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# TEXAS REGISTER

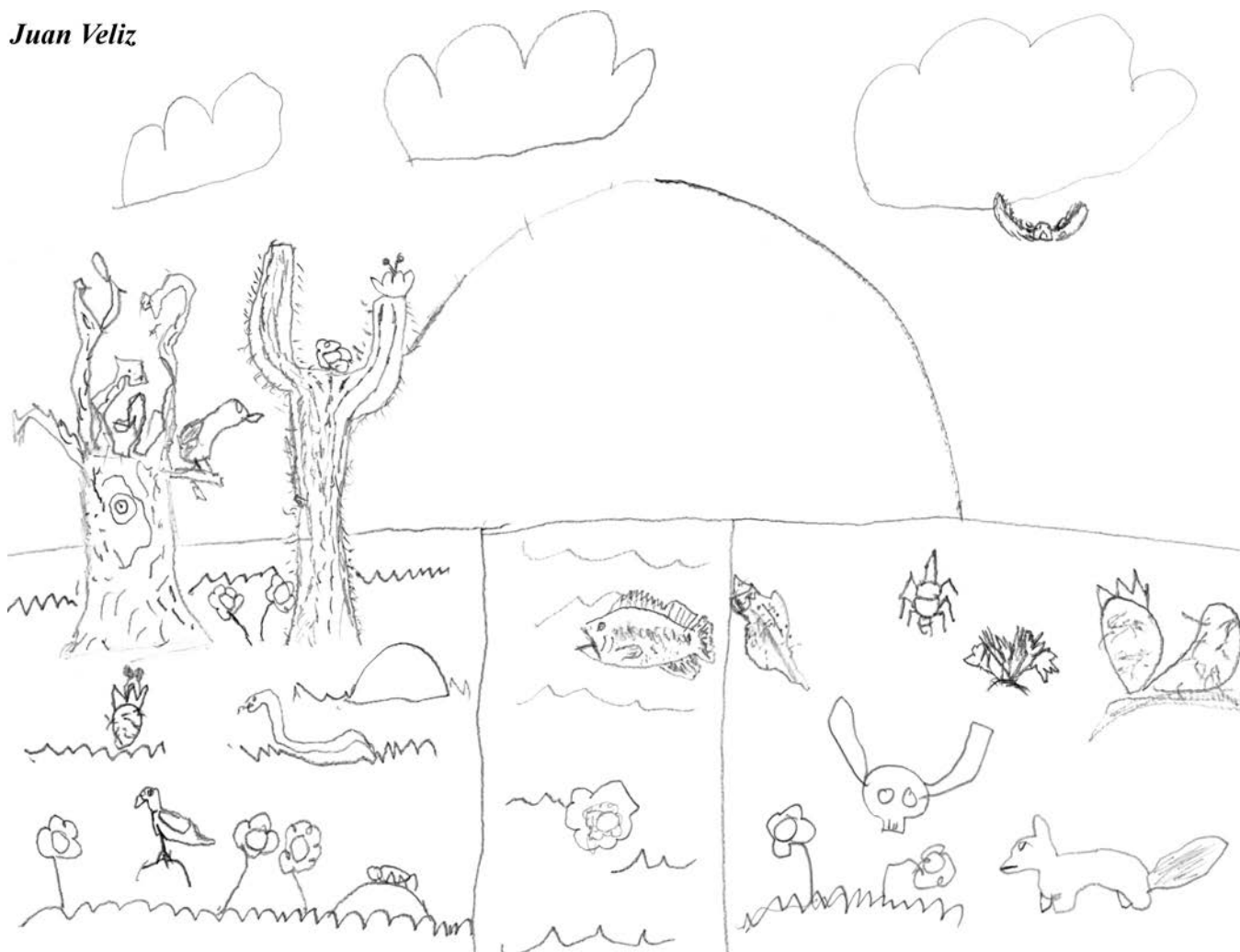
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*Juan Veliz*



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

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# TEXAS REGISTER

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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](mailto:register@sos.texas.gov).

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

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

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

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

# THE ATTORNEY GENERAL

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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>.)

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## Requests for Opinions

RQ-1225-GA

### Requestor:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether Education Code section 45.105 authorizes a public school district to expend funds to determine if its lessee of a mineral estate is fulfilling its duty to explore and develop the mineral estate (RQ-1225-GA)

### Briefs requested by October 27, 2014

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201404715

Katherine Cary

General Counsel

Office of the Attorney General

Filed: October 8, 2014



## Opinions

## Opinion No. GA-1083

The Honorable Lisa L. Peterson

Nolan County Attorney

100 East 3rd Street, Suite 106A

Sweetwater, Texas 79556

Re: Whether concurrent service as a juvenile probation officer and a trustee on an independent school district's board of trustees creates a conflict of interest (RQ-1195-GA)

### SUMMARY

Concurrent employment with the Fisher, Mitchell, and Nolan Counties Juvenile Department and service as the presiding member of the Sweetwater Independent School District is not incompatible and likely does not constitute a conflict of interest under chapter 171 of the Local Government Code.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201404711

Katherine Cary

General Counsel

Office of the Attorney General

Filed: October 8, 2014



*Raymundo Limones*





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1001, concerning Claim Information Requirements, and §354.1062, concerning Authorized Physician Services.

###### Background and Justification

The proposed amendments clarify that services performed by an advanced practice registered nurse (APRN) or a physician assistant (PA) but billed by a supervising physician are to be reimbursed according to the requirements in Chapter 355 of the Texas Administrative Code unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

The term "APRN," as used in this rule, includes the following categories of nurses with advanced training: nurse practitioner (NP), clinical nurse specialist (CNS) and certified nurse-midwife (CNM). Certified Registered Nurse Anesthetists (CRNAs) are not addressed in the proposed amendments as CRNAs bill, and are reimbursed, at the appropriate payment rate. Currently, APRNs, under title 1, §355.8281 of the Texas Administrative Code (TAC), and PAs, under TAC title 1, §355.8093, are to be reimbursed at 92 percent of the physician rate for professional services billed under their own provider numbers and 100 percent of the physician rate for laboratory services, x-ray services, and injections. Some physicians bill for services performed by an APRN or PA under the physician's supervision at the full physician rate, even if the supervising physician did not make a decision regarding the patient's care or treatment during the billable medical visit.

The Texas Legislature, in the 2014-2015 General Appropriations Act, directs HHSC to "enforce appropriate payment practices for non-physician services," which HHSC understands to mean that all services performed by an APRN or PA under the supervision of a physician be reimbursed at the 92 percent reimbursement rate. See General Appropriations Act, 83d Legislature, Regular Session, Chapter 1411, article II, at II-101, 2013 Texas General Laws 3743, 3952 (Health and Human Services Section, Health and Human Services Commission, rider 51(b)(24)).

The proposed amendments thus provide for appropriate payment for services performed by an APRN or PA under a physician's supervision, while allowing reimbursement at the full physician's rate when a physician has been called upon to make a decision in a specific patient's case during a billable medical visit. HHSC proposes to amend §354.1001 to require a physician billing for supervised services to indicate that supervised services were performed by an APRN or PA, as appropriate, on the physician's claim form unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

HHSC also proposes to amend §354.1062 to clarify that the payment rate for the supervised services is set in accordance with the appropriate reimbursement rule and further states that if the physician did not make a decision about the patient's care during the billable medical visit, the physician must note on the claim that the service was performed by the physician assistant or advanced practice registered nurse in accordance with §354.1001 of this subchapter (relating to Claim Information Requirements).

Finally, these rule changes are coordinated with proposed clarifications to the corresponding reimbursement rules in Chapter 355 for PAs, NPs, CNSs and CNMs. Those proposed changes clarify that services performed by one of the above provider types while under the supervision of a physician are to be reimbursed at the 92 percent level appropriate to the supervised practitioner unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

###### Section-by-Section Summary

###### Section 354.1001, Claim Information Requirements

The rule is amended to add subsection (c), which states that if the billing provider is a physician supervising the performance of eligible services by a PA, an NP, a CNS or a CNM, the physician must note on the claim, in accordance with standards set by HHSC, that the services were performed by the supervisee unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

###### Section 354.1062, Authorized Physician Services

Subsection (b) of the rule is amended to state that services performed under a physician's supervision by a PA, an NP, a CNS, or a CNM will be reimbursed according to the reimbursement rule applicable to the supervised practitioner unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

Subsection (d) is amended to state that a service performed under a physician's supervision by a physician assistant or an advanced practice registered nurse (excluding a certified registered nurse anesthetist), acting within the scope of the physician assistant's or advanced practice registered nurse's license and consistent with this chapter and the rules and laws of the Texas Medical Board and Texas Board of Nursing, as applicable, are reimbursed according to the reimbursement rule applicable to the supervised practitioner unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit. The amended rule requires documentation and cites §354.1001, as amended.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be a fiscal impact to state government. The fiscal impact is anticipated to be savings of \$2,859,391 in General Revenue (GR) (\$6,824,323 All Funds (AF)) for State (SFY) 2015, \$4,738,542 GR (\$11,097,289 AF) for SFY 2016, \$5,110,796 GR (\$11,949,488 AF) for SFY 2017, \$5,503,272 GR (\$12,867,130 AF) for SFY 2018, and \$5,925,887 GR (\$13,855,242 AF) for SFY 2019. The amended rule is not anticipated to result in any fiscal implications to local governments.

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

#### Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the amended rules as the amendment merely clarifies and brings billing practices into compliance with current state policy.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amended rules will be clarifying the APRN and PA provider payment process.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Alexander Melis, Project Manager, 4900 N. Lamar Blvd., Mail

Code H310, Austin, Texas 78751; by fax to (512) 730-7472; or by e-mail to alex.melis@hhsc.state.tx.us.

## DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

### 1 TAC §354.1001

#### Statutory Authority--Medicaid

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

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

#### Statutory Authority--CHIP

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

The proposed amendments affect Texas Health and Safety Code Chapter 62, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

#### §354.1001. Claim Information Requirements.

(a) Eligible providers are required to provide separate claim information for each eligible recipient. Claims must be complete, accurate, and as specified by the Health and Human Services Commission or its designee.

(b) Required information includes the following:

- (1) name, address, and appropriate Texas provider identification number of the provider of services or supplies or both;
- (2) the date of the claim;
- (3) the name, address, identification number, and date of birth of the individual who received services or supplies or both;
- (4) the type of such services or supplies or both provided;
- (5) the date(s) each service or supplies or both were provided;
- (6) the amounts of each charge for the various types of services or supplies or both;
- (7) the total charge for services or supplies or both;
- (8) credits for any payments made at the time of submission of the claim, including payments made by private health insurance and under Medicare;
- (9) indication that the eligible recipient has health, accident, or other insurance policies, or is covered by private or governmental benefit systems, or other third party liability, when reported, known, or suspected;
- (10) the date of the eligible recipient's death, if applicable;

and

(11) the name and associated national provider identifier of:

(A) the eligible billing provider;

(B) the ordering or referring provider or other professional, if services or supplies, or both, are ordered or referred; and

(C) the supervising and supervised provider, except for pharmacy claims, if:

(i) the services or supplies, or both, were provided due to a referral or ordered by a provider;

(ii) the referring or ordering provider is acting at the direction or under the supervision of another provider; and

(iii) the referral or order is based on the supervised provider's evaluation of the recipient or enrollee.

(c) If the eligible billing provider is a physician supervising the performance of eligible services by a Physician Assistant or an Advanced Practice Registered Nurse (Nurse Practitioner, Clinical Nurse Specialist, or Certified Nurse-Midwife) and the supervising physician did not make a decision regarding the patient's care or treatment during the billable medical visit, the physician must note on the claim, in accordance with standards set by HHSC, that the services were performed by the supervisee.

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 6, 2014.

TRD-201404665

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 16, 2014

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



## DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

### 1 TAC §354.1062

Statutory Authority--Medicaid

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

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

Statutory Authority--CHIP

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

The proposed amendments affect Texas Health and Safety Code Chapter 62, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

### §354.1062. Authorized Physician Services.

(a) This rule specifies the conditions under which a physician may bill Texas Medicaid for covered services. Such conditions include compliance with this rule as well as compliance with all applicable federal and state laws, rules, regulations and policies relating to covered services.

(b) Physician services. A physician may bill for reasonable and medically necessary services that are within the scope of practice of medicine or osteopathy as defined by state law. Except for services provided under subsections (c), (d), and (e) of this section, eligible [Eligible] physician services include those performed by the physician and those medical acts delegated by the physician to qualified and properly trained persons acting under the physician's supervision. Delegation and supervision of medical services must be consistent with this chapter and the rules and laws of the Texas Medical Board, and supervision of the delegated medical act must be appropriately documented in the patient's chart. A physician shall not bill the Texas Medicaid program for services if that billing would result in duplicate payment for the same services.

(c) Physician supervising other physicians. A physician supervising other physicians may bill when the supervision and services are performed in the context of an accredited graduate medical education program. Facilities and professional practices do not qualify for reimbursement for services provided by resident physicians in an outpatient setting unless the facility or professional practice is owned by, or affiliated with, an accredited graduate medical education program.

(1) For all services billed to the Medicaid program, the supervision must be medically appropriate, as described in this rule, and provided to a resident physician performing a Medicaid-covered service. The supervision must be either personal or direct. To qualify for reimbursement, the medical record must clearly establish:

(A) The nature of the supervisory role of the billing physician in the delivery of the services provided by the resident physician; and

(B) That the supervision complies with the definition of supervision applicable to the covered service, as defined in §354.1060 of this title (relating to Definitions).

(2) Personal supervision is required during the key portions of all major surgeries and the key portions of all other physician services billed to the Medicaid program if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient. Physician services that require personal supervision may include invasive procedures and evaluation and management services that require complex medical decision making. Situations that require personal supervision include those in which:

(A) The clinical condition of the patient is unstable or will likely become unstable during, or as a result of, the planned medical intervention; or

(B) The planned medical intervention, even under optimal conditions, will result in medically reasonable risk for significant morbidity or death following the service or procedure; or

(C) Deviation from expected technique at the time the procedure or service is performed presents a medically reasonable, causally-related, foreseeable risk to the patient's life or health.

(3) For surgical services, the supervising surgeon is responsible for pre-operative, operative, and post-operative care provided to the patient and billed to the Medicaid program. The supervising surgeon, however, may delegate the pre- and post-operative care to a resident if appropriate direct supervision, as defined in §354.1060 of this title, is provided.

(4) For all services that do not require personal supervision and are billed to the Medicaid program, the supervising physician must provide direct supervision. The supervising physician may not provide direct supervision for an activity at the same time as providing personal supervision for another activity, with the following exceptions.

(A) The supervising physician in the outpatient setting may provide personal and direct supervision concurrently for residents providing evaluation and management services; and

(B) A supervising surgeon or supervising anesthesiologist may be involved in two concurrent anesthesia cases with residents. The supervising surgeon or supervising anesthesiologist must be present during all key portions of the procedure if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient.

(5) Supervision in the outpatient setting. A face-to-face encounter between the physician providing direct supervision and the patient is not required in the outpatient setting in the context of a graduate medical education program. All other requirements for personal or direct supervision in this division must be met for the services to qualify for reimbursement. The supervising physician must document that he/she:

(A) Reviewed the patient's history and physical examination;

(B) Confirmed or revised the patient's diagnosis;

(C) Determined the course of treatment to be followed;

(D) Assured that any needed supervision of interns or residents was provided; and

(E) Confirmed that the documentation in the medical record comports with the level of service billed.

(6) Supervision in the inpatient setting. A physician who supervises other physicians in an inpatient setting must comply with documentation requirements of paragraph (5)(A) - (E) of this subsection and must document that he or she has completed a:

(A) Personal examination of the patient not later than 36 hours after the patient's admission and before the patient's discharge and, as necessary, based on the patient's condition; and

(B) Face-to-face encounter with the patient on the same day as any billed services provided by the resident physician.

(d) Services provided by a physician assistant or advanced practice registered nurse.

(1) A service performed under a physician's supervision by a physician assistant or an advanced practice registered nurse (excluding a certified registered nurse anesthetist), acting within the scope of the physician assistant's or advanced practice registered nurse's license and consistent with this chapter and the rules and laws of the Texas Medical Board and Texas Board of Nursing, as applicable, are reimbursed according to the reimbursement rule applicable to the supervised practitioner unless the supervising physician made a decision regarding the patient's care or treatment during the billable medical visit and documented that decision in the patient's record.

(A) The physician's record of patient care must document the physician's involvement.

(B) If the physician did not make a decision about the patient's care during the billable medical visit, the physician must note on the claim that the service was performed by the physician assistant or advanced practice registered nurse in accordance with §354.1001 of this subchapter (relating to Claim Information Requirements). [If the services are provided by a physician assistant or advanced practice nurse, practicing within the scope of their license and consistent with this chapter and with the rules and laws of the Texas Medical Board and Texas Nursing Board, as applicable, the physician services are covered.]

(2) Services provided by a certified registered nurse anesthetist must be billed as described in §354.1301 of this title (relating to Certified Registered Nurse Anesthetists' Services).

(e) Substitute physician. A physician may bill for the services of a substitute physician who sees patients in the billing physician's practice under either a reciprocal or locum tenens arrangement. To qualify for reimbursement, the billing physician and substitute physician must comply with the following requirements:

(1) The substitute physician's name and address must be documented on the claim.

(2) The substitute physician must be licensed to practice in the state of Texas.

(3) Consistent with the requirements of §371.1605 and §371.1705 of this title (relating to Provider Responsibility and Mandatory Exclusion, respectively), the substitute physician must be enrolled in Medicaid and not be on the Medicaid or Title XX provider exclusion list.

(4) The time period for which a physician may bill for the services of a substitute physician is limited to the following situations:

(A) Reciprocal Arrangements. When the substitute physician sees patients in the billing physician's practice under a reciprocal arrangement, the billing physician may bill for services furnished by the substitute physician during a period that does not exceed 14 continuous days.

(B) Locum Tenens Arrangements. When the substitute physician sees patients in the billing physician's practice under a locum tenens arrangement, the billing physician may bill for services furnished by the substitute physician during a period that does not exceed 90 continuous days. Except as provided in clause (iii) of this subparagraph, services furnished by the substitute physician after the 90th day must be billed under the substitute physician's own Medicaid provider number.

(i) When the billing physician is absent for more than 90 days, the billing physician may bill for services furnished by a different substitute physician for each consecutive continuous 90 day period.

(ii) The billing physician may only bill for services furnished by a substitute physician on a temporary basis. Except as provided in clause (iii) of this subparagraph, the billing physician may not bill for services furnished by a substitute physician to address long-term vacancies in a physician practice.

(iii) When the billing physician is absent or unavailable due to active duty as a member of a reserve component of the U.S. Armed Forces, the billing physician may bill for the services of a substitute physician for a longer continuous period during all of which the billing physician has been called or ordered to active duty as a member

of a reserve component of the Armed Forces. Medicaid may reimburse the billing physician for services provided by the substitute physician until the billing physician is no longer on active duty as a member of a reserve component of the Armed Forces.

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

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Jack Stick

Chief Counsel

Texas Health and Human Services Commission

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



## CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8093, concerning Physician Assistants, §355.8161, concerning Reimbursement Methodology for Midwife Services, and §355.8281, concerning Reimbursement Methodology.

#### Background and Justification

The proposed amendments will update the Medicaid reimbursement methodology to more accurately reflect the appropriate reimbursement methodology for physician assistants, certified nurse midwives, nurse practitioners, and clinical nurse specialists by deleting obsolete language and restructuring rule layout. The amendments proposed here, along with related amendments proposed to chapter 354, are consistent with the 2014-15 General Appropriations Act, which directs HHSC to implement cost-saving initiatives, which may include "enforc(ing) appropriate payment practices for non-physician services." General Appropriations Act, 83rd Legislature, Regular Session, chapter 1411, article II, at II-100 to II-101, 2013 Texas General Laws 3743, 3952 (Health & Human Services Section, Health & Human Services Commission, rider 51(b)(24)).

#### Section-by-Section Summary

##### *Section 355.8093, Physician Assistants*

The rule title is amended to add the term "Reimbursement Methodology."

The first paragraph of the rule is amended to add subsection identifier (a).

Newly identified subsection (a) is amended to clarify that all covered professional services provided by a physician assistant (PA) are reimbursed the lesser of the PA's billed charges or 92 percent of the reimbursement for the same professional service paid to a physician.

Newly identified subsection (a) is amended to indicate that PA claims for reimbursement must be billed under either the PA's provider number or a physician claim with a notation that the physician was supervising the activity of the PA and did not, while the service was being rendered, make a decision about the patient's care.

Proposed new subsection (b) indicates that PAs are reimbursed at the same level as physicians for laboratory, x-ray, and injection services.

##### *Section 355.8161, Reimbursement Methodology for Midwife Services*

Proposed subsection (a) clarifies that all covered professional services provided by a certified nurse midwife (CNM) are reimbursed the lesser of the CNM's billed charges or 92 percent of the reimbursement for the same professional service paid to a physician.

Proposed subsection (a)(1) and (a)(2) add requirements that CNM claims for reimbursement must be billed under either the CNM's provider number or a physician claim with a notation that the physician was supervising the activity of the CNM and did not, while the service was being rendered, make a decision about the patient's care.

The proposed rule includes numbering revisions to make the rule more understandable.

##### *Section 355.8281, Reimbursement Methodology*

The rule title is amended to add the terms "Nurse Practitioners and Clinical Nurse Specialists."

The first paragraph of the rule is amended to add subsection identifier (a).

Newly identified subsection (a) is amended to clarify that all covered professional services provided by a nurse practitioner (NP) or clinical nurse specialist (CNS) are reimbursed the lesser of the NP's or CNS' billed charges or 92 percent of the reimbursement for the same professional service paid to a physician.

Newly identified subsection (a) is amended to indicate that NP and CNS claims for reimbursement must be billed under either the NP's or CNS' provider number or a physician claim with a notation that the physician was supervising the activity of the NP or CNS and did not, while the service was being rendered, make a decision about the patient's care.

Proposed new subsection (b) indicates that NPs and CNSs are reimbursed at the same level as physicians for laboratory, x-ray, and injection services.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amendments are in effect, there will be no fiscal impact to state or local governments due to enforcement or administration of the proposed amendments. There will be no fiscal impact because the proposed amendments merely clarify rule language to reflect current practice.

