certificate before it may be registered.

(b) A vehicle owner may obtain an inspection not earlier than 90 days before the date of expiration of the vehicle's registration.

(c) A used motor vehicle sold by a dealer, as defined by Texas Transportation Code, §503.001, must be inspected in the 180 days preceding the date the dealer sells the vehicle.

(d) The requirements of this section are not applicable to commercial motor vehicles as defined in Texas Transportation Code, §548.001.

§23.82. Acceptance of Out-of-State Vehicle Inspection Certificates.

(a) For purposes of operation only and not for registration, a valid inspection certificate issued in the District of Columbia or in another state of the United States having an inspection law similar to that of the State of Texas is acceptable on a Texas-registered vehicle provided the inspection certificate was obtained while the owner or operator of the vehicle was residing in the other jurisdiction and the vehicle was regularly assigned, garaged, or stationed outside of the State of Texas. This acceptance does not extend to owners and operators who have resided continuously in Texas.

(b) An out-of-state registered vehicle required to be registered in Texas will be required to be inspected at a Texas certified vehicle inspection station and obtain a passing vehicle inspection report before the registration process can be completed. Valid out-of-state safety inspection certificates will not be honored on vehicles required to be registered.

(c) The Department of Public Safety extends the time within which an inspection report must be obtained by a resident owner or operator of a Texas-registered vehicle, when the vehicle has no valid inspection report. The extension will be granted only on the first occasion of operation in this state during an inspection year and only until

the resident owner or operator of the vehicle has arrived at his home, station, or destination in this state and for three days thereafter.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404879
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

SUBCHAPTER I. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §§23.201 - 23.214

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

The Texas Department of Public Safety (the department) proposes the repeal of §§23.201 - 23.214, concerning Vehicle Inspection Advisory Committee. The repeal of §§23.201 - 23.214 is filed simultaneously with proposed new §§23.71 - 23.77 to reorganize and consolidate the rules governing the vehicle inspection advisory committee and to simplify and generally improve the clarity of the related rules.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be simplification and greater clarity in the rules governing the vehicle inspection advisory committee.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§23.201. Purpose.
§23.202. Definitions.
§23.203. Creation and Duration of Terms for the Vehicle Inspection Advisory Committee.
§23.204. Purpose and Duties of Vehicle Inspection Advisory Committee.
§23.205. Composition of Vehicle Inspection Advisory Committee.
§23.206. Membership Terms.
§23.207. Membership.
§23.208. Attendance.
§23.209. Reimbursement.
§23.210. Presiding Officer.
§23.211. Manner of Reporting.
§23.212. Subcommittees.
§23.213. Meetings.
§23.214. Records.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404880
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 424-5848

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §147.1

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §147.1, concerning public hearings. The amendments are to add procedures during a closed hearing.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by email to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the board adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§147.1. Public Hearings.

(a) - (c) (No change.)

(d) If the hearing officer closes the hearing pursuant to this section, in no event shall the hearing officer exclude from the hearing a party as defined by Section 141.111 of this title (relating to Definition of Terms) and includes:

(1) the releasee;

(2) the releasee's attorney;

(3) the releasee's interpreter;

(4) Board member or Board employee;

(5) TDCJ employee;

(6) County jail employee; and

(7) Prosecuting attorney.

(e) When the hearing officer closes the hearing, the hearing officer shall announce on the record that the hearing will be closed to the public to protect the confidential and/or privileged information being introduced into evidence. After the confidential and/or privileged evidence is obtained, the hearing officer shall open the hearing to the public and announce the same on the record.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404893
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 406-5388

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §148.40

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §148.40, concerning purpose. The amendments are proposed due to discussions with the Attorney General's Office.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by email to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.045, 508.141, and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§148.40. Purpose.

This chapter only applies to releasees not convicted of a sex offense to include a past juvenile adjudication for a sex offense.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404894
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 406-5388

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice proposes amendments to §159.15, concerning GO KIDS Initiative. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years. The proposed amendments are necessary to update the agency web address.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §492.013.

Cross Reference to Statutes: Texas Government Code §492.001.

§159.15. GO KIDS Initiative.

(a) The Texas Department of Criminal Justice (TDCJ) Giving Offenders' Kids Incentive and Direction to Succeed (GO KIDS) initiative identifies programs within the TDCJ and resources at local, state, and national levels to help the children of those persons under criminal justice supervision in Texas.

(b) A resource directory, identifying these programs and services, is available on the TDCJ website (www.TDCJ.texas.gov) [~~(www.tdcj.state.tx.us)~~]. In addition, direct links to selected GO KIDS collaborators are included.

(c) A TDCJ GO KIDS coordinator is available to answer inquiries on the initiative. Inquiries should be addressed to the GO KIDS coordinator, TDCJ Rehabilitation Programs Division, P.O. Box 99, Huntsville, Texas 77342-0099.

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 15, 2014.

TRD-201404818
Sharon F. Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 30, 2014
For further information, please call: (936) 437-6701

TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes amendments to §57.3, Compliance Adoption by Reference; §57.10, Nonlobbying Certification; §57.14, Approval of Grant Projects; §57.15, Implementation of Grant; §57.16, Operation of Grant; §57.21, Obligation of Grant Funds; §57.22, Third Party Participation; §57.23, Financial, Progress, and Inventory Reports; §57.24, Deobligation of Grant Funds; §57.26, Misappropriation of Funds; §57.27, Withholding Funds from Grantees; §57.29, Termination for Cause; §57.30, Appeal of Termination of Grant; §57.34, Funding for Project Promotion; §57.36, Level of Funding for Grant Projects; §57.41, Known or Suspected Violations of Laws; §57.49, Audit; §57.50, Report to Department of Insurance; and §57.51, Refund Determinations. The ABTPA further proposes the repeals of §57.1, Definitions; §57.2, Applicability; §57.4, Eligible Applicants; §57.6, Grant Applications; §57.7, Review of Grant Applications; §57.8, Revision of Grant Application; §57.9, Nonsupplanting Requirement; §57.12, Application for Supplemental Funds; §57.13, Award and Acceptance of Grant Award; §57.18, Grant Adjustments; §57.19, Grant Extensions; §57.20, Requests for Funds; §57.28, Conditions for Withholding Funds from Grantees; §57.31, Statewide Private Nonprofit Organizations; §57.32, Funding of Vehicle; §57.35, Requirements for Funding; §57.38, Audit Standards; §57.39, Audit Objectives; §57.40, Audit Requirements for Nonprofit Organizations; §57.42, Grantee's Response to Audit Exceptions; §57.44, Audit Review Board; §57.46, Refunds to the ATBPA on Audit Review Board Determinations; §57.48, Motor Vehicle Years of Insurance Calculations; §57.52, Charges for Copies for Public Records; §57.53, Border Solutions Advisory Committee; §57.54, Grantee Advisory Committee; §57.55, Insurance Fraud Advisory Committee; §57.56, General Requirements for Advisory Committees; and §57.57, Historically Underutilized Business (HUB) Program.

EXPLANATION OF PROPOSED REPEALS AND AMENDMENTS

The ABTPA conducted a review of its rules in compliance with Government Code, §2001.039. As a result of the review, the ABTPA has determined that the reasons for initially adopting §§57.1, 57.2, 57.4 - 57.9, 57.12, 57.13, 57.18 - 57.20, 57.28,

57.31, 57.32, 57.35, 57.38 - 57.40, 57.42 - 57.48, and 57.52 - 57.57 no longer exist. Policies concerning grant and application procedures will be detailed in ABTPA's Grant Administrative Manual available to all grantees and therefore, do not need to be maintained as rules. The ABTPA has also determined that rules which duplicate language already in statute should be repealed.

The ABTPA has further determined that the reasons for initially adopting §§57.3, 57.10, 57.14 - 57.16, 57.21 - 57.24, 57.26, 57.27, 57.29, 57.30, 57.34, 57.36, 57.41, and 57.49 - 57.51 continue to exist but amendments are necessary.

An amendment to §57.3 is proposed to delete language regarding the ABTPA's adoptions by reference because adoptions by reference are not necessary.

An amendment to §57.10 is proposed to clarify the meaning of ABTPA when used throughout Chapter 57.

Amendments to §57.14 are proposed to clarify that approval of grant projects is made by the Board of the Automobile Burglary and Theft Prevention Authority (board) and that grant award decisions are final and not subject to judicial review.

An amendment to §57.15 is proposed to provide that the ABTPA board designee may review and approve exceptions to the requirements related to implementation of grants. Additional amendments are proposed to add subsections (a) - (c) for improved structure and readability.

Amendments to §57.21 are proposed to add subsections (a) and (b) for improved structure and readability.

An amendment to §57.22 is proposed to provide that the ABTPA director or board designee must review and approve any contract or amendments to any contract prior to releasing funds in the amount of $15,000 or more

Amendments to §57.23 are proposed to clarify that grantees must submit all required reports as instructed in the ABTPA Grant Administrative Manual and to revise the reporting period to the fiscal year calendar.

An amendment to §57.24 is proposed to clarify that unobligated funds must be returned to the ABTPA with the final financial report on or before November 30.

An amendment to §57.26 is proposed to add that upon discovery of any evidence of misappropriation of funds, grantees must report to the general counsel of ABTPA in addition to the director of ABTPA.

Amendments to §57.27 are proposed to include the conditions for withholding funds that are currently set out under existing §57.28 because the conditions are more appropriately located under §57.27. Additional amendments are proposed to subdivide the rule to improve formatting and readability. Because the ABTPA proposes to incorporate, with amendments, all rule language contained under existing §57.28, the ABTPA further proposes to repeal §57.28.

An amendment to §57.29(b)(2) is proposed to add the word "or" to clarify that a grant may be terminated based on any one of three findings described under subsection (b).

Amendments to §57.30 are proposed to clarify that an appeal of the termination of a grant must be submitted to both the director and board designee. The proposed amendments also require both the director and board designee to consider all submitted documentation and to make recommendations to the board.

Amendments to §57.34 are proposed to add subsections (a) and (b) to improve formatting and readability. An additional amendment is proposed to delete the list of items that may be purchased because the Grant Administrative Manual will further outline the approval process for purchasing promotional items which include a list of allowable items.

Amendments to §57.36 are proposed to clarify that grantees must contribute a cash match of 20% for each year of funding to remain eligible for funds and to delete all additional contribution provisions.

Amendments to §57.41 are proposed to prescribe the procedures a grantee is required to take if that grantee has reason to believe a criminal violation has occurred in connection with ABTPA funds.

Nonsubstantive amendments to §57.49 are proposed for clarity and for consistency with other agency rules.

Amendments to §57.51 are proposed to clarify that the ABTPA board designee is granted the same authority as the director for purposes of §57.51. The ABTPA further proposes to delete the language that excludes insurance company representatives from participating in refund determinations.

Proposed amendments are made throughout the proposed amended sections to revise terminology for consistency with Texas Department of Motor Vehicle (TxDMV) rules and with current ABTPA practice. In addition, nonsubstantive amendments are proposed to correct punctuation, grammar, capitalization, and references throughout the proposed amended sections.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and repealed sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repealed sections.

Ginny Booton, Interim Director of ABTPA, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and repealed sections.

PUBLIC BENEFIT AND COST

Ms. Booton has also determined that for each year of the first five years the amendments and repealed sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and repealed sections will be simplification and clarification of the agency's rules. There are no anticipated economic costs for persons required to comply with the amendments and repealed sections as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The ABTPA has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and repealed sections may be submitted to David Richards, General Counsel, Automobile Burglary and Theft Prevention Authority,

4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on December 1, 2014.

43 TAC §§57.1, 57.2, 57.4, 57.6 - 57.9, 57.12, 57.13, 57.18 - 57.20, 57.28, 57.31, 57.32, 57.35, 57.38 - 57.40, 57.42, 57.44, 57.46, 57.48, 57.52 - 57.57

(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 Automobile Burglary and Theft Prevention Authority or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repealed sections are proposed under Texas Civil Statutes, Article 4413(37), Section 6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; and Texas Civil Statutes, Article 4413(37).

§57.1. Definitions.

§57.2. Applicability.

§57.4. Eligible Applicants.

§57.6. Grant Applications.

§57.7. Review of Grant Applications.

§57.8. Revision of Grant Application.

§57.9. Nonsupplanting Requirement.

§57.12. Application for Supplemental Funds.

§57.13. Award and Acceptance of Grant Award.

§57.18. Grant Adjustments.

§57.19. Grant Extensions.

§57.20. Requests for Funds.

§57.28. Conditions for Withholding Funds from Grantees.

§57.31. Statewide Private Nonprofit Organizations.

§57.32. Funding of Vehicle.

§57.35. Requirements for Funding.

§57.38. Audit Standards.

§57.39. Audit Objectives.

§57.40. Audit Requirements for Nonprofit Organizations.

§57.42. Grantee's Response to Audit Exceptions.

§57.44. Audit Review Board.

§57.46. Refunds to the ATBPA on Audit Review Board Determinations.

§57.48. Motor Vehicle Years of Insurance Calculations.

§57.52. Charges for Copies for Public Records.

§57.53. Border Solutions Advisory Committee.

§57.54. Grantee Advisory Committee.

§57.55. Insurance Fraud Advisory Committee.

§57.56. General Requirements for Advisory Committees.

§57.57. Historically Underutilized Business (HUB) Program.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404857
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 465-5665

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43 TAC §§57.3, 57.10, 57.14 - 57.16, 57.21 - 57.24, 57.26, 57.27, 57.29, 57.30, 57.34, 57.36, 57.41, 57.49 - 57.51

STATUTORY AUTHORITY

The amendments are proposed under Texas Civil Statutes, Article 4413(37), Section 6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; and Texas Civil Statutes, Article 4413(37).

§57.3. Compliance Adoption by Reference.

Grantees [~~Grantee/applicants~~] shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. [~~The ABTPA adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, (512) 374-5101.~~]

[~~(1) federal guidelines:~~]

[~~(A) Office of Justice Assistance, Research, and Statistics, OJARS Guideline Manual, OJARS M7100.1D, Financial and Administrative Guide for Grants;~~]

[~~(B) United States General Accounting Office, Standards for Audit for Governmental Organizations, Programs, Activities and Functions;~~]

[~~(C) United States General Accounting Office, Guidelines for Financial and Compliance Audits of Federally Assisted Programs;~~]

[~~(D) Office of Management and Budget, Circular Number A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations;~~]

[~~(2) Uniform Grant and Contract Management Standards, developed under directive of the Uniform Grant and Contract Management Act of 1981, Texas Civil Statutes, Article 4413(32g);~~]

[~~(3) Automobile Burglary and Theft Prevention Authority Grant Program: application kit;~~]

[~~(4) Automobile Burglary and Theft Prevention Authority Grant Program: Grant Administrative Guide;~~]

[~~(5) ABTPA Forms:~~]

[~~(A) statement of grant award;~~]

[~~(B) grantee acceptance notice;~~]

[~~(C) grantee's request for funds;~~]

[~~(D) grant adjustment notice;~~]

[~~(E) grantee's progress report;~~]

[~~(F) report of expenditure and status of funds;~~]

[~~(G) property inventory.~~]

§57.10. Nonlobbying Certification.

(a) Each grantee shall certify that none of the grant funds, regardless of their source or character, including local cash contribution, shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from the Automobile Burglary and Theft Prevention Authority (ABTPA). [~~ABTPA.~~]

§57.14. Approval of Grant Projects.

(a) The ABTPA board will approve funding for projects on an annual basis, subject to continuation of funding through state appropriations and availability of funds.

(b) To be eligible for consideration for funding, a project must be designed to support one of the following ABTPA program categories:

(1) Law Enforcement, Detection and Apprehension;

(2) Prosecution, Adjudication and Conviction;

(3) Prevention, Anti-Theft Devices and Automobile Registration;

(4) Reduction of the Sale of Stolen Vehicles or Parts; and

(5) Public Awareness, Crime Prevention, and Education.

(c) Grant award decisions by the ABTPA are final and not subject to judicial review. [~~In evaluating a project for funding, the ABTPA will consider:~~]

[~~(1) components of auto burglary and theft, including the auto theft rate (ratio of automobile burglaries or thefts in this state to the number of automobiles in this state), of the grantee's program area and its impact on the statewide auto theft rate and the reduction of auto burglaries;~~]

[~~(2) performance measures and the likelihood of success of the project. An application for a continuation grant will be evaluated on past performance as reflected in the project's success to date in meeting its goals, objectives, and performance measures;~~]

[~~(3) the performance of an applicant on other projects funded by the ABTPA;~~]

[~~(4) recommendations by ABTPA staff on funding allocations for the grant year and on individual grant applications. Staff recommendations on individual grant applications will be based on staff's review and ranking of each grant application as reflected in the ABTPA Application Review Instrument for each application; and~~]

[~~(5) the total number of grant applications submitted for the grant year and by program category, in relation to the total grant money available and its allocation among the five program categories, as determined by the ABTPA.~~]

[~~(d) Grant award decisions by the ABTPA are final and not subject to judicial review.~~]

§57.15. Implementation of Grant.

(a) Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement.

(b) Failure by the grantee to implement a grant within 45 days will be construed by the ABTPA as the grantee's relinquishment of the grant award.

(c) Any exception to this rule will require the review and written approval of the ABTPA director and board designee.

§57.16. Operation of Grant.

All grants shall be conducted in accordance with the following:

(1) applicable federal or state laws, rules, regulations, policies, or procedures; [~~guidelines;~~] and

(2) terms, conditions, standards, or stipulations of [~~or~~] grant agreements.

§57.21. Obligation of Grant Funds.

(a) Grant funds may not be obligated prior to the effective date or subsequent to the termination date of the grant period.

(b) Obligations must be related to goods or services provided and used for approved purposes.

§57.22. Third Party Participation.

(a) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(b) Contracts, including any amendments, must be reviewed and approved as to form and content by the ABTPA director or board designee [~~,~~] prior to the release of any funds under the contract when the amount is $15,000 or more.

§57.23. Financial, Progress, and Inventory Reports.

(a) Each grantee shall submit all required [~~financial, monthly progress and inventory~~] reports in accordance with the instructions provided in [~~by~~] the ABTPA Grant Administrative Manual. [~~on forms prescribed by the ABTPA. Financial and inventory reports must be signed by the financial officer. Progress reports must be signed by the project director.~~]

(b) Reporting is based on the Texas government fiscal year calendar, beginning September 1 through August 31. [~~Monthly progress reports are due by the 5th business day of the following month.~~]

[~~(c) Financial reports are due quarterly and are due 30 days after the period end date.~~]

[~~(d) A complete inventory report is due once a year and is to be included with the fourth quarter report.~~]

[~~(e) For purposes of this section, reporting is on a fiscal year basis, beginning September 1 through August 31.~~]

§57.24. Deobligation of Grant Funds.

Any unobligated funds remaining with the grantee shall be returned immediately to the ABTPA with the final financial report on or before November 30.

§57.26. Misappropriation of Funds.

The grantee must, immediately upon discovery, report to the ABTPA director and the ABTPA general counsel any evidence of misappropriation of funds.

§57.27. Withholding Funds from Grantees.

(a) The ABTPA may withhold funds from a grantee or projects operated by the grantee when: [~~when determination is made that the~~

grantee has failed to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or when ABTPA funds are depleted or insufficient to fund allocations.]

(1) determination is made that the grantee has failed to:

(A) comply with applicable federal or state laws, rules, regulations, policies, or the grant agreements on which the award of the grant is predicated;

(B) submit required reports on time;

(C) provide a response to audit or monitoring findings on time;

(D) return any unused grant funds remaining on the expired grant within the required timeframe;

(E) use funds appropriately;

(F) commence project operations within 45 days of the project start date; or

(2) determination is made that the grantee has submitted reports or records with deficiencies, irregularities, or are delinquent.

(b) The ABTPA may reduce or withhold grant funds when ABTPA allocations are depleted or insufficient funds are allocated.

(c) The ABTPA will notify grantees of deficient conditions for withholding funds and the period of time within which to cure any deficiency.

(d) Grantees have 15 days after receiving deficient notification to request an appeal.

(e) The ABTPA director or board designee will determine the outcome of the grant appeal.

(f) Funds will be released when the ABTPA director or board designee is provided with satisfactory evidence that the deficient conditions are corrected.

§57.29. Termination for Cause.