Ms. Rymal has also determined there are no anticipated economic costs to persons who are required to comply with the amendments because providers will not be required to alter their business practices as a result of the amendments. There is no anticipated negative effect on local employment in geographic areas affected by the amendments.

#### Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments because the rules merely clarify rule language to reflect current practice.

## Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the amendments are in effect, the expected public benefit is increased public understanding of the way in which the Health and Human Services Commission determines reimbursement for physician assistants, certified nurse midwives, nurse practitioners, and clinical nurse specialists.

## Regulatory Analysis

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

## Takings Impact Assessment

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

## Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

## DIVISION 5. GENERAL ADMINISTRATION

### 1 TAC §355.8093

#### Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

§355.8093. *Reimbursement Methodology for Physician Assistants.*

(a) Covered professional services provided by a physician assistant (PA) [and billed under the PA's own provider number] are reimbursed the lesser of the PA's billed charges or 92 percent [%] of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). The claim for reimbursement must either be: [Physician assistants are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services and injections.]

(1) billed under the PA's provider number; or

(2) a physician claim noting that the physician was supervising the activity of the PA and did not, while the service was being rendered, make a decision about the patient's care.

(b) PAs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services and injections.

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

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Jack Stick

Chief Counsel

Texas Health and Human Services Commission

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## DIVISION 9. MIDWIVES

### 1 TAC §355.8161

#### Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

§355.8161. *Reimbursement Methodology for Midwife Services.*

(a) Certified Nurse Midwives.

[(+)] Covered [Effective for services delivered on and after March 1, 2006, covered] professional services provided by a certified nurse midwife (CNM) [and billed under the CNM's own provider number] are reimbursed the lesser of the CNM's billed charges or 92 percent [%] of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). The claim for reimbursement must either be:

(1) billed under the CNM's provider number; or

(2) a physician claim indicating that the physician was supervising the activity of the CNM and did not, while the service was being rendered, make a decision about the patient's care.

(b) [(2)] CNMs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services, and injections.

(c) [(b)] Licensed Midwives. Effective for services delivered on and after January 1, 2013, covered professional services provided by a licensed midwife (LM) and billed under the LM's [own] provider number are reimbursed the lesser of the LM's billed charges or 70 percent [%] of the reimbursement for the same professional service paid to a physician (M.D. or D.O.).

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

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## DIVISION 15. NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS

### 1 TAC §355.8281

#### Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

*§355.8281. Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists.*

(a) Covered [~~Effective for services delivered on and after March 1, 2006; covered~~] professional services provided by a nurse practitioner (NP) or a clinical nurse specialist (CNS) [~~and billed under the NP's or CNS' own provider number~~] are reimbursed the lesser of the NP's or CNS' billed charges or 92 percent [%] of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). The claim for reimbursement must either be: [NPs and CNSs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services, and injections.]

(1) billed under the NP's or CNS' provider number; or

(2) a physician claim noting that the physician was supervising the activity of the NP or CNS and did not, while the service was being rendered, make a decision about the patient's care.

(b) NPs and CNSs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services, and injections.

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

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## CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

### 1 TAC §393.1, §393.2

The Texas Health and Human Services Commission (HHSC) proposes to amend §393.1, concerning Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID). HHSC also proposes new §393.2, concerning Informal Dispute Resolution for Assisted Living Facilities.

#### Background and Justification

House Bill (H.B.) 33, 83rd Legislature, Regular Session, 2013, amended §247.051 of the Texas Health and Safety Code. The amendment affects the IDR process that HHSC uses to address disputes between an ALF and the Department of Aging and Disability Services (DADS). H.B. 33 also amended §531.058 of Texas Government Code by changing the deadline for HHSC to complete the IDR process for ALFs from not later than the 30th day after the date of receipt of a request from an ALF for an IDR to not later than the 90th day after receipt of the IDR request. Additionally, H.B. 33 removed the requirement imposed by §531.058 of Texas Government Code and §247.051 of the Texas Health and Safety Code that required individuals representing providers in the IDR process to register with HHSC.

Moreover, H.B. 33 amended Health and Safety Code §247.051 to require the IDR process to give full consideration to all factual arguments raised during the IDR process that are supported by references to specific information that the ALFs or DADS relied on to dispute or support findings in the statement of violations that are provided by the proponent of the argument to HHSC. The bill requires IDR staff to give full consideration to the information provided by both parties.

As required by H.B. 33, in accordance with the Texas Government Code Chapter 2008, HHSC engaged in Negotiated Rulemaking to improve the IDR process for ALFs. Currently, §393.1 of the Texas Administrative Code (TAC) dictates the IDR process for three facility types: Nursing facilities, ICF/IID, and ALFs. Under the negotiated rulemaking committee's proposal, there are significant differences between the proposed IDR process for ALFs and the other two providers. Therefore, although the negotiated rulemaking committee initially attempted to incorporate the newly proposed IDR process for ALFs within §393.1, it subsequently determined that having two separate rules--one that applies to Nursing facilities and ICF/IID, and another that applies exclusively to ALFs--was preferable. The purpose of this bifurcation is to avoid confusion as to what provisions affect ALFs and what provisions affect the other two providers.

HHSC agrees with the negotiated rulemaking committee and proposes to bifurcate the rule. Thus, §393.1 as amended will apply to Nursing facilities and ICF/IIDs, while the new §393.2 will apply solely to ALFs. Since §393.1 will no longer apply to ALFs, amending this rule to reflect the change is necessary. The nego-

tiated rulemaking committee used §393.1 as a template to create §393.2 and modified it as necessary to incorporate the committee's recommendations and H.B. 33's requirements. HHSC determined that, where possible, aligning the newly proposed IDR process for ALFs and the other providers is desirable and made additional changes to §393.1 based on the newly proposed §393.2.

#### Section-by-Section Summary

##### *Proposed amendments to §393.1*

The proposed amendment to §393.1(a) removes ALFs and incorporates People First Language to correctly reference the ICF/IID program. Additionally, the language indicating that ICF/IID "are only entitled to an IDR if the deficiencies/violations do not pose an imminent threat of danger to the health and safety of an ICF/MR resident" is proposed to be removed.

The proposed amendment to §393.1(b) removes the reference to the registration requirement as dictated by Texas Government Code §531.058.

Section 393.1(c) is proposed for deletion in its entirety. This amendment removes the requirement to concurrently notify the State survey agency's Regional Office and provide confirmation to HHSC that the Regional Office was notified of the IDR request. The notification to DADS will be performed by HHSC when the IDR request is acknowledged.

Because of the deletion of former §393.1(c), §393.1(d) will become §393.1(c). Additionally, the language "and the State survey agency's regional office under which the facility operates." was added to ensure that HHSC notifies DADS of the IDR request.

The proposed amendments to §393.1(e) changes the numbering to §393.1(d). In addition, some of the requirements related to the rebuttal letter and to the supporting documentation are deleted.

The proposed amendments to §393.1(f) changes the numbering to §393.1(e). Likewise, some of the requirements related to the rebuttal letter and supporting documentation are deleted while others are added.

The proposed amendments to §393.1(g) changes the numbering to §393.1(f). In addition, because of the elimination of former subsection (c), two referenced subsections within new §393.1(f) are changed to cite the now corresponding subsections.

The proposed amendments to §393.1(h) changes the numbering to §393.1(g). The amendment clarifies what the possible outcomes of an IDR for nursing facilities and ICF/IID are. Likewise, the amendment changes the language of "scope and severity" to "severity and scope." This is federal terminology that was changed by the Centers for Medicare & Medicaid Services.

The proposed amendments to §393.1(i) changes the numbering to §393.1(h) and corrects some terminology. Additionally, "state" was changed to "State."

The proposed amendments to §393.1(j) changes the numbering to §393.1(i) and clarifies some terminology.

The proposed amendments to §393.1(k) clarifies additional language and changes the numbering to §393.1(j).

The proposed amendments to §393.1(l) clarifies additional language and changes the numbering to §393.1(k).

The proposed amendments to §393.1(m) only changes the numbering to §393.1(l).

The proposed amendments to §393.1(n) changes the numbering to §393.1(m). Additionally, the requirement for a facility to have remedies imposed; recommended adverse actions; or deficiencies/violations in which immediate jeopardy /immediate threat were identified in order to be eligible for an IDR conference is proposed to be removed.

The proposed amendments to §393.1(o) only changes the numbering to §393.1(n).

The proposed amendments to §393.1(p) changes the numbering to §393.1(o). Additionally, the proposed amendment removes the statement "but may not present information". Formerly, DADS was not permitted to participate in the conference. This provision will allow DADS to participate.

The proposed amendments to §393.1(q) only changes the numbering to §393.1(p).

The proposed amendments to §393.1(r) only changes the numbering to §393.1(q).

The proposed amendments to §393.1(s) only changes the numbering to §393.1(r).

The proposed amendments to §393.1(t) only changes the numbering to §393.1(s).

##### *Proposed new §393.2*

Section 393.2(a) establishes that the Texas Health and Human Services Commission (HHSC) provides an IDR process for ALFs.

Section 393.2(b) provides the initial deadline by which an ALF must request the IDR with HHSC. Additionally, it requires the facility to use the designated form when requesting an IDR.

Section 393.2(c) provides the deadline by which HHSC must acknowledge the receipt of the IDR request.

Section 393.2(d) explains the requirements for the facility's rebuttal letter and provides the deadline by which the rebuttal letter and supporting documentation must be received by HHSC.

Section 393.2(e) explains how the supporting documentation should be submitted.

Section 393.2(f) indicates that if the procedures in (d) and (e) are substantially complied with, then the IDR request will be processed.

Section 393.2(g) contains language that was added to §247.051 Health and Safety Code by H.B. 33 requiring HHSC to give full consideration to all factual arguments.

Section 393.2(h) contains language that was added to §247.051 Health and Safety Code by H.B. 33 requiring HHSC staff to consider all information submitted in the IDR process.

Section 393.2(i) establishes possible outcomes in the IDR process.

Section 393.2(j) establishes what types of disputes are not appropriate for the IDR process.

Section 393.2(k) requires DADS to submit information related to the survey to HHSC.

Section 393.2(l) requires HHSC to share all information received with each party and provides each party with an opportunity to respond to the shared information.



Section 393.2(m) provides the authority for HHSC to request additional information from either party. It also indicates that any information received must be shared with the other party and that each party will be provided with the opportunity to respond to the information.

Section 393.2(n) prohibits ex parte communications.

Section 393.2(o) permits the facility to request an IDR conference.

Section 393.2(p) provides timeframes by which the conference must be held by and indicates that the conference will be cancelled if the facility cannot attend. The timeframe by which the conference must be held is established at 30 days.

Section 393.2(q) establishes the purpose of the IDR conference. It also specifies that the facility cannot present any new information during the conference and permits DADS to attend.

Section 393.2(r) establishes the timeframes and requirements regarding the IDR decision. Per H.B. 33, the timeframe is established at 90 days.

Section 393.2(s) indicates that the timeframes in the IDR process are computed in accordance with Texas Government Code §311.014.

Section 393.2(t) authorizes HHSC to issue and enforce operating procedures.

#### Fiscal Note

Ms. Greta Rymal, Deputy Executive Commissioner for Financial Services has determined that during the first five years the proposal is in effect there is no expected impact to costs or revenues of state or local governments to implement and enforce the rule(s) as proposed. Ms. Rymal has also determined that there are no anticipated costs to persons required to comply from implementing and enforcing the rule as proposed because they will not be required to alter their business practices.

#### Small and Micro-business Impact Analysis

HHSC has also determined that during the first five years the proposal is in effect, there are no anticipated costs to persons required to comply from implementing and enforcing the rule as proposed because they will not be required to alter their business practices. Implementing this rule will not significantly alter the current IDR process.

#### Public Benefit and Costs

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the rules are in effect the public benefit expected as a result of adopting the proposed rule will be improvements to the current IDR process.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment 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 environment exposure.

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposed rule may be submitted to Allison Levee, IDR Director, Health and Human Services Commission by mail at 1106 Clayton Lane, Suite 300W, Austin, Texas 78723; by fax at (512) 706-7275; or by email to Allison.Levee@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendments and new rule are proposed under the authority granted to HHSC by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and Texas Health and Safety Code §247.051(a), which directs HHSC to adopt rules necessary to establish an informal dispute resolution process to address disputes between a facility and the department concerning a statement of violations prepared by the department.

The proposed amendments and new rule affect Texas Government Code Chapter 531 and Texas Health and Safety Code Chapter 247. No other statutes, articles, or codes are affected by the proposed rules.

#### *§393.1. Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).*

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) (hereinafter referred to collectively as "facility") [persons with mental retardation (ICFs/MR), and assisted living facilities] through which a facility may dispute deficiencies/violations cited against that facility by the State survey agency or its designee. [ICFs/MR are entitled to an IDR only if the cited deficiencies/violations do not pose an imminent threat of danger to the health and safety of an ICF/MR resident.]

(b) HHSC must receive a facility's written request for an IDR no later than the 10th calendar day after the facility's receipt of the statement of deficiencies/violations from the State survey agency or its designee. If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.

[(+) The facility must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

[(2) The facility must also file with its IDR request the registration information, as required by §531.058, Texas Government Code.]

[(e) The facility must concurrently provide a copy of its request for an IDR to the State survey agency's regional office (Regional Office) under which the facility operates. The facility must provide confirmation to HHSC that the Regional Office has been notified of the IDR request. HHSC will not consider an IDR request to have been received until the facility provides a fully executed IDR request form as well as confirmation that the facility provided a copy of that IDR request form to the relevant Regional Office.]

(c) [(d)] Within three [3] business days of its receipt of the facility's written request for an IDR, HHSC will notify the facility and

the State survey agency's regional office under which the facility operates of its receipt of the request.

(d) [(e)] Within five [5] calendar days of HHSC's receipt of the facility's request for an IDR, HHSC must receive from the facility two [2] copies of the facility's rebuttal letter and attached supporting documentation. If the 5th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day. The rebuttal letter must contain:

(1) a list of the deficiencies/violations disputed (only those deficiencies/violations listed on the IDR request form and addressed in the rebuttal letter/supporting documentation will be reviewed);

(2) the reason(s) each deficiency/violation is disputed; and

(3) the outcome desired by the facility for each disputed deficiency/violation.]; and

[(4) documentation or information, e.g., a witness statement, that directly demonstrates that each disputed deficiency/violation is not sustainable. Such documentation should:]

[(A) be labeled and legible;]

[(B) be non-duplicative;]

[(C) include highlights of specific entries to be reviewed for each disputed deficiency/violation; and]

[(D) describe the relevance of the documentation/information to the disputed deficiency/violation.]

(e) [(f)] The facility submits [should submit] its [rebuttal letter, including any] supporting documentation or information[;] in the following format:

[(1) Begin each attachment on a new page with a labeled tab or other descriptive identification.]

[(2) Tab, label, or otherwise identify each with consecutive numbers or letters on the right-hand side or lower edge of the document.]

[(3) Reference each tab in the rebuttal letter. An attachment must be identified in the rebuttal letter, tabbed, and labeled or otherwise identified, or HHSC will not review the attachment.]

(1) [(4)] Organize the attachments by deficiency/violation and cross-reference to the disputed deficiency/violation in the rebuttal letter.

(2) Ensure all information is labeled and legible.

[(5) Identify which attachment(s) relate to a disputed deficiency/violation, in the event that the facility disputes more than one deficiency/violation.]

[(6) Indicate, if known, whether or not any of the attachments were provided to State survey agency personnel at the time of the survey and identify the attachments that were provided, if any.]

[(7) Number all pages consecutively.]

(3) [(8)] Highlight information relevant to the disputed deficiency/violation, such as a particular portion of a narrative.

(4) Describe the relevance of the documentation/information to the disputed deficiency/violation.

[(9) Address each disputed deficiency/violation in the rebuttal letter in the same order as it is addressed in the statement of deficiencies/violations from the State survey agency. Deficiencies/violations identified on the IDR request form but not addressed in the rebuttal letter or supporting documentation will not be reviewed.]

[(10) Identify the facility name and survey exit date on all documents.]

[(11) Set out the typewritten full name and title of any person signing an affidavit, written statement, or other document. Indicate the date on which the document was created.]

[(12) Identify the resident referenced in the disputed deficiency/violation and include the resident's name on all relevant attachments.]

(5) [(13)] Do not de-identify documents that name residents referenced in disputed deficiencies/violations.

(6) [(14)] Submit supporting documentation or information by regular mail, hand delivery, or overnight delivery [only]. HHSC will not review supporting documentation submitted by facsimile transmission.

(f) [(g)] If the facility substantially complies with the procedures set out in subsections (d) [(e)] and (e) [(f)] of this section, HHSC will proceed with its review of the facility's IDR request.

(g) [(h)] It is the facility's responsibility to present sufficient credible information to HHSC to support the outcome requested by the facility.

(1) Possible outcomes of an IDR for nursing facilities and ICF/IID are:

(A) [(+)] a determination that there is insufficient evidence to sustain a deficiency/violation; and/or

(B) [(2)] a determination that there is insufficient evidence to sustain a portion or a finding of a deficiency/violation; and/or

(C) [(3)] a determination that there is sufficient evidence to sustain a deficiency/violation; or and/or

(D) [(4)] a determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation. and/or

(2) [(5)] In addition to the outcomes stated in paragraph (1) of this subsection, possible additional outcomes of an IDR for nursing facilities only include [Nursing Facilities Only]:

(A) a determination [is made] that there is insufficient evidence to sustain the severity [seope] and scope [severity] assessment but that there is sufficient evidence to sustain a reduced severity [seope] and scope [severity] assessment (for Immediate Jeopardy or Substandard Quality of Care only); or and/or

(B) [(6)] [for Nursing Facilities Only:] a determination [is made] that there is sufficient evidence to sustain the severity [seope] and scope [severity] assessment as cited.

(h) [(+)] HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State [state] survey agency failure to comply with survey protocol, complaints about existing federal or State [state] standards, or attempts to clear previously corrected deficiencies/violations.

(i) [(+)] Upon receipt of the facility's IDR request, the State survey agency must submit to HHSC by means allowing confirmation of HHSC's receipt, e.g., overnight delivery or electronic mail, the following supporting documentation as specified in the IDR operating procedures:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(j) ~~[(k)]~~ Any information related to an IDR request that is received by HHSC from either the facility or the State survey agency will be made available by HHSC to the opposing ~~[other]~~ party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing ~~[other]~~ party.

(k) ~~[(4)]~~ HHSC may request additional information from the facility and/or the State survey agency. Both parties will be notified of the request for additional information and~~;~~ have until the end of the second business day after notification to respond to the request.~~;~~ and ~~The opposing party will be provided with~~ copies of the response submitted to HHSC.

(l) ~~[(m)]~~ Ex parte communications by the facility or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(m) ~~[(n)]~~ An eligible facility may receive a telephone or face-to-face IDR conference provided that~~;~~

~~[(1)]~~ the facility requested an IDR conference on the IDR request form.~~;~~ and

~~[(2)]~~ the State survey agency's survey visit resulted in deficiencies/violations for which remedies are to be imposed or adverse action has been recommended; or

~~[(3)]~~ the State survey agency's survey visit resulted in deficiencies/violations in which immediate jeopardy or immediate threat was identified.~~;~~

(n) ~~[(o)]~~ Any telephone or face-to-face IDR conference will be scheduled on or before the 22nd calendar day after HHSC received the IDR request. If the facility is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(o) ~~[(p)]~~ The IDR conference is an opportunity for an eligible facility to emphasize important information previously submitted in the facility's rebuttal letter ~~and/or~~ response(s) to shared information. The facility and the State survey agency may attend any IDR conference, but neither party may present new information. ~~[The facility may not present any new information at an IDR conference. The State survey agency may attend, but may not present information.]~~

(p) ~~[(q)]~~ HHSC will complete the IDR no later than the 30th calendar day after receipt of the facility's written request. If the 30th calendar day falls on a Saturday, Sunday or legal holiday, the due date becomes the following business day. The IDR decision shall be in writing, address all the issues raised by the facility, and explain the rationale for the decision.

(q) ~~[(r)]~~ The time frames designated in the IDR process shall be computed in accordance with §311.014, Texas Government Code.

(r) ~~[(s)]~~ HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(s) ~~[(t)]~~ HHSC will revise an IDR decision as a result of a review, requested by the State survey agency, and subsequent determination that the IDR decision may violate a federal law, regulation, or the CMS State Operations Manual.

§393.2. Informal Dispute Resolution for Assisted Living Facilities.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for assisted living facilities (ALFs) through which an ALF may dispute violations cited against that ALF by the State survey agency or its designee.

(b) HHSC must receive the ALF's written request for an IDR no later than the 10th calendar day after the ALF's receipt of the statement of violations from the State survey agency or its designee. If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day. The ALF must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the ALF's written request for an IDR, HHSC will notify the ALF and the State survey agency's regional office under which the ALF operates of its receipt of the request.

(d) Within 15 calendar days of HHSC's receipt of the ALF's request for an IDR, HHSC must receive from the ALF two copies of the ALF's rebuttal letter and attached supporting documentation. If the 15th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day. The rebuttal letter must contain:

(1) a list of the violations disputed (only those violations listed on the IDR request form and addressed in the rebuttal letter/supporting documentation will be reviewed);

(2) the reason(s) each violation is disputed; and

(3) the outcome desired by the ALF for each disputed violation.

(e) The ALF submits its supporting documentation or information in the following format:

(1) organize the attachments by violation and cross-reference to the disputed violation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed violation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation/information to the disputed violation;

(5) do not de-identify documents that name residents referenced in disputed deficiencies/violations; and

(6) submit supporting documentation or information by regular mail, hand delivery, or overnight delivery. HHSC will not review supporting documentation submitted by facsimile transmission.

(f) If the ALF substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the ALF's IDR request.

(g) HHSC will give full consideration to all factual arguments raised during the IDR process that are:

(1) supported by references to specific information that the ALF or State survey agency relies on to dispute or support findings in the statement of violations; and

(2) provided by the proponent of the argument to HHSC and the opposing party.

(h) IDR staff will give full consideration to the information provided by the ALF and the State survey agency.

(i) It is the ALF's responsibility to present sufficient credible information to HHSC to support the outcome requested by the ALF. Possible outcomes of an IDR are:

(1) a determination that there is insufficient evidence to sustain a violation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a violation;

(3) a determination that there is sufficient evidence to sustain a violation; or

(4) a determination that there is insufficient evidence to sustain the violation as cited but that there is sufficient evidence to sustain a different citation.

(j) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing State standards, or attempts to clear previously corrected violations.