(a) The ABTPA may terminate any grant for failure to comply with any of the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines;

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on finding that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished;

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by the ABTPA; or

(3) a grantee has acted in bad faith.

(c) The ABTPA shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds awarded to a grantee shall, upon termination of a grant, revert to the ABTPA.

(e) A grantee may be adjudged ineligible for future grant award if a grant awarded to the grantee is terminated for cause.

§57.30. Appeal of Termination of Grant.

(a) A grantee may appeal the termination of a grant by writing to the director and board designee of the ABTPA within 10 days from the date of the suspension or termination notification.

(b) The grantee may submit written documentation in support of the appeal.

(c) The director and board designee of the ABTPA shall consider any documentation submitted by a grantee in support of an appeal and make a recommendation to the ABTPA board on a grantee's appeal.

(d) The decision of the ABTPA is final and not subject to judicial review.

§57.34. Funding for Project Promotion.

(a) Funds may be used by the ABTPA and grantees [Grantees] for promotional items to enhance auto theft crime prevention efforts. [Items such as pens, magnets, tee shirts, bags, or hats may be purchased with ABTPA funds to distribute at Public Awareness/Education events.]

(b) Funds may be provided for project promotion through paid advertisement, such as billboards, television, newspaper, or radio announcement. Production costs for public service announcements are an allowable expense. [It is the intent of the ABTPA to promote the grant program and prevention efforts with administrative funds.]

§57.36. Level of Funding for Grant Projects.

(a) A grantee must contribute a cash match of 20% of the total ABTPA award, for each year of funding, in order to be eligible for ABTPA Funds. [Except as provided in subsection (f) of this section, the level of ABTPA funding for a project will not exceed the following annual rates:]

[(1) Years 1 and 2--100% of the grant request for each year.]

[(2) Year 3 and thereafter--80% of the second year award.]

[(b) Projects that have been funded previously from federal or other private sources may apply for ABTPA funding as continuation grants. The ABTPA will assume funding of the project's funding history.]

[(c) Equipment costs funded by the ABTPA during a project's first year shall be deducted before the calculation of subsequent year funding.]

[(d) A grantee must contribute a cash match of 20% of the total ABTPA award, for each year of funding, in order to be eligible for ABTPA Funds.]

[(e) A grantee awarded ABTPA funds must expend its 20% cash contribution before the end of the current grant period.]

[(f) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award, including for the consolidation of existing grant programs, the inclusion of new agencies in a current grant program or based on the availability of funds.]

§57.41. Violation of Law [Known or Suspected Violations of Laws].

(a) If the grantee has a reasonable belief that a criminal violation may have occurred in connection with ABTPA funds, including the misappropriation of funds, [Knowledge or suspicion of any legal violations that are encountered during audits--including] fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with the requirements of a grant, the grantee must immediately notify [--must be communicated in writing to the local prosecutor's office and] the ABTPA director and the ABTPA general counsel

in writing of the suspected violation or irregularity. [~~immediately upon discovery.~~]

(b) The grantee may also notify the local prosecutor's office of any possible criminal violations.

(c) Grantees whose programs or personnel become involved in any litigation arising from the grant, whether civil or criminal, must immediately notify and forward a copy of any demand notices, lawsuits, or indictments to the ABTPA director and the ABTPA general counsel.

§57.49. Audit.

(a) The ABTPA may employ or retain the services of auditors for the purpose of assisting the ABTPA to determine an insurer's compliance with the requirements of Texas Civil Statutes, Article 4413(37), §10.

(b) All insurers subject to Texas Civil Statutes, Article 4413(37), §10, shall make their books and records reflecting motor vehicle years of insurance available to the auditors upon request during normal business hours.

(c) The ABTPA may assess charges for audit to insurance companies [~~charges for audit~~] in cases where the companies' assertion of Refund Due was determined to be unfounded.

§57.50. Report to Department of Insurance.

If the ABTPA determines that an insurer failed to pay or intentionally underpaid the fee required by Texas Civil Statutes, Article 4413(37), §10, the ABTPA shall notify the Department of Insurance with the request that the department [~~Department~~] revoke the insurer's certificate of authority.

§57.51. Refund Determinations.

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file a written claim for a determination or a refund not later than six months after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA board designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ABTPA determination. If an insurer refuses to provide the requested information, the refund may be denied in whole or in part.

(c) The director or the ABTPA board designee is authorized to employ or retain the services of financial advisors to assist in the determination. The director or the designee shall prepare a written report to the ABTPA based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA shall base its determination on the documentary evidence considered by the director or the board designee. [~~The two insurance company representatives on the ABTPA shall not participate in the determination.~~] The ABTPA decision shall be based on a majority vote of the board. [~~five remaining members.~~] The ABTPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA shall notify the comptroller and request the comptroller to draw warrants on the funds available to the ABTPA for the purpose of refunding monies overpaid.

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

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404858
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: November 30, 2014
For further information, please call: (512) 465-5665

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER J. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

4 TAC §17.603, §17.604

The Texas Department of Agriculture (the department) adopts amendments to §17.603, concerning assistance for GO TEXAN Certified Retirement Communities, and §17.604, concerning use of department marks by GO TEXAN Certified Retirement Community members. The amendments are adopted without changes to the proposal published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6349). The amendments are adopted to clarify program benefits, ensure proper use of the GO TEXAN Certified Retirement Community certification mark, and to make the sections consistent with changes made to Texas Agriculture Code, §12.040, by Senate Bill 1214, 83rd Legislative Regular Session, 2013 (SB 1214).

The amendments to §17.603 add benefits for GO TEXAN Certified Retirement Communities, including but not limited to training, marketing, and partnerships for promotional campaigns. The amendments to §17.604 provide clarification and direction regarding use of the GO TEXAN Retirement Community Certification Mark by communities. Additionally, the amendments clarify the existing application requirements regarding the current certification fees, as are required by statute, to provide that a community shall not be required to pay fees until they are invoiced by the department upon approval of an application. No change has been made to the current fee amount.

No comments were received on the proposal.

The amendments to Chapter 17, Subchapter J, are adopted under the Texas Agriculture Code, §12.040, as amended by SB 1214, which authorizes the department to adopt rules to establish and maintain a certified retirement community program and to set a fee for program participation.

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 16, 2014.

TRD-201404827
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 5, 2014
Proposal publication date: August 22, 2014
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §5.101, concerning education and training of employees of the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, "finance agencies") without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6771). The rule will not be republished.

The new rule is adopted to implement Texas Government Code, §656.048, on providing assistance for education and training of finance agency employees under certain conditions.

The Department received no comments regarding the proposed rule.

The new rule is adopted under Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency; and the obligations assumed by the administrators and employees on receiving the training and education.

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 17, 2014.

TRD-201404828

Catherine Reyer
General Counsel, Texas Department of Banking
Finance Commission of Texas
Effective date: November 6, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 475-1300

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.209

The Credit Union Commission (the Commission) adopts amendments to §91.209, concerning Call Reports and Other Information Requests, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5018).

The amendments increase the Commissioner's flexibility to assess penalties when a credit union fails to file a timely and accurate quarterly financial and statistical report. Such penalties are intended as a deterrent to late, incomplete, and inaccurate filing of required reports.

The Commission received no comments on these proposed changes.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §122.101, which directs credit unions to submit call reports to the Commissioner and permits the Commissioner to charge a fee for late reports, and §122.254, which sets out criminal penalties for providing false information.

The specific sections affected by the proposed amended rule are Texas Finance Code, §122.101 and §122.254.

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 20, 2014.

TRD-201404854
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 9, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 837-9236

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SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.502

The Credit Union Commission (the Commission) adopts amendments to §91.502, concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, without changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5493).

The amendments clarify that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

The Commission received no comments on these proposed changes.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §122.062, which limits the compensation a director may receive for services.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.062.

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 20, 2014.

TRD-201404851
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 9, 2014
Proposal publication date: July 18, 2014
For further information, please call: (512) 837-9236

♦ ♦ ♦

SUBCHAPTER G. LENDING POWERS

7 TAC §91.704

The Credit Union Commission (the Commission) adopts amendments to §91.704, concerning Lending Powers, Real Estate Lending, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5019). The amendments clarify maturity limits for certain real estate loans.

The amendments are adopted as a result of the Texas Credit Union Department's (Department) general rule review.

The Commission received no comments on these proposed changes.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §123.201, which authorizes lending activities for credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §123.201.

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 20, 2014.

TRD-201404853
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 9, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 837-9236

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §§20.1 - 20.15 and new §20.16, Single Family Umbrella Rule, without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6123).

REASONED JUSTIFICATION: The Department finds that the amendments will increase efficiency and effectiveness of single family programs.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS:

Comments were accepted from August 15, 2014 through September 15, 2014, and the following comments were received.

General Comments

COMMENT SUMMARY: Commenter (Easter Seals Central Texas) requested that the Department refrain from imposing additional requirements on the Amy Young Barrier Removal (AYBR) Program through the Single Family Umbrella Rule, such as the burden to prove program beneficiaries' clear title on their properties and other requirements suggested for major rehabilitation programs (which the AYBR Program is not). Commenter believes such requirements would create unnecessary challenges to the Program.

STAFF RESPONSE: Staff agrees with the comment regarding no additional burdens and advises that no additional requirements are being imposed upon the AYBR Program through the Single Family Umbrella Rule. The only new requirement under which future rounds of the AYBR Program must operate is 10 TAC Chapter 21, the Minimum Energy Efficiency Requirement for Single Family Construction Activities, which becomes effective on January 1, 2015. Staff believes that the new energy efficiency requirements will not pose new challenges to Administrators because existing program guidelines already prompt compliance with the new energy efficiency rules. No changes have been made to the rule in response to this comment.

§20.2(1), Applicability

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) questioned what inspection and construction requirements would apply to the AYBR Program if the Program is exempt from §20.10, Inspection and Construction Requirements in the proposed Single Family Umbrella Rule. Commenter recommends that the Program be required to follow §20.10. Commenter also recommends that AYBR Program activities be required to follow the applicable sections of the Texas Minimum Construction Standards on a project-by-project basis.

STAFF RESPONSE: Staff will put summarized AYBR Program inspection and construction requirements in AYBR Program Notices of Funding Availability, and detailed requirements in AYBR Program manuals. No changes have been made to the rule in response to this comment.

§20.3(3), Definitions

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) questioned the applicability of Affirmative Marketing requirements, including HUD Form 935.2B or an equivalent plan to market rehabilitation programs to homeowners. Additionally the Commenter questioned if the Department will review and approve equivalent plans.

STAFF RESPONSE: In response to Commenter's questions, the intent of the rule is to ensure that Administrators are affirmatively marketing the assistance they offer to persons who are least likely to apply. The Department will review equivalent plans for meeting requirements as specified in the rule at the time of monitoring or as needed in the event of complaints received by the Texas Workforce Commission or the Department. A proposed amendment to 10 TAC §20.9(d), concerning Affirmative Marketing Requirements, has been posted to the TDHCA website, and the amendment will be presented to the Board at a future meeting. It is anticipated that the amendment will provide further clarification of Department expectations regarding compliance with regulatory requirements. No changes have been made to the rule in response to this comment.

§20.3(7), Definitions

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) questioned how the Department would remove barriers and address health and safety issues in the AYBR Program if the Program is exempt from §20.10 relating to Inspection and Construction Requirements in the proposed Single Family Umbrella Rule.

STAFF RESPONSE: See the STAFF RESPONSE to comment regarding §20.2(1) above, incorporated herein.

§20.4(c), Eligible Single Family Activities

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) questioned the prohibition on rehabilitation of Manufactured Housing Units with federal funds.

STAFF RESPONSE: In response to Commenter's question, the Department has two primary programs that can be used to provide accessibility features for low-income Texans: the Amy Young Barrier Removal (AYBR) program is funded by State of Texas general revenue funds and can be used to add accessibility features to existing units, while the HOME Invest-

ment Partnerships Program (HOME) can be used to repair or replace substandard housing units. The Department proposes to allow the AYBR program to remove barriers for all housing types including manufactured housing units (MHUs), as long as there is sufficient funding to address life and safety concerns. The Department is not proposing to allow HOME Investment Partnerships Program (HOME) to rehabilitate existing MHUs because, unlike AYBR, the program can be used to replace units with a new MHU unit that is accessible, including funding for ramps and driveway access. It is not a prudent use of HOME funds to rehabilitate MHUs for the primary purpose of removing architectural barriers when the use of such funds triggers additional property condition requirements that go beyond addressing life and safety issues. No changes have been made to the rule in response to this comment.

§20.10(b)(2), Inspection and Construction Requirements

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) stated that the Department's various programs use different inspection forms and some Administrators use third-party inspection software. Commenter recommends that the Department create a universal inspection form that is applicable to all Department programs. Commenter also recommends that Administrators be permitted to use third-party inspection software if it complies with Department requirements.

STAFF RESPONSE: The Department agrees in part with the Commenter, and will develop an inspection form to be used by all Administrators with the revised Texas Minimum Construction Standards, which will be effective on January 1, 2015. Unless the Department specifically authorizes an Administrator's use of any third-party software, Administrators must use the applicable Department form to administer Department programs. No changes have been made to the rule in response to this comment.

§20.16, Waivers and Appeals

COMMENT SUMMARY: Commenter (Equity Community Development Corporation) stated that the time allowed for Department response to a request for waiver for Texas Minimum Construction Standards is excessive, and may result in the loss of the contractor hired to complete rehabilitation work, or an increase in costs to the project.

STAFF RESPONSE: The Department agrees in part with the Commenter, and will work closely with Administrators as the revised Texas Minimum Construction Standards become effective on January 1, 2015. Training will emphasize the importance of a complete and accurate initial inspection, in order to minimize the need to request a waiver once work is underway. Further, while the Department will work diligently to respond to waiver requests in fewer than the 14 business days allowed by the rule, sufficient time must be allowed to resolve more complicated requests. No changes have been made to the rule in response to this comment.

STATUTORY AUTHORITY. The amendments and new rule are adopted pursuant to §2306.053 of the Texas Government Code, which authorizes the Department to adopt rules. The amendments and new rule affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404892
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 9, 2014
Proposal publication date: August 15, 2014
For further information, please call: (512) 475-3959

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 114. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§114.31, 114.47 - 114.52

The State Board of Education (SBOE) adopts amendment to §114.31 and new §§114.47-114.52, concerning Texas essential knowledge and skills (TEKS) for languages other than English (LOTE). The amendment to §114.31 is adopted with changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6135). New §§114.47-114.52 are adopted without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6135) and will not be republished. Section 114.31 addresses implementation of high school LOTE TEKS adopted in 2014. The adopted rule actions add new TEKS for classical languages for implementation in the 2017-2018 school year.

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

The LOTE TEKS review committees convened in Austin in June 2013 to begin work on draft recommendations for revisions to the TEKS. Expert reviewers provided their initial feedback on the current LOTE TEKS to the SBOE in August. The TEKS review committees met again in August 2013 to complete their initial draft recommendations. In September 2013, the first draft recommendations were provided to the board and to the board-appointed expert reviewers and posted to the TEA website for informal public feedback. During the September 2013 SBOE meeting, two expert reviewers and one representative from each LOTE TEKS review committee provided invited testimony to the Committee of the Full Board. Expert reviewers provided feedback on the committee's draft recommendations in October.

The LOTE TEKS review committees met for a third time in October 2013 in order to finalize their recommendations for revisions to the TEKS. The SBOE-appointed expert reviewers participated in this meeting and their feedback on the draft recommendations was provided to the TEKS review committee members at this meeting. The final recommendations from the review committees were posted on the TEA website in November 2013 and were shared with the expert reviewers. The experts' final feed-

back on the recommendations was provided to the SBOE at the January 2014 meeting. A public hearing on the proposed revisions to the LOTE TEKS was held on January 28, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for first reading and filing authorization at the January 31, 2014, meeting. Also at the January meeting, the board directed staff to form two committees to make recommendations regarding the need for unique TEKS for classical languages and logographic languages.

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

A second public hearing was held on April 9, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for second reading and final adoption at the April 11, 2014, meeting. The revised TEKS for LOTE approved for adoption at the April 2014 meeting were scheduled to be implemented in classrooms in the 2016-2017 school year, with the exception of the Special Topics in Language and Culture course, which will be implemented beginning with the 2014-2015 school year. The SBOE also directed staff to move forward with the LOTE TEKS committees' recommendation that new TEKS for classical languages be developed. The LOTE TEKS committee for classical languages met in May 2014 to begin work on draft recommendations. The committee met again in June 2014 to finalize their recommendations for LOTE TEKS for classical language.

At its July 2014 meeting, the SBOE approved proposed revisions to 19 TAC Chapter 114, Texas Essential Knowledge and Skills for Languages Other Than English, Subchapter C, High School, for first reading and filing authorization. The proposed revisions to 19 TAC Chapter 114, Subchapter C, were to add new TEKS for Classical Languages, Levels I-VII, and Seminar in Classical Languages. The proposed revisions were also to amend §114.31, Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, High School, Adopted 2014, to establish an implementation date of the 2016-2017 school year for all high school LOTE TEKS, with the exception of Special Topics in Language and Culture.

At its September 2014 meeting, the SBOE approved the proposed revisions to 19 TAC Chapter 114, Subchapter C, for second reading and final adoption to add the new LOTE TEKS for classical languages and to amend §114.31, relating to the implementation date for high school LOTE TEKS. The SBOE's action at its September meeting included a change at adoption to §114.31 to establish the implementation date of the 2017-2018 school year for all high school LOTE TEKS, with the exception of Special Topics in Language and Culture, to correspond with the action taken by the SBOE at its July 2014 meeting to delay the adoption of instructional materials for LOTE until the 2017-2018 school year. This change allows for the implementation of the new LOTE TEKS to coincide with the availability of LOTE instructional materials.

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

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

The SBOE took action to approve the amendment and new sections for second reading and final adoption during its September 19, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the rule actions for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school. The earlier effective date will enable districts to begin preparing for implementation of the new TEKS.

Following is a summary of the public comments and corresponding responses regarding the proposed rule actions.

Comment. One teacher expressed support for the new TEKS for classical languages, stating that they keep the focus on reading and only minimally address speaking and writing.

Response. The SBOE agreed and determined that the new TEKS appropriately addressed reading, writing, and speaking.

Comment. One teacher stated that most students in general Latin, Level II courses can speak and write at an intermediate level, which is in alignment with the proposed new TEKS for classical languages.

Response. The SBOE agreed and determined that the new TEKS for Level II appropriately addressed writing and speaking.

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

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

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

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

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

(c) No later than August 31, 2016, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §§114.32 and 114.34-114.52 of this title.

(d) If the commissioner makes the determination that instructional materials funding has been made available under subsection (c) of this section, §§114.32 and 114.34-114.52 of this title shall be implemented beginning with the 2017-2018 school year and apply to the 2017-2018 and subsequent school years.

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

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

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 14, 2014.

TRD-201404808
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 3, 2014
Proposal publication date: August 15, 2014
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §781.419

The Texas State Board of Social Worker Examiners (board) adopts an amendment to §781.419, concerning the licensure and regulation of social workers, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5040), and therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendments to §781.419 implement Senate Bill 162 of the 83rd Legislature, Regular Session, 2013, which amended the Texas Occupations Code, Chapter 55, requiring the board, by rule, to set licensure requirement procedures for military spouses and the eligibility requirements for certain licenses issued to applicants with military experience. Specific amended sections in this proposal update licensure requirements and standards of practice in the regulation of social workers, and revisions are outlined in the section-by-section summary of this preamble.

SECTION-BY-SECTION SUMMARY

This summary considers only those sections which were substantially changed in language, meaning, or intent.

The amendment to §781.419 adds new language to define military service member, military spouse, and military veteran as well as application and eligibility procedures that apply to those individuals.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were individuals and an association, the National Association of Social Workers - Texas Chapter. Commenters were generally in favor of the rules; however, some commenters suggested changes that are discussed in the summary of comments.

Comment: Concerning §781.419(a)(2), one commenter notes there may be a need to reference the Military Spouses Equal Treatment Act (Act) that added a definition of spouse for purposes of military policies.

Response: The board disagrees. The Act was merely a bill which failed to make it out of the United States House of Representatives Subcommittee on Military Personnel, and thus, it was not passed into federal law and cannot be referenced. No change to the proposed language was made as a result of this comment.