(k) Upon receipt of the ALF's IDR request, the State survey agency must submit to HHSC by means allowing confirmation of HHSC's receipt, e.g., overnight delivery or electronic mail, the following supporting documentation as specified in the IDR operating procedures:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(l) Any information related to an IDR request that is received by HHSC from either the ALF or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(m) HHSC may request additional information from the ALF or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(n) Ex parte communications by the ALF or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) An eligible ALF may receive a telephone or face-to-face IDR conference provided that the ALF requested an IDR conference on the IDR request form.

(p) Any telephone or face-to-face IDR conference will be scheduled on or before the 30th calendar day after HHSC received the IDR request. If the ALF is unable to participate on the scheduled date, the IDR conference will be cancelled and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an opportunity for an eligible ALF to emphasize important information previously submitted in the ALF's rebuttal letter or response(s) to shared information. The ALF and the State survey agency may attend any IDR conference but neither party may present new information.

(r) HHSC will complete the IDR no later than the 90th calendar day after receipt of the ALF's written request. If the 90th calendar day falls on a Saturday, Sunday or legal holiday, the due date becomes

the following business day. The IDR decision shall be in writing, address all the issues raised by the ALF, and explain the rationale for the decision.

(s) The time frames designated in the IDR process shall be computed in accordance with §311.014, Texas Government Code.

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating 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 6, 2014.

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Jack Stick

Chief Counsel

Texas Health and Human Services Commission

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



## **TITLE 16. ECONOMIC REGULATION**

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

#### **CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS**

##### **16 TAC §§77.20 - 77.23**

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 77, §§77.20 - 77.23, regarding the Service Contract Providers and Administrators program.

The proposed amendments are necessary to implement the Department's "plain language initiative", an agency-wide effort to use plain language in Department rules, forms, letters and other communication.

In the ongoing efforts to implement plain language rules, the Department identified outdated, unclear, and unnecessary words and terms in Service Contract Provider rules, §§77.20 - 77.23, and replaced the words and terms with language that is easier to read and understand.

The proposed rule changes are the first "plain language" amendments to the Service Contract Providers and Administrators program. The amendments clarify the registration and renewal requirements for providers and administrators and are non-substantive. The Department will propose additional, non-substantive, plain language amendments for the remaining Service Contract Provider rule sections at a later date.

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

estimated loss in revenue to the state as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be a clearer understanding of the rules which will result in increased compliance and greater public protection.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed.

There will be no anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed because these changes are non-substantive.

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

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

The rules are proposed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission on Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the proposal.

*§77.20. Registration Requirements--Provider.*

(a) ~~A [No] person may not operate as a [provider of] service contracts provider [sold or issued], or offer to be a provider unless the person is either registered [of service contracts sold or issued, in this state without first registering] with the department or[, unless] the service contracts offered [by such person] are specifically exempt from [the application of] Texas Occupations Code, Chapter 1304.~~

(b) A registration ~~expires [is valid for] one year from the date issued.~~

(c) ~~An applicant for a provider registration must submit on department-approved forms [Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director]:~~

- (1) a completed application [registration form];
- (2) a completed personal information form from each controlling person as defined in Texas Occupations Code §1304.0035;
- (3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;
- (4) the ~~[required] fee required under §77.80; and~~
- (5) proof of financial security required [as prescribed] under §77.40.

(d) ~~Within 30 days [Not later than the 30th day after the date] of a provider's initial registration date, the provider must submit a list of the following information [to the department]:~~

(1) ~~[a list of internet] website addresses where [through which] a consumer may purchase the provider's service contracts, as applicable [if any];~~

(2) ~~the provider's [a list of] administrator(s) as applicable [appointed by the provider, if any], including each administrator's name, assumed name, street address, telephone number, and department registration number; and~~

(3) ~~[a list of sellers of] the provider's service contracts sellers, except those excluded under Texas Occupations Code §1304.1025(c)(2), including each [service contract] seller's name, assumed name, street address, and telephone number.~~

*§77.21. Registration Renewal Requirements--Provider.*

(a) ~~A [In order for a provider to continue operating in this state, a] registration must be renewed annually for a provider to continue operating in this state.~~

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

(c) ~~To renew a registration, a provider must submit on department-approved forms [Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director]:~~

- (1) a completed application [registration form];
- (2) the number of service contracts sold or issued ~~[by the provider] in the preceding 12-month period;~~
- (3) the updated lists of information required under §77.20(d);

(4) ~~[except as provided under subsection (d),] a completed personal information form from any controlling person as defined in Texas Occupations Code §1304.0035 whose information provided previously has changed or who has never submitted a personal information form [who has had a change in any of the information previously provided by the controlling person to the department or has not previously submitted a personal information form to the department. The applicant must indicate on the registration form if there has or has not been any change in the information previously provided by any controlling person to the department];~~

(5) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;

(6) the ~~[required] fee required under §77.80; and~~

(7) proof of new or continuing financial security required [as prescribed] under §77.40.

~~[(d) Due to the statutory changes under Texas Occupations Code §1304.102 and §1304.1025, for the first registration renewal on or after March 1, 2012, each controlling person of a provider must complete a personal information form as prescribed by the executive director.]~~

(d) ~~[(e) A person may [shall] not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.~~

*§77.22. Registration Requirements--Administrator.*

(a) ~~A [No] person may not operate as an administrator for a provider unless the person is registered [or offer to act as an administrator for a provider operating in this state without first registering] with the department.~~

(b) A registration expires [is valid for] one year from the date issued.

(c) An applicant for an administrator registration must submit on department-approved forms [~~Initial applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director~~]:

(1) a completed application [registration form];

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the [required] fee required under §77.80.

§77.23. *Registration Renewal Requirements-Administrator.*

(a) A [~~In order for an administrator to continue operating in this state, a~~] registration must be renewed annually for an administrator to continue operating in this state.

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

(c) To renew a registration, an administrator must submit on department-approved forms [~~Renewal applications for registration must provide the department with all of the following required information, on forms prescribed by the executive director~~]:

(1) a completed application [registration form];

(2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;

(3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and

(4) the [required] fee required under §77.80.

(d) A person may [~~shall~~] not perform or offer to perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired 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 6, 2014.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 16, 2014

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



## CHAPTER 85. VEHICLE STORAGE FACILITIES

### 16 TAC §85.10, §85.719

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 85, §85.10 and §85.719, regarding the Vehicle Storage Facilities program.

The proposed amendments are necessary to implement Texas Occupations Code, §2303.155(b)(5) which authorizes the Texas Commission of Licensing and Regulation (Commission) to establish a maximum fee that a vehicle storage facility may charge for the remediation, recovery, capture or disposal of environmental or biological hazards.

The proposed amendments to §85.10 add definitions for "biological hazard" and "environmental hazard". Editorial changes are also proposed to renumber the section.

Proposed amendments to §85.719 add subsection (d) to: (1) establish the maximum amount that may be charged to each vehicle owner or operator for the remediation, recovery, capture or disposal of environmental or biological hazards; (2) require the environmental hazard fee be itemized on the statement of charges provided to the vehicle owner or operator; (3) require copies of the statements be maintained by the facility; and (4) authorize the department to request copies of the records and for the vehicle storage facility to comply within the timeframe and in the manner requested.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit because vehicle storage facilities will have the financial resources to clean up contaminated facilities, thereby protecting the environment and the health and safety of the public from leaking and leaching contaminants.

The anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the proposed amendments will be *de minimis* and inconsequential. Therefore, there will be no adverse effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

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

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

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

#### §85.10. *Definitions.*

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

(1) Abandoned nuisance vehicle--A motor vehicle that is at least 10 years old and is of a condition only to be demolished, wrecked, or dismantled.

(2) Act--The Vehicle Storage Facility Act, Texas Occupations Code, Chapter 2303.

(3) Affidavit of Right of Possession--A form prescribed by the department and provided by the licensee for use by an immediate family member certifying right of possession to a vehicle stored at a vehicle storage facility.

(4) Biological Hazard--A biological or chemical substance or situation that may be dangerous to a person or the environment. Biological hazards do not include the remediation, recovery or capture of ordinary trash collection and disposal; but do include and are not limited to the following types:

(A) gasoline or oil spills; or

(B) disposal of motor vehicle batteries.

(5) [(4)] Commission--The Texas Commission of Licensing and Regulation.

(6) [(5)] Day--Twenty-four continuous hours.

(7) [(6)] Department--The Texas Department of Licensing and Regulation.

(8) Environmental Hazard--The state of events which threaten the surrounding natural environment and adversely affect a person's health. Environmental Hazards do not include the remediation, recovery or capture of ordinary trash collection and disposal; but includes and is not limited to the disposal of automobile tires.

(9) [(7)] Executive director--The executive director of the department.

(10) [(8)] Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

(11) [(9)] Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

(12) [(10)] Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

(13) [(11)] License holder or Licensee--The person to which the department issued a license.

(14) [(12)] Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

(15) [(13)] Notice of Right of Possession for Salvage--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

(16) [(14)] Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(17) [(15)] Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

(18) [(16)] Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

(19) [(17)] Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

(20) [(18)] Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

(21) [(19)] Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

(22) [(20)] Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

(23) [(21)] Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

(24) [(22)] Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

§85.719. *Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.*

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

(d) Environmental or Biological Hazard Fees. A VSF operator may charge a one-time fee up to, but not more than \$2.50 for each vehicle stored at a licensed facility. The fee authorized by and collected under this subsection is dedicated exclusively for the remediation, recovery, capture or disposal of environmental or biological hazards.

(1) Statement of Charges. Each VSF operator collecting an environmental or biological hazard fee must comply with requirements of this paragraph and with paragraphs (2) and (3):

(A) The statement of charges provided to the vehicle owner or authorized representative must contain a separate charge for an environmental or biological hazard fee;

(B) The amount of the environmental or biological hazard fee may not exceed the fee authorized by this section; and

(C) The separate charge must be listed on the statement of charges as an "Environmental Hazard Fee".

(2) Environmental or Biological Hazard Fees Documentation. Each VSF operator collecting a fee under this subsection must keep a copy of each statement of charges provided to the vehicle owner or representative which contains a fee up to, but not more than \$2.50 for each vehicle stored at the licensed facility.

(3) Records related to the remediation, recovery, capture or disposal of environmental or biological hazards may be audited and copies of those records may be requested by the department at any interval and for all purposes. On request, a licensed VSF must produce an original or copy of any records required to be kept by the license holder within the timeframe and in the manner requested 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 6, 2014.

TRD-201404660

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 16, 2014

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



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

##### SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

###### 19 TAC §§22.227, 22.230, 22.231, 22.234

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.227, 22.230, 22.231, and

22.234, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. In particular, amendments to §22.227 clarify that public two-year institutions, beginning fall 2014, are eligible to make renewal TEXAS Grant awards only to persons who had received initial TEXAS Grant awards at a two-year institution. They cannot make renewal awards to persons who entered the TEXAS Grant program at a four-year institution. This is in accordance with Senate Bill 215, 83rd Texas Legislature, Regular Session.

Amendments to §22.230(b) are made to clarify that its provisions apply to students receiving initial year awards on September 1, 2005, or later. Changes to §22.230(b)(1) indicate the years of eligibility for TEXAS Grant recipients who did not enter the program on the basis of being recent associate degree recipients.

Amendments to §22.230(b)(2) reflect the years of eligibility for an individual who did enter the program on the basis of an associate's degree. References to certificate programs in this subsection are deleted because the TEXAS Grant program, as of fall 2014 (Senate Bill 215, 83rd Texas Legislature, Regular Session), requires students to be enrolled in baccalaureate degree programs. Section 22.230(b)(3) is deleted because the Financial Aid Advisory Committee concluded that transfer students should have the same period of eligibility as persons entering the program straight out of high school, and they are now, therefore, covered by the wording of §22.230(b)(1).

Amendments to the first sentence of §22.230(d) adjust language to indicate that the subsection now applies to all persons who entered the TEXAS Grant Program on September 1, 2005, or later on the basis of provisions other than the receipt of an associate's degree. Subsequent parts of the subsection reflect the use of attempted hours as the measure of a student's eligibility period for a TEXAS Grant beginning with the 2015-2016 academic year. At their June 3, 2014, meeting, the members of the Coordinating Board's Financial Aid Advisory Committee voted unanimously to measure a student's period of eligibility for TEXAS Grants on the basis of hours attempted. In the past, only hours paid for at least in part with Texas Grant funds were counted against a student's maximum number of hours. In general, the committee felt all hours enrolled in as of the census date, including hours later dropped and hours from which the student withdrew, should count towards a student's semester credit hours of eligibility for a grant. If a student transfers to a new institution, any hours determined by the receiving institution to apply to the student's current degree plan will count towards the limit. This approach is expected to encourage students to be efficient in the hours they take and in their completion of their programs of study. Since institutions are already awarding grants for the 2014-2015 academic year, the change in measurement is proposed for adoption effective with awards for the 2015-2016 academic year. Amendments to §22.230(d) include an explanation of the term "attempted hours" as used in this context and provide institutions the authority to exercise professional judgment and grant an extension for students to whom the change to attempted hours will cause an undue hardship. However, no extension would allow an individual to use grant funds to pay for more than 150 hours.

Amendments to §22.230(e) are identical to the changes to subsection (d), except they apply to persons who entered the TEXAS Grant program on the basis of the recent receipt of an associate's degree. In this case, no extension would allow an individual to use grant funds to pay for more than 90 semester credit hours.



Old wording of §22.230(f) is deleted since transfer students are now addressed in §22.230(d), and subsection (g) is renumbered as §22.230(f).

Amendments to §22.231 extend the authority of institutions to exercise professional judgment to include students to whom the change to measuring a student's period of eligibility in attempted hours rather than hours paid for with the grant will cause an undue hardship. However, no extension would allow a student to use grant funds to pay for more than maximum number of hours listed in the relevant subsection of §22.230.

The amendments to §22.234(d) are made to indicate an institution must adjust a student's TEXAS Grant award if additional aid resulting in an over award is received before TEXAS Grant funds are disbursed to a student. The \$300 tolerance of over awards applies only if the unexpected additional aid is received after TEXAS Grant funds have been disbursed. In subsection (e), the reference to the previous effective date has been stricken.

The new §22.234(f) incorporates the use of attempted hours into the proration schedule when students are near the end of their eligibility periods in FY2016 or later.

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Moller has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering this sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lesa Moller, Interim Assistant Commissioner for Student Financial Aid, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules to implement the TEXAS Grant Program.

The amendments affect Texas Education Code, §§56.301 - 56.311.

§22.227. *Institutions.*

(a) Eligibility.

(1) Prior to fall 2014, all institutions of higher education are eligible to participate in the TEXAS Grant program. Beginning with awards for fall 2014, the only institutions eligible to make initial and continuation awards in the program are medical and dental units and general academic teaching institutions other than the public state colleges. Other institutions of higher education, including public state colleges, are only eligible to make continuation awards, and can make continuation awards only to persons who initially received TEXAS grant awards prior to fall 2014 through a public state college, community college, or technical college.

(2) - (3) (No change.)

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

§22.230. *Discontinuation of Eligibility or Non-Eligibility.*

(a) (No change.)

(b) For recipients who were awarded an initial year award through the TEXAS Grant program for the 2005-2006 academic year on or after September 1, 2005, and for recipients who were awarded such an initial year award [or] for a subsequent academic year:

(1) Unless granted a hardship postponement in accordance with §22.231 of this title, [a student's] eligibility for a TEXAS Grant for a student whose eligibility for an initial TEXAS Grant was not based on the receipt of an associate's degree ends:

(A) five years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if [the student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced or Foundation High School Program or its equivalent in high school and] the student is enrolled in a degree [or certificate] program of four years or less;

(B) six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the [student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced or Foundation High School Program or its equivalent in high school and the] student is enrolled in a degree [or certificate] program of more than four years.

(2) Unless granted a hardship postponement in accordance with §22.231 of this title, eligibility for a TEXAS Grant for a student whose eligibility was based on receiving an associate's degree ends [loses eligibility]:

(A) three years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree [or certificate] program of four or fewer years;

(B) four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student is enrolled in a degree [or certificate] program of more than four years.

~~[(3) Unless granted a hardship extension in accordance with §22.231 of this title, the number of years of eligibility for a transfer student whose initial award eligibility was based on the requirements outlined in §22.228(e)(7)(D) of this title will be determined using a formula developed by Board staff with the assistance of the Financial Aid Advisory Committee.]~~

(c) (No change.)

(d) A student whose eligibility [who is eligible] for a TEXAS Grant is not based on the receipt of an associate's degree [completion of a required high school curriculum or its equivalent] may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent. Beginning with awards for the 2015-2016 academic year, such a student's eligibility for a TEXAS Grant ends once he or she has attempted 150 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(d) of this title (relating to Hardship Provisions). For this purpose, "attempted hours" is defined as every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study. The total number of hours paid for, at least

in part, with TEXAS Grant funds may not exceed 150 semester credit hours or the equivalent.

(e) A student [who is] eligible for a TEXAS Grant based on receiving an associate's degree may receive a TEXAS Grant for no more than 90 semester credit hours. Beginning with awards for the 2015-2016 academic year, such a student's eligibility for a TEXAS Grant ends once he or she has attempted 150 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(d) of this title. For this purpose, "attempted hours" is defined as every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study. The total number of hours paid for, at least in part, with TEXAS Grant funds may not exceed 90 semester credit hours or the equivalent.

~~{(f) The number of hours of eligibility granted a transfer student who receives an initial TEXAS Grant based on the requirements outlined in §22.228(e)(7)(D) of this title shall not exceed 150 semester credit hours and will be calculated based on a formula developed by board staff with the assistance of the Financial Aid Advisory Committee.}~~

~~{(f) [(g)] A person is not eligible to receive an initial or continuation TEXAS Grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:~~

~~{(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or~~

~~{(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.~~

~~{(g) [(h)] Other than as described in §22.231 of this title, if a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a TEXAS Grant until he or she completes courses while not receiving a TEXAS Grant and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.~~

§22.231. *Hardship Provisions.*

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

(d) The Program Officer may allow a student to receive a grant after attempting more hours than allowed under §22.230(d), (e), (f) or (g) of this title (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. However, the student may not use the grants to pay for more than the number of hours listed in these subsections. Documentation justifying the extension must be kept in the student's files.

~~{(e) [(d)] Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.~~

§22.234. *Award Amounts and Adjustments.*

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

(d) Over Awards. If, at a time after an award has been disbursed [offered] by the institution to [and accepted by] the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than \$300.

(e) Prorated Awards. If the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated[. ~~Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated~~] using the following schedule:

(1) - (4) (No change.)

(f) Prorated Awards, beginning with Awards for the 2015-2016 Academic Year. If the student's balance of eligible attempted hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule:

(1) If balance of attempted hours = 12 or more hours - 100% of the maximum award;

(2) If balance of attempted hours = 9-11 hours - 100% of the maximum award;

(3) If balance of attempted hours = 6-8 hours - 50% of the maximum award; and

(4) If balance of attempted hours = fewer than 6 hours and student is enrolled for at least 6 hours - 25% of the maximum award.

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 3, 2014.

TRD-201404619

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 22, 2015

For further information, please call: (512) 427-6114



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

#### 19 TAC §33.65

The State Board of Education (SBOE) proposes amendment to §33.65, concerning the guarantee program for school district bonds. The section establishes provisions for the administration of the bond guarantee program. The proposed amendment would add a definition of *bond* to the rule to define more precisely the types of debt that are eligible for guarantee. The proposed amendment would also modify the rule to require that *each issuance* of bonds approved for the guarantee be approved by the

attorney general. In addition, the proposed amendment would add a definition of *nationally recognized investment rating firm* to provide consistency with the charter school bond guarantee rules.

The Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the Permanent School Fund (PSF) Bond Guarantee Program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the program. Section 33.65 is the rule the SBOE adopted to implement the program.

Section 33.65 sets out the statutory provisions for the Bond Guarantee Program, provides definitions, specifies bond eligibility requirements, and explains the requirements of and policies related to the program's application process. The rule also describes how PSF capacity to guarantee bonds is determined, provides limitations on access to the program, and allows for the commissioner to allocate specific holdings of the PSF under certain conditions. In addition, the rule provides requirements specific to districts that have declared financial exigency, explains what effect defeasance has on guaranteed bonds, and sets out specific program conditions for bonds issued or guaranteed on certain specified dates. The rule also explains program payment conditions and guarantee restrictions.

At the April 2014 meeting of the Committee on School Finance/PSF, committee members discussed a fellow board member's proposal to amend the rule to allow commercial paper notes to be eligible for the Bond Guarantee Program and agency legal counsel's recommendation to not make that change. Committee members also discussed a recommendation from agency legal counsel and staff members to instead address any ambiguity about which debt instruments are eligible for the program by amending the rule to define these debt instruments more precisely. At the July 2014 meeting of the committee, during discussion of the report of the PSF executive administrator and chief investment officer, committee members directed agency staff members to present, for first reading and filing authorization at the September 2014 meeting, a proposed amendment to the rule to define eligible debt instruments more precisely, as described by agency legal counsel.

The proposed amendment to 19 TAC §33.65 would define eligible debt more precisely by adding a definition of the term *bond* in subsection (b) that specifies, in part, that a bond is a debt instrument with a term of at least three years that has approval from the attorney general and by modifying subsection (g)(4)(A) to require that *each issuance* of bonds be approved by the attorney general for the bonds to be guaranteed.

The proposed amendment would also add a definition of *nationally recognized investment rating firm* in subsection (b), specifying that term as meaning an investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization.

Corresponding technical edits would be made throughout the rule to update cross references as necessary.

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

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule action.

Dr. Dawn-Fisher has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule action would be clarification of the Bond Guarantee Program rule by defining more precisely the debt that is eligible for the program. The Bond Guarantee Program provides low-cost bond insurance to school districts in Texas. The program also ensures that the bonds issued by school districts under the program are rated competitively in the bond market. A competitive bond rating allows districts to market their bonds at lower interest rates and thus reduces the long-term costs of the bonds for school districts and taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

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

The amendment is proposed under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063, and the Texas Constitution, Article VII, Section 5.

§33.65. *Bond Guarantee Program for School Districts.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(2) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(3) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(4) Bond--A debt security issuance approved by the attorney general, issued under the TEC, §45.003 or §45.004, to provide long-term financing with a maturity schedule of at least three years.

(5) [(4)] Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(6) [(5)] Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds and the pricing certificate, if any, establishing the terms of the bonds executed pursuant to such order.