Comment: Concerning §781.419(e), one commenter objects to the inclusion of the term "apprenticeship" because it is not a term that is used in the Social Work Practice Act or in the Texas Administrative Code, Title 22, Chapter 781, governing the practice of social work. The commenter suggested the term "supervised practice" as more consistent with current language.

Response: The board disagrees. The term "apprenticeship" is statutory language that is applicable to many professions and differentiates the statutory intent from other types of supervised practice. No change to the proposed language was made as a result of this comment.

Comment: Concerning §781.419(e), one commenter supports a military service member or military veteran receiving credit for military service, training, or education.

Response: The board appreciates the support. No changes to the proposed rules were made as a result of this comment.

Comment: Concerning §781.419, one commenter lends conditional support to the amendments if they "provide some measure of reciprocity for military social workers as well as military spouses who are social workers."

Response: The board clarifies that while the amendment to §781.419(e) grants "credit towards any licensing or apprenticeship requirement...for verified military service, training or education that is relevant to the occupation" and §781.419(f) authorizes the board to issue a license to a military spouse "as soon as practicable," these provisions significantly differ from "reciprocity." The board notes that Texas Occupations Code, §505.3575, allows the board to waive a license requirement for an applicant who is licensed or certified in another state if Texas has entered into a reciprocity agreement with that state. At this time, no reciprocity agreements with any state are in place. No change to the proposed language was made as a result of this comment.

Comment: Concerning §781.419, two commenters support the proposed language.

Response: The board appreciates the support. No change to the proposed language was made as a result of the comment.

STATUTORY AUTHORITY

The amendment is authorized by Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members, military veterans, and military spouses.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404901
Tim Brown
Chair
Texas State Board of Social Worker Examiners
Effective date: November 9, 2014
Proposal publication date: July 4, 2014
For further information, please call: (512) 776-6972

TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2, 601.3, 601.9

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2, 601.3, and 601.9 concerning informed consent. The amendment to §601.2 is adopted with changes to the proposed text as published in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3662). Amendments to §601.3 and §601.9 are adopted without changes, and therefore, the sections will not be republished. The rules will be effective on January 15, 2015.

BACKGROUND AND PURPOSE

These amendments are adopted in accordance with the Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring full disclosure of specific risks and hazards to patients before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required; and §601.9 contains the consent form for anesthesia and/or perioperative pain management.

SECTION-BY-SECTION SUMMARY

The amendments to §601.2 is to revise subsection (h), titled Hematic and lymphatic system, and to add a new subsection (u), titled "Dental Surgery Procedures," to the List A procedures included in this rule which require full disclosure to patients of the specific risks and hazards associated with the procedure before consenting to it.

The amendments to §601.3, the List B procedures requiring no disclosure of specific risks and hazards, removes "Other forms of regional anesthesia" under subsection (a), titled "Anesthesia," leaving only "Local" anesthesia in this subsection.

The amendments to §601.9 revises the English and Spanish versions of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) to add "Deep Sedation" and "Moderate Sedation" as two new items on the consent form.

COMMENTS

The panel has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were an individual; the Texas Society of Anesthesiologists; and the State Board of Dental Examiners. The commenters were not against the rules in their entirety; however, two commenters made recommendations for changes as discussed in the summary of comments.

Comment: Concerning §601.9(1) and (2), the figure regarding disclosure and consent for anesthesia and/or perioperative pain management (analgesia), the commenter requested that "Moderate Sedation" to be changed to "Procedural Sedation and Analgesia (including Moderation Sedation" in order to better align with the clinical policy by the American College of Emergency Physicians.

Response: The panel disagrees with the commenter. The types of anesthesia listed on the form reflect current practice. No change was made as a result of this comment.

Comment: Concerning §601.3, the List B procedures requiring no disclosure of specific risks and hazards, the commenter supported the proposed changes.

Response: No change was made as a result of this comment.

Comment: Concerning §601.2(u), Dental Surgery Procedures, the commenter requested for "Local" anesthesia to be moved from List B to List A. The commenter also requested for fillings, onlays, permanent crowns core buildups, pin retention, post and core-prefabricated and cast, labial veneers, temporary crowns, and crown repair to be added to §601.2, the List A procedures, which require full disclosure to patients of the specific risks and hazards associated with the procedure before consenting to it.

Response: The panel disagrees with the commenter and did not see the need for additional List A disclosures, the purpose of which is to state the requirements and process by which practitioners can acquire the rebuttable presumption granted by the Civil Practice and Remedies Code, Chapter 74, to those who comply. No change was made as a result of this comment.

Change: Concerning §601.2(h)(1)(C), the panel corrected the spelling of the word "Sever" to "Severe."

STATUTORY AUTHORITY

The amendments are authorized under the Civil Practice and Remedies Code, §74.102 and §74.103, which provide the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the

possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

(a) Anesthesia.

(1) Epidural.

(A) Nerve damage.

(B) Persistent back pain.

(C) Headache.

(D) Bleeding/epidural hematoma.

(E) Infection.

(F) Medical necessity to convert to general anesthesia.

(G) Brain damage.

(H) Chronic pain.

(2) General.

(A) Permanent organ damage.

(B) Memory dysfunction/memory loss.

(C) Injury to vocal cords, teeth, lips, eyes.

(D) Awareness during the procedure.

(E) Brain damage.

(3) Spinal.

(A) Nerve damage.

(B) Persistent back pain.

(C) Bleeding/epidural hematoma.

(D) Infection.

(E) Medical necessity to convert to general anesthesia.

(F) Brain damage.

(G) Headache.

(H) Chronic pain.

(4) Regional block.

(A) Nerve damage.

(B) Persistent pain.

(C) Bleeding/hematoma.

(D) Infection.

(E) Medical necessity to convert to general anesthesia.

(F) Brain damage.

(5) Monitored Anesthesia Care (MAC) (conscious sedation).

(A) Permanent organ damage.

(B) Memory dysfunction/memory loss.

(C) Medical necessity to convert to general anesthesia.

(D) Brain damage.

(b) Cardiovascular system.

(1) Cardiac.

(A) Surgical.

(i) Coronary artery bypass, valve replacement.

(I) Acute myocardial infarction.

(II) Hemorrhage.

(III) Kidney failure.

(IV) Stroke.

(V) Sudden death.

(VI) Infection of chest wall/chest cavity.

(VII) Valve related delayed onset infection.

(ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Acute myocardial infarction (heart attack).

(iii) Rupture of myocardium (hole in wall of heart).

(iv) Life threatening arrhythmias (irregular heart rhythm).

(v) Need for emergency open heart surgery.

(vi) Sudden death.

(vii) Device related delayed onset infection (infection related to the device that happens sometime after surgery).

(C) Diagnostic.

(i) Cardiac catheterization.

(I) All associated risks as listed under paragraph (2)(B) of this subsection.

(II) Acute myocardial infarction (heart attack).

(III) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure).

(IV) Heart arrhythmias (irregular heart rhythm), possibly life threatening.

(V) Need for emergency open heart surgery.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.

(i) Hemorrhage.

(ii) Paraplegia.

(iii) Kidney damage.

(iv) Stroke.

(v) Acute myocardial infarction.

(vi) Infection of graft.

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(C) Angioplasty (intravascular dilatation technique).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Change in procedure to open surgical procedure.

(iii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(iv) Stent migration (stent moves from location in which it was placed).

(v) Vessel occlusion (blocking).

(vi) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (mechanical or chemical).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(iii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(iv) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(v) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(vi) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations.

(I) Angiography risks (inclusive of aortography, arteriography, venography) - injection of contrast material into blood vessels.

(-a-) Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(-b-) Hemorrhage (severe bleeding).

(-c-) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(-d-) Worsening of the condition for which the procedure is being done.

(-e-) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(-f-) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(II) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(III) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IV) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves.

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph.

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure.

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(iii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Injury to the inferior vena cava (main vein in the abdomen).

(iii) Filter migration or fracture (filter could break and/or move from where it was placed).

(iv) Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs).

(v) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in the lungs despite filter).

(vi) Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(iii) Cardiac injury/perforation (heart injury).

(iv) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous via laser, RFA, chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) Digestive system treatments and procedures.

(1) Cholecystectomy with or without common bile duct exploration.

(A) Pancreatitis.

(B) Injury to the tube between the liver and the bowel.

(C) Retained stones in the tube between the liver and the bowel.

(D) Narrowing or obstruction of the tube between the liver and the bowel.

(E) Injury to the bowel and/or intestinal obstruction.

(2) Bariatric surgery.

(A) Laparoscopic.

(i) Conversion to open procedure.

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(vii) Suture line leak with abscess or fistula formation.

(B) Open.

(i) Failure of wound to heal or wound dehiscence (separation of wound).

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(3) Pancreatectomy (subtotal or total).

(A) Pancreatitis (subtotal).

(B) Diabetes (total).

(C) Lifelong requirement of enzyme and digestive medication.

(D) Anastamotic leaks.

(4) Total colectomy.

(A) Permanent ileostomy.

(B) Injury to organs.

(C) Infection.

(5) Subtotal colectomy.

(A) Anastomotic leaks.

(B) Temporary colostomy.

(C) Infection.

(D) Second surgery.

(E) Injury to organs.

(6) Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy.

(A) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).

(B) Pancreatitis (inflammation of the pancreas).

(C) Hemobilia (bleeding into the bile ducts).

(D) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).

(E) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).

(7) Gastrointestinal tract stenting.

(A) Stent migration (stent moves from location in which it was placed).

(B) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

(C) Tumor ingrowth or other obstruction of stent.

(D) For stent placement in the esophagus (tube from the throat to the stomach).

(i) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(ii) Reflux (stomach contents passing up into esophagus or higher).

(iii) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(iv) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(d) Ear treatments and procedures.

(1) Stapedectomy.

(A) Diminished or bad taste.

(B) Total or partial loss of hearing in the operated ear.

(C) Brief or long-standing dizziness.

(D) Eardrum hole requiring more surgery.

(E) Ringing in the ear.

(2) Reconstruction of auricle of ear for congenital deformity or trauma.

(A) Less satisfactory appearance compared to possible alternative artificial ear.

(B) Exposure of implanted material.

(3) Tympanoplasty with mastoidectomy.

(A) Facial nerve paralysis.

(B) Altered or loss of taste.

(C) Recurrence of original disease process.

(D) Total loss of hearing in operated ear.

(E) Dizziness.

(F) Ringing in the ear.

(e) Endocrine system treatments and procedures.

(1) Thyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.

(D) Lifelong requirement of thyroid medication.

(2) Parathyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.

(3) Adrenalectomy.

(A) Loss of endocrine functions.

(B) Lifelong requirement for hormone replacement therapy and steroid medication.

(C) Damage to kidneys.

(4) Other procedures.

(5) See also Pancreatectomy under subsection (c)(3) of this section (relating to digestive system treatments and procedures).

(f) Eye treatments and procedures.

(1) Eye muscle surgery.

(A) Additional treatment and/or surgery.

(B) Double vision.

(C) Partial or total blindness.

(2) Surgery for cataract with or without implantation of intraocular lens.

(A) Complications requiring additional treatment and/or surgery.

(B) Need for glasses or contact lenses.

(C) Complications requiring the removal of implanted lens.

(D) Partial or total blindness.

(3) Retinal or vitreous surgery.

(A) Complications requiring additional treatment and/or surgery.

(B) Recurrence or spread of disease.

(C) Partial or total blindness.

(4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.

(A) Worsening or unsatisfactory appearance.

(B) Creation of additional problems.

(i) Poor healing or skin loss.

(ii) Nerve damage with loss of use and/or feeling.

(iii) Painful or unattractive scarring.

(iv) Impairment of regional organs (inability or decreased ability of regional organs to work), such as eye or lip function.

(C) Recurrence of the original condition.

(5) Photocoagulation and/or cryotherapy.

(A) Complications requiring additional treatment and/or surgery.

(B) Pain.

(C) Partial or total blindness.

(6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.

(A) Complications requiring additional treatment and/or surgery.

(B) Pain.

(C) Need for glasses or contact lenses.

(D) Partial or total blindness.

(7) Glaucoma surgery by any method.

(A) Complications requiring additional treatment and/or surgery.

(B) Worsening of the glaucoma.

(C) Pain.

(D) Partial or total blindness.

(8) Removal of the eye or its contents (enucleation or evisceration).

(A) Complications requiring additional treatment and/or surgery.

(B) Worsening or unsatisfactory appearance.

(C) Recurrence or spread of disease.

(9) Surgery for penetrating ocular injury, including intraocular foreign body.

(A) Complications requiring additional treatment and/or surgery.

(B) Possible removal of eye.

(C) Pain.

(D) Partial or total blindness.

(g) Female genital system treatments and procedures.

(1) Abdominal hysterectomy (total).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(2) Vaginal hysterectomy.

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(F) Completion of operation by abdominal incision.

(3) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.

(A) Injury to the bowel and/or bladder.

(B) Sterility.

(C) Failure to obtain fertility (if applicable).

(D) Failure to obtain sterility (if applicable).

(E) Loss of ovarian functions or hormone production from ovary(ies).

(4) Reserved.

(5) Removing fibroids (uterine myomectomy).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(6) Uterine suspension.

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(7) Removal of the nerves to the uterus (presacral neurectomy).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(F) Hemorrhage, complications of hemorrhage, with additional operation.

(8) Removal of the cervix.

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(F) Completion of operation by abdominal incision.

(9) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(10) Abdominal suspension of the bladder (retropubic urethropexy).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Injury to the tube (ureter) between the kidney and the bladder.

(D) Injury to the bowel and/or intestinal obstruction.

(11) Conization of cervix.

(A) Hemorrhage with possible hysterectomy to control.

(B) Sterility.

(C) Injury to bladder.

(D) Injury to rectum.

(E) Failure of procedure to remove all of cervical abnormality.

(12) Dilation and curettage of uterus (diagnostic/therapeutic).

(A) Hemorrhage with possible hysterectomy.

(B) Perforation of the uterus.

(C) Sterility.

(D) Injury to bowel and/or bladder.

(E) Abdominal incision and operation to correct injury.

(13) Surgical abortion/dilation and curettage/dilation and evacuation.

(A) Hemorrhage with possible hysterectomy to control.

(B) Perforation of the uterus.

(C) Sterility.

(D) Injury to the bowel and/or bladder.

(E) Abdominal incision and operation to correct injury.

(F) Failure to remove all products of conception.

(14) Medical abortion/non-surgical.

(A) Hemorrhage with possible need for surgical intervention.

(B) Failure to remove all products of conception.

(C) Sterility.

(15) Selective salpingography and Fallopian tube recanalization.

(A) Perforation (hole) created in the uterus or Fallopian tube.

(B) Ectopic pregnancy (pregnancy outside of the uterus).

(C) Pelvic infection.

(16) Fallopian tube occlusion (for sterilization).

(A) Risks listed in selective salpingography and Fallopian tube recanalization.

(B) Failure to provide sterilization.

(C) Coil expulsion (coil falls out of Fallopian tube).

(h) Hematic and lymphatic system.

(1) Transfusion of blood and blood components.

(A) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.

(B) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.

(C) Severe allergic reaction, potentially fatal.

(2) Splenectomy.

(A) Susceptibility to infections and increased severity of infections.

(B) Increased immunization requirements.

(i) Integumentary system treatments and procedures.

(1) Radical or modified radical mastectomy. (Simple mastectomy excluded).

(A) Limitation of movement of shoulder and arm.

(B) Swelling of the arm.

(C) Loss of the skin of the chest requiring skin graft.

(D) Recurrence of malignancy, if present.

(E) Decreased sensation or numbness of the inner aspect of the arm and chest wall.

(2) Reconstruction and/or plastic surgical operations of the face and neck.

(A) Worsening or unsatisfactory appearance.

(B) Creation of several additional problems.

(i) Poor healing or skin loss.

(ii) Nerve damage.

(iii) Painful or unattractive scarring.

(iv) Impairment of regional organs, such as eye or lip function.

(C) Recurrence of the original condition.

(j) Male genital system.

(1) Orchidopexy (reposition of testis(es)).

(A) Removal of testicle.

(B) Atrophy (shriveling) of the testicle with loss of function.

(2) Orchiectomy (removal of the testis(es)).

(A) Decreased sexual desire.

(B) Difficulties with penile erection.

(C) Permanent sterility (inability to father children) if both testes are removed.

(3) Vasectomy.

(A) Loss of testicle.

(B) Failure to produce permanent sterility (inability to father children).

(k) Maternity and related cases.

(1) Delivery (vaginal).

(A) Injury to bladder and/or rectum, including a fistula (hole) between bladder and vagina and/or rectum and vagina.

(B) Hemorrhage (severe bleeding) possibly requiring blood administration and/or hysterectomy (removal of uterus) and/or artery ligation (tying off) to control.

(C) Sterility (inability to get pregnant).

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or vaginal delivery whether or not the cause is known.

(2) Delivery (cesarean section).

(A) Injury to bowel and/or bladder.

(B) Sterility (inability to get pregnant).

(C) Injury to ureter (tube between kidney and bladder).

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known.

(E) Uterine disease or injury requiring hysterectomy (removal of uterus).

(3) Cerclage.

(A) Premature labor.

(B) Injury to bowel and/or bladder.

(l) Musculoskeletal system treatments and procedures.

(1) Arthroplasty of any joints with mechanical device.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) Various functional or cosmetic growth deformities requiring additional surgery.

(I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(2) Arthroscopy of any joint.

(A) Blood vessel or nerve injury.

(B) Continued pain.

(C) Stiffness of joint.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Joint infection.

(F) Various functional or cosmetic growth deformities requiring additional surgery.

(G) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(3) Open reduction with internal fixation.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) Problems with appearance, use, or growth requiring additional surgery.

(4) Osteotomy.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(5) Ligamentous reconstruction of joints.

(A) Failure of reconstruction to work.

(B) Continued instability of the joint.

(C) Degenerative arthritis.

(D) Continued pain.

(E) Stiffness of joint.

(F) Blood vessel or nerve injury.

(G) Impaired function and/or scarring.

(H) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(6) Vertebroplasty/kyphoplasty.

(A) Nerve/spinal cord injury.

(B) Need for emergency surgery.

(C) Embolization of cement (cement used passes into blood vessels and possibly all the way to the blood vessels in the lungs).

(D) Fracture of adjacent vertebrae (bones in spine).

(E) Leak of cerebrospinal fluid (fluid around the brain and spinal cord).

(F) Pneumothorax (collapsed lung).

(G) Worsening of pain.

(H) Rib or vertebral (spine) fracture.

(7) If the following procedures are performed on a child age 12 or under, problems with appearance, use, or growth requiring additional surgery should be disclosed.

(A) Arthrotomy, arthrocentesis, or joint injection.

(B) Closed reduction without internal fixation.

(C) Wound debridement.

(D) Needle biopsy or aspiration, bone marrow.

(E) Partial excision of bone.

(F) Removal of external fixation device.

(G) Traction or fixation without manipulation for reduction.

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty.

(A) Additional loss of brain function including memory.

(B) Recurrence, continuation or worsening of the condition that required this operation.

(C) Stroke.

(D) Blindness, deafness, inability to smell, double vision, coordination loss, seizures, pain, numbness and paralysis.

(E) Cerebral spinal fluid leak with potential for meningitis and severe headaches.

(F) Meningitis.

(G) Brain abscess.

(H) Persistent vegetative state.

(I) Heart attack.

(2) Cranial nerve operations.

(A) Numbness, impaired muscle function or paralysis.

(B) Recurrence, continuation or worsening of the condition that required this operation.

(C) Seizures.

(D) New or different pain.

(3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability; injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).

(A) Pain, numbness or clumsiness.

(B) Impaired muscle function or paralysis.

(C) Incontinence, impotence or impaired bowel function.

(D) Unstable spine.

(E) Recurrence, continuation or worsening of the condition that required the operation.

(F) Injury to major blood vessels.

(G) Hemorrhage.

(4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neurorrhaphy, neurectomy or neurolysis.

(A) Numbness.

(B) Impaired muscle function.

(C) Recurrence, continuation or worsening of the condition that required the operation.

(D) Continued, increased or different pain.

(5) Transphenoidal hypophysectomy or other pituitary gland operation.

(A) Spinal fluid leak.

(B) Necessity for hormone replacement.

(C) Recurrence or continuation of the condition that required this operation.

(D) Nasal septal deformity or perforation.

(E) Facial numbness and disfigurement.

(F) Blindness.