(7) [(6)] Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) [(7)] Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(9) Nationally recognized investment rating firm--An investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization.

(10) [(8)] New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(11) [(9)] Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the attorney general or issued in accordance with proceedings that have been approved by the attorney general; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(12) [(10)] Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(13) [(11)] Total debt service--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(7), (10), and (12), [~~(b)(6), (8), and (10)~~] respectively, of this section are eligible to receive the guarantee.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) As with any district applying for approval for the guarantee, the district issuing the refunding bonds must meet the requirements for initial approval specified in subsection (g)(2)(A) of this section.

(B) The bonds to be refunded must have been:

(i) previously guaranteed by the Permanent School Fund (PSF) or approved for credit enhancement under §61.1038 of this title (relating to School District Bond Enhancement Program);

(ii) issued on or after November 1, 2008, and before January 1, 2010; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(11) [~~(b)(9)~~] of this section.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(D) The refunding transaction must comply with the provisions of subsection (g)(4)(A) - (C) of this section.

(3) If a district files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the applicant district must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(e) Determination of PSF capacity to guarantee bonds.

(1) Each month the commissioner will estimate the available capacity of the PSF. If necessary, the commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (g)(3) of this section. The calculation of capacity will be based on a multiplier of three times the cost value of the PSF. The commissioner may reduce the multiplier to maintain the AAA credit rating of the PSF. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

(2) The SBOE will establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. The reserved capacity can be used to award guarantees for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h). The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio, or by the commissioner as necessary to prudently manage fund capacity. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.

(3) The net capacity of the PSF to guarantee bonds is determined by subtracting the amount to be held in reserve, as determined under paragraph (2) of this subsection, from the total available capacity, as described in paragraph (1) of this subsection.

(f) Application process and application processing.

(1) Application submission and fee. A district must apply to the commissioner for the guarantee of eligible bonds or the credit enhancement of eligible bonds as authorized under §61.1038 of this title by submitting an application electronically through the website of the MAC of Texas or its successor. The district must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(A) The application fee is \$1,500.

(B) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(D) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Application prioritization and processing. Applications will be prioritized based on districts' property wealth per ADA, with the application of a district with a lower property wealth per ADA prioritized before that of a district with a higher property wealth per ADA. All applications received during a calendar month will be held until up to the 15th business day of the subsequent month. On or before the

15th business day of each month, the commissioner will announce the results of the prioritization and process applications for initial approval for the guarantee, up to the available net capacity as of the application deadline, subject to the requirements of this section.

(A) Approval for guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds.

(B) Approval for guarantees will be awarded based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process. If PSF net capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.

(C) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (g) of this section.

(D) An applicant school district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(9) of this section [credit rating agency] is the same as or higher than that of the PSF.

(3) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(4) Notice of application status. Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(5) Reapplication. If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (g)(4) of this section, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months.

(g) Approval for the guarantee; district responsibilities on receipt of approval.

(1) Initial and final approval provisions.

(A) If, during the monthly estimation of PSF capacity described in subsection (e)(1) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (3) of this subsection.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (2) of this subsection as both the initial and final approval; and

(ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (2) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(2) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new

money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.

(B) The following limitation applies to applications for new money issues of bonds for which the election authorizing the issuance of the bonds was called after July 15, 2004. The commissioner will limit approval for the guarantee to a district that has, at the time of the application for the guarantee, less than 90% of the annual debt service of the district with the highest annual debt service per ADA, as determined by the commissioner annually, or less than 90% of the total debt service of the district with the highest total debt service per ADA, as determined by the commissioner annually. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(8) [(b)(7)] of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(13) [(b)(11)] of this section.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant district whose application has received initial approval for the guarantee written notice of initial approval.

(3) Final approval. The provisions of this paragraph apply only as described in paragraph (1) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the school board of trustees no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) The TEA will process requests for final approval from districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A district may provide written notification as required by this paragraph by facsimile transmission or by email in a manner prescribed by the commissioner.

(4) District responsibilities on receipt of approval.

(A) Once a district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district or the attorney general before the expiration of the 180-day period.

(B) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the district must reapply for a guarantee.

(C) If applicable, the district must comply with the provisions for final approval described in paragraph (3) of this subsection to maintain approval for the guarantee.

(D) A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(h) Financial exigency. The following provisions describe how a declaration of financial exigency under §109.2001 of this title (relating to Financial Exigency) affects a district's application for guarantee approval or a district's previously granted approval.

(1) Application for guarantee of new money issue. The commissioner will deny approval of an application for the guarantee of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of

approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(2) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the guarantee of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(3) Application for guarantee of refunding issue. The commissioner will consider an application for the guarantee of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(i) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(j) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(n) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject

to mandatory redemption, including extraordinary mandatory redemption, in accordance with the terms of the bond order. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(o) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond order provision requiring an interest rate change. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(p) Notice of default. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before maturity date, notify the commissioner.

(q) Payment from PSF.

(1) Immediately after the commissioner receives the notice described in subsection (p) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the PSF.

(3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward it to the school district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code, §2251.025(b). Interest will accrue as specified in the Texas Government Code, §2251.025(a) and (c).

(r) Bonds not accelerated on default. If a school district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's default.

(s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.062.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



### 19 TAC §33.67

The State Board of Education (SBOE) proposes an amendment to §33.67, concerning the guarantee program for charter school bonds. The section establishes provisions for the administration of the bond guarantee program. The proposed amendment would add a definition of *bond* to the rule to define more precisely the types of debt that are eligible for guarantee. The proposed amendment would also add a definition of *nationally recognized investment rating firm*. In addition, the proposed amendment would modify the rule to require that *each issuance* of bonds approved for the guarantee be approved by the attorney general. Finally, the proposed amendment would clarify language regarding the treatment of charter schools that apply for the guarantee within 12 months of the date that their charter is due to expire.

The Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the Permanent School Fund (PSF) Bond Guarantee Program as authorized in the TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. The TEC, §45.063, authorizes the SBOE to adopt rules necessary for the administration of the program.

Senate Bill (SB) 1, Article 59, 82nd Texas Legislature, First Called Session, 2011, added statutory provisions to the TEC, Chapter 12, Subchapter D, and Chapter 45, Subchapter C, that expanded the PSF Bond Guarantee Program to allow for the guarantee of bonds issued for the benefit of open-enrollment charter schools under the TEC, Chapter 53. House Bill (HB) 885, 83rd Texas Legislature, Regular Session, 2013, amended those statutory provisions to explicitly allow for the guarantee of refunding and refinanced bonds issued for the benefit of open-enrollment charter schools, up to an amount equal to one-half of the total amount available for the guarantee of charter school bonds.

Section 33.65 is the rule the SBOE adopted to implement the Bond Guarantee Program for school districts. Section 33.67 is the rule the SBOE adopted to implement the provisions of SB 1, 82nd Texas Legislature, First Called Session, 2011, and HB 885, 83rd Texas Legislature, Regular Session, 2013, to extend the program's guarantee to bonds for open-enrollment charter schools.

Section 33.67 sets out the statutory provisions for the Bond Guarantee Program for charter schools, provides definitions, and explains bond eligibility requirements and how the capacity of the PSF to guarantee charter school bonds is determined. The rule also establishes the requirements of and policies related to the program's application and approval process. In addition, the rule allows for the commissioner to allocate specific holdings of the PSF under certain conditions, explains what effect defeasance has on guaranteed bonds, and sets out program payment conditions and guarantee restrictions.

At the April 2014 meeting of the Committee on School Finance/PSF, committee members discussed a fellow board member's proposal to amend §33.65 to allow commercial paper notes to be eligible for the Bond Guarantee Program and agency legal counsel's recommendation to not make that change.



Committee members also discussed a recommendation from agency legal counsel and staff members to instead address any ambiguity about which debt instruments are eligible for the school district Bond Guarantee Program by amending the rule to define these debt instruments more precisely.

At the July 2014 meeting of the committee, during discussion of the report of the PSF executive administrator and chief investment officer, committee members directed agency staff members to present, for first reading and filing authorization at the September 2014 meeting, a proposed amendment to both §33.65 and §33.67 to define eligible debt instruments more precisely, as described by agency legal counsel. During the same discussion at the July 2014 committee meeting, agency legal counsel explained to committee members that a charter school with a rating from an investment rating firm that was not one of the "Big Three" firms of Standard & Poor's, Moody's, and Fitch had recently applied for the guarantee under §33.67. Agency legal counsel explained that this application represented the first time the agency had dealt with a charter school credit rating issued by a firm other than one of the "Big Three." Counsel stated that the SBOE might wish to amend §33.67 to define *nationally recognized investment rating firm*. Committee members directed agency staff members to include a definition of this term in the amendment brought for first reading and filing authorization in September 2014.

The proposed amendment to §33.67 would define eligible debt more precisely by adding a definition of the term *bond* in subsection (b) that specifies, in part, that a bond is a debt instrument with a term of at least three years and by modifying subsection (f)(5)(A) to require that *each issuance* of bonds be approved by the attorney general for the bonds to be guaranteed.

The proposed amendment would also add a definition of *nationally recognized investment rating firm* in subsection (b) that specifies that that term means an investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization. References to *nationally recognized investment rating firm* would be added in subsection (e)(2)(A)(vi) and (3)(C), relating to applicant eligibility.

Finally, the proposed amendment would clarify language in subsection (f)(1)(A) regarding the treatment of charter schools that apply for the guarantee within 12 months of the date that their charter is due to expire.

Corresponding technical edits would be made throughout the rule to update cross references as necessary.

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

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule action.

Dr. Dawn-Fisher has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule action would be clarification of the Bond Guarantee Program rule by defining more precisely the debt that is eligible for the program and by specifying which firms are considered nationally recognized investment rat-

ing firms. The Bond Guarantee Program provides low-cost bond insurance to school districts in Texas. The program also ensures that the bonds issued by school districts under the program are rated competitively in the bond market. A competitive bond rating allows districts and charter schools to market their bonds at lower interest rates and thus reduces the long-term costs of the bonds for school districts, charter schools, and taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

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

The amendment is proposed under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C, and §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

The amendment implements the Texas Education Code, §7.102(c)(33) and §45.063, and the Texas Constitution, Article VII, Section 5.

§33.67. *Bond Guarantee Program for Charter Schools.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for open-enrollment charter school bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for open-enrollment charter school bonds.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and non-capitalized interest on outstanding bonded debt scheduled to occur during a charter district's fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the charter district is responsible for outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the charter district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement or, if there is no official statement, debt service amounts based on the maximum rate permitted by the bond resolution or other bond proceeding that establishes a maximum interest rate for the bonds.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter district.

(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing. This application deadline does not apply to applications for issues to refund bonds previously guaranteed by the Bond Guarantee Program.

(4) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests guarantee of bonds through the Bond Guarantee Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(5) Bond--A debt security issuance approved by the attorney general, issued under the TEC, Chapter 53, to provide long-term financing with a maturity schedule of at least three years.

(6) [~~5~~] Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(7) [~~6~~] Bond resolution--The resolution, indenture, or other instrument adopted by the governing body of an issuer of bonds authorizing the issuance of bonds for the benefit of a charter district.

(8) [~~7~~] Charter district--An open-enrollment charter holder designated as a charter district under subsection (e) of this section, as authorized by the TEC, §12.135.

(9) [~~8~~] Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(10) [~~9~~] Debt service coverage ratio--A measure of a charter district's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / annual debt service.

(11) [~~10~~] Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

(12) [~~11~~] Educational facility--A classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of a charter school.

(13) [~~12~~] Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.

(14) [~~13~~] Long-term debt--Any debt of the charter district that has a term of greater than three years and is secured on a parity basis with the bonds to be guaranteed.

(15) [~~14~~] Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding long-term debt for any succeeding fiscal year.

(16) Nationally recognized investment rating firm--An investment rating firm that is, or is part of, Standard & Poor's, Moody's, or Fitch and is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization.

(17) [~~15~~] New money issue--An issuance of revenue bonds under the TEC, Chapter 53, for the purposes of:

(A) the acquisition, construction, repair, or renovation of an educational facility of an open-enrollment charter school and equipping real property of an open-enrollment charter school; or

(B) the refinancing of one or more promissory notes executed by an open-enrollment charter school, each in an amount in excess of \$500,000, that evidence one or more loans from a national or regional bank, nonprofit corporation, or foundation that customarily makes loans to charter schools, the proceeds of which loans were used for a purpose described in subparagraph (A) of this paragraph; or

(C) both.

(18) [~~16~~] Open-enrollment charter--This term has the meaning assigned in §100.1001 [~~§100.1011~~] of this title (relating to Definitions).

(19) [~~17~~] Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(20) [~~18~~] Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1001 [~~§100.1011~~] of this title.

(21) [~~19~~] Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1001 [~~§100.1011~~] of this title.

(22) [~~20~~] Refunding issue--An issuance of bonds under the TEC, Chapter 53, for the purpose of refunding:

(A) bonds that have previously been issued under that chapter and have previously been approved by the attorney general; or

(B) bonds that have previously been issued for the benefit of an open-enrollment charter school under Vernon's Civil Statutes, Article 1528m, and have previously been approved by the attorney general.

(c) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(9), (17), and (22), [~~(b)(8), (15), and (20);~~] respectively, of this section are eligible to receive the guarantee. The bonds must, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm and must be issued on or after September 28, 2011.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds.

(A) As with any open-enrollment charter holder applying for approval for the guarantee, the charter holder for which the refunding bonds are being issued must meet the requirements for charter district designation specified in subsection (e)(2) of this section and

the requirements for initial approval specified in subsection (f)(3)(A) of this section.

(B) The charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the charter holder. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(C) For issues that refund bonds previously guaranteed by the BGP, the charter holder must demonstrate that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded.

(D) The refunding transaction must comply with the provisions of subsection (f)(5)(A)-(C) and (E) of this section.

(3) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the charter holder making the application must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.

(1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by taking the net capacity determined under §33.65 of this title (relating to Bond Guarantee Program for School Districts), subtracting the total amount of outstanding guaranteed bonds, and then determining the percentage of the difference that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner. The commissioner's determination of the number of students enrolled in open-enrollment charter schools in this state and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open-enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP.

(2) Up to half of the total capacity of the PSF to guarantee bonds for charter districts may be used to guarantee charter district refunding bonds.

(e) Application process and application processing. An open-enrollment charter holder must apply to the commissioner for the guarantee of eligible bonds by submitting an application electronically through the website of the MAC of Texas or its successor. Before an application for the guarantee will be considered, a charter holder must

first be determined by the commissioner to meet criteria for designation as a charter district for purposes of this section. The application submitted through the website of the MAC of Texas or its successor will serve as both a charter holder's application for designation as a charter district and its application for the guarantee.

(1) Application submission and fee. As part of its application, an open-enrollment charter holder must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The open-enrollment charter holder may not submit an application for a guarantee before the governing body of the charter holder adopts a board resolution as defined in subsection (b)(4) of this section.

(A) The amount of the application fee is the amount specified in §33.65 of this title.

(B) The fee is due at the time the application for charter district designation and the guarantee is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to an applicant that:

(i) is designated a charter district but is not approved for the guarantee; or

(ii) receives approval for the guarantee but does not sell its bonds before the expiration of its approval for the guarantee.

(D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee.

(2) Eligibility to be designated a charter district.

(A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open-enrollment charter holder must:

(i) have operated at least one open-enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;

(ii) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;

(iv) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;

(v) have had, for the past three years, an audit as required by §100.1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified or unmodified opinions; and

(vi) have received an investment grade credit rating from a nationally recognized investment rating firm as specified by the TEC, §45.0541, within the last year.

(B) For an open-enrollment charter holder to be designated a charter district and have its application for the guarantee considered by the commissioner, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of met standard or met alternative standard as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to be designated a charter district and apply for the guarantee.

(3) Application processing. All applications received during a calendar month that were submitted by open-enrollment charter holders determined to meet the criteria in paragraph (2) of this subsection will be held until the 15th business day of the subsequent month. On the 15th business day of each month, the commissioner will announce the results of the pro rata allocation of available capacity, if pro rata allocation is necessary, and process applications for initial approval for the guarantee, up to the available capacity as of the application deadline, subject to the requirements of this section.

(A) If the available capacity is insufficient to guarantee the total value of the bonds for all applicant charter districts, the commissioner will allocate the available capacity on a pro rata basis to each applicant charter district. For each applicant, the commissioner will determine the percentage of the total amount of all applicants' proposed bonds that the applicant's proposed bonds represent. The commissioner will then allocate to that applicant the same percentage of the available capacity, but in no event will an allocation be equal to an amount less than \$500,000.

(B) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (f) of this section.

(C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section [credit rating agency] is the same as or higher than that of the PSF.

(4) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(5) Notice of application status. Each open-enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(6) Reapplication. If an open-enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(5) of this section, the charter holder may reapply in a subsequent month. An application that was denied approval for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.

(f) Approval for the guarantee; charter district responsibilities on receipt of approval.

(1) Approval for the guarantee and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the guarantee within the 12 months before [the July 1 that] the charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the guarantee may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the guarantee for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(2) Initial and final approval provisions.

(A) The commissioner may require an applicant charter district to obtain final approval for the guarantee as described in paragraph (4) of this subsection if:

(i) during the monthly estimation of PSF capacity described in §33.65 of this title, the commissioner determines that the available capacity of the PSF as described in §33.65 of this title is 10% or less; or

(ii) during the monthly estimation of the available capacity of the PSF to guarantee bonds for charter districts described in subsection (d) of this section, the commissioner determines that the available capacity of the PSF to guarantee bonds for charter districts is 10% or less.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and

(ii) an applicant charter district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(3) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of all open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner's review will include review of the following:

(i) the purpose of the bond issue;

(ii) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter district's eligibility for consideration for the guarantee:

(I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;

(II) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the charter district will not be eligible for consideration for the guarantee; or

(III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the charter district will not be eligible for consideration for the guarantee;

(iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §53.40;

(iv) whether the TEA has required the charter district to submit a financial plan under §109.1101 of this title (relating to Financial Solvency Review) in the last three years;

(v) the audit history of the charter district and of all open-enrollment charter schools operated under the charter;

(vi) the charter district's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(vii) any interventions and sanctions to which the charter district has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(viii) formal complaints received by the TEA that have been made against the charter district, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(ix) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter;

(x) any unresolved corrective actions that are less than one year old; and

(xi) whether the charter district is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation.

(B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted is the charter district's first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph

(A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee written notice of initial approval.

(4) Final approval. The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A charter district must receive final approval before completing the sale of the bonds for which the charter district has received notification of initial approval.

(A) A charter district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available and must continue to meet the requirements of subsection (e)(2) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A charter district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the bond issuer's board of directors no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

(C) The TEA will process requests for final approval from charter districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A charter district may provide written notification as required by this paragraph by facsimile transmission, by email, or in another manner prescribed by the commissioner.

(5) Charter district responsibilities on receipt of approval.

(A) Once a charter district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the charter district or the attorney general before the expiration of the 180-day period.

(B) If applicable, the charter district must comply with the provisions for final approval described in paragraph (4) of this subsection to maintain approval for the guarantee.

(C) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the

guarantee, the commissioner will consider the application withdrawn, and the charter district must reapply for a guarantee.

(D) A charter district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(E) The charter district must provide evidence of the final investment grade rating of the bonds to the TEA after receiving initial approval but before the distribution of the preliminary official statement for the bonds or, if the bonds are offered in a private placement, before approval of the bond sale by the governing body of the charter district.

(F) A charter district must identify by legal description any educational facility purchased or improved with bond proceeds no later than 30 days after entering into a binding commitment to expend bond proceeds for that purpose. The charter district must identify at that time whether and to what extent debt service will be paid with any source of revenue other than state funds.

(g) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the State Board of Education (SBOE) to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(h) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP are defeased, the charter district must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond resolution provision requiring an interest rate change. The guarantee does not extend to any obligation of a charter district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) Notice of default. A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the

fifth business day before the maturing or matured principal or interest becomes due, notify the commissioner.

(l) Payment from Charter District Bond Guarantee Reserve Fund and PSF.

(1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the TEA division responsible for administering the PSF of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under the TEC, §45.0571, to the charter district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) If money in the reserve fund is insufficient to pay the amount due on a bond under paragraph (1) of this subsection, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the charter district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(3) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(4) To ensure that the charter district reimburses the reserve fund and the PSF, if applicable, the commissioner will withhold from state funds otherwise payable to the charter district the amount that the charter district owes in reimbursement.

(5) Funds intercepted for reimbursement under paragraph (4) of this subsection will be used to fully reimburse the PSF before any funds reimburse the reserve fund. If the funds intercepted under paragraph (4) of this subsection are insufficient to fully reimburse the PSF with interest, subsequent payments into the reserve fund will first be applied to any outstanding obligation to the PSF.

(6) Following full reimbursement to the reserve fund and the PSF, if applicable, with interest, the comptroller will further cancel the bond or coupon and forward it to the charter district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code (TGC), §2251.025(b). Interest will accrue as specified in the TGC, §2251.025(a) and (c). For purposes of this section, the "date the payment becomes overdue" that is referred to in the TGC, §2251.025(a), is the date that the comptroller makes the payment to the charter district's paying agent.

(m) Bonds not accelerated on default. If a charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the charter district's default.

(n) Reimbursement of Charter District Bond Guarantee Reserve Fund or PSF. If payment from the Charter District Bond Guarantee Reserve Fund or the PSF is made on behalf of a charter district, the charter district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(o) Repeated failure to pay. If a total of two or more payments are made under the BGP on the bonds of a charter district, the commissioner may take action in accordance with the provisions of the TEC, §45.062.

(p) Report on the use of funds and confirmation of use of funds by independent auditor. A charter district that issues bonds approved for the guarantee must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district's independent auditor must

confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the guarantee.

(q) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter C, or with the requirements of this section, including by making any material misrepresentations in the charter holder's application for charter district designation and the guarantee, constitutes a material violation of the open-enrollment charter holder's charter.

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 3, 2014.

TRD-201404622

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 16, 2014

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



## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER D. SPECIAL EDUCATION SERVICES AND SETTINGS

#### 19 TAC §89.63

The State Board of Education (SBOE) proposes amendment to §89.63, concerning special education services and settings. The section addresses instructional arrangements and settings. The proposed amendment would address the mainstream, homebound, off-home campus, and vocational adjustment class/program instructional arrangements.