(6) Cerebral spinal fluid shunting procedure or revision.

(A) Shunt obstruction, migration or infection.

(B) Seizure disorder.

(C) Recurrence or continuation of brain dysfunction.

(D) Injury to internal organs.

(E) Possible brain injury or hemorrhage.

(n) Radiology.

(1) Splenoportography (needle injection of contrast media into the spleen).

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Injury to the spleen requiring blood transfusion and/or removal of the spleen.

(2) Chemoembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Risks of the chemotherapeutic agent(s) utilized.

(E) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(F) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(G) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(3) Radioembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(4) Thermal and other ablative techniques for treatment of tumors (for curative intent or palliation) including radiofrequency ablation, microwave ablation, cryoablation, and high intensity focused ultrasound (HIFU).

(A) Injury to tumor-containing organ or adjacent organs/structures.

(B) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(C) Failure to completely treat tumor.

(5) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt).

(A) All associated risks as listed under subsection (b)(2)(B) - (D) of this section.

(B) Hepatic encephalopathy (confusion/decreased ability to think).

(C) Liver failure or injury.

(D) Gallbladder injury.

(E) Hemorrhage (severe bleeding).

(F) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(G) Kidney failure.

(H) Heart failure.

(I) Death.

(6) Myelography.

(A) Chronic (continuing) pain.

(B) Nerve injury with loss of use and/or feeling.

(C) Transient (temporary) headache, nausea, and/or vomiting.

(D) Numbness.

(E) Seizure.

(7) Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous, transgluteal, transrectal and transvaginal routes)).

(A) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(B) Injury to nearby organs.

(C) Hemorrhage (severe bleeding).

(D) Infection of collection which was not previously infected, or additional infection of abscess.

(8) Procedures utilizing prolonged fluoroscopy.

(A) Skin injury (such as epilation (hair loss), burns, or ulcers).

(B) Cataracts (for procedures in the region of the head).

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision of lesion of larynx, vocal cords, trachea.

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty or nasal reconstruction with or without septoplasty.

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty.

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in wall between the right and left halves of the nose) with dryness and crusting.

(C) External deformity of the nose.

(4) Lung biopsy.

(A) Pneumothorax (collapsed lung).

(B) Hemothorax (blood in the chest around the lung).

(5) Segmental resection of lung.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Insertion of tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(6) Thoracotomy.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(7) Thoracotomy with drainage.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(8) Open tracheostomy.

(A) Loss of voice.

(B) Breathing difficulties.

(C) Pneumothorax (collapsed lung).

(D) Hemothorax (blood in the chest around the lung).

(E) Scarring in trachea (windpipe).

(F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

(9) Respiratory tract/tracheobronchial balloon dilatation/stenting.

(A) Stent migration (stent moves from position in which it was placed).

(B) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(C) Mucosal injury (injury to lining of airways).

(p) Urinary system.

(1) Partial nephrectomy (removal of part of the kidney).

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury to or loss of the kidney.

(E) Damage to organs next to kidney.

(2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).

(A) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).

(B) Incomplete removal of tumor.

(C) Damage to organs next to kidney.

(3) Nephrectomy (removal of kidney).

(A) Incomplete removal of tumor if present.

(B) Damage to organs next to kidney.

(C) Injury to or loss of the kidney.

(4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).

(A) Incomplete removal of stone(s).

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury or loss of the kidney.

(E) Damage to organs next to kidney.

(5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).

(A) Blockage of urine.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(6) Exploration of kidney or perinephric mass.

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of the stone or tumor (when applicable).

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of the ureter.

(8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of ureter.

(9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Damage to organs next to ureter.

(D) Damage to or loss of ureter.

(11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Damage to or loss of ureter.

(D) Backward flow of urine from bladder into ureter.

(E) Damage to organs next to ureter.

(12) Prostatectomy (partial or total removal of prostate).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Incontinence (difficulty with control of urine flow).

(D) Semen passing backward into bladder.

(E) Difficulty with penile erection (possible with partial and probable with total prostatectomy).

(13) Total cystectomy (removal of bladder).

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(14) Radical cystectomy.

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(D) Chronic (continuing) swelling of thighs, legs and feet.

(E) Recurrence or spread of cancer if present.

(15) Partial cystectomy (partial removal of bladder).

(A) Leakage of urine at surgical site.

(B) Incontinence (difficulty with control of urine flow).

(C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).

(D) Blockage of urine.

(E) Damage to organs next to bladder.

(16) Urinary diversion (ileal conduit, colon conduit).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

(C) Leakage of urine at surgical site.

(D) This procedure will require an alternate method of urinary drainage.

(17) Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel (intestine)).

(A) Blood chemistry abnormalities requiring medication.

(B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).

(C) Leakage of urine at surgical site.

(D) Difficulty in holding urine in the rectum.

(18) Urethroplasty (construction/reconstruction of drainage tube from bladder).

(A) Leakage of urine at surgical site.

(B) Stricture formation (narrowing of urethra (tube from bladder to outside)).

(C) Need for additional surgery.

(19) Percutaneous nephrostomy/stenting/stone removal.

(A) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).

(B) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.

(C) Bowel (intestinal) injury.

(D) Blood vessel injury with or without significant bleeding.

(20) Dialysis (technique to replace functions of kidney and clean blood of toxins).

(A) Hemodialysis.

(i) Hypotension (low blood pressure).

(ii) Hypertension (high blood pressure).

(iii) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.

(iv) Cardiac arrhythmias (irregular heart rhythms).

(v) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).

(vi) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).

(vii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(viii) Allergic reactions.

(ix) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(x) Pyrogenic reactions (fever).

(xi) Hemolysis (rupture of red blood cells).

(xii) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(B) Peritoneal dialysis.

(i) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(ii) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(iii) Hypertension (high blood pressure).

(iv) Hypotension (low blood pressure).

(v) Hydrothorax (fluid in chest cavity).

(vi) Arrhythmia (irregular heart rhythm).

(vii) Perforation of the bowel.

(viii) Sclerosis or scarring of the peritoneum.

(ix) Weight gain leading to obesity.

(x) Abdominal discomfort/distension.

(xi) Heartburn or reflux.

(xii) Increase in need for anti-diabetic medication.

(xiii) Muscle weakness.

(xiv) Dehydration (extreme loss of body fluid).

(xv) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(xvi) Allergic reactions.

(xvii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(q) Psychiatric procedures.

(1) Electroconvulsive therapy with modification by intravenous muscle relaxants and sedatives.

(A) Memory changes of events prior to, during, and immediately following the treatment.

(B) Fractures or dislocations of bones.

(C) Significant temporary confusion requiring special care.

(2) Other Procedures. No other procedures are assigned at this time.

(r) Radiation therapy. A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.

(1) Head and neck.

(A) Early reactions.

(i) Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.

(ii) Sore throat, difficulty swallowing, weight loss, fatigue.

(iii) Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.

(iv) Hoarseness, cough, loss of voice, and swelling of airway.

(v) Blockage and crusting of nasal passages.

(vi) Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.

(vii) Dry and irritable eye(s).

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Dry mouth and altered sense, or loss, of taste.

(ii) Tooth decay and gum changes.

(iii) Bone damage, especially in jaws.

(iv) Stiffness and limitation of jaw movement.

(v) Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.

(vi) Swelling of tissues, particularly under the chin.

(vii) Throat damage causing hoarseness, pain or difficulty breathing or swallowing.

(viii) Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).

(ix) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(x) Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and/or loss of strength, feeling or coordination in any part of the body.

(xi) Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.

(xii) In children, there may be additional late reactions.

(I) Disturbance of bone and tissue growth.

(II) Bone damage to face causing abnormal development.

(III) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(IV) Second cancers developing in the irradiated area.

(2) Central nervous system.

(A) Early reactions.

(i) Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.

(ii) Nausea, vomiting, headaches.

(iii) Fatigue, drowsiness.

(iv) Altered sense of taste or smell.

(v) Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.

(vi) Depression of blood count leading to increased risk of infection and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.

(ii) Persistent drowsiness and tiredness.

(iii) Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.

(iv) Scarring of skin.

(v) Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.

(vi) Damage to eye(s), or optic nerve(s) causing loss of vision.

(vii) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(viii) Pituitary gland damage requiring long-term hormone replacement therapy.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.

(IV) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(V) Second cancers developing in the irradiated area.

(3) Thorax.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.

(ii) Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.

(iii) Loss of appetite, nausea, vomiting.

(iv) Weight loss, weakness, vomiting.

(v) Inflammation of the lung with pain, fever and cough.

(vi) Inflammation of the heart sac with chest pain and palpitations.

(vii) Bleeding or creation of a fistula resulting from tumor destruction.

(viii) Depression of blood count leading to increased risk of infection and/or bleeding.

(ix) Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.

(x) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(xi) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.

(ii) Lung scarring or shrinkage causing shortness of breath.

(iii) Narrowing of esophagus causing swallowing problems.

(iv) Constriction of heart sac which may require surgical correction.

(v) Damage to heart muscle or arteries leading to heart failure.

(vi) Fracture of ribs.

(vii) Nerve damage causing pain, loss of strength or feeling in arms.

(viii) Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Underdevelopment or absence of development of female breast.

(IV) Second cancers developing in the irradiated area.

(4) Breast.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.

(ii) Breast changes including swelling, tightness, or tenderness.

(iii) Inflammation of the esophagus causing pain or swallowing, heartburn, or sense of obstruction.

(iv) Lung inflammation with cough.

(v) Inflammation of heart sac with chest pain and palpitations.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Breast changes including thickening, firmness, tenderness, shrinkage.

(iii) Swelling of arm.

(iv) Stiffness and discomfort in shoulder joint.

(v) Rib or lung damage causing pain, fracture, cough, shortness of breath.

(vi) Nerve damage causing pain, loss of strength or feeling in arm.

(vii) Damage to heart muscle or arteries or heart sac leading to heart failure.

(5) Abdomen.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Loss of appetite, nausea, vomiting.

(iii) Weight loss, weakness, fatigue.

(iv) Inflammation of stomach causing indigestion, heartburn, and ulcers.

(v) Inflammation of bowel causing cramping and diarrhea.

(vi) Depression of blood count leading to increased risk of infections and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Stomach damage causing persistent indigestion, pain, and bleeding.

(iii) Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.

(iv) Kidney damage leading to kidney failure and/or high blood pressure.

(v) Liver damage leading to liver failure.

(vi) Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to pelvis causing stunting of bone growth and/or abnormal development.

(IV) Second cancers developing in the irradiated area.

(6) Female pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Disturbance of menstrual cycle.

(vi) Vaginal discharge, pain, irritation, bleeding.

(vii) Depression of blood count leading to increased risk of infection and/or bleeding.

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during, or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Ovarian damage causing infertility, sterility, or premature menopause.

(vi) Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bladder and/or bowel and/or vagina.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(7) Male pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Depression of blood count leading to increased risk of infection and/or bleeding.

(vi) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(vii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.

(vi) Impotence (loss of erection) or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bowel and other organs.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(8) Skin.

(A) Early reactions.

(i) Redness, irritation, or soreness.

(ii) Scaliness, ulceration, crusting, oozing, discharge.

(iii) Hair loss.

(iv) These reactions are likely to be intensified by chemotherapy.

(B) Late reactions.

(i) Changes in skin texture causing scaly or shiny smooth skin, thickening with contracture, puckering, scarring of skin.

(ii) Changes in skin color.

(iii) Prominent dilated small blood vessels.

(iv) Permanent hair loss.

(v) Chronic or recurrent ulcerations.

(vi) Damage to adjacent tissues including underlying bone or cartilage.

(vii) In children, second cancers may develop in the irradiated area.

(9) Extremities.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Inflammation of soft tissues causing tenderness, swelling, and interference with movement.

(iii) Inflammation of joints causing pain, swelling and limitation of joint motion.

(iv) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(v) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.

(ii) Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb.

(iii) Nerve damage causing loss of strength, feeling or coordination.

(iv) Bone damage causing fracture.

(v) Joint damage causing permanent stiffness, pains and arthritis.

(vi) Swelling of limb below the area treated.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to limbs causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(10) Total body irradiation.

(A) Early reactions.

(i) Loss of appetite, nausea, vomiting.

(ii) Diarrhea.

(iii) Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.

(iv) Hair loss.

(v) Sore mouth and throat, difficulty swallowing.

(vi) Permanent destruction of bone marrow leading to infection, bleeding, and possible death.

(vii) Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

(viii) Damage to liver with possible fatal liver failure.

(ix) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(x) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Lung scarring causing shortness of breath, infection, and fatal lung failure.

(ii) Cataract formation in the eyes, possible loss of vision.

(iii) Testicular damage in males causing sterility.

(iv) Ovarian damage in females causing premature menopause and sterility.

(v) Increased risk of second cancer.

(s) Endoscopic surgery.

(1) Abdominal endoscopy/laparoscopy procedures. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Damage to intra-abdominal structures (e.g., bowel, bladder, blood vessels, or nerves).

(B) Intra-abdominal abscess and infectious complications.

(C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(D) Conversion of the procedure to an open procedure.

(E) Cardiac dysfunction.

(2) Endoscopic surgery of the thorax. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Postoperative pneumothorax.

(B) Subcutaneous emphysema.

(C) Conversion of the procedure to an open procedure.

(t) Pain management procedures.

(1) Neuroaxial procedures (injections into or around spine).

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Seizure.

(F) Persistent leak of spinal fluid which may require surgery.

(G) Breathing and/or heart problems including cardiac arrest (heart stops beating).

(2) Peripheral and visceral nerve blocks and/or ablations.

(A) Failure to reduce pain or worsening of pain.

(B) Bleeding.

(C) Nerve damage including paralysis (inability to move).

(D) Infection.

(E) Damage to nearby organ or structure.

(F) Seizure.

(3) Implantation of pain control devices.

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Persistent leak of spinal fluid which may require surgery.

(u) Dental Surgery Procedures.

(1) Oral surgery.

(A) Extraction (removing teeth).

(i) Dry socket (inflammation in the socket of a tooth).

(ii) Permanent or temporary numbness or altered sensation.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).

(B) Surgical exposure of tooth in order to facilitate orthodontics.

(i) Injury to tooth or to adjacent teeth and structures.

(ii) Failure to get proper attachment to tooth requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

(A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(i) Instrument separation (tiny files which break within the tooth canal system).

(ii) Fenestration (penetration of walls of tooth into adjacent tissue).

(iii) Failure to find and/or adequately fill all canals.

(iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).

(v) Damage to adjacent tissues from irrigants or clamps.

(vi) Fracture or loss of tooth.

(3) Periodontal surgery (surgery of the gums).

(A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(F) Osseous surgery-including flap entry and closure (modification of the bony support of the teeth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Loss of tooth.

(iv) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(G) Guided tissue regeneration-resorbable barrier.

(i) Permanent or temporary numbness or altered sensation.

(ii) Accidental aspiration (into the lungs) of foreign matter.

(iii) Rejection of donor materials.

(H) Guided tissue regeneration-nonresorbable barrier (includes membrane removal).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Accidental aspiration (into the lungs) of foreign matter.

(iv) Rejection of donor materials.

(I) Pedicle soft tissue graft procedure.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of donor materials.

(J) Free soft tissue graft protection-including donor site surgery.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(K) Sub epithelial connective tissue graft procedures.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Implant procedures.

(A) Bone grafting (replacing missing bone).

(i) Permanent or temporary numbness or altered sensation.

(ii) Rejection of bone particles or graft from donor or recipient sites.

(iii) Damage to adjacent teeth or bone.

(B) Surgical placement of implant body.

(i) Blood vessel or nerve injury.

(ii) Damage to adjacent teeth or bone fracture.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Failure of implant requiring corrective surgery.

(v) Cyst formation, bone loss, or gum disease around the implant.

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 17, 2014.

TRD-201404850
Noah Appel, MD
Chair
Texas Medical Disclosure Panel
Effective date: January 15, 2015
Proposal publication date: May 9, 2014
For further information, please call: (512) 776-6972

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESSES

28 TAC §1.1601

The Texas Department of Insurance adopts amendments to 28 TAC §1.601, concerning historically underutilized businesses. The amendments are adopted without changes to the proposed text published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6779).

REASONED JUSTIFICATION. The amendments are necessary to update the department's rule to incorporate by reference the rules adopted by the Texas Comptroller of Public Accounts for historically underutilized businesses, as required by Texas Government Code §2161.003.

HOW THE SECTION WILL FUNCTION. The department originally adopted §1.1601 on September 26, 2000, to implement Government Code §2161.003, which adopted by reference General Services Commission rules regarding historically underutilized businesses for the purchase of goods and services paid for with appropriated money. As originally adopted, §1.1601 was located in 1 TAC §§111.11 - 111.28.

The General Services Commission was abolished in 2001 by SB 311, 77th Legislature, Regular Session, and its duties and powers were transferred to the Texas Building and Procurement Commission. The department's rules remained in 1 TAC §§111.11 - 111.28.

In 2007, the Legislature transferred some of the duties and powers of the Texas Building and Procurement Commission to the comptroller with House Bill 3560, 80th Legislature, Regular Session. The authority to adopt rules addressing historically underutilized businesses under Texas Government Code, §2161.0012, was included in this transfer.

Following the transfer of duty and powers of the Texas Building and Procurement Commission to the comptroller, the Texas secretary of state transferred and reorganized 1 TAC §§111.11 - 111.28, relocating the sections to 34 TAC §§20.11 - 20.28. The transfer and reorganization occurred on July 6, 2007, and is located at 32 TexReg 4237.

The transfer and reorganization resulted in new numbering of the rules addressing historically underutilized businesses, but it was not a substantive change to the rules themselves. The secretary of state transferred and reorganized the rules under Government Code §2002.058, and under HB 3560, the rules were to continue in effect until superseded by an act of the comptroller. This did not constitute a rulemaking procedure under Government Code Chapter 2001. The comptroller updated the rules addressing historically underutilized businesses and added an additional section in 2011. These updated rules addressing historically underutilized businesses remain at 34 TAC §§20.10 - 20.28.

The amendments do not make a substantive change to the adoption by reference of the comptroller's rules addressing historically underutilized businesses. Rather, the purpose of the amendments is for clarity and ease of locating the most current version

of the rules addressing historically underutilized businesses the department adopted by reference.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §2161.003 and Insurance Code §36.001. Section 2161.003 of the Government Code requires that the Texas Department of Insurance adopt the comptroller's rules for historically underutilized businesses. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404856
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: November 9, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 463-6326

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41

The Texas Department of Public Safety (the department) adopts amendments to §23.41, concerning Vehicle Inspection Items, Procedures, and Requirements, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6786). The rule will not be republished.

House Bill 2305, enacted by the 83rd Texas Legislature and amending in relevant part Texas Transportation Code, §548.104, requires the department adopt rules relating to the inspection of vehicles equipped with compressed natural gas containers. Specifically, the bill requires the adoption of rules regarding the type of proof required of vehicle owners relating to the certification of their vehicle's natural gas container.

No comments were received regarding the proposal.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.104.

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 20, 2014.

TRD-201404859
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 9, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 424-5848

CHAPTER 31. STANDARDS FOR AN APPROVED MOTORCYCLE OPERATOR TRAINING COURSE

37 TAC §§31.1 - 31.12

The Texas Department of Public Safety (the department) adopts amendments to §§31.1 - 31.12, concerning Standards for an Approved Motorcycle Operator Training Course. Sections 31.1 - 31.6 and 31.8 - 31.12 are adopted without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6787). Section 31.7 was adopted with changes to correct a grammatical error and will be republished.

These amendments are necessary to reorganize, update, and clarify rules governing the Motorcycle Operator Training Course.

No comments were received regarding the proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §662.009, which authorizes the department to adopt rules to administer Chapter 662.

§31.7. Motorcycle Requirements.

(a) A motorcycle must be rejected for use by the instructor if it fails to meet the requirements of this section or if, in the discretion of the instructor, the motorcycle is unsafe or inappropriate for the rider, an instructor, another student, or any other person permitted in the riding area. A motorcycle may be deemed unsafe because of modification, damage, lack of maintenance, nonstandard configuration, or any other substantial safety reason.

(b) Student-owned motorcycles used in the basic, intermediate, or advanced motorcycle operator training courses must:

(1) meet all the requirements for operation on public highways;

(2) have proof of adequate insurance coverage available for inspection by an instructor; and

(3) pass a safety inspection conducted by the instructor.

(c) A student may use a borrowed motorcycle if the student can show written permission from the owner to use the motorcycle in the course and if it meets the requirements of paragraphs (1), (2), and (3) of subsection (b).

(d) A student electing to use a personal or borrowed motorcycle in the basic motorcycle operator training course must sign a waiver form stating that they accept all liability for damages caused by, or to the vehicle.

(e) A motorcycle provided by a sponsor for use in the basic motorcycle operator training course must meet a minimum of two of the three criteria detailed in this subsection based on the original equipment manufacturer's specifications without modifications:

(1) an engine displacement of 500cc or less;

(2) an unladened weight of 400 pounds or less; or,

(3) a seat height of 30 inches or less.

(f) Motorcycles on loan to sponsors from the department for use in the basic motorcycle operator training course, if deemed unsafe, may be required to be returned to the department.

(g) Sponsors may not provide a training motorcycle or riding gear to a student for use in the advanced motorcycle operator training course. If a sponsor provides a motorcycle to a student for use in the basic motorcycle operator training course, the motorcycle:

(1) must meet the safety requirements of subsection (a) and subsection (b) of this section; and

(2) may, but is not required to, be registered, inspected, or insured for operation on public highways.

(h) Motorcycles, trikes, sidecar rigs, or any other combinations of motorcycle equipment used in specialized motorcycle training courses must be in safe operating condition, as determined by the instructor, at the time of use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2014.

TRD-201404860
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 9, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 424-5848

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 143. EXECUTIVE CLEMENCY
SUBCHAPTER A. FULL PARDON AND RESTORATION OF RIGHTS OF CITIZENSHIP

37 TAC §§143.1 -143.6, 143.8, 143.9, 143.11, 143.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§143.1 - 143.6, 143.8, 143.9, 143.11, and 143.12, concerning full pardon and restoration of rights of citizenship. The amended rules are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5861). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, update the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements. The substantive amendments to §143.6 and §143.12 add language stating the burden is on the applicant.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404885
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

37 TAC §143.14

The Texas Board of Pardons and Paroles adopts new 37 TAC §143.14, concerning Consideration of Request or Application. The new rule is adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5862). The text of the rule will not be republished.

The new rule reflects language relating to applicants waiting two years from the date of a denial to reapply.

The rule is adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by the new rule.

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 20, 2014.

TRD-201404891

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

SUBCHAPTER B. CONDITIONAL PARDON

37 TAC §§143.21 - 143.24

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§143.21 - 143.24, concerning conditional pardon. The amended rules are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5863). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, update the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements. The amendments to §143.22 add language stating the burden is on the applicant.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404886
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

SUBCHAPTER C. REPRIEVE

37 TAC §143.31, §143.33

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §143.31 and §143.33, concerning reprieve. The amended rules are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5864). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, update the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404887
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

SUBCHAPTER D. REPRIEVE FROM EXECUTION

37 TAC §§143.41 - 143.43

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§143.41 - 143.43, concerning reprieve from execution. The amended rules are adopted without change to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5865). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, updates the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404888
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §§143.51, 143.52, 143.54, 143.55, 143.57, 143.58

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§143.51, 143.52, 143.54, 143.55, 143.57, and 143.58, concerning commutation of sentence. The amended rules are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5867). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, update the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404889
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

SUBCHAPTER F. REMISSION OF FINES AND FORFEITURES

37 TAC §§143.72 - 143.74

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§143.72 - 143.74, concerning remission of fines and forfeitures. The amended rules are adopted without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5869). The text of the rules will not be republished.

The amended rules are adopted to make grammatical changes, update the statutory references, add additional language in the rules to clarify current procedures and explain that all applications should be addressed to the board and responses from trial officials should be made on official letterhead. The amendments also ensure language throughout the rules coincides with the actual requirements.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the board to make clemency recommendations to the Governor. Articles 48.01 and 48.03, Code of Criminal Procedure, authorize the board make clemency recommendations to the Governor.

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 20, 2014.

TRD-201404890
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 9, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 406-5388

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.20

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §92.20, in Chapter 92, Licensing Standards for Assisted Living Facilities, without changes to

the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5568).

The amendment is adopted to implement House Bill 3729, 83rd Legislature, Regular Session, 2013, which amended Texas Health and Safety Code §247.021, regarding licensure of assisted living facilities. The amendment requires DADS to issue a six-month provisional license before conducting a Life Safety Code (NFPA 101) inspection under the circumstances described in the rule.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 16, 2014.

TRD-201404825
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: November 5, 2014
Proposal publication date: July 18, 2014
For further information, please call: (512) 438-4162

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

Automobile Burglary and Theft Prevention Authority

Title 43, Part 3

The Automobile Burglary and Theft Prevention Authority (ABTPA) files this notice of intention to review 43 TAC Chapter 57, Automobile Burglary and Theft Prevention Authority. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules. The ABTPA's review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The ABTPA is conducting this rule review in conjunction with proposing amendments and repeals, which are published in the Proposed Rules section of this issue of the *Texas Register.*

Comments regarding this rule review may be submitted to David Richards, General Counsel, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on December 1, 2014.

TRD-201404904
David Richards
General Counsel
Automobile Burglary and Theft Prevention Authority
Filed: October 21, 2014

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Texas Administrative Code, Title 43, Part 1, Chapter 10, Ethical Conduct by Entities Doing Business with the Department, and Chapter 16, Planning and Development of Transportation Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on December 1, 2014.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-201404944
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 22, 2014

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 800, General Administration, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404909
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 801, Local Workforce Development Boards, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404910

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 803, Skills Development Fund, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404911

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404912

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 815, Unemployment Insurance, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404913

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 817, Child Labor, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404914

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 821, Texas Payday Rules, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404915
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 833, Community Development Initiatives, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404916
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 21, 2014

The Texas Workforce Commission (Commission) files this notice of its intent to review 40 TAC Chapter 843, Job Matching Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

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

TRD-201404917
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Filed: October 21, 2014

Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 11 (Miscellaneous), in its entirety, specifically §11.37.

Notice of the review of Chapter 11 was published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7181). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting this rule continue to exist and readopts Chapter 11 in accordance with the requirements of the Government Code, §2001.039.

TRD-201404832
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 17, 2014

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 26 (Perpetual Care Cemeteries), in its entirety, specifically §§26.1 - 26.6, 26.11, and 26.12.

Notice of the review of Chapter 26 was published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7181). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 26 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 26 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register*.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201404833
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 17, 2014

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 27 (Applications), in its entirety, specifically §27.1.

Notice of the review of Chapter 27 was published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7181). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting this rule continue to exist and readopts Chapter 27 in accordance with the requirements of the Government Code, §2001.039.

TRD-201404834
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 17, 2014

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 31 (Private Child Support Enforcement Agencies), in its entirety, specifically Subchapter A (§31.1); Subchapter B (§§31.11 - 31.19); Subchapter C (§§31.31 - 31.34 and

§§31.36 - 31.39); Subchapter D (§§31.51 - 31.56); Subchapter E (§§31.72 - 31.76); Subchapter F (§§31.91 - 31.96); and Subchapter G (§§31.111 - 31.115).

Notice of the review of Chapter 31 was published in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7181). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 31 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 31 sections, with discussion of the justification for the proposed changes, will be published in this issue of the *Texas Register.*

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201404835
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: October 17, 2014

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, §§95.100 (Definitions), 91.101 (Share and Depositor Insurance Protection), 95.102 (Qualifications for an Insuring Organization), 95.103 (General Powers and Duties of an Insuring Organization), 95.104 (Notices), 95.105 (Reporting), 95.106 (Amount of Insurance Protection), 95.107 (Sharing Confidential Information), 95.108 (Examinations), 95.109 (Fees and Charges), 95.110 (Enforcement; Penalty; and Appeal), 95.200 (Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights), 95.205 (State Not Liable for Any Deficiency), 95.300 (Share and Deposit Guaranty Credit Union), 95.301 (Authority for a Guaranty Credit Union), 95.302 (Powers), 95.303 (Subordination of Right, Title, or Interest), 95.304 (Accounting for Membership Investment Shares), 95.305 (Audited Financial Statements; Accounting Procedures; Reports), 95.310 (Fees and Charges), and 95.400 (Requirements of Participating Credit Unions), as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5801). The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review.

The Commission received one comment in support of readoption these rules without changes.

The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§95.100 - 95.110, 95.200, 95.205, 95.300 - 95.305, 95.310, and 95.400 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201404852
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 20, 2014

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Part 5, Chapter 143, concerning Executive Clemency. The Board amended §§143.1 - 143.6, 143.8, 143.9, 143.11, 143.12, 143.21 - 143.24, 143.31 - 143.35, 143.41 - 143.43, 143.51, 143.52, 143.54, 143.55, 143.57, 143.58, and 143.71 - 143.74 for grammatical changes and to clean up the statutory references and language contained within the rules. The amendments to §§143.6, 143.12, and 143.22 add "burden" to applicant language to be consistent with other rules, and the amendment to §143.34 adds the requirement for the attending physician to provide verification of the terminal illness or total disability and a statement from the free world medical facility.

The assessment of Chapter 143 indicates that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapter 143.

TRD-201404884
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: October 20, 2014

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 Aging and Disability Services

Notice of Enrollment for Intermediate Care Facility for Individuals with an Intellectual Disability and High Medical Needs Project

In accordance with Texas Administrative Code, Title 40, Part 1, §9.206, the Department of Aging and Disability Services (DADS) announces that it is accepting applications for enrollment in the Intermediate Care Facility for Individuals with Intellectual Disabilities and Related Conditions (ICF/IID) Program because beds are available for allocation in Travis, Williamson and Hays Counties. Specifically, DADS is allocating up to 24 beds in four new facilities. Only existing Texas ICF/IID program providers may apply for enrollment to operate one of these facilities.

The allocated beds are designated to serve individuals with high medical needs transitioning from a state supported living center (SSLC) to a small ICF/IID. DADS will conduct a medical necessity and level of care assessment before an individual is discharged from a SSLC. DADS will pay a participating provider the standard daily ICF/IID reimbursement rate for the assessed level of need of an individual, plus an add-on rate that is based on the individual's assessment results. Provider applicants will be required to meet all ICF/IID certification and licensure requirements and to provide information to DADS upon request that will help DADS determine if additional beds should be made available for individuals with similar needs.

An ICF/IID program provider interested in applying for this opportunity to enroll must submit an application (Form 3584, Application to Participate, ICF/IID Serving Individuals with High Medical Needs Transitioning from a State Supported Living Center) in accordance with the instructions in this notice and on the instructions to the application.

A provider applicant may obtain the application and the instructions at:

http://www.dads.state.tx.us/forms/3584/

DADS will reject an incomplete application.

A provider applicant may submit only one application for one facility having a capacity of up to six beds. If a provider applicant submits multiple applications, DADS will reject all applications submitted by that applicant. In the application, the provider applicant must identify the proposed location of the facility by city and county, and the number of beds requested. The provider applicant may not change the county after submitting the application to DADS.

Procurement and Contracting Services, a division of the Health and Human Services Commission (HHSC), will receive applications and conduct an initial screening of them. A provider applicant must submit an application so HHSC receives the application by 5:00 p.m. on November 21, 2014. HHSC will reject late applications.

A provider applicant must submit a complete application to the sole point of contact, Lizet Alaniz - Procurement Project Manager.

Physical Address for overnight, commercial and hand-delivery of applications:

HHSC - Procurement and Contracting Services

4405 N. Lamar Blvd.

Bldg. 1, MC: 2020

Austin, Texas 78756

Attn: Lizet Alaniz

Mailing Address:

HHSC - Procurement and Contracting Services

4405 N. Lamar Blvd.

MC: 2020

Austin, Texas 78756

Attn: Lizet Alaniz

Hours of Operation: 8:00 a.m. to 5:00 p.m.

HHSC will not accept applications by telephone, facsimile, or email.

Additional information regarding this enrollment has been posted on the Electronic State Business Daily (ESBD) under DADS listing "Notice of Enrollment for Intermediate Care Facility for Individuals with an Intellectual Disability and High Medical Needs Project," located at: http://esbd.cpa.state.tx.us/sagency-bid.cfm?startrow=1&endrow=25&ag_num=539&orderby=Agency.

A person must direct all communications relating to this enrollment to the HHSC sole point of contact named above by email (lizet.alaniz@hhsc.state.tx.us), unless specifically instructed to an alternate contact by HHSC Procurement and Contracting Services. Any communication with other HHSC or DADS staff members concerning this enrollment is strictly prohibited. DADS may disqualify a provider applicant from the enrollment process if the applicant fails to comply with these requirements.

After the deadline for submitting applications, DADS will determine if provider applicants are eligible for enrollment. If there are less than five eligible applicants, DADS will approve the applications of all of the eligible provider applicants. If more than four provider applicants are eligible, DADS will use a random selection process to determine which applications for enrollment are approved. If a provider applicant's application for enrollment is approved, the applicant must initiate licensure and certification action with DADS Regulatory Services. If no applications are received or if no program applicant meets the requirements to receive a contract, DADS will close the process without allocating the beds.

TRD-201404933
Lawrence T. Hornsby
General Counsel
Department of Aging and Disability Services
Filed: October 22, 2014

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Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Darrell Hall,* Cause No. D-1-GV-12-000240; in the 250th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant Darrell Hall owns a public water system along CR 227 off FM 2620 in Bedias, Grimes County, Texas. The State alleges that over the past nine years, Defendant has been in continuous violation of Texas statutes governing public drinking water systems, and the rules promulgated thereunder by the Texas Commission on Environmental Quality ("TCEQ"). Specifically, Defendant's water system has repeatedly failed to meet the minimum standards required of disinfectant residuals, water pressure, secondary constituent levels, as well as technical specifications for water wells, tanks, pumps and other equipment.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of $90,000, and attorney's fees in the amount of $20,000. In addition, Defendant is required to hire a licensed professional engineer to bring the water system into compliance with TCEQ rules.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Emily Petrick, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201404883
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 20, 2014

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Request for Applications P-15-CCE-2

Competitive Continuation/Expansion - Evidence-Based Cancer Prevention Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose to continue or expand highly successful projects previously or currently funded by CPRIT. This award mechanism is open only to previously or currently funded CPRIT prevention projects. The proposed projects must continue to provide evidence-based interventions in at least one of the following cancer prevention and control areas: 1) Primary cancer prevention (e.g., vaccine-conferred immunity, healthy diet, avoidance of alcohol misuse, physical activity, sun protection); 2) Secondary prevention (e.g., screening/early detection for breast, cervical, and/or colorectal cancer); or 3) Tertiary prevention (e.g., survivorship services such as physical rehabilitation/therapy, psychosocial interventions, navigation services, palliative care). Successful applicants are eligible for a grant award of up to $1.5 million in direct costs for a maximum of 36 months for clinical service delivery projects. Applicant budget requests will vary depending on the project.

A request for applications titled Competitive Continuation/Expansion - Evidence-Based Cancer Prevention Services is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on September 25, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on December 4, 2014. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201404836
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: October 17, 2014

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Request for Applications P-15-EBP-2

Evidence-Based Cancer Prevention Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose to deliver evidence-based services in at least one of the following cancer prevention and control areas: 1) Primary cancer prevention (e.g., vaccine-conferred immunity, healthy diet, avoidance of alcohol misuse, physical activity, sun protection); 2) Secondary prevention (e.g., screening/early detection for breast, cervical, and/or colorectal cancer); or 3) Tertiary prevention (e.g., survivorship services such as physical rehabilitation/therapy, psychosocial interventions, navigation services, palliative care). CPRIT expects measurable outcomes of supported activities.

Successful applicants are eligible for a grant award of up to $1.5 million in direct costs for a maximum of 36 months. Applicant budget requests for funding will vary depending on the project.

A request for applications titled Evidence-Based Cancer Prevention Services is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on September 25, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on December 4, 2014. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201404837
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: October 17, 2014

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Request for Applications P-15-EBP-CRC-1

Evidence-Based Cancer Prevention Services - Colorectal Cancer Prevention Coalition

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that greatly challenge the status quo in colorectal cancer preven-

tion and control services. The proposed project should be designed to reach and serve as many people as possible by its simultaneous implementation in multiple clinical sites. Project activities include, but are not limited to, public education, professional education, and clinical service delivery and include systems/policy change.

Successful applicants are eligible for a grant award of direct costs for up to 36 months. No cap is placed on the funding amount; applicant budget requests will vary depending on the project.

A request for applications titled Evidence-Based Cancer Prevention Services - Colorectal Cancer Prevention Coalition is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on September 25, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on December 4, 2014. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201404838
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: October 17, 2014

Request for Applications P-15-PN-1

Cancer Prevention Promotion and Navigation to Clinical Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for health promotion that focus on education, and survivorship of cancer for the public. Projects must assist participants in taking action by navigating them to one or more prevention services being promoted. Successful projects would increase the number of persons who improve their health behaviors related to the prevention of cancer, obtain recommended cancer screening tests, have cancers detected at earlier stages, and improve their quality of life if they are survivors of cancer. CPRIT expects measurable outcomes of supported activities.

Successful applicants are eligible for a grant award of up to $400,000 in direct costs for up to 36 months. Applicant budget requests will vary depending on the project.

A request for applications titled Cancer Prevention Promotion and Navigation to Clinical Services is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on September 25, 2014, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on December 4, 2014. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201404839
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: October 17, 2014

Comptroller of Public Accounts

Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR (Saving Taxes and Resources) Revolving Loan Program of the Texas State Energy Plan ("SEP") in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.), as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305 of the Texas Government Code; and (3) Title 34, Texas Administrative Code, Chapter 19, Subchapter D Loan Program for Energy Retrofits; the Texas Comptroller of Public Accounts ("Comptroller") and the State Energy Conservation Office ("SECO") announces its Notice of Loan Fund Availability ("NOLFA") and Request for Applications #BE-G12-2014 ("RFA") and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

PROGRAM SUMMARY: The Texas LoanSTAR Revolving Loan Program finances energy-related cost-reduction retrofits for eligible public sector institutions. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows loan recipients to repay loans through the stream of energy cost savings realized from the projects.

FUNDS AVAILABLE AND LOAN TERM: Approximately $21,000,000 in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The anticipated maximum amount of funds available for each loan recipient is $7,500,000. SECO may make more than one award of a loan and may make more than one award of a loan to a single loan recipient with this NOLFA/RFA announcement. The interest rate to be charged to loan recipients for this NOLFA/RFA announcement is 2.0% fixed. The loan term will be equal to the composite simple payback term for the energy efficiency measures.

ELIGIBILITY CRITERIA: Eligible public sector institutions include the following: (1) any state department, commission, board, office, institution, facility, or other agency; (2) a public junior college or community college; (3) an institution of higher education as defined in Section 61.003 of the Texas Education Code; (4) units of local government including a county, city, town, a public or non-profit hospital or health care facility; (5) a public school; or (6) a political subdivision of the state.

Utility dollar savings are the most important criterion for determining if the measure can be considered an eligible Energy Cost Reduction Measure ("ECRM"). ECRMs are not limited to those activities that save units of energy. An ECRM could conceivably call for actions which save no energy or consume additional BTUs, but save utility budget dollars. Examples of such ECRMs include demand reduction, increased power factor, load shifting, switching utility rate structures, and thermal storage projects.

Projects financed by LoanSTAR must have a composite simple payback of ten (10) years or less for design-build and design-bid-build projects and a total project payback of ten (10) years or less for energy savings performance contracts. In addition, each ECRM and Utility Cost Reduction Measure ("UCRM") must have a simple payback that does not exceed the estimated useful life ("EUL") of the ECRM or UCRM. Loan recipients have the option of buying down specific energy-related cost-reduction projects so that paybacks can meet both the individual and composite loan term limits. SECO encourages Applicants to consider renewable energy technologies when evaluating ECRMs and UCRMs.

Before entering into a LoanSTAR loan agreement, Applicants are required to submit an Energy Assessment Report ("EAR") for Design-Bid-Build Projects and Design-Build Projects, or a Utility Assessment Report ("UAR") for Energy Savings Performance Contracts,

or a Systems Commissioning Report in the case where the commissioning meets LoanSTAR payback requirements. All LoanSTAR projects must be reviewed and analyzed by a professional engineer licensed in the State of Texas ("Engineer"). The Engineer shall be selected by the Applicant.