Section 89.63, Instructional Arrangements and Settings, establishes the definitions for the special education instructional arrangements. The instructional arrangements determine the amount of state special education funds local school districts receive and, by definition, how and/or where students with disabilities receive services.

During the statutorily required review of SBOE rules in 19 TAC Chapter 89, Adaptations for Special Populations, the SBOE received one public comment from Disability Rights Texas (DRTx) related to 19 TAC §89.63. The SBOE directed staff to review the changes requested by DRTx and report any recommendations. On July 8, 2014, agency staff presented the issues related to the public comment from DRTx to a stakeholder group to solicit broader stakeholder input. Staff presented a report about the issues and stakeholder input to the SBOE Committee on Instruction at its July 2014 meeting.

As a result of discussion at the July 2014 committee meeting and the July 8 stakeholder meeting, the SBOE proposes amendment to 19 TAC §89.63 that would revise: 1) the mainstream definition to add the phrase "positive classroom behavioral interventions and supports" to a list of available strategies to support student and teacher success for students served in the general education classroom; 2) the homebound and hospital bedside definition to provide clarity, flexibility, and better alignment with the

general education definition of homebound; and 3) the off-home campus and vocational adjustment class/program definitions to provide additional clarity and flexibility for the use of these instructional arrangements with any student and, specifically, a student who continues to receive special education and related services beyond age 18.

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

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule action.

Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule action would include additional guidance/clarification and increased flexibility in implementing requirements for instructional arrangements and settings for students with disabilities in order to meet the individual needs of those students in accordance with state and federal regulations. There is no anticipated economic cost to persons who are required to comply with the proposed rule action.

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

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

The amendment is proposed under the Texas Education Code, §42.151(e), which authorizes the SBOE to adopt rules that prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement.

The amendment implements the Texas Education Code, §42.151(e).

#### §89.63. *Instructional Arrangements and Settings.*

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the

regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks or [as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for] any period of time totaling at least four weeks throughout the school year. The need for confinement must be [as] documented by a physician licensed to practice in the United States, or a licensed health care professional under the supervision of a physician licensed to practice in the United States, and within the scope of practice of the health care professional's license. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained pro-

gram for 50% or more of the regular school day on a regular school campus.

(7) Off-home [Off home] campus. This instructional arrangement/setting is for providing special education and related services to the following, including, but not limited to, students at South Texas Independent School District and Windham Independent School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student in a community setting or environment (not operated by a school district) that prepares the student for postsecondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by school district personnel, or a student in a facility not operated by a school district (other than a nonpublic day school) with instruction provided by school district personnel [whose instruction is provided by school district personnel in a facility (other than a nonpublic day school) not operated by a school district]; or

(C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals [plan] and only after the school district's career and technical education [technology] classes have been considered and determined inappropriate for the student.

(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State supported living center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current



attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:

- (1) contracts with other school districts; and
- (2) other program options as approved by the TEA.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

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



## CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

The State Board of Education (SBOE) proposes amendments to §111.1 and §111.25 and the repeal of §§111.11-111.17 and 111.21-111.24, concerning Texas essential knowledge and skills (TEKS) for mathematics. Sections 111.1 and 111.25 address implementation of elementary and middle school mathematics TEKS adopted in 2012. Sections 111.11-111.17 and 111.21-111.24 address the elementary and middle school mathematics TEKS that took effect in August 2006. The proposed repeals would remove the TEKS for Kindergarten-Grade 8 mathematics, and related implementation language, that were superseded by 19 TAC §§111.1-111.7 and 111.25-111.28 beginning with the 2014-2015 school year. The proposed amendments would remove references to rules that would be repealed.

The SBOE adopted proposed revisions to the mathematics TEKS for elementary and middle school in April 2012 for implementation in the 2014-2015 school year. With the implementation of the new mathematics TEKS for Kindergarten-Grade 8 in 19 TAC §§111.2-111.7 and 111.26-111.28, the TEKS in 19 TAC §§111.11-111.17 and 111.21-111.24 are no longer needed and may be repealed. In addition, §111.1 and §111.25 must be amended to remove references to rules that would be repealed.

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

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments and repeals are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

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

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

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

### SUBCHAPTER A. ELEMENTARY

#### 19 TAC §111.1

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

*§111.1. Implementation of Texas Essential Knowledge and Skills for Mathematics, Elementary, Adopted 2012.*

(a) The provisions of §§111.2-111.7 of this subchapter shall be implemented by school districts.

(b) No later than August 31, 2013, 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 mathematics as adopted in §§111.2-111.7 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§111.2-111.7 of this subchapter shall be implemented beginning with the 2014-2015 school year and apply to the 2014-2015 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) 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 §§111.2-111.7 of this subchapter shall be implemented for the following school year.

~~[(e) Sections 111.11-111.17 of this subchapter shall be superseded by the implementation of §§111.1-111.7 under this section.]~~

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

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## 19 TAC §§111.11 - 111.17

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

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

§111.11. *Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades K-5.*

§111.12. *Mathematics, Kindergarten.*

§111.13. *Mathematics, Grade 1.*

§111.14. *Mathematics, Grade 2.*

§111.15. *Mathematics, Grade 3.*

§111.16. *Mathematics, Grade 4.*

§111.17. *Mathematics, Grade 5.*

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

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§111.21 - 111.24

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of*

*the Texas Education Agency or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

§111.21. *Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades 6-8.*

§111.22. *Mathematics, Grade 6.*

§111.23. *Mathematics, Grade 7.*

§111.24. *Mathematics, Grade 8.*

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

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### 19 TAC §111.25

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

§111.25. *Implementation of Texas Essential Knowledge and Skills for Mathematics, Middle School, Adopted 2012.*

(a) The provisions of §§111.26-111.28 of this subchapter shall be implemented by school districts.

(b) No later than August 31, 2013, 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 mathematics as adopted in §§111.26-111.28 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§111.26-111.28 of this subchapter shall be implemented beginning with the 2014-2015 school year and apply to the 2014-2015 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) 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 §§111.26-111.28 of this subchapter shall be implemented for the following school year.

~~[(e) Sections 111.21-111.24 of this subchapter shall be superseded by the implementation of §§111.25-111.28 under this section.]~~

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

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## CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES SUBCHAPTER D. OTHER SOCIAL STUDIES COURSES

### 19 TAC §§113.53, 113.55 - 113.57, 113.62, 113.65, 113.66

The State Board of Education (SBOE) proposes amendments to §§113.53, 113.55 - 113.57, 113.62, 113.65, and 113.66, concerning Texas essential knowledge and skills (TEKS) for social studies. The sections address the TEKS for other social studies courses. The proposed amendments would amend existing rules to require that Advanced Placement (AP) and International Baccalaureate (IB) courses address the TEKS, as applicable.

Current SBOE rules allow students to earn credit toward high school graduation for successful completion of certain AP and IB courses. The content requirements of AP and IB social studies courses are prescribed by the College Board and the International Baccalaureate Organization respectively.

Proposed amendments to 19 TAC Chapter 113, Subchapter D, would explicitly require that students who seek to satisfy specific social studies graduation requirements through completion of AP and IB social studies courses demonstrate proficiency in all of the TEKS for the corresponding TEKS-based courses.

The proposed amendments would have no procedural and reporting implications. The proposed amendments would have no locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Martinez 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 rule actions would include better alignment of AP and IB courses with the TEKS and added flexibility in course options for students to meet high school graduation requirements. There is no anticipated economic cost to

persons who are required to comply with the proposed rule actions.

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

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

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, 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 amendments implement the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025.

*§113.53. Advanced Placement (AP) United States History (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to meet either the course requirement for U.S. History for state graduation or elective course requirements.

(b) Content requirements. Content requirements for Advanced Placement (AP) United States History are prescribed in the College Board Publication *Advanced Placement Course in United States History*, published by The College Board and in §113.41 of this title (relating to United States History Studies Since 1877 (One Credit), Beginning with School Year 2011-2012).

*§113.55. Advanced Placement (AP) World History (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used as a substitute for World History Studies.

(b) Content requirements. Content requirements for Advanced Placement (AP) World History are prescribed in the College Board Publication *Advanced Placement Course Description in World History*, published by The College Board and in §113.42 of this title (relating to World History Studies (One Credit), Beginning with School Year 2011-2012).

*§113.56. Advanced Placement (AP) Human Geography (One-Half to One Credit).*

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. When completed for one credit, this course may be used as a substitute for World Geography Studies. When completed for one-half credit, this course may be used to meet only elective course requirements.

(b) Content requirements. Content requirements for Advanced Placement (AP) Human Geography are prescribed in the

College Board Publication *Advanced Placement Course Description in Human Geography*, published by The College Board and in §113.43 of this title (relating to World Geography Studies (One Credit), Beginning with School Year 2011-2012) when taught as a one credit course. Content requirements for AP Human Geography are prescribed in the College Board Publication *Advanced Placement Course Description in Human Geography*, published by The College Board when taught as a one-half credit course.

§113.57. *Advanced Placement (AP) U.S. Government and Politics (One-Half Credit)*.

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course may be used to meet the course requirement in Government for state graduation.

(b) Content requirements. Content requirements for Advanced Placement (AP) U.S. Government and Politics are prescribed in the College Board Publication *Advanced Placement Course in U.S. Government and Politics*, published by The College Board and in §113.44 of this title (relating to United States Government (One-Half Credit), Beginning with School Year 2011-2012).

§113.62. *International Baccalaureate (IB) History: Americas, Higher Level (HL) (Two Credits)*.

(a) General requirements. Students shall be awarded two credits for successful completion of this course. One credit may be used to meet the course requirement in United States [U.S.] history for state graduation; the other credit may be used to meet only elective course requirements for state graduation.

(b) Content requirements. Content requirements for International Baccalaureate (IB) History: Americas HL are prescribed in the International Baccalaureate publication *History: Americas and in §113.41 of this title (relating to United States History Studies Since 1877 (One Credit), Beginning with School Year 2011-2012)*.

§113.65. *International Baccalaureate (IB) Geography, Standard Level (SL) (One Credit)*.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to meet required course requirements for state graduation.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Geography SL are prescribed in the International Baccalaureate publication *Geography* and in §113.43 of this title (relating to World Geography Studies (One Credit), Beginning with School Year 2011-2012).

§113.66. *International Baccalaureate (IB) Geography, Higher Level (HL) (Two Credits)*.

(a) General requirements. Students shall be awarded two credits for successful completion of this course. One credit may be used to meet the course requirement in World Geography Studies for state graduation; the other credit may be used to meet only elective course requirements for state graduation.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Geography HL are prescribed in the International Baccalaureate publication *Geography* and in §113.43 of this title (relating to World Geography Studies (One Credit), Beginning with School Year 2011-2012).

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

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CHAPTER 114. TEXAS ESSENTIAL  
KNOWLEDGE AND SKILLS FOR LANGUAGES  
OTHER THAN ENGLISH

The State Board of Education (SBOE) proposes amendments to §§114.3, 114.13, and 114.61, concerning Texas essential knowledge and skills (TEKS) for languages other than English (LOTE). The sections address implementation of the LOTE TEKS for elementary, middle school, and other LOTE courses adopted in 2014. The proposed amendments would change the implementation of the recently revised LOTE TEKS to 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 feedback on the recommendations was provided to the SBOE at the January 2014 meeting. A public hearing on the proposed revisions to the LOTE TEKS was held on January 28, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for first reading and filing authorization at the January 31, 2014, meeting. Also at the January meeting, the board directed staff to form two committees to make recommendations regarding the need for unique TEKS for classical languages and logographic languages.

A new course, Special Topics in Language and Culture, was developed by the LOTE TEKS review committee to address requirements in House Bill 5, 83rd Texas Legislature, Regular Session, 2013, that allow students who have completed one credit

in a language other than English but who are unlikely to successfully complete a second credit in that language to substitute credit in another course. In order for the new course to be available for the implementation of the new foundation high school program graduation requirements in the 2014-2015 school year, the TEKS for the Special Topics in Language and Culture course required an earlier implementation date than the other LOTE TEKS.

A second public hearing was held on April 9, 2014; however, no one registered to provide testimony at the hearing. The SBOE approved proposed revisions to Chapter 114, Subchapters A-D, for second reading and final adoption at the April 11, 2014, meeting. The revised TEKS for LOTE approved for adoption at the April 2014 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 languages. 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 SBOE approved the proposed revisions to 19 TAC Chapter 114, Subchapter C, for second reading and final adoption at its September 2014 meeting.

The proposed amendments to 19 TAC Chapter 114, Texas Essential Knowledge and Skills for Languages Other Than English, Subchapters A, B, and D, would change the implementation date of the recently revised LOTE TEKS for elementary, middle school, and other LOTE courses to the 2017-2018 school year to align with the expected availability of LOTE instructional materials.

The proposed amendments would have no procedural and reporting implications. The proposed amendments would have no locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions.

Ms. Martinez 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 rule actions would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request

for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §114.3

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

*§114.3. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Elementary, Adopted 2014.*

(a) The provisions of this section and §114.4 of this title (relating to Languages Other Than English, Elementary, Adopted 2014) shall be implemented by school districts.

(b) No later than August 31, 2016, [2015,] the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §114.4 of this title.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §114.4 of this title shall be implemented beginning with the 2017-2018 [2016-2017] school year and apply to the 2017-2018 [2016-2017] and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) 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 §114.4 of this title shall be implemented for the following school year.

(e) Section 114.1 of this title (relating to Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Elementary) and §114.2 of this title (relating to Languages Other Than English, Elementary) shall be superseded by the implementation of this section and §114.4 of this title.

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

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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §114.13

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §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.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

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

(a) The provisions of this section and §114.14 of this title (relating to Languages Other Than English, Middle School, Adopted 2014) shall be implemented by school districts.

(b) No later than August 31, 2016, [2015,] the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §114.14 of this title.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §114.14 of this title shall be implemented beginning with the 2017-2018 [2016-2017] school year and apply to the 2017-2018 [2016-2017] and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) 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 §114.14 of this title shall be implemented for the following school year.

(e) Section 114.11 of this title (relating to Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Middle School) and §114.12 of this title (relating to Languages Other Than English, Middle School) shall be superseded by the implementation of this section and §114.14 of this title.

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

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## SUBCHAPTER D. OTHER LANGUAGES

### OTHER THAN ENGLISH COURSES

#### 19 TAC §114.61

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, 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 implements the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025.

*§114.61. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English Courses.*

The provisions of this subchapter shall be implemented by school districts beginning August 28, 2017.

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 3, 2014.

TRD-201404631

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 129. STUDENT ATTENDANCE

### SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

#### 19 TAC §129.21

The State Board of Education (SBOE) proposes amendment to §129.21, concerning student attendance accounting. The section provides requirements for student attendance accounting for state funding purposes. The proposed amendment would update statutory references in the rule text to reflect changes from the 83rd Texas Legislature, Regular Session, 2013.

The rule provides the student attendance accounting requirements school districts must follow and describes the manner in which student attendance is earned. The rule also specifies conditions under which a student who is not actually on campus at the time attendance is taken may be considered in attendance for Foundation School Program (FSP) funding purposes.

The proposed amendment to 19 TAC §129.21 would update statutory references in the rule text to reflect changes from the last legislative session. Specifically, the amendment would update subsection (j)(3), which specifies conditions under which a student who is not on campus at the time attendance is taken may be considered in attendance for FSP funding purposes, to refer to statutory provisions added by the 83rd Texas Legislature, Regular Session, 2013, through Senate Bills 260 and 553. The provisions relate to excused absences to serve as an early voting clerk and excused absences to visit with a parent, step-parent, or guardian who has been called to duty for, is on leave from, or is immediately returned from deployment. The proposed

amendment would also make a minor grammatical correction in subsection (h).

The proposed amendment would have no new procedural and reporting implications. The proposed amendment would have no new requirements related to locally maintained paperwork.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule action.

Dr. Dawn-Fisher has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule action would be to ensure that the rule reflects current statute. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

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

The amendment is proposed under the Texas Education Code (TEC), §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program. TEC, §25.087, establishes grounds for excused absences.

The amendment implements the Texas Education Code, §25.087 and §42.004.

*§129.21. Requirements for Student Attendance Accounting for State Funding Purposes.*

(a) All public schools in Texas must maintain records to reflect the average daily attendance (ADA) for the allocation of Foundation School Program (FSP) funds and other funds allocated by the Texas Education Agency (TEA). Superintendents, principals, and teachers are responsible to their school boards and to the state to maintain accurate, current attendance records.

(b) The commissioner of education is responsible for providing guidelines and procedures for attendance accounting in accordance with state law.

(c) The commissioner must provide for special circumstances regarding attendance accounting in accordance with the provisions of law.

(d) The superintendent of schools is responsible for the safekeeping of all attendance records and reports. The superintendent of schools may determine whether the properly certified attendance records or reports for the school year are to be stored in the central office, on the respective school campuses of the district, or at another secure location. Regardless of where such records are stored, they

must be readily available for audit by the TEA division responsible for performing school financial audits.

(e) Districts must maintain records and make reports concerning student attendance and participation in special programs as required by the commissioner.

(f) If a school district chooses to use a locally developed record or automated system, the record or automated system must contain the minimum information required by the commissioner.

(g) A student must be enrolled for at least two hours of instruction to be considered in membership for one half day, and for at least four hours of instruction to be considered in membership for one full day.

(h) Attendance for all grades must be determined by the absences recorded in the second or fifth instructional hour of the day, unless the local school board adopts a district policy, or delegates to the superintendent the authority to establish procedures, for recording absences in an alternative [alternate] hour, or unless the students for which attendance is being taken are enrolled in and participating in an alternative attendance accounting program approved by the commissioner.

(1) Students enrolled on a half-day basis may earn only one half day of attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half day that they are scheduled to be present. Students enrolled on a full-day basis may earn one full day of attendance each school day.

(2) Students who are enrolled in and participating in an alternative attendance accounting program approved by the commissioner will earn attendance according to the statutory and rule provisions applicable to that program.

(3) The established period in which absences are recorded may not be changed during the school year.

(4) Students absent at the time the attendance roll is taken, during the daily period selected, are counted absent for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner. Students present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner.

(i) A student who is not actually in school at the time attendance is taken must not be counted in attendance for FSP funding purposes, unless the student is participating in an activity that meets the conditions set out in subsection (j) of this section, or unless the student is enrolled in and participating in an alternative attendance accounting program approved by the commissioner.

(j) A student not actually on campus at the time attendance is taken may be considered in attendance for FSP funding purposes under the following conditions.

(1) The student is participating in an activity that is approved by the local board of school trustees and is under the direction of a member of the professional staff of the school district, or an adjunct staff member who:

(A) has a minimum of a bachelor's degree; and

(B) is eligible for participation in the Teacher Retirement System of Texas.

(2) The student is participating in a mentorship approved by district personnel to serve as one or more of the advanced measures

needed to complete the Distinguished Achievement Program outlined in Chapter 74 of this title (relating to Curriculum Requirements).

(3) The student is absent for one of the purposes specified in the Texas Education Code (TEC), §25.087(b), (b-1), (b-2), (b-4), or (c). Excused days for travel under the TEC, §25.087(b)(1), are limited to not more than one day for travel to and one day for travel from the applicable site. A temporary absence excused under the TEC, §25.087(b)(2), must be supported by a document such as a note from the health care professional.

(k) A student not actually on campus at the time attendance is taken also may be considered in attendance for FSP funding purposes under other conditions described in the handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook) related to off-campus instruction.

(l) Before a district or charter school may count a student in attendance under this section or in attendance when the student was allowed to leave campus during any part of the school day, the local school board or governing body must adopt a policy, or delegate to the superintendent the authority to establish procedures, addressing parental consent for a student to leave campus, and the district or charter school must distribute the policy or procedures to staff and to all parents of students in the district or charter school.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

##### 22 TAC §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, 201.19

*(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 Funeral Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Funeral Services Commission (Commission) proposes the repeal of §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, and 201.19, concerning Licensing and Enforcement--Practice and Procedure. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined that the reasons for initially adopting the rules continue to exist, but that extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment of an

extensively rewritten, rearranged and updated proposed new Chapter 201.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

In the reordering process, it is important to note that the substance of §§201.2, 201.3, 201.11, and 201.12 are now included in the proposed new Chapter 203, which deals with more substantive rules and procedures of the Commission.

There are no proposed changes to §201.15 and §201.16, concerning the Commission's Joint Memorandum of Understandings. The rules are being repealed and will be added to the new Chapter 201 as currently written.

The remaining rules will remain in the new Chapter 201 in a reordered format with edits for style consistency, grammar and proper references to statute. Substance changes are discussed in the filing for the proposed Chapter 201.

Janice McCoy, Executive Director, has 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Ms. McCoy has also 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.

The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than sixty (60) days from the date of publication of this proposal.



This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code, §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 rules under this section.

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

§201.1. *Computation of Time.*

§201.2. *Procedures and Criteria for Inspections of Funeral Establishments.*

§201.3. *Complaints and Investigations.*

§201.4. *Subpoenas.*

§201.5. *Executive Director.*

§201.8. *Procedures for the Petition for Adoption of Rules.*

§201.9. *Preparation and Dissemination of Consumer Information.*

§201.10. *Witness Travel Reimbursement.*

§201.11. *Disciplinary Guidelines.*

§201.12. *Retired Licenses.*

§201.14. *Introduction to Joint Memorandum of Understanding.*

§201.15. *Joint Memorandum of Understanding.*

§201.16. *Joint Memorandum of Understanding with the Texas Department of State Health Services.*

§201.18. *Charges for Providing Copies of Public Information.*

§201.19. *Correspondence and Notice.*

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 3, 2014.

TRD-201404636

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 936-2469



## 22 TAC §§201.1 - 201.17

The Texas Funeral Service Commission (the Commission) proposes new Chapter 201, §§201.1 - 201.17, concerning Licensing and Enforcement--Practice and Procedure, simultaneously with the repeal of the current Chapter 201. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code, Chapter 651) make it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 201 is filed simultaneously with the repeal of the current Chapter 201.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined

proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

Newly written rules found in the proposed Chapter 201 include §§201.1 - 201.3 which outline the general rights of the Commission. Additionally, the definitions have been moved from the current Chapter 203 to proposed §201.4 and now include terms that are defined by statute. The language proposed for §201.17 was previously numbered as §203.13(b).

Substantive changes have been made to how the Commission adopts rules in §201.5 and §201.6 to include a new provision regarding how the Commission will address negotiated rulemaking and a provision to allow the Executive Director to deny a petition for rule changes if Commissioners cannot review it within 60 days.

The remaining rules are being proposed in new Chapter 201 with edits for style consistency, grammar and proper references to statute. Additionally the rules have been reordered to provide more clarity to both industry members and consumers.

There are no proposed changes to §201.15 and §201.16, concerning the Commission's Joint Memorandum of Understandings.

Janice McCoy, Executive Director, 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. McCoy 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov.

Comments must be received no later than sixty (60) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this section.

The rules reflect provisions to comply with statutory provisions under Government Code, Chapters 2001 and 2008.

§201.1. Right of Licensure.

The Commission shall establish standards for the licensure of establishments and individuals provided for in Occupations Code, Chapter 651.

§201.2. Right of Inspection.

The Commission shall inspect funeral establishments as provided for in Occupations Code, Chapter 651.

§201.3. Right of Investigation.

The Commission may investigate complaints regarding any license holder as provided for in Occupations Code, Chapter 651.

§201.4. Definitions.

The following words and terms, when used in 22 TAC Part 10, shall have the following meanings.

(1) Advertising--The act of making publicly and generally known: the act of announcing publicly especially by a printed notice, electronic medium or a broadcast.

(2) Alternative container--An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(3) At-need--The time of need of funeral services or merchandise when a human being has become deceased.

(4) Cash Advance item--Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(5) Casket--A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(6) Cemetery--A place that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

(7) Commission--The Texas Funeral Service Commission.

(8) Cremation--A heating process which incinerates human remains.

(9) Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area.

(10) Crematory--A structure containing a furnace used or intended to be used for the cremation of human remains.

(11) Direct Cremation--Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(12) Embalmer--A licensed person who for compensation, wholly or partly, disinfects or preserves a dead human body by:

(A) using chemical substances, fluids, or gases, including by introducing those substances, fluids, or gases into the body by:

(i) vascular or hypodermic injection; or

(ii) direct application into the organs or cavities; or

(B) another method intended to disinfect or preserve a dead human body or to restore body tissues and structures.

(13) Funeral ceremony--A service commemorating the deceased with the body present.

(14) Funeral director--A licensed person who engages in for compensation, or represents to the public as being engaged in for compensation, the preparation, other than by embalming, of a dead human body for burial or other disposition.

(15) Funeral directing--Acts associated with or arranging for the disposition of a dead human body, performed by a person for compensation, from the time of first call until:

(A) inurnment, interment, or entombment services are complete; or

(B) the body is permanently transported out of this state.

(16) Funeral establishment--A place of business used in the care and preparation for burial or transportation of a dead human body; or any other place in which a person engages in, or represents the person to be engaged in, the business of embalming or funeral directing.

(17) Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.

(18) Funeral provider--Any person, partnership or corporation that sells or offers to sell funeral merchandise and funeral services to the public at need.

(19) Funeral service--A service performed incident to a funeral ceremony or for the care and preparation of a dead human body for burial, cremation, or other disposition. The term includes embalming.

(20) Graveside service--A funeral ceremony with the body present held at the burial site.

(21) Holding the body hostage--Refusing for any reason to transfer or allow the transfer of a dead human body to the person responsible for making arrangements for final disposition.

(22) Immediate burial--Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(23) Memorial service--A ceremony commemorating the deceased without the body present.

(24) Morgue--A place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.

(25) Outer enclosure--An enclosure or container placed in a grave above or around the casket. The term includes a burial vault, grave box, or grave liner.

(26) Person--Any individual, partnership, corporation, association, government or governmental subdivision or agency or other entity.

(27) Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Finance Code, Chapter 154.

(28) Prospective customer--A consumer who enters a funeral establishment and inquires about a funeral service, cremation, or merchandise.

(29) Purchase agreement--A written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list.

(30) Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.

(31) Solicitation--A direct or indirect contact by a funeral director, embalmer, or employee, agent, or representative of a licensed funeral establishment or any other entity with a person near death or with a family member or the person who is responsible for making arrangements for final disposition of a person who is deceased or near death, if the contact is not initiated by the person near death or by a family member or the person responsible for making funeral arrangements and the contact is to secure the right to provide funeral services or merchandise or occurs in a situation that might influence the contacted person to choose a particular funeral establishment. The term does not include:

(A) except in the case of contact with a person near death or the person responsible for making funeral arrangements for a person near death, an attempt to secure funeral business under a permit issued under Chapter 154, Finance Code; or

(B) any method of advertising by publication or broadcasting.

(32) SOAH--The State Office of Administrative Hearings.

(33) Unit pricing--A method of pricing that offers a discount to a purchaser who buys various funeral services and merchandise as a package.

(34) Unreasonable Time--The retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

#### §201.5. Procedures for the Petition for Adoption of Rules.

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

(1) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(2) Rule--Any Commission statement of general applicability that implements interprets, or explains any statute, law or policy related to the death care industry or describes the procedure or practice requirements of the Commission. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only

the internal management or organization of the Commission not affecting private rights or procedures.

(b) Any interested person may submit a petition to the Commission requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed form by the Executive Director or his/her designee.

(c) Each petition will clearly state:

(1) the proposed rule(s), including the specific language recommended;

(2) a brief explanation of the proposed rule;

(3) the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statute or other provisions under which the rule is proposed;

(4) the rationale or justification for the adoption, amendment, or repeal of the rule, including the public benefit to be expected.

(d) If the petition cannot be placed on the next regularly scheduled Commission agenda within 60 days after receiving the petition, the Executive Director shall automatically deny the petition and notify the petitioner of the denial. A petitioner may waive the 60 day response period in writing.

(e) When a petition is received that meets the requirements of subsection (c) of this section and is not automatically denied under subsection (d) of this section, the Executive Director will forward the petition to the Presiding Officer of the Commission who will either assign the task to staff or an appropriate group of interested persons to study the petition and make a recommendation to the Commissioners.

(f) The Commissioners will consider the submission of a petition and may either deny the petition or instruct the Executive Director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act.

(g) In the event a petition is denied, the Executive Director will advise the interested person who submitted the petition in writing of the denial and will state the reason for the denial by the Commissioners.

#### §201.6. Negotiated Rulemaking.

The Commission may engage in negotiated rulemaking to assist in the drafting of proposed rules if the Executive Director determines it is advisable to proceed under the procedures established in Government Code, Chapter 2008. If the Executive Director concludes that formal negotiated rulemaking is not advisable, the Commission may nonetheless engage in informal negotiated rulemaking.

#### §201.7. Preparation and Dissemination of Consumer Information.

(a) The Commission shall prepare and disseminate to the general public information of consumer interest explaining matters relating to funerals and the funeral industry, describing the regulatory functions of the Commission, and describing the Commission's procedure by which consumer complaints are filed and resolved by the Commission.

(b) The Commission shall review and revise the information of consumer interest prepared and disseminated by the Commission on a biennial basis.

(1) Any person or groups of persons may submit in writing any proposal concerning the content and/or the methods of dissemination of information of consumer interest prepared and disseminated by the Commission. Once submitted, such proposal shall become the property of the Commission and will not be returned.

(2) The Commission shall review any proposals submitted to the Commission in writing concerning the content and/or method of dissemination of information of consumer interest.

(c) Information of consumer interest prepared and disseminated by the Commission shall be available to the general public through funeral establishments. The Funeral Director in Charge shall prominently display Commission consumer brochures in the public view within the funeral establishment.

(d) Information of consumer interest prepared and disseminated by the Commission shall also be available, upon request, to individuals and interested organizations or institutions, such as, better business bureaus, hospice groups, consumer groups, libraries, and legislators.

§201.8. Computation of Time.

In computing any period of time prescribed or allowed by 22 TAC Part 10, by Order of the Commission, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day the act occurred, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

§201.9. Subpoenas.

The Executive Director may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, documents and/or other material relevant to the complaint under investigation or pending at SOAH.

§201.10. Witness Travel Reimbursement.

The Commission may reimburse a witness in a SOAH hearing for travel expenses at the rates established by the General Appropriations Act for classified employees of the Commission. All documentation required of classified employees will also be required of witnesses.

§201.11. Correspondence and Notice.

(a) All correspondence to an establishment or to a licensee shall be sent to the mailing address of record as reflected on the initial license application or as otherwise provided by the establishment or licensee.

(b) Notice shall be deemed complete upon deposit by the Commission in a postpaid, properly addressed envelope. The correspondence must be placed in a post office or official depository under the care and custody of the United States Postal Service, FedEx, UPS or any other overnight mail delivery service.

§201.12. Charges for Providing Copies of Public Information.

The Commission determines charges for public information in accordance with the rules of the Office of the Attorney General at 1 TAC §70.3.

§201.13. Executive Director.

(a) The Commission shall employ an Executive Director to manage the administrative affairs of the Commission under the Commissioners' discretion.

(b) The Commission may delegate the Commissioners' duties to the Executive Director.

(c) In the event of the Executive Director's absence or if the Executive Director is unable to act, the Presiding Officer of the Commission may designate an Acting Executive Director to perform the Executive Director's duties.

§201.14. Introduction to Joint Memorandum of Understanding.

(a) Occupations Code, §651.159, mandates the Texas Department of Banking, the Texas Funeral Service Commission, and the Texas Department of Insurance to adopt by rule a Joint Memorandum of Understanding (JMOU) relating to prepaid funeral services and transactions that:

(1) outlines the responsibilities of each agency in regulating these services and transactions;

(2) establishes procedures to be used by each agency in referring complaints to one of the other agencies;

(3) establishes procedures to be used by each agency in investigating complaints;

(4) establishes procedures to be used by each agency in notifying the other agencies of a complaint or of the investigation of a complaint;

(5) describes actions the agencies regard as deceptive trade practices;

(6) specifies the information the agencies provide consumers and when that information is to be provided; and

(7) sets the administrative penalties each agency imposes for violation.

(b) Any revisions to the JMOU will be adopted by rule by each agency.

(c) The JMOU entered into by the three agencies is found at §201.15 of this title.

(d) Nothing in this rule or in §201.15 and §201.16 of this title shall be construed as prohibiting any agency from taking independent disciplinary action or assessing administrative penalties under their own statute or rules. The JMOU does not limit the authority of any agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

§201.15. Joint Memorandum of Understanding.

(a) Pursuant to Occupations Code §651.159, the Texas Funeral Service Commission (herein referred to as the "TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral benefits as defined in Finance Code Chapter 154. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Public Information Act, Government Code Chapter 552. Such information will be transmitted between agencies with the understanding that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits:

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment

which violates Finance Code Chapter 154, under Occupations Code §651.460(b)(3);

(B) taking action under Occupations Code §651.460(b)(3) against any licensee violating Finance Code Chapter 154; and

(C) taking action under Occupations Code §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code Chapter 154, by persons directly or indirectly connected to the crematory or funeral establishment.

(2) The Texas Department of Banking is responsible for administering Finance Code Chapter 154, and 7 Texas Administrative Code (TAC) Chapter 25, including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violate Finance Code Chapter 154 and/or 7 TAC Chapter 25; and

(B) all other actions authorized by Finance Code Chapter 154 and 7 TAC Chapter 25.

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating insurers that issue or propose to issue life insurance policies or annuity contracts which may fund prepaid funeral contracts;

(B) regulating individuals/entities that perform the acts of an insurance agent(s) as defined in the Insurance Code, Articles 21.02 and Chapter 101;

(C) regulating insurance/annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance/annuity contracts which may fund prepaid funeral contracts pursuant to the Insurance Code, Article 21.21;

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code Chapter 542.

(c) Procedures used by each agency in exchanging information with or referring complaint to one of the other agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide contact information to the reviewing agency's processing of the complaint.

(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop internal complaint procedures for violations relating to prepaid funeral benefits. The procedures should at a minimum provide for:

(i) identification of necessary data and documents to be obtained from the complainant; and

(ii) such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

(2) The Texas Funeral Service Commission.

(A) Complaints received by the TFSC will be logged in and investigated as required under Occupations Code, Chapter 651. A complaint about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, will be referred to the DOB.

(B) If disciplinary action against a licensee of the TFSC is found to be appropriate, the matter will be referred to the Administrator of Consumer Affairs & Compliance Division of TFSC.

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(3) Texas Department of Banking.

(A) Complaints received by the Special Audits Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a person who violated Finance Code Chapter 154 or 7 TAC Chapter 25 is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of Finance Code Chapter 154 or 7 TAC Chapter 25, the DOB will coordinate with those agencies DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25.

(D) In the event that the DOB issues an order against a person or entity who is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order.

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Protection Division of TDI will be logged in and investigated, except that if a complaint is solely violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, the complaint will be referred to the DOB. Other areas of TDI can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) In the event that the Commissioner of Insurance issues an order against a person that also sells, funds or provides prepaid funeral benefits or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order.

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under Business and Commerce Code §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under Insurance Code Chapter 541, other chapters of the Code and the regulations promulgated by the TDI there under.

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). DOB will continue to provide consumers with information on its website in accordance with Finance Code §154.132, including the informational brochure developed in accordance with Finance Code §154.131.

(2) DOB, TDI, and TFSC will maintain their toll free numbers.

(3) TFSC, DOB, and TDI, as state agencies, are subject to the Public Information Act, Government Code Chapter 552. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act.

(g) Administrative penalties each agency imposes for violations.

(1) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance Code Chapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code Chapter 651.

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under Finance Code Chapter 154.

(3) Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under Insurance Code Chapter 82.

§201.16. Memorandum of Understanding with the Texas Department of State Health Services.

(a) Purpose. The purpose of this section is to implement Texas Occupations Code, Chapter 651, 76th Legislature, 1999, and Health and Safety Code, Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws of the Texas Department of State Health Services (Department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) Scope.

(1) The Memorandum of Understanding (MOU) includes the respective responsibilities of the Department and the TFSC in reg-

ulating any person or entity under the Health and Safety Code, Chapters 193 and 195, concerning the completion and filing of death records.

(2) The Department and the TFSC will implement the cooperative procedure described in this memorandum to refer complaints to the other agency when that complaint falls within the other agency's jurisdiction or may have an effect on the administration and enforcement of the law for which the other agency is responsible.

(3) The Department and the TFSC will implement the cooperative procedure described in this MOU in order to notify the other agency of violations of Health and Safety Code, Chapters 193 and 195; and Texas Occupations Code, Chapter 651 by funeral directors and funeral establishments, and to assist and encourage funeral directors, embalmers, and funeral establishments to conform their activities relating to the completion and filing of death records.

(4) The MOU does not limit the authority of either agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

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

(1) Agency--Texas Department of State Health Services or the Texas Funeral Service Commission.

(2) Death record--A report of death, death certificate, or a burial-transit permit, and such other forms as the Texas Department of State Health Services determine to be necessary.

(3) Department--The Texas Department of State Health Services or any local registrar.

(4) Funeral Director--A person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than the embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

(5) Funeral establishment--A place of business used in the care and preparation for burial or transportation of dead human bodies, or any other place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be engaged in the business of embalming and/or funeral directing, or is so engaged.

(6) Local registrar--

(A) The justice of the peace is a local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(B) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(C) If a local registrar fails or refuses to register each birth and death in the district or neglects duties, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(7) Person--

(A) includes corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity; or

(B) includes individual, corporation, or association where enforcement of Health and Safety Code, Chapter 195 is involved.

(8) Physician--Any individual licensed by the Texas Medical Board to practice medicine in this state.

(d) Delegation of responsibilities. The Department and TFSC agree that the agencies shall have the following responsibilities.

(1) The Department shall have primary responsibility for the enforcement of the laws, rules, and policies governing the collection and maintenance of a system of vital statistics, including the collection and maintenance of death records for the State of Texas. Except as may be otherwise provided by law, the Department shall:

(A) design the format and prescribe the data to be entered on all forms that constitute the death records of the state;

(B) prescribe the rules and procedures to be followed by a funeral director licensed by TFSC in executing his/her responsibility to secure the required data and file the completed death record;

(C) establish rules or policies to determine when a local registrar may accept the filing of a death record by a funeral director or the funeral director's designee and the purposes for which each record may be used, including the filing and uses of a delayed death certificate; and

(D) enforce the provisions of the Health & Safety Code (Code), Chapter 193, in accordance with Chapter 195 of the Code relating to criminal penalties for violations of laws relating to vital statistics. These laws include Chapters 191, 192, and 193 of the Code and rules adopted thereunder. If the state registrar knows or suspects that a funeral director or a funeral establishment has violated the provisions of §195.003 or other provisions of Title 3 of the Code, he or she shall report the violation to the appropriate district or county attorney for prosecution.

(2) The Texas Funeral Service Commission (TFSC) shall have primary responsibility for the enforcement of the laws, rules, and policies governing the licensing of funeral directors, embalmers, funeral and commercial embalming establishments. Except as may be otherwise provided by law, the TFSC has authority:

(A) to inspect a funeral establishment for violations of Chapter 193 of the Code; and

(B) to assess an administrative penalty or to reprimand, revoke, suspend, probate, deny or impose any combination of sanctions against a licensee in accordance with Texas Occupations Code Chapter 651, if the licensee has violated Chapter 193 or 195 of the Code or 25 TAC Chapter 181 of the Department rules;

(3) Referral, investigation, and resolution of complaint.

(A) If the Department receives a complaint that alleges conduct by a funeral director or a funeral establishment that constitutes possible violations of Texas Occupations Code, Chapter 651, or the rules adopted by TFSC under authority of Texas Occupations Code, Chapter 651, the Department may refer the complaint to the TFSC for investigation and disposition; however, if the complaint describes conduct by any person or entity licensed under Texas Occupations Code, Chapter 651 that constitutes possible violations of Chapters 193 and 195 of the Code, the Department shall retain jurisdiction over the subject matter of the complaint, investigate the complaint, and if valid, shall file a complaint with TFSC; or the Department or any local vital statistics registrar may refer the complaint to TFSC for investigation and adjudication.

(B) If TFSC receives a complaint that alleges conduct by any person that constitutes possible violations of Title 3 of the Code, TFSC shall immediately notify the Department of the complaint for any appropriate action by the Department.

(C) If either agency receives a complaint that alleges facts that constitute a violation of any other law, the complaint shall be referred to the appropriate state administrative agency or state or local law enforcement agency.

(D) Each agency shall appoint at least one person to an interagency team that will meet at least biannually and at that time review each unresolved complaint that affects the agencies jointly.

(i) If the complaint has not been referred for investigation and resolution, the team will refer the complaint to the Department, TFSC, or other appropriate state administrative or law enforcement agency, including the State Board of Medical Examiners, or local law enforcement agency.

(ii) If the Department and the TFSC determine that a complaint has been incorrectly referred, they will refer the complaint appropriately.

(E) To the extent allowed by law, each agency shall cooperate and assist the other in the investigation and resolution of complaints. The following actions may be taken where indicated in the other's enforcement actions.

(i) Either agency may request the assistance of the other in the investigation of a complaint.

(ii) Each agency may share information obtained during the complaint investigation with the other agency when the subject matter of the complaint affects both agencies.

(iii) Any information obtained by the TFSC as a result of a complaint investigation is not subject to public disclosure under the Government Code, §552.101, by virtue of Texas Occupations Code, Chapter 651, §651.203, until the case has reached its final disposition.

(iv) Each agency shall make its personnel available to testify in an administrative or judicial proceeding brought on behalf of the other agency, when the personnel has knowledge of information that is material to the subject matter of the proceeding.

(e) Effective date. This section shall become effective on August 1, 1994. The MOU may be amended at any time upon mutual agreement of the agencies and the amendments are effective as to each agency 20 days after the adopted amendments are filed with the *Texas Register*.

§201.17. Severability Clause.

The provisions of each section of the rules of the Commission are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

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 3, 2014.

TRD-201404637



## CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

### 22 TAC §§203.1 - 203.14, 203.16, 203.17, 203.20 - 203.27, 203.29 - 203.33, 203.35, 203.36, 203.38 - 203.42

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

The Texas Funeral Services Commission (Commission) proposes the repeal of §§203.1 - 203.17, 203.20 - 203.27, 203.29 - 203.33, 203.35, 203.36, and 203.38 - 203.42, concerning Licensing and Enforcement--Specific Substantive Rules. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined that the reasons for initially adopting the rules continue to exist, but that extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment of an extensively rewritten, rearranged and updated proposed new Chapter 203, filed in three separate submissions for each of the proposed subchapters.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of proposed new Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203.

Section 203.1, Definitions, and §203.5, Right of Investigation, are being moved with updates to the newly proposed Chapter 201, as the rules are more general in nature. Section 203.20, Cash Advance Items, is being repealed in its entirety because it is duplicative of another rule (see proposed §203.46(f)).

The Commission's rules that mirror the Federal Trade Commission's rules (§§203.7 - 203.13) can be found in proposed new Chapter 203 at §203.33 and §§203.44 - 203.49. Section 203.7(b)(6) has been included in its own rule at §203.45. Section 203.13(c) was deleted as the Commission does not regulate the business of insurance and §203.13(b) was moved to the newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in the proposed Chapter 203 to include minor edits for clarity.

The remaining rules are being proposed to be included in the new Chapter 203 with edits for procedure, style consistency, grammar and proper references to statute. Additionally the rules have been reordered into subchapters to provide more clarity to both industry members and consumers.

Janice McCoy, Executive Director, 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. McCoy 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than sixty (60) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this section.

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

- §203.1. *Definitions.*
- §203.2. *Clarification of First Call Definition.*
- §203.3. *Funeral Director in Charge.*
- §203.4. *Licensure of Funeral Establishments and Commercial Embalming Establishments and Display of License.*
- §203.5. *Right of Investigation.*
- §203.6. *Provisional Licensees.*
- §203.7. *Price Disclosure.*
- §203.8. *Misrepresentations.*
- §203.9. *Required Purchase of Funeral Goods or Funeral Services.*
- §203.10. *Services Provided Without Prior Approval.*
- §203.11. *Retention of Documents.*
- §203.12. *Comprehension of Disclosures.*
- §203.13. *Declaration of Intent.*
- §203.14. *Display of Funeral Merchandise.*
- §203.16. *Requirements Relating to Embalming.*



- §203.17. *Clarification of Other Facilities Necessary in a Preparation Room.*
- §203.20. *Cash Advance Items.*
- §203.21. *Presentation of Consumer Brochure.*
- §203.22. *Required Documentation for Embalming.*
- §203.23. *Location of Retained Records.*
- §203.24. *Unprofessional Conduct.*
- §203.25. *Franchise Tax.*
- §203.26. *Funeral Directors and Embalmers License Requirements and Procedure.*
- §203.27. *Military Licensing.*
- §203.29. *Establishment Names and Advertising.*
- §203.30. *Continuing Education.*
- §203.31. *Inspections of Licensed or Registered Facilities.*
- §203.32. *State Agency Action as Basis for License Suspension, Revocation, or Denial.*
- §203.33. *Consequences of Criminal Conviction.*
- §203.35. *Clarification of Establishment Chapel Requirements.*
- §203.36. *Temporary Operation Authorization--Damaged Establishments.*
- §203.38. *Reinstatement of Funeral Director and/or Embalmer Licenses.*
- §203.39. *Embalmer in Charge.*
- §203.40. *Provisional License; Hardship.*
- §203.41. *In-Casket Identification.*
- §203.42. *New License Applications.*

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 3, 2014.