When an Engineer analyzes a project; he/she shall submit the details of his/her analysis in the form of an EAR for Design-Bid-Build Projects and Design-Build Projects, or a UAR for Energy Savings Performance Contracts. The EAR shall be prepared in accordance with the LoanSTAR Technical Guidelines (http://seco.cpa.state.tx.us/ls/guidelines/) prescribed format. The UAR shall be prepared in accordance with the SECO Performance Contracting Guidelines (http://seco.cpa.state.tx.us/perf-contract/) prescribed format. There is not a prescribed format for Systems Commissioning Reports.

Project descriptions and calculations contained within the EAR, the UAR, and the Systems Commissioning Reports must be reviewed and approved by SECO before project financing is authorized.

Project designs for Design-Bid-Build must be reviewed and approved by SECO before construction can commence. Design-Build project designs must be sufficiently complete to be reviewed and approved by SECO before construction can commence. Design-Bid-Build, Design-Build, and Energy Savings Performance Contracts are monitored during the construction phase and at project completion.

Post-retrofit energy savings should be monitored by the Applicant in Design-Bid-Build and Design-Build projects to ensure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole building metering, depending on the size and types of retrofits installed.

For Energy Savings Performance Contracts, a Measurement and Verification (M+V) plan must be developed and approved by SECO. Post construction measurement and verification costs must be included as part of the total project cost when calculating the payback.

Additional LoanSTAR funds can be borrowed for metering of large, complex retrofits in order to maximize the probability of achieving, or exceeding, calculated savings; however, the maximum allowable loan amount, including the cost of the metering, cannot be exceeded.

APPLICATION REQUIREMENTS: Comptroller will make the loan application, instructions, and a sample loan agreement with attachments available for review electronically on the SECO website at: http://www.seco.cpa.state.tx.us/funding/ after 10:00 a.m. Central Time ("CT") on Friday, October 31, 2014.

The loan application must: (1) be complete; (2) be submitted under a signed transmittal letter; (3) include an executive summary and a table of contents; and (4) describe the project and personnel qualifications relevant to the evaluation criteria. Applications must also meet the following program requirements:

The maximum loan amount shall not exceed $7.5 million.

The interest rate is set at 2.0%.

The loan repayment term is equal to the Total Loan Payback for Design-Bid-Build and Design-Build projects and the Total Project Payback for Energy Savings Performance Contracts. The individual ECRM/UCRM must demonstrate a simple payback of less than the ECRM's/UCRM's estimated useful life.

Project expenses will be reimbursed on a "cost reimbursement" basis.

Loan recipient will be required to comply with federal Solid Waste Disposal Act, and, if applicable, National Environmental Policy Act, and National Historic Preservation Act. Loan recipients will ensure that the State Historical Preservation Office ("SHPO") is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to ensure that the historical significance of the building will be preserved. All requirements are set out in the sample contract.

SECO will conduct periodic on-site monitoring visits on all building retrofit projects.

All improvements financed through the LoanSTAR Revolving Loan Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable may include:

Building and mechanical system commissioning and optimization

Energy management systems and equipment control automation

High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects

High efficiency lighting fixtures and lamps

Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof.)

Load Management Projects

Energy Recovery Systems

Low flow plumbing fixtures, high efficiency pumps

Systems commissioning

Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as rooftop solar water and space heating systems, geothermal heat pumps(only closed loop systems with no greater than 10 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 10 ton capacity involved, then Applicants will be responsible for further National Environmental Policy Act (NEPA) review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, Applicants will be responsible for further NEPA review by DOE.

Applicants shall submit one (1) original, five (5) bound copies, and one (1) electronic copy of the loan application, as well as of one of the following documents:

1. Project Assessment Commitment. The Project Assessment Commitment can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The Project Assessment Commitment shall be signed by the applicant's Chief Financial Officer or equivalent;

2. Preliminary Energy Assessment (PEA). A PEA can be used for Design-Bid-Build and Design-Build projects, for Energy Savings Performance Contracts, or for Commissioning projects. The PEA must be completed by a Professional Engineer licensed in the State of Texas. PEAs must include Energy Cost Reduction Measure (ECRM) or Utility Cost Reduction Measure (UCRM) that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA;

3. Energy Assessment Report (EAR). An EAR can be used for Design-Bid-Build and Design-Build projects;

4. Utility Assessment Report (UAR). The UAR can be used for Energy Savings Performance Contracts; or

5. Commissioning Report for Commissioning projects.

While the Project Assessment Commitment and the PEA will qualify the project for potential funding, an approved EAR, UAR or Commissioning Report will be required prior to execution of a loan agreement.

ISSUING OFFICE: Parties interested in submitting an application should contact William C. George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, at: 111 E. 17th St., Room 201, Austin, Texas 78774, or via phone at (512) 305-8673. This NOLFA/RFA will be available on Friday, October 31, 2014, after 10:00 a.m. CT and during normal business hours thereafter.

QUESTIONS: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, November 21, 2014. Prospective applicants are encouraged to send Questions via email to contracts@cpa.states.tx.us or fax to (512) 463-3669 to ensure timely receipt. On or about Tuesday, November 25, 2014, or as soon thereafter as practical, Comptroller expects to post responses to the questions received by the deadline on the website referenced above. Late Questions will not be considered under any circumstances.

CLOSING DATE: Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Monday December 15, 2014. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

SCHEDULE OF EVENTS: The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - October 31, 2014, after 10:00 a.m. CT; Non Mandatory Webinar - November 12, 2014 at 10:00 a.m. CT; Questions Due - November 21, 2014, 2:00 p.m. CT; Official Responses to Questions posted - November 25, 2014, or as soon thereafter as practical; Applications Due - December 15, 2014, 2:00 p.m. CT; Loan Commitment and/or Agreement Execution - as soon thereafter as practical.

TRD-201404932
William C. George
Assistant General Counsel
Comptroller of Public Accounts
Filed: October 22, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/27/14 - 11/02/14 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 10/27/14 - 11/02/14 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/14 - 11/30/14 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/14 - 11/30/14 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201404949
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 23, 2014

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Texas Telcom Credit Union (Dallas) seeking approval to merge with Dallas I.H.C. Federal Credit Union (Colleyville), with Texas Telcom Credit Union being the surviving 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-201404935
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2014

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Lone Star Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees and tenants of Champions Cove, 1600 South Main Street, Duncanville, Texas 75137, to be eligible for membership in the credit union.

An application was received from East Texas Professional Credit Union, Longview, Texas to expand its field of membership. The proposal would permit individuals who live or work in Panola County, Texas, to be eligible for membership in the credit union.

An application was received from Assemblies of God Credit Union, Springfield, Missouri to expand its field of membership. The proposal would permit adherents of Assemblies of God churches in Texas, to be eligible for membership in the 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. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. 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-201404934

Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 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 1, 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 1, 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: BJAYS INCORPORATED dba J P Discount Beer & Wine; DOCKET NUMBER: 2014-1132-PST-E; IDENTIFIER: RN102256302; LOCATION: Dallas, 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; PENALTY: $1,719; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Buckner Construction, LLC; DOCKET NUMBER: 2014-1093-WQ-E; IDENTIFIER: RN107230245; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: residential 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 storm water associated with construction activities; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Cathy Ward dba Town and Country Septic; DOCKET NUMBER: 2014-0840-MLM-E; IDENTIFIER: RN107147621; LOCATION: Eagle Lake, Colorado County; TYPE OF FACILITY: sludge transporter business; RULES VIOLATED: 30 TAC §312.142(a) and (d), and §312.145(a) and (b), by failing to renew a Sludge Transporter Registration and maintain complete records of each individual collection in the form of a trip ticket before continuing to transport waste; TWC, §26.121(a)(1) and 30 TAC §312.143, by failing to obtain authorization to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the facility has written authorization by permit or registration issued by the executive director to receive wastes; 30 TAC §312.144(f), by failing to prominently mark discharge valves and ports on all closed vehicles, tanks, or containers used to transport liquid wastes; 30 TAC §312.144(d), by failing to equip a vehicle used to transport liquid waste with a sight gauge maintained in a manner which can be used to determine whether or not the vehicle is loaded and the approximate capacity; and 30 TAC §312.145(b)(4), by failing to submit to the executive director an annual summary of the Respondent's activities for the previous period of June 1 - May 31 of each year; PENALTY: $16,287; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Christopher L. West; DOCKET NUMBER: 2014-0964-WOC-E; IDENTIFIER: RN104744719; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid water system operator's license prior to performing process control duties in production, treatment, and distribution of public drinking water; PENALTY: $696; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Mount Vernon; DOCKET NUMBER: 2014-1073-MWD-E; IDENTIFIER: RN102095338; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011122001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,437; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Overton; DOCKET NUMBER: 2014-0896-MWD-E; IDENTIFIER: RN102096203; LOCATION: Overton, Rusk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010242001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010242001, Sludge Provisions, by failing to submit a complete and accurate annual sludge report for the monitoring period ending July 31, 2013, by September 30, 2013; PENALTY: $7,437; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Sinton; DOCKET NUMBER: 2014-0910-MWD-E; IDENTIFIER: RN101721330; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013641001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted

effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0013641001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; PENALTY: $38,425; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Dewitt County Precinct 2; DOCKET NUMBER: 2014-1472-WR-E; IDENTIFIER: RN107614554; LOCATION: Cuero, DeWitt County; TYPE OF FACILITY: creek bed; 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: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: DISCOUNT CIGARETTE AND BEER INCORPORATED dba Discount Cigars; DOCKET NUMBER: 2014-1107-PST-E; IDENTIFIER: RN102782133; LOCATION: Wichita Falls, Wichita 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 (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.375(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,504; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Eastland County Water Supply District; DOCKET NUMBER: 2014-0781-MWD-E; IDENTIFIER: RN102185295; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013726001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: $8,850; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Fazio Family Investments, Incorporated dba Kid Korral; DOCKET NUMBER: 2014-0446-PWS-E; IDENTIFIER: RN106618432; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and failed to provide public notice of the failure to submit a DLQOR to the executive director; 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of being notified of a distribution total coliform-positive result; 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine distribution sample collected; and 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; PENALTY: $1,435; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Galveston County Water Control and Improvement District 19; DOCKET NUMBER: 2014-1015-PWS-E; IDENTIFIER: RN101408599; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of August 2011; 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on the running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for TTHM, based on the locational running annual average; PENALTY: $385; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Jose Mario Flores and The Millett Housing Group, LLC dba Millett Housing Group; DOCKET NUMBER: 2014-0853-PWS-E; IDENTIFIER: RN106631567; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring during the month of June 2013, the failure to conduct groundwater triggered source monitoring for the month of September 2013, the failure to conduct repeat coliform monitoring during the month of September 2013 and the failure to conduct increased coliform monitoring for the months of October and November 2013; 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of February 2014; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in February 2014; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive sample result for the month of March 2014; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91420012 for Fiscal Year 2014; PENALTY: $1,237; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: Linde Gas North America LLC; DOCKET NUMBER: 2014-0612-AIR-E; IDENTIFIER: RN100217207; LOCATION: La Porte, Harris County; TYPE OF FACILITY: gas production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O2290, General Terms and Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; and 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), FOP Number O2290, Special Terms and Conditions Number 12, New Source Review Permit Number 4773A, Special Conditions Number 1, and THSC, §382.085(b), by failing to maintain compliance with the maximum allowable emission rates for volatile organic compounds and nitrogen oxides; PENALTY: $12,080; ENFORCEMENT COORDINATOR:

Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Murad Maknojia dba Aggies Food Store; DOCKET NUMBER: 2014-1190-PST-E; IDENTIFIER: RN102354396; 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $24,100; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Nizar Momin dba Nicks Grocery; DOCKET NUMBER: 2014-1250-PWS-E; IDENTIFIER: RN101832764; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2012 and 2013 monitoring periods; PENALTY: $100; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: North Pines, LLC; DOCKET NUMBER: 2014-1026-PWS-E; IDENTIFIER: RN101213593; LOCATION: Houston, Harris 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 20 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; PENALTY: $6,028; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Perry Homes, LLC; DOCKET NUMBER: 2014-0947-WQ-E; IDENTIFIER: RN105494207; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXRX15KG96, Part III, Section G.1., by failing to install and implement erosion and sediment controls; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXRX15KG96, Part III, Section F.6.(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: $1,413; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: PURE UTILITIES, L.C.; DOCKET NUMBER: 2014-1084-PWS-E; IDENTIFIER: RN101259679; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: $3,552; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Salinas Construction Technologies, Limited; DOCKET NUMBER: 2014-1471-WR-E; IDENTIFIER: RN107671729; LOCATION: Concan, Uvalde County; TYPE OF FACILITY: 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: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Shell Pipeline Company LP; DOCKET NUMBER: 2014-1125-AIR-E; IDENTIFIER: RN102027174; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum pipeline breakout station; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 56342, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O2733, Special Terms and Conditions (STC) Number 9, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G), and (1)(H) and §122.143(4), THSC, §382.085(b), and FOP Number O2733, STC Number 2F, by failing to timely submit an accurate and complete final report for Incident Number 197253; PENALTY: $4,201; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: StarPak, Corporation; DOCKET NUMBER: 2014-0961-AIR-E; IDENTIFIER: RN102886819; LOCATION: Houston, Harris County; TYPE OF FACILITY: flexographic printing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit Number O3525, General Terms and Conditions and Special Terms and Conditions Number 8, by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §116.110(a) and §116.315(a) and THSC, §382.0518(a) and §382.085(b), by failing to submit a renewal application for New Source Review Permit Number 52466 at least six months prior to expiration of the permit; PENALTY: $21,001; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: SUPER HEIMER VIEW, INCORPORATED dba Exclusive Cleaners; DOCKET NUMBER: 2014-0716-DCL-E; IDENTIFIER: RN104130927; LOCATION: Bellaire, Harris County; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a drop station facility; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Synagro of Texas-CDR, Incorporated; DOCKET NUMBER: 2014-1032-SLG-E; IDENTIFIER: RN103143640 (Site 1), RN103143657 (Site 2), and RN103143673 (Site 3); LOCATION: Brownsboro, Henderson County (Site 1), Poynor, Henderson County (Site 2), and Whitehouse, Smith County (Site 3); TYPE OF FACILITY: sewage sludge land application sites; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §§305.65, 305.125(2), 312.4(a) and (d), and Texas Pollutant Discharge Elimination System Permit Numbers WQ0004505000, WQ0004506000, and WQ0004507000, General Requirements B, by failing to maintain authorization to land apply wastewater treatment plant sewage sludge (Sites 1, 2 and 3); PENALTY: $9,907; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2014-0919-PST-E; IDENTIFIER: RN100700095 (Facility

1) and RN101871820 (Facility 2); LOCATION: Del Rio, Val Verde County (Facility 1) and Eagle Pass, Maverick County (Facility 2); TYPE OF FACILITY: fleet refueling facilities; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) at Facility 1 and 2 for releases at a frequency of at least once every month; 30 TAC §334.49(e), by failing to maintain corrosion protection records at Facility 2 and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST system at Facility 2; PENALTY: $8,625; Supplemental Environmental Project offset amount of $6,900 applied to The University of Texas at Austin Lyndon B. Johnson School of Public Affairs; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(26) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2014-0971-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; 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 O1935, Special Terms and Conditions Number 7, and New Source Review Permit Number 22056, Special Conditions Number 1, by failing to comply with the maximum allowable hourly emissions rates for nitrogen oxides, carbon monoxide, and volatile organic compounds for the Poly Plant Flare, Emission Point Number POLY FL-1; PENALTY: $15,000; Supplemental Environmental Project offset amount of $6,000 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2014-0465-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1498, Special Terms and Conditions Number 18, and New Source Review Permit Numbers 6825A, PSDTX49, and N65, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $200,000; Supplemental Environmental Project offset amount of $100,000 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: UNIMIN CORPORATION; DOCKET NUMBER: 2014-0940-PWS-E; IDENTIFIER: RN101257327; LOCATION: Voca, McCulloch County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(29) COMPANY: WESSON SAND COMPANY, INCORPORATED; DOCKET NUMBER: 2014-1042-MLM-E; IDENTIFIER: RN106876485; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §342.25(b), by failing to register the site as an aggregate production operation no later than the 10th business day before the beginning date of regulated activities; 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent particulate emissions from causing nuisance conditions; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201404919
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 21, 2014

Enforcement Orders

An agreed order was entered regarding Southwest Shipyard, L.P., Docket No. 2011-1776-AIR-E on October 13, 2014, assessing $4,125 in administrative penalties with $825 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 Jerry Lynn Cooper, Docket No. 2013-0992-IWD-E on October 13, 2014, assessing $4,950 in administrative penalties with $990 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 Leroy Moody and Ernestine L. Moody dba Leroy's Mobile Home Park, Docket No. 2013-1088-PWS-E on October 14, 2014, assessing $873 in administrative penalties.

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 DHANANI RETAIL, INC. dba Lockwood Fuel Stop, Docket No. 2013-1174-PST-E on October 13, 2014, assessing $3,075 in administrative penalties with $615 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Douglassville, Docket No. 2013-1425-MLM-E on October 13, 2014, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAYS CITY CORPORATION dba Tex Con Oil, Docket No. 2013-1792-PST-E on October 13, 2014, assessing $3,857 in administrative penalties with $771 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael 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 Kathy Ringo and Richard Ringo dba K & R Contractors, Docket No. 2013-1877-MSW-E on October 13, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Waste Disposal Authority, Docket No. 2013-1982-AIR-E on October 13, 2014, assessing $2,075 in administrative penalties with $415 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 1915 ENTERPRISES, LP, Docket No. 2013-2013-MSW-E on October 13, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradise Independent School District, Docket No. 2013-2038-MWD-E on October 13, 2014, assessing $7,250 in administrative penalties with $1,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS AIRSTREAM HARBOR, INC., Docket No. 2013-2147-PWS-E on October 13, 2014, assessing $605 in administrative penalties with $121 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 Orange County Water Control and Improvement District No. 1, Docket No. 2013-2158-MWD-E on October 13, 2014, assessing $3,625 in administrative penalties with $725 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 711 Main Street Ventures, LLC, Docket No. 2013-2220-PST-E on October 13, 2014, assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OVERSEAS ENTERPRISES USA, INC. dba Neighborly, Docket No. 2013-2227-PST-E on October 13, 2014, assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JEC JMc Development, LLC, Docket No. 2014-0085-WQ-E on October 13, 2014, assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Brent Davis dba Cypresswood Estates, Docket No. 2014-0130-PWS-E on October 13, 2014, assessing $2,801 in administrative penalties with $559 deferred.