TRD-201404638

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 936-2469



## SUBCHAPTER A. LICENSING

### 22 TAC §§203.1 - 203.17

The Texas Funeral Service Commission (the Commission) proposes new Chapter 203, Subchapter A, Licensing, §§203.1 - 203.17, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code, Chapter 651) make it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposal of this new Chapter 203 is filed simultaneously with the proposed repeal of the current Chapter 203.

New Chapter 203 is filed in three submissions - one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of proposed new Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

Chapter 203 rules that were deleted from the proposed new chapter include only §203.36(d).

In the reordering process, it is important to note that the substance of current §201.2 is now included in proposed new Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rule can be found at §203.3, Retired/Disabled License (updated to include disabled licensees and not just retired).

Proposed new language to the Commission's rules can be found at §203.4, Reciprocal Licenses; and §203.9, Preparation Room Exemption. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules. They are wholly based on provisions found in Texas Occupations Code, Chapter 651.

Major substantive changes were made to §203.5, Provisional License, to clarify that the licensee must complete all the requirements for licensure before the end of the provisional license period and to require that an applicant take and pass the mortuary law exam prior to receiving a provisional license.

A change was made to §203.13, State Agency Action as a Basis for License Suspension, Revocation or Denial, to clarify that any licensee, not just establishments, may be subject to administrative action by the Commission for default or delinquency in an obligation to the state. A change was made to §203.15, Consequences of Criminal Conviction, to give the Executive Director authority to enter into an Agreed Order with a person placed on probation and to allow a person denied a license to appeal to SOAH.

A change was made to §203.17, Reissuance of Revoked Funeral Director and/or Embalmer License, to allow Commissioners additional options for compliance from an applicant seeking license reissuance.

The remaining rules are being proposed in new Chapter 203 with edits for style consistency, grammar and proper references to statute.

The following sections are reserved for expansion: §§203.18, 203.19 and 203.20.

Janice McCoy, Executive Director, 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. McCoy 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than sixty (60) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this section.

These changes also are made pursuant to Texas Occupations Code, Chapter 53 and 55.

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

§203.1. Funeral Directors and Embalmers License Requirements and Procedure.

(a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the supervision and direction of a licensed funeral director or embalmer.

(b) An applicant for a license must meet the eligibility requirements of Occupations Code, §651.253.

(c) The period of a license is two years beginning on the first day of the month following the licensee's birth month. The initial licensing period following completion of the provisional period may be less than two years.

(d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.

(e) Renewal Procedures and Conditions

(1) A license may be renewed prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.7 of this title.

(2) A person whose license is expired for 90 days or less, may renew the license by meeting the continuing education requirements of §203.7 of this title and paying a renewal fee that is 1-1/2 times the amount of the normal renewal fee.

(3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.7 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

(4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:

(A) retaking and passing the State Mortuary Law Examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the continuing education requirements of §203.7 of this title.

(5) Notwithstanding subsection (4) of this section, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.

§203.2. Military Licensing.

(a) Licensing for Military Spouses.

(1) This subsection applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(2) The Commission may issue a license to an applicant described in paragraph (1) of this subsection who:

(A) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license in the State of Texas; or

(B) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(3) The Commission may allow an applicant described under paragraph (2) of this subsection to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. For purposes of this subsection, the standard method of demonstrating competency is the specific examinations, education, and/or experience required to obtain a particular license.

(4) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the department:

(A) education;

- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the Executive Director.

(5) The Executive Director may issue a license by endorsement to an applicant described under paragraph (2) of this subsection.

(6) The applicant described under paragraph (2) of this subsection shall submit an application and proof of the requirements under this subsection and for that particular license on a form and in a manner prescribed by the agency.

(7) The applicant described under paragraph (2) of this subsection shall submit the applicable fee(s) required for that particular license.

(8) The Commission shall expedite the processing of an application submitted by an applicant described under paragraph (2) of this subsection.

**(b) Licensing for Military Applicants**

(1) This subsection applies to an applicant who is an honorably discharged veteran of the armed forces of the United States and does not have an unacceptable criminal history as defined by §203.17 of this title.

(2) The Commission shall credit verified military service or training of the applicant described under paragraph (1) of this subsection toward the requirements outlined under §203.5(f) of this title.

(3) The Commission may not waive examination requirements.

(4) A Joint Services Transcript, or comparable document issued by the United States military, is required to verify military training or education.

(5) The applicant described under paragraph (1) of this subsection shall submit an application and proof of the requirements under this paragraph (4) of this subsection in a manner prescribed by the Commission.

(6) The applicant described under paragraph (1) of this subsection shall submit the applicable fee(s) required for that particular license.

**§203.3. Retired/Disabled License.**

(a) At the time of license renewal and upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active or Retired, Inactive status.

(b) At the time of license renewal and upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.

(c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs, for compensation, any act of funeral directing and/or embalming.

(d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon written notification to the Commission, payment of 50% of the current renewal fee charged licensees not in a retired status, and showing compliance with continuing education requirements.

**§203.4. Reciprocal License.**

(a) A person who holds a funeral director's license or an embalmer's license issued by another state, country or territory may reciprocate that license with the Commission.

(b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:

(1) a statement that the applicant is the person who holds the license, that the applicant's license is current and in good standing, and that no criminal prosecution is pending against the applicant;

(2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and that the qualifications provided by the applicant are correct;

(3) a copy of a certified transcript showing that the applicant graduated from an accredited college of mortuary science; and

(4) any other requirements necessary for licensure under Occupations Code, §651.253.

(c) An applicant under this section must show that the applicant has practiced for at least:

(1) one year in a state that has license requirements similar to those of the Commission; or

(2) five years in a state that does not have license requirements similar to those of the Commission.

(d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.

(e) The Commission shall conduct a criminal background check on each applicant. An applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony.

(f) The Executive Director shall waive licensure requirements under Occupations Code, §651.253, if the applicant meets the licensure term under (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code, §651.253, if the applicant meets the licensure term under (c)(2) of this section.

(g) The applicant shall pay a license fee in an amount set by the Commission.

**§203.5. Provisional License.**

(a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code, §651.253. The Commission shall conduct a criminal background check on each applicant.

(b) Participants in the provisional licensure program may serve as provisional licensees only in funeral establishments or commercial embalming establishments licensed by the Commission, and all work must be directly related to funeral directing and/or embalming and must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.

(c) The provisional funeral director program may not be served in a commercial embalming establishment.

(d) Provisional licensees must be employed by a funeral establishment or commercial embalming establishment, under actual working conditions directly related to funeral directing and/or embalming, and under the direct supervision of a licensed funeral director and/or embalmer throughout the provisional license period.

(e) The provisional licensure period is a minimum of 12 consecutive months and a maximum of 24 consecutive months, beginning on the issue date of the provisional license. The provisional licensure programs for funeral director and embalmer may be served simultaneously.

(f) Provisional licenses expire on the last day of the month 12 months from their issue date. No fees shall be refunded to provisional licensees who fail to complete the program.

(g) 60 cases are required for each provisional licensure program, at least 10 of which must be complete cases. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body. A complete embalming requires the provisional embalmer to handle all major actions included in §203.31 of this title performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the Commission that the cases were performed while the student held a current provisional license at the time the cases were performed.

(h) Provisional licensees shall retain copies of all case report forms with supporting documentation for all cases claimed for two years from the completion date of the provisional program.

(i) The provisional licensee must file with the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, a report outlining the number of cases performed and the name of the funeral director or embalmer under whom the cases were supervised. If a provisional licensee adds/moves to a new funeral establishment or commercial embalming facility, a separate case report form must be started. If a Funeral Director in Charge or the Embalmer in Charge changes, a separate case report form must be started. All signed case report forms accumulated during the provisional period may be used to verify the total number of cases performed.

(j) It is the responsibility of the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, and the provisional licensee to schedule case work sufficient to fulfill the requirements of the provisional program.

(k) Each case on a case report form shall be certified by the licensee under whom the provisional licensee performed the work. Both the supervising licensee and the provisional licensee are subject to disciplinary action if the information submitted to the Commission is not true and accurate.

#### (l) Examination Requirements

(1) Applicants for licensure as a funeral director from the certificate program must sit for the Texas State Board Examination as described in the Occupations Code, §651.255.

(2) Applicants for licensure who hold Associate of Applied Science degrees are required to sit, as applicable, for either or both of the examinations as described in the Occupations Code, §§651.255 - 651.256.

(3) All applicants for licensure shall pass the State Mortuary Law Examination administered by the Commission prior to receiving a provisional license. If full licensure has not been met within

24 months from the date the applicant initially took the State Mortuary Law Examination the applicant must retake the examination before full licensure can be accomplished even if the applicant passed the examination.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection. Passing scores are not determined by averaging scores on two or more examinations.

(m) A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to entering the provisional program.

(n) Upon the completion of the provisional license program the Funeral Director in Charge or Embalmer in Charge where the provisional licensee is primarily employed shall notify the Commission in writing by submitting the number of cases performed by the licensee. The Commission shall verify the information received by the Commission to ensure each provisional licensee has met all requirements. All information submitted is subject to inspection.

(o) A person must meet all the requirements for regular licensure before the end of the provisional license period. Completing any of the licensing requirements, including graduation or examination, after a provisional license has been canceled or is expired does not count as meeting the licensing requirements.

(p) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional licensee a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge which attests to the proficiency of the provisional licensee. In addition the Commission shall issue a written letter to the licensee outlining the fees required for regular licensure.

(q) While, pursuant to Occupations Code, §651.253, a person is not eligible for a funeral director's or embalmer's license from the Commission unless the person has graduated from an accredited school or college of mortuary science, the Commission may, pursuant to Occupations Code, §651.302, issue a provisional license to practice funeral directing or embalming to a person who is enrolled in a school or college of mortuary science.

(r) If a school or college of mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code, §651.253, if the student graduates within 12 months of the loss of accreditation.

#### §203.6. Provisional License; Hardship and Reinstatement.

(a) A person whose provisional license is cancelled for failure to complete the requirements of §203.5 of this title within the 24 month limit may petition the Executive Director for reinstatement in the provisional program by demonstrating that the failure to comply with §203.5 of this title was because of a personal situation that made such compliance unreasonable under the circumstances. The petition must be received no later than 60 days after the license was cancelled.

(b) If the Executive Director determines that the person has made a compelling case for reinstatement in the provisional program, the Executive Director may reinstate the person in the provisional program under terms and conditions that he or she may prescribe.

(c) If the Executive Director determines that the person has not made a compelling hardship case for reinstatement in the provisional program, the Executive Director's decision may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting.

(d) A person whose provisional license is cancelled for failure to timely renew the license may apply for reinstatement within 18 months after the date of cancellation. The Commission may reinstate the license if all other Commission requirements are satisfied and the applicant pays a renewal fee that is two times the amount of the normal renewal fee.

§203.7. Continuing Education.

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

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

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

(2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers.

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.

(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(d) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program, including the course or program number;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative; and

(G) the signature of each attendee.

(2) The provider shall maintain the attendance records for a minimum of two years on each course provided.

(3) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed on-site or at the time the program concludes. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request. Providers shall keep evaluations for two years after the course is presented.

(4) The provider shall provide a syllabus of each course offered, which may include a copy of any video offered for home study.

(5) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(6) Commission staff may monitor any continuing education with or without prior notice.

(e) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every two year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) The following are mandatory continuing education hours and subjects for each renewal period:

(A) Ethics--two credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(B) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code, Chapter 651, and the Rules of the Commission.

(C) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code, Chapters 193, 711 - 715, and 25 TAC Chapter 181.

(f) Credit hour eligibility. The Commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour is given for each hour of participation, except in accredited college courses taken for school credit. Such college courses will be evaluated by the Commission on an individual basis for a certification fee set by the Commission. College hour credit does not count toward the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) A person is eligible for a maximum of five credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(3) A presenter or instructor of approved continuing education is eligible for a maximum of five credit hours per renewal period for instruction, regardless of the number of times the course is presented.

(4) All required hours may be obtained through independent study, including home study or Internet presentation with a maximum of three hours credit per course.

(5) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and out and is present during this period of time.

(6) With written permission from the Commission, a licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements, except for the mandatory continuing education outlined in subsection (e)(2) of this section.

(7) It is the responsibility of the licensee to track the number of hours accumulated during a licensing period.

(g) Exemptions, waivers, reactivation, and conversion.

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) Individuals licensed in Texas, but not practicing in the state, are required to obtain the mandatory continuing education outlined in subsection (e)(2) of this section. Any individual who returns to practice in this state shall, before the next license renewal period, meet the continuing education requirements before resuming any funeral directing and/or embalming activities in the state.

(3) Persons in Retired, Inactive or Disabled, Inactive status are exempt from continuing education requirements.

(4) Persons in Retired, Active or Disabled, Active status are required to obtain 10 hours of continuing education, including the mandatory continuing education outlined in subsection (e)(2) of this section.

(5) Persons converting from an inactive status to a Retired, Active or Disabled, Active status shall obtain the continuing education hours required in paragraph (4) of this subsection.

(6) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(7) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(h) Failure to comply.

(1) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education, except as provided by paragraph (2) of this subsection.

(2) A noncompliance fee must be paid before a license is eligible for renewal if the individual has not obtained the required 16 hours of continuing education.

(A) The noncompliance fee may only be used in lieu of obtaining the required continuing education for every other biennial renewal period.

(B) The noncompliance penalty fee and allowance for every other renewal period does not eliminate the necessity of obtaining the mandatory continuing education outlined in subsection (e)(2) of this section.

(i) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

§203.8. Licensure of Funeral Establishments and Commercial Embalming Establishments.

(a) New License Applications.

(1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and embalming case report forms to be used, if applicable, which reflect the establishment's name.

(2) The passage of an inspection is mandatory for a new establishment seeking its initial licensure and for previously licensed establishments that have changed physical location.

(3) The license shall be issued to the establishment's owner.

(4) A change of ownership, name, or physical address requires the submission of a new establishment license application. The application must be filed with the Commission within 30 days following the occurrence of the event requiring the license application.

(5) A new license will not be issued unless all fees have been paid. Prior to a new license being issued for a name or address change under subsection (4) of this section, any outstanding penalties of the previous establishment, if any, must be paid or the Commission must be in possession of evidence that the applicant is current on a payment plan or that the penalties are the subject of an administrative hearing or judicial review.

(6) A license expires on the last day of the month 12 months from the date of issue.

(b) Renewal Applications.

(1) The renewal period of a license is 12 months.

(2) A late renewal fee will be assessed for an application for renewal which has been postmarked after its renewal date.

(3) Establishments may be inspected upon the submission of a renewal application.

(4) A renewal license will not be issued unless all fees and outstanding penalties, if any, have been paid or the Commission's records reflect that the applicant is current on a payment plan or that penalties previously assessed are the subject of an administrative hearing or judicial review.

(5) The Commission may investigate any circumstances involved with the renewal of any license as provided for in Occupations Code, Chapter 651.

(c) The Commission may refuse to issue a new license or to renew an outstanding license or may revoke an establishment's license if it determines that the license application contains materially false information or that a person whose individual license to practice funeral directing or embalming is currently suspended or revoked owns the establishment or an interest in the establishment.

§203.9. Preparation Room Exemption.

(a) The Executive Director may exempt a funeral establishment from the requirement of having a preparation room for embalming

services only if the establishment is within 50 miles of another funeral establishment that contains a preparation room and has the same ownership.

(b) The funeral establishment seeking the exemption must attest that no embalming services will be performed at the exempt establishment.

(c) An applicant for an exemption may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

§203.10. Establishment Names and Advertising.

(a) Each establishment's application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new or changed establishment license, the Commission shall review establishment names in the its database. The Commission shall issue the license in the requested name when all licensing requirements are satisfied, unless the Commission determines that the name is deceptively or substantially similar to the name of another licensed establishment in the same county, metropolitan area, municipality, or service area. In these instances, the Executive Director shall deny a license for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) An establishment's licensed name may be changed by following the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

(e) All advertising on a website controlled by an entity licensed by the Commission must operate as follows:

(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity must appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.

(3) All locations advertised shall be licensed by the Commission.

(f) No establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive.

(g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided on the website or advertising.

§203.11. Temporary Operation Authorization--Damaged Establishments.

(a) The Commission may grant a temporary operation authorization to a licensed funeral establishment, commercial embalming facility, or crematory establishment to operate at a temporary location if the establishment is damaged by fire, flood, or other natural disaster.

(b) The temporary location must meet all the requirements for establishments under Occupations Code, Chapter 651, and the Rules of the Commission.

(c) The application for a temporary operation authorization shall be in writing, shall detail the circumstances which prevent the conduct of business at the licensed location, and shall provide an estimated date by which the licensed location will be made ready for operation.

§203.12. Franchise Tax.

(a) Any taxable entity, as defined under Tax Code, §171.0002, contracting with the Commission and/or any taxable entity that is an applicant for a license or permit issued by the agency must certify in writing, on a form provided by the agency, that its right to transact business in Texas is active, that it is exempt from payment of the franchise tax or that it is an out-of-state entity that is not subject to the franchise tax.

(b) The making of a false statement as to franchise tax status on any license or permit application shall be grounds for disciplinary action.

(c) The making of a false statement as to franchise tax status with regards to a state contract shall be grounds for cancellation of the contract at the option of the agency by treating the statement as a material breach of contract.

§203.13. State Agency Action as a Basis for License Suspension, Revocation or Denial.

(a) Any licensed establishment, funeral director or embalmer shall be subject to license revocation or denial of license renewal upon a verified showing by any state agency with statutory authority that such licensee is delinquent or in default of an obligation to, a guarantee by, or an interest protected by the state.

(b) Any licensee subject to action under this section by the Commission shall be afforded an opportunity for a hearing before SOAH in the same manner as other licensees subject to Commission action unless such hearing has been provided under other applicable laws.

§203.14. Required Notification of Criminal Conviction.

(a) An applicant for licensure shall disclose in writing to the Commission any conviction related to the occupations of funeral directing or embalming against him or her at the time of application.

(b) A current licensee shall disclose in writing to the Commission any conviction related to the occupations of funeral directing or embalming at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

(c) Upon notification of a conviction, the Commission shall request that the person respond by filing information demonstrating why the Commission should not deny the application or take disciplinary action against the person, if already licensed. The response must be filed within 21 days of the date of receipt of notice from the Commission. An applicant for licensure is responsible for filing documentation that will allow the Commission to conduct an analysis under §203.17 of this title.

§203.15. Consequences of Criminal Conviction.

(a) The Commission may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651).

(b) The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the

Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(c) If the Commissioners revoke a license or deny a person from getting a license, the licensee or applicant may appeal that decision to SOAH.

(d) The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection are not subject to appeal at SOAH.

(e) A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.

(f) The Commission shall consider the following factors in determining whether a criminal conviction directly relates to an occupation required to be licensed by Chapter 651:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(g) If a person has been convicted of a crime, the Commission shall consider the following in determining a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person; and

(7) evidence that the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(h) The following are related to the occupations of funeral directing or embalming:

(1) Class B misdemeanors classified by Occupations Code, §651.602:

(A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;

(B) making a first call in a manner that violates Occupations Code, §651.401;

(C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or

(D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(2) The commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead.

(3) The following crimes because the commission of each reflects a lack of respect for human life and dignity or a lack of fitness to practice the occupations:

(A) a misdemeanor or felony offense involving:

(i) murder;

(ii) assault;

(iii) burglary;

(iv) robbery;

(v) theft;

(vi) sexual assault;

(vii) injury to a child;

(viii) injury to an elderly person;

(ix) child abuse or neglect;

(x) tampering with a governmental record;

(xi) forgery;

(xii) perjury;

(xiii) bribery;

(xiv) harassment;

(xv) insurance claim fraud; or

(xvi) mail fraud;

(B) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(C) violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure or registration.

§203.16. Criminal History Evaluation Letter.

(a) Prior to submitting an application for licensure, a person may request the Commission issue a criminal history evaluation letter



regarding the person's eligibility for a license if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license.

(b) A person may request a criminal history evaluation letter if he or she has reason to believe the Commission may determine that he or she is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense outlined in §203.17 of this title. The request must state the basis for the potential ineligibility.

(c) The Commissioners must consider the application for a criminal history evaluation letter at the next regularly scheduled Commission meeting if all requested information is received in a timely manner.

(d) If the Commissioners determine that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination of eligibility. The motion for eligibility is subject to the criminal behavior known to the Commission as of the date of the determination. Any future criminal behavior could impact the issuance of a license.

(e) If the Commissioners determine that a ground for ineligibility does exist, the Commission shall notify the requestor in writing of the Commission's determination of ineligibility.

(f) The Commission may charge a person requesting an evaluation under this section a fee. Fees must be in an amount sufficient to cover the cost of administering this section.

(g) The Commissioners may issue a probated license to an applicant who is not ineligible under subsection (d) of this section, but has been convicted of an offense by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(h) The Commission shall revoke, without hearing, a probated license if the license holder commits a new offense; commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or violates Occupations Code, Chapter 651, or the Rules of the Commission.

(i) A person who is on community supervision, mandatory supervision, or parole and who is issued a probated license under this section shall provide to the Commission the name and contact information of the probation or parole department to which the person reports.

(j) The Commission shall notify the probation or parole department that a provisional license has been issued.

(k) Once the terms of the probated license have been satisfied, the person shall be licensed as any other licensee who had not been on probation.

§203.17. Reissuance of Revoked Funeral Director and/or Embalmer License.

(a) A person whose license to practice funeral directing and/or embalming has been revoked may, after five years from the effective date of such revocation, petition the Commission for reissuance of the license, unless another time is provided in the revocation order.