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 ACME BRIDGE COMPANY, INC., Docket No. 2014-0161-MSW-E on October 13, 2014, assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dallas, Docket No. 2014-0170-PST-E on October 13, 2014, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crockett, Docket No. 2014-0194-MLM-E on October 13, 2014, assessing $3,789 in administrative penalties with $757 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM RAYBURN WATER, INC., Docket No. 2014-0242-PWS-E on October 13, 2014, assessing $6,241 in administrative penalties with $1,247 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TPC Group LLC, Docket No. 2014-0263-AIR-E on October 13, 2014, assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lewis Petro Properties, Inc., Docket No. 2014-0264-AIR-E on October 13, 2014, assessing $3,905 in administrative penalties with $781 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 Hendrik Post and Hendrik Post, Jr., Docket No. 2014-0274-AIR-E on October 13, 2014, assessing $1,250 in administrative penalties with $250 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 Shintech Incorporated, Docket No. 2014-0299-AIR-E on October 13, 2014, assessing $7,080 in administrative penalties with $1,416 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 Dao Pham and Lai Nguyen dba Heights Super Cleaners, Docket No. 2014-0326-DCL-E on October 13, 2014, assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc, Docket No. 2014-0411-AIR-E on October 13, 2014, assessing $7,012 in administrative penalties with $1,402 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 East Central Special Utility District, Docket No. 2014-0420-PWS-E on October 13, 2014, assessing $4,370 in administrative penalties with $874 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2014-0423-IHW-E on October 13, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beacon Estates Water Supply Corporation, Docket No. 2014-0471-MWD-E on October 13, 2014, assessing $6,600 in administrative penalties with $1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert J. Crawford and Carolyn Crawford dba LITTLE TEXANS PUBLIC WATER SYSTEM, Docket No. 2014-0475-PWS-E on October 13, 2014, assessing $1,282 in administrative penalties with $256 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & D MEKHAIL ENTERPRISES, INC., Docket No. 2014-0515-PST-E on October 13, 2014, assessing $3,813 in administrative penalties with $762 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hearne, Docket No. 2014-0533-MLM-E on October 13, 2014, assessing $2,814 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEANDER GROCERY, INC. dba Jiffy Mart 1, Docket No. 2014-0544-PST-E on October 13, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QAWI AND QUDDUS, INC. dba Q & Q Mart, Docket No. 2014-0585-PST-E on October 13, 2014, assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samkwang USA, Inc. dba Lockwood Texaco Mart, Docket No. 2014-0586-PST-E on October 13, 2014, assessing $3,036 in administrative penalties with $607 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Industries, Inc., Docket No. 2014-0587-IWD-E on October 13, 2014, assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2014-0606-AIR-E on October 13, 2014, assessing $6,225 in administrative penalties with $1,245 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 Texas SPF Investments, LLC, Docket No. 2014-0608-PWS-E on October 13, 2014, assessing $405 in administrative penalties with $81 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CASH REGISTER SERVICES, INC., Docket No. 2014-0625-PWS-E on October 13, 2014, assessing $335 in administrative penalties with $335 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IBA BUSINESS LLC dba Snappy Foods 4, Docket No. 2014-0628-PST-E on October 13, 2014, assessing $2,566 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spring Creek Independent School District, Docket No. 2014-0646-PWS-E on October 13, 2014, assessing $1,140 in administrative penalties with $228 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TPC Group LLC, Docket No. 2014-0687-AIR-E on October 13, 2014, assessing $5,775 in administrative penalties with $1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Roads Corner Store, Limited Liability Company dba Cross Roads Corner Store, Docket No. 2014-0717-PST-E on October 13, 2014, assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C-Store Trands Inc dba Jrs Food Mart, Docket No. 2014-0719-PST-E on October 13, 2014, assessing $1,913 in administrative penalties with $382 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jessica N. Gandy dba Jags, Docket No. 2014-0720-PST-E on October 13, 2014, assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TX MALAC GROUP, INC. dba Stop and Go Food Mart, Docket No. 2014-0725-PST-E on October 13, 2014, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2014-0733-AIR-E on October 13, 2014, assessing $4,000 in administrative penalties with $800 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 Baker Hughes Incorporated, Docket No. 2014-0740-AIR-E on October 13, 2014, assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Century Corrosion Technologies, LLC, Docket No. 2014-0741-AIR-E on October 13, 2014, assessing $5,926 in administrative penalties with $1,185 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 EMIL B. CORPORATION dba Valley Ranch Cleaners, Docket No. 2014-0745-DCL-E on October 13, 2014, assessing $399 in administrative penalties with $79 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valor Telecommunications of Texas, LLC, Docket No. 2014-0751-PST-E on October 13, 2014, assessing $3,516 in administrative penalties with $703 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UGROR ENTERPRISES, INC. dba Super Stop 5, Docket No. 2014-0765-PST-E on October 13, 2014, assessing $1,362 in administrative penalties with $272 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lumbini Enterprise LLC dba NEIGHBORHOOD FOOD MART, Docket No. 2014-0787-PST-E on October 13, 2014, assessing $6,011 in administrative penalties with $1,202 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2014-0796-AIR-E on October 13, 2014, assessing $4,536 in administrative penalties with $907 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 Knife River Corporation - South, Docket No. 2014-0798-WQ-E on October 13, 2014, assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LILBERT-LOONEYVILLE WATER SUPPLY CORPORATION, Docket No. 2014-0823-PWS-E on October 13, 2014, assessing $760 in administrative penalties with $151 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nhu Kim Quach dba DDS Express Mart, Docket No. 2014-0831-PST-E on October 13, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Neutze dba Neu Mart 1, Docket No. 2014-0838-PST-E on October 13, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hickory Creek Special Utility District, Docket No. 20140883PWSE on October 13, 2014, assessing $2,106 in administrative penalties with $421 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TWIN LAKES CLUB, INC., Docket No. 2014-0893-PWS-E on October 13, 2014, assessing $1,380 in administrative penalties with $276 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding W L Hayes Tank Truck Service, Docket No. 2014-1020-WR-E on October 13, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cliff J Chambers, Docket No. 2014-1022-OSI-E on October 13, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Javier Gonzales, Jr., Docket No. 2014-1115-WOC-E on October 13, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jeremy S Langley, Docket No. 2014-1116-WOC-E on October 13, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Roger Lee, Docket No. 2014-1117-WOC-E on October 13, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Terry Memorial Hospital District, Docket No. 2014-1136-PST-E on October 13, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201404937
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 22, 2014

Notice of Correction to Agreed Order Number 11

In the October 10, 2014, issue of the *Texas Register* (39 TexReg 8086), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically item Number 8, Mares Group LLC d/b/a Mares Mart. Rules violated were published as: 30 TAC §334.54(b)(2), but should have been as follows: 30 TAC §334.54(b)(2) and (d)(2). This error is as submitted by the commission.

For questions concerning this error, please contact Meaghan Bailey at (512) 239-0205.

TRD-201404921

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 21, 2014

Notice of Water Quality Applications

The following notices were issued on October 10, 2014 through October 17, 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

GRAYDEN CEDARWORKS INC which operates a cedar wood oil production plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001391000, which authorizes the discharge of once-through cooling water and boiler blowdown at a volume not to exceed a daily average flow of 2,160,000 gallons per day. This application was received by the TCEQ on May 8, 2014. The facility is located at 8782 Ranch Road 2169, Junction, Kimble County, Texas 76849.

CALHOUN PORT AUTHORITY which operates Port of Port Lavaca - Point Comfort, a marine cargo transfer and storage station, has applied for a renewal of TPDES Permit No. WQ0003868000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day via Outfall 001 and stormwater on an intermittent and flow-variable basis via Outfall 002. The facility is located at 2313 Farm-to-Market Road 1593 South, approximately 2.3 miles south of the intersection of State Highway 35 and Farm-to-Market Road 1593, Calhoun County, Texas 77978.

EAGLE MOUNTAIN POWER COMPANY LLC which proposes to operate Eagle Mountain Steam Electric Station, an electricity generating station, has applied for new TPDES Permit No. WQ0005122000 to authorize the discharge of once-through cooling water and previously monitored effluent (low volume waste, chemical metal cleaning waste, non-chemical metal cleaning waste, and stormwater) at a daily average flow not to exceed 296, 640,000 gallons per day via Outfall 001. The facility is located at 10029 Morris Dido Newark Road, adjacent to Eagle Mountain Reservoir and approximately ten miles (via Farm-to-Market Road 1220) northwest of the City of Fort Worth, Tarrant County, Texas 76179.

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO 1 (OWNER) AND CITY OF MINERAL WELLS (OPERATOR) which propose to operate the Brazos Water Treatment Plant, have applied for new TPDES Permit No. WQ0005134000 to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 1,100,000 gallons per day via Outfall 001. The facility will be located on West Water Plant Road, approximately 1.1 miles southwest of the intersection of West Water Plant Road and South Farm-to-Market Road 129, where the road intersects the western bank of Palo Pinto Creek, in Palo Pinto County, Texas 76472.

CITY OF LA GRANGE has applied for a renewal of TPDES Permit No. WQ0010019001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 800 West Lower Line Street, La Grange in Fayette County, Texas 78945.

CITY OF SEMINOLE has applied for a renewal of TPDES Permit No. WQ0010278001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located adjacent to and south of U.S. Highway 180, approximately 1.5 miles east of the intersection of U.S. Highways 180 and 385 in Gaines County, Texas 79360.

CITY OF WHARTON has applied for a renewal of TPDES Permit No. WQ0010381001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 806 South East Avenue, Wharton in Wharton County, Texas 77488.

CITY OF BRIDGEPORT has applied for a renewal of TPDES Permit No. WQ0010389003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. The facility is located at 201 West Farm-to-Market Road 2123, approximately 1,500 feet southwest of the intersection of State Highway 114 and Farm-to-Market Road 2123 in Wise County, Texas 76426.

KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010414001, 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 36B Highway 473, Comfort, in Kendall County, Texas 78013.

CITY OF HOOKS has applied for a renewal of TPDES Permit No. WQ0010507001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 449 Willow Oak Drive, approximately 2,000 feet northeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1398 in Bowie County, Texas 75561.

CITY OF BLANCO has applied for a major amendment to TPDES Permit No. WQ0010549002 to relocate the existing outfall (Outfall 001) and to add an additional outfall (Outfall 002). The applicant proposes to designate Outfall 001 as a discharge outfall with appropriate effluent limits for discharge to water in the State, and would designate Outfall 002 as an irrigation outfall, with appropriate effluent limits for irrigating non-public access agricultural land. The applicant requested to reduce bacteria monitoring from five times per week to twice per month, which complies with current TCEQ rules. The applicant also requested that the upper pH limit be modified from 9.0 standard units to 10.0 standard units at the irrigation outfall, as allowed by 30 Texas Administrative Code §309.2(c). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day with an option to dispose of treated domestic wastewater via irrigation of 68 acres of non-public access agricultural land through a combined outfall. The facility is located approximately 0.8 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1623, at 289 Waters Edge Road in Blanco County, Texas 78606.

CITY OF KENDLETON has applied for a renewal of TPDES Permit No. WQ0010996001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1,500 feet east of the intersection of Farm-to-Market Road 2219 and U.S. Highway 59, and 1,000 feet south of U.S. Highway 59 in Fort Bend County, Texas 77451.

CANYON RIDGE INVESTMENT COMPANY has applied for a renewal of TCEQ Permit No. WQ0011198001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 124,000 gallons per day via surface irrigation of 49 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 at the northwest corner of

McCormick Road and Bell Street, approximately 1000 feet north of McCormick Road and approximately 4,000 feet east of Interstate Highway 27 in Randall County, Texas 79118.

TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 17 has applied for a renewal of TCEQ Permit No. WQ0013294001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 525,000 gallons per day via surface irrigation of 145 acres of golf course and subsurface drip irrigation of 28.7 acres of nonpublic access perennial pastureland. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located at North Quinlan Park Road, approximately two miles south of the intersection of Ranch Road 620 and Quinlan Park Road in Travis County, Texas 78732.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. WQ0013613001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 1690 Farm-to-Market Road 3505, approximately 500 feet east of Buggy Whip Creek and approximately 7,800 feet north of Posey on State Highway 71 in Hopkins County, Texas 75482.

SOLIDAGO LLC has applied for a renewal of TCEQ Permit No. WQ0014203001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via subsurface drip irrigation on 6.3 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located at 13500 Farm-to-Market Road 2769 (Volente Road), along the north side of Volente Road, approximately 0.5 mile northeast of the intersection of Ranch Road 2222 and Volente Road in Austin in Travis County, Texas 78726.

VENTANA DEVELOPMENT MCCRARY LTD has applied for a new permit, TPDES Permit No. WQ0015241001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 0.25 mile north of the intersection of Brandt Road and McCrary Road, on the east side of McCrary Road, in Fort Bend County, Texas 77406.

LUMINANT MINING COMPANY LLC which operates the Three Oaks Lignite Mine, has applied for a renewal of TPDES Permit No. WQ0004348000, which authorizes the discharge of mine seepage, groundwater seepage, water from dewatering activities, and stormwater from retention ponds in the "active mining area" via Outfalls 001M, 002M, 003M, 004M, and 005M on an intermittent and flow-variable basis; groundwater seepage, water from dewatering activities, and stormwater from retention ponds in the "post mining area" via Outfalls 001R, 002R, 003R, 004R, and 005R on an intermittent and flow-variable basis. The facility is located approximately one mile northwest of the intersection of Farm-to-Market Road 619 and Farm-to-Market Road 696, Lee County and Bastrop County, Texas 78621.

WEATHERFORD US LP which operates Weatherford Technology and Training Center, has applied for a major amendment to TPDES Permit No. WQ0004760000 to remove Outfall 002 from the permit, add stormwater only Outfalls 004 and 005, remove requirements to sample Outfall 001 within first 30 minutes of discharge during normal business hours, remove rubber mixer area washdown as an authorized wastestream for discharge and to recalculate total copper effluent limitations using site-specific criteria. The current permit authorizes the discharge of treated domestic wastewater, laboratory rinse water, and rubber mixer area wash down water on an intermittent and flow variable basis via Outfall 001; and rig testing area wash water and potentially impacted stormwater on an intermittent and flow variable basis via Outfall 002. The application also includes a request for the approval of a Water Effect Ratio (WER) of 4.55 for total copper at Outfall 001. The facility is located approximately 0.75 mile west of U.S. Highway 290 and two miles east of Eldridge Road on Spencer Road in the City of Houston, Harris County, Texas 77041.

CITY OF HENRIETTA has applied for a renewal of TPDES Permit No. WQ0010454003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 240,000 gallons per day. The facility is located at 1305 North Bridge Street, Henrietta in Clay County, Texas 76365.

CITY OF MIAMI has applied for a renewal of TPDES Permit No. WQ0011027001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located northeast of the intersection of Houston Street and Austin Street in City of Miami in Roberts County, Texas 79059.

CITY OF HORSESHOE BAY has applied for a renewal of TCEQ Permit No. WQ0011217001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,500,000 gallons per day via surface irrigation of 373 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 301 Farm-to-Market Road 2831, Horseshoe Bay, approximately 3,000 feet northeast of the intersection of State Highway 71 and Farm-to-Market Road 2831 in Llano County, Texas 78657.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0012024001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the right-of-way of U.S. Highway 59, approximately 0.6 mile west of the City of Inez (on the southbound traffic side) in Victoria County, Texas 77968.

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.

CITY OF SADLER has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011037001 to authorize the addition of a clarifier, sludge drying beds, and chlorination disinfection to the treatment process. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. The facility is located on East Pecan Street, approximately 2,200 about 2,600 feet (near to far side) east-southeast of the intersection of Farm-to-Market Road 901 and the Missouri-Kansas-Texas Railroad in Grayson County, Texas 76264.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0014931001 issued to Bay Bluff, L.P. to express the BOD5 effluent limits as CBOD5 effluent limits without changing the numerical values. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 2,200 feet north-northeast of the intersection of Bay Area Boulevard and Red Bluff Road in Harris County, Texas 77507.

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-201404936
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 22, 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: Lobby Activities Report due April 10, 2014

Brittney Booth, 1980 Post Oak Blvd., Ste. 1380, Houston, Texas 77056

P. John Kuhl, Jr., 1980 Post Oak Blvd., Ste. 1380, Houston, Texas 77056

Deadline: Lobby Activities Report due July 10, 2014

Jennifer E. Sellers, 700 Mandarin Flyway #203, Cedar Park, Texas 78613

TRD-201404826
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: October 16, 2014

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Texas Facilities Commission

Request for Proposals #303-5-20472

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20472. TFC seeks a five (5) or ten (10) year lease of approximately 7,866 square feet of office space in Richmond, Fort Bend County, Texas.

The deadline for questions is November 10, 2014 and the deadline for proposals is November 20, 2014 at 3:00 p.m. The award date is December 17, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=114351.*

TRD-201404945
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 22, 2014

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Department of Family and Protective Services

Request for Proposals for Consulting Services - Foster Care Redesign

The Texas Department of Family and Protective Services (DFPS or the Department) has expanded the Child Protective Services (CPS) Reform Initiative to include a redesign of the Texas foster care system. The redesign project (the Project) will create needed sustainable placement resources in communities in order to meet the service needs of children and youth in foster care using the least restrictive placement settings available. The existing system places too many children and youth outside of their local communities and away from their families, siblings, schools, and social support networks because a significant number of communities do not have appropriate and least restrictive placement options locally available. DFPS has determined that distal placements increase the risk of poor child and family outcomes.

In accordance with Texas Government Code, Chapter 2254, DFPS is issuing a Request for Proposals (RFP) for the Department to enter into contract(s) with one or more consultant(s) with the competence, knowledge, and qualifications to advise and assist in the implementation of remodeling the DFPS foster care system. The consultant(s) awarded the contract(s) shall assist and advise DFPS in the Project outlined in this notice.

This is not the complete bid package. The complete bid package will be available on or around November 7, 2014 and will be posted on the Electronic State Business Daily (ESBD) found at http://esbd.cpa.state.tx.us/. Search under Agency Name: "Department of Family and Protective Services - 530" and select "Search Bid/Procurement Opportunities." DFPS will use the RFP posted on the ESBD to solicit and evaluate consultant proposals from which to award one or more contracts.

Point of Contact: Peggie Laser@hhsc.state.tx.us, Purchasing Procurement Project Manager, Health and Human Services Commission (email: Peggie.Laser@hhsc.state.tx.us).

TRD-201404908
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Filed: October 21, 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 4, 2014 through October 20, 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 24, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, November 24, 2014.

FEDERAL AGENCY ACTIONS:

Applicant: Aransas County Navigation District #1; Location: The project site is located in Aransas Bay, at Seabreeze Park Road, in Rockport, Aransas County, Texas. The project can be located on the

U.S.G.S. quadrangle map titled: Rockport, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.029438 North; Longitude: 97.040635 West. Project Description: The applicant proposes to conduct a beach nourishment project for Rockport Beach to repair the beach to the 2004 project design. The plans state that approx. 9,154 cubic yards of sand will be needed in order to accomplish the renourishment. The constructed beach will have a design berm width of 59 feet to 71 feet in Reach 1 (east end), 34 feet to 135 feet in Reach 2 (central section), and 29 feet to 39 feet in Reach 3 (west end), with an inclusion dune at the landward end of the beach in end of Reach 1 only. Approximately 1.6 acres of sand will be placed below the MHW (+1.29 feet NAVD) and 2.6 acres of sand will be placed below the AHTL (+2.66 feet NAVD). No fill will be placed into special aquatic sites, including wetlands.

CMP Project No: 15-1060-F1

Type of Application: U.S.A.C.E. permit application #SWG-1991-01789. 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).

Applicant: Enterprise Crude Pipeline, LLC; Location: The project site is located in the wetlands adjacent to Highland Bayou, off Texas Loop 197, in Texas City, Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: VIRGINIA POINT, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.341016 North; Longitude: 94.931548 West.

Project Description: The applicant proposes to place approximately 9,906 cubic yards of fill material into 6.14 acres of emergent wetlands. The purpose of the fill is the expansion of an existing crude oil tank farm. Construction would include pig receivers/launchers, meter skids, above and below ground piping, a slop tank, a building, control room, and a substation.

CMP Project No: 15-1065-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2004-00629. 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 Railroad Commission under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Gulf Shores Joint Venture; Location: The project is located in wetlands, sand flats and tidal waters, at the Lake Padre Subdivision, located southeast of the intersection of Park Road 22 and State Highway 361, on North Padre Island, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands SW, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.610113 North; Longitude: 97.215520 West.

Project Description: The applicant proposes to redesign and complete the construction of the previously authorized, and partially completed, residential and commercial development, called Lake Padre Subdivision. This subdivision has been previously permitted as Department of the Army (DA) Permit 17760, and then permit SWG-2000-02743. The applicant proposes to construct a canal-type connection (instead of culverts) between Lake Padre and the existing canal at Cruiser Street (covered by DA Permit 9009). The canal type connection would extend under Park Road 22, along Padre Isles Golf Course, and connect to the existing canal along Cruiser Street. The applicant states this canal is an improved connection, as compared to the culvert-type connection under the prior permit, because it would increase the cross-sectional area and circulation potential by a factor of 3.5 and lead to the enhancement of water circulation within both Lake Padre and the canal system to the west of Park Road 22. The applicant is proposing to construct two bridges (one northbound, one southbound) within the existing right-of-way of Park Road 22 (which is TXDOT owned) which are necessary to allow the passage of the canal beneath Park Road 22. The applicant states the bridge and canal system are elements of the City of Corpus Christi's transportation plan for North Padre Island. Finally, the applicant proposes to complete the dredging of Lake Padre, as well as the filling of adjacent lands as shown in project plans. The project, as proposed, would impact a total of 122.632 acres of waters of the United States, including 90.752 acres of wetlands, 20.1 acres of sand flats, and 11.78 acres of tidal open water (Lake Padre). The impacts to wetlands can be further separated into 62.691 acres of permanent fill, 3.911 acres of temporary fill, and 24.15 acres of dredging impacts. The impacts to sand flats can be further separated into 5.02 acres of permanent fill and 15.08 acres of dredging impacts. Finally, the open water can be further separated into 5.42 acres of permanent fill and 6.36 acres of dredging impacts.

CMP Project No: 15-1066-F1

Type of Application: U.S.A.C.E. permit application #SWG-2000-02743. 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-201404946
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 22, 2014

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is April 1, 2015.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals to offset uncompensated care for Medicaid and low-income uninsured patients.

The Delivery System Reform Incentive Payment (DSRIP) funding in the waiver is for incentive payments to hospitals and other providers who develop programs or strategies to enhance access to health care, and increase the quality of care, cost-effectiveness of care provided, and the health of the patients and families served. HHSC is requesting an amendment to the THTQIP that would allocate unutilized Demonstration Year (DY) 2 (October 1, 2012 - September 30, 2013) DSRIP funds into DY 5 (October 1, 2015 - September 30, 2016). Based on the initial Regional Healthcare Partnership (RHP) plans submitted to CMS, there are approximately $352 million unspent DY 2 DSRIP funds, which may grow slightly if additional currently active projects withdraw from the program. This amendment would allow HHSC to use these unspent DSRIP funds for DY 2 to increase the impact of many of the existing 1489 active DSRIP projects in DY 5, including projects related to primary and preventive care, behavioral healthcare, and chronic care management. DSRIP providers that also are State contractors for primary health care and behavioral healthcare services may be prioritized in accessing additional funds in order to build on the State's investments in these areas.

DSRIP projects that appear to be on track following the mid-point assessment and that have a funding source for the non-federal share of these incentive payments would have an opportunity to request to add certain defined metrics in DY 5 to enable them to earn additional DSRIP funds. Such metrics may relate to: 1) serving more Medicaid/low-income uninsured individuals than planned; 2) increasing data exchange to support the project, and 3) evaluation of the success of the project. By adding these specified metrics to existing projects, there will be additional healthcare services provided to the program's target populations in DY 5, while the data exchange and evaluation metrics will help strengthen the program going forward, support the sustainability of projects, and continue to build coordinated systems of care.

Depending on how many projects are interested in doing one or more of these additional metrics (and have a source of non-federal share), HHSC will adjust those projects' valuation upward for DY 5 to enable Texas providers to earn the unused DY 2 DSRIP funds. HHSC will coordinate with CMS to finalize how the additional funding will be allocated between the eligible projects.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning April 1, 2015 through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Tiffany Kirts by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-600, Austin, Texas 78711-3427, phone (512) 424-6574, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201404918
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: October 21, 2014

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Lubbock	Nabil M. Attaya M.D., P.A.	L06672	Lubbock	00	10/10/14
Throughout Tx	Triopt Inc.	L06673	Corpus Christi	00	10/10/14
Throughout Tx	L&G Consulting Engineers Inc. dba L&G Engineering	L06671	Mercedes	00	10/07/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Amarillo	BSA Hospital L.L.C. dba The Don and Sybil Harrington Cancer Center A Department of Baptist St. Anthony's Hospital	L06556	Amarillo	05	10/06/14
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	109	10/15/14
Austin	ARA Imaging	L05862	Austin	57	10/15/14
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	145	10/01/14
Bedford	Texas Oncology P.A.	L05550	Bedford	29	10/13/14
Bishop	Ticona Polymers Inc.	L02441	Bishop	52	10/07/14
Conroe	Adnan Afzal M.D., P.A. dba Healing Hearts	L06071	Conroe	07	10/07/14
Dallas	Baylor University Medical Center	L01290	Dallas	125	10/01/14
Dallas	Heartplace P.A.	L04607	Dallas	63	10/02/14
Dallas	Texas Oncology P.A. dba Sammons Cancer Center	L04878	Dallas	53	10/03/14
Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	02	10/15/14
Dallas	UT Southwestern Medical Center	L06663	Dallas	01	10/02/14
Edinburg	McAllen Hospitals L.P. dba Edinburg Regional Medical Center	L04262	Edinburg	22	10/06/14
Edinburg	McAllen Hospitals L.P. dba Edinburg Regional Medical Center	L04262	Edinburg	23	10/08/14
El Paso	Cardinal Health	L01999	El Paso	122	10/01/14
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	144	10/10/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	198	10/03/14

Houston	The University of Texas Health Science Center at Houston	L02774	Houston	70	10/13/14
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	68	10/13/14
Houston	Harris County Hospital District dba Lyndon Baines Johnson General Hospital	L04412	Houston	44	10/15/14
Houston	Memorial Cardiology Associates P.A.	L05349	Houston	13	10/09/14
Houston	UT Physicians	L05465	Houston	15	10/10/14
Houston	Cardinal Health	L05536	Houston	45	10/14/14
Houston	Hotwell U.S., L.L.C.	L06552	Houston	03	10/01/14
Houston	Clay Healthcare Services L.L.C. dba Elite Healthcare Services	L06576	Houston	01	10/13/14
Lakeway	Lakeway Regional Medical Center L.L.C.	L06461	Lakeway	05	10/08/14
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	69	10/06/14
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	70	10/10/14
Livingston	Memorial Hospital of Polk County dba Memorial Medical Center Livingston	L05552	Livingston	15	10/02/14
Lubbock	University Medical Center	L04719	Lubbock	136	10/08/14
Mansfield	Steven P. Havard, M.D., P.A.	L06249	Mansfield	03	10/10/14
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	24	10/02/14
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	97	10/13/14
Pittsburg	Southwestern Electric Power Company	L02008	Pittsburg	23	10/08/14
Plano	Columbia Med. Ctr. of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	101	10/06/14
Round Rock	Heart and Vascular of Central Texas	L06045	Round Rock	04	10/07/14
Round Rock	Scott & White Hospital Round Rock	L06085	Round Rock	16	10/15/14
San Angelo	Shannon Clinic	L04216	San Angelo	54	10/07/14
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	331	10/06/14
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	157	10/01/14
San Antonio	Southwest General Hospital L.L.P. dba Southwest General Hospital	L02689	San Antonio	45	10/08/14
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	15	10/14/14
Southlake	Health Imaging Partners L.L.C. dba Envision Imaging	L06634	Southlake	01	10/10/14
The Woodlands	St. Lukes The Woodlands Hospital	L05763	The Woodlands	26	10/02/14
The Woodlands	Greater Houston Physicians Medical Association P.L.L.C.	L06415	The Woodlands	05	10/02/14
Throughout Tx	RSI Inspection L.L.C.	L05624	Abilene	22	10/07/14
Throughout Tx	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	23	10/01/14
Throughout Tx	Anderson Perforating Services L.L.C.	L06587	Albany	05	10/01/14
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	173	10/03/14
Throughout Tx	Weatherford International L.L.C.	L00747	Benbrook	97	10/01/14
Throughout Tx	Weatherford International L.L.C.	L00747	Benbrook	98	10/10/14
Throughout Tx	NQS Inspection Ltd.	L06262	Corpus Christi	08	10/01/14
Throughout Tx	Sterigenics U.S. L.L.C.	L03851	Fort Worth	44	10/10/14
Throughout Tx	Lockheed Martin Corporation dba Lockheed Martin Aeronautics Company	L05633	Fort Worth	14	10/10/14
Throughout Tx	Texas QA Services Inc.	L04601	Grand Prairie	29	10/07/14
Throughout Tx	Texas QA Services Inc.	L04601	Grand Prairie	30	10/15/14
Throughout Tx	Nuclear Scanning Services Inc.	L04339	Houston	29	10/01/14
Throughout Tx	Williams Brothers Construction Company Inc.	L04823	Houston	09	10/07/14

Throughout Tx	Nuclear Imaging Services L.L.C.	L05791	Houston	15	10/08/14
Throughout Tx	AGD Inspection Services	L06368	Houston	06	10/14/14
Throughout Tx	Quality Inspection & Testing Inc.	L06371	Houston	07	10/09/14
Throughout Tx	Element Materials Technology Houston Inc.	L06451	Houston	02	10/01/14
Throughout Tx	Multi Phase Meters Inc.	L06458	Houston	07	10/07/14
Throughout Tx	Kleinfelder Central Inc.	L01351	Irving	83	10/15/14
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	284	10/07/14
Throughout Tx	Chief Inspection Service Inc.	L06541	Longview	03	10/07/14
Throughout Tx	L&G Consulting Engineers Inc. dba L&G Engineering	L06671	Mercedes	00	10/07/14
Throughout Tx	CDK Perforating L.L.C. dba Nine Energy Service	L06616	Midland	03	10/01/14
Throughout Tx	Ecoserv Environmental Services L.L.C.	L04999	Winnie	15	10/01/14
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	56	10/15/14
Waco	Waco Cardiology Associates	L05158	Waco	19	10/10/14

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Sugar Land	E+ PET Imaging XI L.P. dba PET Imaging of Sugar Land	L05858	Sugar Land	09	10/15/14
Throughout Tx	Lockheed Martin Corporation dba Lockheed Martin Aeronautics Company	L05633	Fort Worth	14	10/10/14

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Channelview	Xxtreme Pipe Services L.L.C.	L02576	Channelview	30	10/14/15
Corpus Christi	Fesco Ltd.	L06343	Corpus Christi	06	10/02/14
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	19	10/03/14

TRD-201404931
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 22, 2014

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Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs (Department) proposed amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, §10.601(b), concerning Compliance Monitoring Objectives; §10.607, concerning Reporting Requirements; §10.609(5), concerning Notices to the Department; §10.612, concerning Tenant File Requirements; §10.613, concerning Lease Requirements; §10.614, concerning Utility Allowances; §10.618, concerning Onsite Monitoring; §10.620(b), concerning Monitoring for Non-Profit Participation or HUB Participation; and §10.624, concerning Events of Non-Compliance, in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7458).

Due to error by the Department, the wrong fax number was published in the "REQUEST FOR PUBLIC COMMENT" section of the proposed amendments. The correct fax number for submitting public comment concerning the proposed amendments is **(512) 475-3359.** Accordingly, the Department is extending the time to submit public comments on the proposed amendments until **5:00 p.m. November 14, 2014.**

TRD-201404906
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 21, 2014

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Correction of Error

The Texas Department of Housing and Community Affairs (Department) proposed the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.610, concerning Tenant Selection Criteria, and §10.617, concerning Affirmative Marketing Requirements, and concurrently proposed new §10.610 and §10.617 in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7466).

Due to error by the Department, the wrong fax number was published in the "REQUEST FOR PUBLIC COMMENT" section of each proposed rulemaking. The correct fax number for submitting public comment concerning the repeal and proposed new sections is **(512) 475-1895.** Accordingly, the Department is extending the time to submit public comments on both proposed rulemakings until **5:00 p.m. November 14, 2014.**

TRD-201404907
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 21, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of RANCHERS AND FARMERS INSURANCE COMPANY to ANCHOR SPECIALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Beaumont, Texas.

Application for admission to the State of Texas by SILVER OAK CASUALTY, INC., a foreign fire and/or casualty company. The home office is in DeRidder, Louisiana.

Application for admission to the State of Texas by LIFECARE ASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Woodland Hills, California.

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-201404938
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 22, 2014

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Texas Lottery Commission

Instant Game Number 1702 "Funky 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1702 is "FUNKY 5'S". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1702 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1702.

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: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000, $100,000, 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 5 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. 1702 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUN
$1,000	ONE THOU
$100,000	100 THOU
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
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
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
46	FRSX
47	FRSV
48	FRET
49	FRNI
5 SYMBOL	WIN5X

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $250 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 (1702), 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: 1702-0000001-001.

K. Pack - A Pack of "FUNKY 5'S" Instant Game Tickets contains 075 Tickets, 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 075 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 075 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 "FUNKY 5'S" Instant Game No. 1702 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 "FUNKY 5'S" 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 FUNKY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a five "5" Play Symbol, the player wins 5 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 within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100,000 and $1,000 will each appear at least once, except on Tickets winning twenty (20) times.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many FUNKY NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching FUNKY NUMBERS Play Symbols will appear on a Ticket.

I. The "5" Play Symbol will never appear as a FUNKY NUMBERS Play Symbol.

J. The "5" Play Symbol will win 5 TIMES the prize shown for that Play Symbol and will win as per the prize structure.

K. The "5" Play Symbol will never appear more than once on a Ticket.

L. The "5" Play Symbol will never appear on a non-winning Ticket.

M. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 50 and $50).

N. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

O. On non-winning tickets, a FUNKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "FUNKY 5'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 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 "FUNKY 5'S" 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 "FUNKY 5'S" 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 "FUNKY 5'S" 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 "FUNKY 5'S" 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 8,280,000 Tickets in the Instant Game No. 1702. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1702 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	975,200	8.49
$10	736,000	11.25
$15	202,400	40.91
$20	92,000	90.00
$50	85,330	97.04
$100	31,579	262.20
$250	3,795	2,181.82
$500	2,898	2,857.14
$1,000	219	37,808.22
$100,000	10	828,000.00

*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 3.89. 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. 1702 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. 1702, 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-201404844

Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 17, 2014

♦ ♦ ♦

Public Utility Commission of Texas

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 13, 2014, pursuant to the Texas Water Code.

Docket Style and Number: Application of Rio Blanco Estates and White River Municipal Water District for Sale, Transfer, or Merger of Facilities in Crosby County, Docket Number 43530.

The Application: Rio Blanco Estates and White River Municipal Water District (WRMWD) filed an application for approval to transfer the Rio Blanco Estates Water System (the Facility). WRMWD will assume control of all system components and distribution systems for the Facility. Rio Blanco seeks to cancel its Certificate of Convenience and Necessity (CCN) number 12956.

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 43530.

TRD-201404929
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2014

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw Tariffs - Tariff Control Number 43522.

The Application: On October 10, 2014, pursuant to P.U.C. Substantive Rule §26.208(h), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) filed an application with the commission to withdraw the offering of the following tariffs in their entirety: Advanced Services Tariff; Dataphone Digital Service Tariff; Digital Link Services Tariff; Directory Assistance Listing Service Tariff; Integrated Services Tariff; Local Exchange Tariff; Long Distance Message Telecommunications Service Tariff; Mobile Telephone Service Tariff - this tariff was previously withdrawn in its entirety on February 3, 1997; Private Network Services Tariff; Telecommunications Service Priority System Tariff; and Wide Area Telecommunications

Service Tariff. The General Exchange Tariff is withdrawn except for the following sections or subsections: Subsection 21.16 *Universal Emergency Number Service (Miscellaneous Basic 911 Features; 8A Key Telephone System)* and Subsection 21.20 *Emergency Warning Call Database* will remain in the tariff under Section 21. All other subsections of Section 21 (Miscellaneous Service Offerings) will be withdrawn: Section 34 - Universal Emergency Number Service (911) will remain in the tariff; Section 36 - Pay Telephone Exchange Access Service will remain in the tariff; Section 44 - Deer Park Emergency Network Service will remain in the tariff; Section 50 - Wireless 9-1-1 Service will remain in the tariff. The Private Line Service Tariff is withdrawn except for the following sections: Section 5 - Interexchange 911 Service will remain in the tariff; Section 6 - Private Switch 911 Service will remain in the tariff; Section 7 - Expanded Interconnection will remain in the tariff.

AT&T Texas plans to withdraw the tariffs and maintain the rates, terms and conditions of the tariffs on AT&T Texas' website at http://www.att.com/servicepublications in the form of Guidebooks. AT&T Texas proposed an effective date of November 1, 2014. The proceedings were docketed and suspended on October 21, 2014, to allow adequate time for review and intervention.

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 Tariff Control Number 43522.

TRD-201404928
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2014

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Chambers County, through its agent, the Texas Department of Transportation (TxDOT), intends 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: Chambers County; TxDOT CSJ No.: 1520ANAHC.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway 12-30

2. Reconstruct Taxiway A, Taxiway C, apron, two hangar access taxiways

3. Demolish Taxiway B

4. Install perimeter game fence

The HUB goal for the design of the current project is 6 %. The goal will be re-set for the construction phase. TxDOT Project Manager is Harry Lorton.

The following is a listing of proposed projects at Chambers County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following:

Expand apron, construct hangars, replace wind-cone & segmented circle

Chambers County reserves 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 "Chambers County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT 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:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than 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 Trudy Hill, Grant Manager.

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 to 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 Trudy Hill, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201404940

Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 22, 2014

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Chambers County, through its agent, the Texas Department of Transportation (TxDOT), intends 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: Chambers County-Winnie/Stowell; TxDOT CSJ No.: 1520WNNIE.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway 17-35
2. Rehabilitate and edge repair parallel and cross taxiway
3. Rehabilitate apron
4. Regrade ditches
5. Expand apron/construct connecting stub taxiway
6. Replace segmented circle and lighted windcone
7. Install wildlife fencing
8. Replace PAPI-2 Runway 17-35
9. Replace rotating beacon
10. Replace MIRLs and signs
11. Update terminal area plan

The current project is expected to be constructed in phases as follows:

Rehab construction in fiscal year 2016 and lighting construction in fiscal year 2017.

The HUB goal for the design of the current project is 4%. The goal will be re-set for the construction phase. TxDOT Project Manager is Harry Lorton.

The following is a listing of proposed projects at Chambers County-Winnie/Stowell 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:

Reconstruct/overlay RW & TW and expand apron and hangar access TWs.

Chambers County reserves 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 "Chambers County-Winnie/Stowell 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:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than 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 Trudy Hill, Grant Manager.

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 to 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 Trudy Hill, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201404942
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 22, 2014

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Jim Hogg County, through its agent, the Texas Department of Transportation (TxDOT), intends 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: Jim Hogg County; TxDOT CSJ No.: 1521HEBRN.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark runway, stub taxiways, and apron
2. Demolish existing hangar
3. Construct new replacement 40' x 40' box hangar
4. Expand apron
5. Replace MIRLs and signage
6. Install PAPI-2 at Runway 31
7. Rehabilitate auto parking
8. Install lighted windcone and segmented circle
9. Install new electrical vault/switch gear
10. Install TW OFA reflectors on southern caprock wall

The HUB goal for the design of the current project is 5%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Paul Slusser.

The following is a listing of proposed projects at the Jim Hogg County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following:

Rehabilitate and mark Runway 13-31, apron, and stub taxiways.

Jim Hogg County reserves 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 "Jim Hogg County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT 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:

SIX completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, TX 78704 no later than December 16, 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 Beverly Longfellow.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under 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 Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201404943
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 22, 2014

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (TxDOT) publishes this notice of a consultant contract award for providing Rail Fixed Guideway Systems State Safety Oversight services to TxDOT. Notice of the request for proposals was published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3637).

The consultant will conduct on-site safety and security reviews, in accordance with: 1) 49 CFR Part 659.29; 2) FTA guidance entitled Recommended Best Practices for States Conducting Three-Year Safety Reviews, dated March 2009; and 3) TxDOT's System Safety Program Plan and Security Program Plan, of the following two rail transit authorities (RTA): 1) Dallas Area Rapid Transit and 2) Metropolitan Transit Authority of Harris County. The consultant must conduct an on-site review of each RTA's implementation of its System Safety Program Plan (SSPP) and System Security Plan (SSP). At the conclusion of each on-site review, consultant must prepare and issue a final report containing model good practices, deficiency findings, areas of concern, and recommendations resulting from that review, which includes an analysis of the effectiveness of the agencies SSPP and SSP and a determination of whether either must be updated. The consultant must work with each RTA to resolve any outstanding issues resulting from the review.

The selected consultant for these services is Transportation Resource Associates, Inc., 1608 Walnut Street, Suite 1602, Philadelphia, PA 19103. The total value of the contract is $199,899. The contract work period started on October 14, 2014, and will continue until February 1, 2016.

TRD-201404941
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 22, 2014

Workforce Solutions Upper Rio Grande Development Board

Texas Rising Star Assessor Services

PY14-RFP-260-600

Release Date: Monday October 20, 2014, 12:00 PM MST

Submission Deadline: October 30, 2014

The purpose of this Request for Proposals (RFP) is to solicit for qualified professionals to provide assessor services to current Texas Rising Star (TRS) providers and to child care providers who may be seeking TRS certification in the El Paso URG Area. Workforce Solutions URG is responsible for the development and delivery of child care quality improvement within our respective counties: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio. Workforce Solutions URG provides subsidized services to an average of 5,510 children per year.

Download RFP at http://www.urgjobs.com/open/.

TRD-201404902
Joseph Sapien
Project Manager
Workforce Solutions Upper Rio Grande Development Board
Filed: October 20, 2014

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704..950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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