(b) The petition shall be in writing.

(c) The Commissioners may grant or deny the petition. If the petition is denied by the Commissioners, a subsequent petition may not be considered by the Commissioners until 12 months have lapsed from the date of denial of the previous petition.

(d) The petitioner or his legal representative shall appear before the Commissioners to present the request for reissuance of the license.

(e) The petitioner shall have the burden of showing good cause why the license should be reissued.

(f) In considering a petition for reissuance, the Commissioners may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to his family;

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;

(5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;

(6) offers of employment as a funeral director and/or embalmer;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Commission Order revoking or canceling the petitioner's license;

(9) compliance with provisions of Occupations Code, Chapter 651, regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; or

(11) any physical, chemical, emotional, or mental impairment.

(g) In considering a petition for reissuance, the Commissioners may also consider:

(1) the nature and seriousness of the crime for which the petitioner's license was cancelled or revoked;

(2) the length of time since the petitioner's license was cancelled or revoked as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; or

(4) other rehabilitative actions taken by the petitioner.

(h) If the Commissioners grant the petition for reissuance, the petitioner must:

(1) take and pass the State Mortuary Law Examination;

(2) pass the applicable examinations as described in Occupations Code, §§651.255 - 651.256;

(3) pay a fee that is equal to two times the normally required renewal fee; and

(4) satisfy continuing education requirements of §203.07 of this title. The Commissioners may require the petitioner to complete additional training to assure the petitioner's competency to practice funeral directing and/or embalming.

(i) The Commissioners may probate the reissued license for a period of not less than two years by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

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

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

TRD-201404635

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 936-2469



## SUBCHAPTER B. DUTIES OF FUNERAL ESTABLISHMENT/LICENSEE

### 22 TAC §§203.21 - 203.35

The Texas Funeral Service Commission (the Commission) proposes new Chapter 203, Subchapter B, Duties of Funeral Establishment/Licensee, §§203.21 - 203.35, simultaneously with the repeal of current Chapter 203. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed new Chapter 203 is filed simultaneously with the proposed repeal of the current Chapter 203. New Chapter 203 is filed in three submissions - one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of proposed new Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in

reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

Chapter 203 rules that were deleted from the proposed new chapter include only §203.36(d).

Proposed new language to the Commission's rules can be found at §203.21(d), First Call Definition; §203.27, Identification of Person Making Arrangement; §203.29(c), In-Casket Identification; and §203.30(a), Interment or Entombment. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules. They are wholly based on provisions found in Texas Occupations Code, Chapter 651.

A change was made to §203.24 to clarify that all displayed licenses must be originals issued by the Commission.

One of the Commission's rules that mirror the Federal Trade Commission's rules can be found in proposed Chapter 203 at §203.34 with the remainder found in the proposed Subchapter C filed concurrently with this submission.

The remaining rules are being proposed in new Chapter 203 with edits for style consistency, grammar and proper references to statute.

The following sections are being reserved for expansion: §§203.36, 203.37, 203.38, and 203.39.

Janice McCoy, Executive Director, 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. McCoy 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than sixty (60) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this section.

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

§203.21. First Call Definition.

(a) First Call is the beginning of the relationship between the consumer and the licensed funeral director acting on behalf of a licensed funeral establishment to prepare the body for burial or other disposition. The relationship is initiated by a family member or the person responsible for making arrangements for final disposition.

(b) Transportation of a body sent to a morgue, or a funeral establishment for identification or autopsy at the request of a Justice of the Peace, Medical Examiner, or other official under Code of Criminal Procedure, Chapter 49, does not constitute a First Call. Any expenses or items used specifically for the transportation of a body under this subsection are not items of choice for the consumer, including storage, and are therefore not the responsibility of the consumer to pay.

(c) Commercial embalming establishment licensees are prohibited from authorizing first calls or dealing directly with the public for services or merchandise. Any removal of a deceased human body by a commercial embalming establishment must be initiated by a licensed funeral establishment prior to the removal. The commercial embalming facility must notate the name of the funeral establishment authorizing the removal on the release form.

(d) Transportation of a body does not constitute a first call if the removal is done at the request of a health care facility or employee. However, if a family member or the person responsible for making arrangements for final disposition is present the provisions of Occupations Code, §651.401, prevail.

§203.22. Funeral Director in Charge.

(a) Each licensed funeral establishment must at all times have a designated Funeral Director in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the funeral establishment. A funeral establishment must designate a Funeral Director in Charge at the time it receives its establishment license, and any time the Funeral Director in Charge changes, the funeral establishment must notify the Commission, on a form prescribed by the Commission, within 15 days.

(b) The Funeral Director in Charge must be generally available in the routine functions of the funeral establishment in order to personally carry out his or her responsibilities.

(c) The Funeral Director in Charge may be served with administrative process when violations are alleged to have been committed in a funeral establishment.

(d) An individual may not be designated as the Funeral Director and/or an Embalmer in Charge of more than one establishment unless the additional establishments are under the same ownership and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated Funeral Director in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting. The Executive Director shall advise interested parties of the action taken by the Commission in writing.

(f) If the establishment employs a provisional licensee it is the responsibility of the Funeral Director in Charge and the provisional licensee to schedule case work sufficient for the provisional program. It is also the responsibility of the Funeral Director in Charge to ensure that each provisional licensee is properly supervised while performing cases.

(g) The Funeral Director in Charge shall retain the originals of all provisional license case reports with supporting documentation for two years from the completion date of the provisional program.

(h) The Funeral Director in Charge of the facility where the provisional licensee is primarily employed shall notify the Commission in writing upon the completion of the provisional license program by submitting the number of cases performed by the provisional licensee.

(i) If a provisional licensee leaves the employment of a Funeral Director in Charge, the Funeral Director in Charge must file an affidavit as described in Occupations Code, §651.304(d), within 15 days of employment termination.

§203.23. Embalmer in Charge.

(a) Each licensed commercial embalming establishment must at all times have a designated Embalmer in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the commercial embalming establishment. A commercial embalming establishment must designate an Embalmer in Charge at the time it receives its establishment license, and any time the Embalmer in Charge changes, the commercial embalming establishment must notify the commission, on a form prescribed by the Commission, within 15 days.

(b) The Embalmer in Charge must be generally available in the routine functions of the commercial embalming establishment in order to personally carry out his or her responsibilities.

(c) The Embalmer in Charge may be served with administrative process when violations are alleged to have been committed in a commercial embalming establishment.

(d) An individual may not be designated as the Embalmer and/or the Funeral Director in Charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated Embalmer in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting. The Executive Director shall advise interested parties of the action taken by the Commission in writing.

(f) If the commercial embalming establishment employs a provisional licensee it is the responsibility of the embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is also the responsibility of the embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases.

(g) The Embalmer in Charge shall retain the originals of all provisional licensee case reports with supporting documentation for two years from the completion date of the provisional program.

(h) The Embalmer in Charge of the facility where the provisional licensee is primarily employed shall notify the Commission in writing upon the completion of the provisional license program by submitting the number of cases performed by the provisional licensee.

(i) If a provisional licensee leaves the employment of an Embalmer in Charge, the Embalmer in Charge must file an affidavit as described in Occupations Code, §651.304(d), within 15 days of employment termination.

§203.24. Display of License.

(a) The funeral establishment license shall be conspicuously displayed in an area of the establishment open and accessible to the general public.

(b) If a license holder is in contact with the public during the course of his or her job, the funeral establishment shall conspicuously display the holder's license in each place of business at which the license holder practices.

(c) If a license holder is not in contact with the public during the course of his or her job, the funeral establishment shall make the license available for inspection in each place of business at which the license holder practices.

(d) A license is conspicuously displayed when it is placed in an area of the funeral establishment generally accessed by a consumer making funeral arrangements.

(e) The displayed license must be issued by the Commission.

§203.25. Display of Funeral Merchandise.

The Commission will approve only those display rooms in licensed funeral establishments which meet the requirements of Occupations Code, Chapter 651, which are designed and utilized to allow the public to make a private inspection and selection of merchandise. Regardless of the type or method of overall merchandise selection used by the licensed funeral establishment, there must be a display of at least two full-size adult caskets one of which must be the lowest priced casket offered for sale by the establishment. The funeral establishment also must display at least three adult caskets that are not required to be full-size:

- (1) in a partial panel display; or
- (2) by video or brochure, online, or in any other manner.

§203.26. Presentation of Consumer Brochure.

(a) Consumer brochures as promulgated under §201.7 of this title shall be prominently displayed in the public view, offered free of charge for keeping to any person, and presented at the beginning of the arrangement conference for the disposition of a dead body.

(b) Consumer brochures are designed and printed by the Commission and may be copied only when the Commission is unable to furnish the funeral establishment with an ordered supply.

(c) The Commission determines the minimum order size and the fees for the brochures.

§203.27. Identification of Person Responsible for Making Arrangements.

Prior to discussing funeral arrangements, a funeral director should attempt to identify the person responsible for making arrangements for final disposition in writing. The disclosure should list the name of the person and his or her relationship to the deceased as outlined by Health and Safety Code, §711.002(a).

§203.28. Establishment Chapel Requirements.

All funeral establishments must have a chapel in which funeral services may be conducted. All chapels shall provide, at a minimum:

- (1) seating for 10;
- (2) public access;
- (3) space for the casket; and
- (4) a lectern or a podium.

§203.29. In-Casket Identification.

(a) The inside of each casket must contain a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death.

(b) Funeral establishments are exempt from subsection (a) of this section if the deceased, family of the deceased, religious norms or cultural norms oppose such inclusion. A funeral establishment must keep a record of each instance of use of this exemption and on what grounds the exemption was applied.

(c) If a casket is not used for interment, the identification may be placed on the body with written permission from the family.

§203.30. Interment or Entombment.

(a) A funeral director contracted to perform funeral directing services shall be present for the public portion of graveside services unless the graveside services take place outside Texas.

(b) Once the public portion of the graveside service is concluded or if no graveside service is performed, either a funeral director or an agent of the funeral establishment contracted to perform funeral directing services must be present when the casket containing a human body is placed in a grave, crypt or burial vault unless the interment or entombment takes place outside Texas.

§203.31. Facilities Necessary in a Preparation Room.

The Commission will approve only those preparation rooms which meet the requirements of Occupations Code, Chapter 651, and the following minimum standards:

(1) must be of sufficient size and dimensions to accommodate an operating table, a sink with water connections, and an instrument table, cabinet, or shelves:

(A) the operating table must have a rust proof metal or porcelain top, with edges raised at least 3/4 inch around the entire table and a drain opening at the lower end;

(B) the sink must have hot and cold running water and drain freely;

(C) the faucet must be equipped with an aspirator;

(2) must contain an injection/embalming machine and sufficient supplies and equipment for normal operations;

(3) must be clean, sanitary, and not used for other purposes;

(4) must not have defective construction which permits the entrance of rodents;

(5) must not have evidence of infestation of insects or rodents;

(6) must be private and have no general passageway through it;

(7) must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour;

(8) must not have unenclosed or public restroom facilities located within the room;

(9) must have walls which run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint;

(10) must have floors of concrete with a glazed surface, or tiled in order to provide the greatest sanitary condition possible, if tile is used, any grout or joint sealant must be unbroken and intact;

(11) must have doors, windows, and walls constructed to prevent odors from entering any other part of the building; and

(12) must have all windows and openings to the outside screened.

§203.32. Requirements Relating to Embalming.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the Commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a Medical Examiner, Coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from a family member or the person responsible for making arrangements for final disposition; and, in the event of a disaster of major proportions and with the prior approval of the Executive Director, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state.

(2) Embalmers are required to utilize all personal protective equipment required by either OSHA or its corresponding state agency during the embalming procedure.

(3) Clothing and/or personal effects of the decedent shall either be thoroughly disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent.

(6) Body orifices (nostrils, mouth, anus, vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance

that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows:  $C \times V = C' \times V'$ , where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

§203.33. Required Documentation for Embalming.

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code, §651.457, to obtain permission to embalm.

(c) Custody of Body.

(1) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

(2) Health and Safety Code, Chapter 694, authorizes county officials to dispose of unclaimed bodies, and Health and Safety Code, Chapter 691, authorizes the Anatomical Board to receive unclaimed bodies.

(d) Authorization to Embalm Form.

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code, §651.407, must be in the possession of the funeral establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code, §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

§203.34. Retention of Documents.

To prevent the unfair or deceptive acts or practices specified in §203.44 of this title and §203.46 of this title, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §203.44(b)(2) - (5) of this title, as applicable, for at least two years after the date of their last distribution to customers, and a copy of each Purchase Agreement, as required by §203.45 of this title, for at least two years from the date of the arrangements conference.

§203.35. Location of Retained Records.

(a) All records required for retention by Occupations Code, Chapter 651, and Rules of the Commission, will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to a family member or the person responsible for making arrangements for final disposition during regular business hours. Copies must be provided upon request to the Commission during the course of an investigation or inspection.

(b) Any licensed establishment may submit a petition to the Commission requesting an exemption to the portion of subsection (a) of this section which requires that retained records be kept within the physical confines of the licensed funeral establishment where the funeral arrangements were made.

(c) Each petition will clearly state:

(1) a brief explanation of the problem(s) created by maintaining the records at that location;

(2) the rationale or justification for the granting of the exemption;

(3) the specific remedy requested, including the alternative location selected;

(4) assurances that the Commission will be able to easily access all records by name of the establishment, name of individual, or by date of service.

(d) The Executive Director will grant, deny, or modify the requested relief.

(e) The Executive Director will advise the licensed establishment in writing of the action taken.

(f) Each petition will be considered separately and upon its own merit. When considering the petition, the Executive Director will take into account the proposed geographical location of the records and the licensee's demonstrated ability to substantially comply with the mortuary laws and the rules and regulations of the Commission as demonstrated in prior inspection reports and other documents submitted to the Commission.

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

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

TRD-201404634

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 936-5064



SUBCHAPTER C. ENFORCEMENT

## 22 TAC §§203.40 - 203.51

The Texas Funeral Service Commission (the Commission) proposes new Chapter 203, Subchapter C, Enforcement, §§203.40 - 203.51, simultaneously with the repeal of current Chapter 203. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed new Chapter 203 is filed simultaneously with the proposed repeal of current Chapter 203. The new Chapter 203 is filed in three submissions - one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of proposed Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose new Chapter 203, filed in three submissions.

Chapter 203 rules that were deleted from the proposed new chapter include only §203.36(d).

In the reordering process, it is important to note that the substance of current §§201.3, 201.11, and 201.12 are now included in proposed Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rules can be found at §203.40, Complaints (updated as noted below); §203.41, Administrative Penalties and Sanctions (updated as noted below); and §203.42, Procedures and Criteria for Inspections of Licensed Establishments (updated to include language from the current §203.31).

Proposed new language added to the Commission's rules can be found at §203.43(b)(14), Unprofessional Conduct; §203.50, Violation to Engage in Unfair or Deceptive Acts or Practices; and §203.51, Defense to Violation. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules. They are wholly based on provisions found in Texas Occupations Code, Chapter 651.

Major substantive changes to the complaints process and to administrative penalties are found at §203.40 and §203.41. These changes include a two-year time limit on when complaints can be filed and a change in when Commissioners review complaint cases and determine final action on a case. Additionally, the rules provide that Commissioners will adopt by Commission Order a penalty matrix which outlines exact penalties for violations of statute and rules.

The Commission's rules that mirror the Federal Trade Commission's rules can be found in proposed Chapter 203 at §203.33 and §§203.44 - 203.49. Section 203.7(b)(6) has been included in its own rule at §203.45. Section 203.13(c) was deleted as the Commission does not regulate the business of insurance and §203.13(b) was moved to newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in the proposed Chapter 203 to include minor edits for clarity.

The remaining rules are being proposed in new Chapter 203 with edits for style consistency, grammar and proper references to statute.

Janice McCoy, Executive Director, 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. McCoy 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. McCoy 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 funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than sixty (60) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this section.

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

*§203.40. Complaints and Investigations.*

(a) Any person may file a written complaint with the Commission concerning alleged violations of any statute over which the Commission has regulatory authority as well as the Rules of the Commission. A written complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Commission unless the complainant can show good cause to the Executive Director for the late filing.

(b) The Commission's complaint form provides space for the following information:

(1) the name and business address of the licensee or establishment complained of;

(2) the time and place where the act(s) occurred;

(3) the nature of the act(s) set out in sufficient detail to enable the Commission to investigate the complaint and the licensee or establishment complained of to identify the incident and prepare a response; and

(4) the names, addresses, and telephone numbers of any persons who witnessed the acts.

(c) The complaint form asks the complainant to provide any pertinent contracts, photographs, letters, advertisements or other documents that show evidence of the alleged violation.

(d) All complaints must be in writing, other than complaints alleging conduct which, if true, would constitute an imminent or continuing threat to the public health, safety, or welfare. These latter complaints must be reduced to writing by the Complainant before the conclusion of the investigative process.

(e) When the Commission receives a complaint, the complaint is given a complaint number and assigned to an Investigator for review. The Investigator performs an initial analysis to determine if the Commission has jurisdiction over the alleged violation and whether a violation of a statute or rule may have occurred.

(f) If the Investigator, in consultation with the Staff Attorney, determines that the Commission does not have jurisdiction of the matter or that the complaint does not reflect a violation, the case is administratively closed.

(g) If the Investigator, in consultation with the Staff Attorney, determines that the Commission has jurisdiction of the matter and that the complaint reflects a violation, the Investigator will send a copy of the complaint to the Respondent(s) along with a letter which outlines the alleged violation(s) and requests a written narrative response and relevant documents. The Respondent(s) has 15 days to respond.

(h) In the course of this review or upon request of the Staff Attorney, the Investigator may request additional information from the Complainant, the Respondent(s), or any witnesses.

(i) The Investigator will prepare an Investigative Report (Report) for the Staff Attorney's review. The Report must contain the Investigator's findings and any applicable administrative penalties or license sanctions based upon the Administrative Penalties and Sanctions Schedule under §203.41 of this title.

(j) Upon Staff Attorney approval of a Report that finds a violation has occurred, the Investigator will send the Respondent(s) a copy of the Report and a letter notifying the Respondent(s) of the Commission's determination to assess an administrative penalty and/or sanction the license. The Respondent(s) has 30 days to respond to this correspondence. Failure to respond within 30 days waives the right to a hearing and requires payment of the assessed penalty/enforcement of license sanction.

(k) The Respondent(s) can accept the Commission's determination, request to settle the case by Alternative Dispute Resolution (ADR) with the Staff Attorney, or request an Informal Conference (Conference).

(l) If the Respondent accepts the Commission's determination to assess an administrative penalty and/or license sanction or if a settlement is reached by ADR, the Respondent shall enter into an Agreed Order with the Commission which is signed by the Executive Director. Once an Agreed Order is signed, the case is closed.

(m) If the Respondent requests a Conference, a time and date for the Conference is scheduled with the Respondent(s).

(n) The Conference is attended by a panel including the Executive Director, Staff Attorney, Legal Assistant, Administrator of Compliance and Investigator who investigated the complaint. No court reporter may be present, the parties will not be placed under oath, and no audio or video recording of the Conference will be made or allowed for use in any subsequent proceeding.

(o) At the Conference, the Respondent is given the opportunity to respond to the allegation(s) and show compliance with all applicable laws and rules. The Respondent may be represented by legal counsel.

(p) Following the Respondent's presentation, the Executive Director may decide to dismiss the complaint, investigate further, raise or lower the recommended administrative penalty, or sanction the Respondent's license. The Executive Director may make a settlement offer to the Respondent or negotiate a settlement agreement at the Conference.

(q) If the complaint is not dismissed and no settlement is reached at the Conference or through ADR, the Respondent is sent a Notice of Hearing and Complaint and the Commission sets the case on the SOAH Docket for a hearing before a SOAH Administrative Law Judge (ALJ).

(r) Once the ALJ renders a Proposal for Decision (PFD), the PFD is presented to the Commissioners at the Commission's next regularly scheduled meeting.

(s) The Commissioners accept or modify the PFD by Commission Order.

(t) The Respondent can either accept the Commission's Order, or after exhausting all administrative remedies, the Respondent can appeal the Commission's decision by filing suit for judicial review in accordance with Government Code, Chapter 2001, and Occupations Code §651.555.

(u) All correspondence to the Respondent(s) will be sent by both certified mail and first class mail to the Respondent's address of record on file with the Commission.

(v) The Commission will notify the Complainant of the final disposition of the complaint.

(w) Government Code, §§2001.051 - 2001.103; Occupations Code §651.506; and SOAH's Rules of Practice and Procedure (1 TAC Chapter 155) govern hearings held at SOAH.

(x) The Commission's Alternative Dispute Resolution Policy and Procedure Rule, found in §207.1 of this title, and SOAH's Rules of Practice and Procedure, 1 TAC §155.351, govern ADR with Commission staff and mediation at SOAH.

§203.41. Administrative Penalties and Sanctions.

(a) If a person violates any provision of Occupations Code, Chapter 651; Health & Safety Code, Chapter 695, §§711.003, 711.008, 711.010, 711.011, 711.021 - 711.035, 711.038, 711.041, 711.042,



711.061, 711.062, 716; 22 TAC Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515 - 651.552.

(b) By Order, the Commissioners shall adopt an Administrative Penalties and Sanctions Schedule which sets penalty limits and ranges by class of offense and number of offenses.

(c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:

- (1) Attempts by the licensee to correct or stop the violation;
- (2) Number of complaints previously found justified against licensee; and
- (3) Other mitigating factors that could warrant a lower penalty.

§203.42. Procedures and Criteria for Inspections of Licensed Establishments.

(a) Inspection Procedures.

(1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting an establishment. If prior reports reveal problems, the inspector shall determine whether the establishment has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct most of their inspections between the hours of 8:00 a.m. and 5:00 p.m., but an establishment is required to be open at all times to inspections for violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716.

(5) If an inspector is unable to contact any employee or owner of the establishment to provide notice of the attempted inspection, the inspector shall notify the establishment by mail of the attempted inspection. If an establishment is unavailable for inspection twice during a six month period, the Commission may file a complaint against the establishment, making the establishment subject to an administrative penalty or other action.

(b) Criteria for Risk-Based Inspections.

(1) If the Commission previously found violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716, following a biennial inspection, an establishment shall be inspected annually until it is free of all violations.

(2) Establishments that have received a reprimand or letter of warning, that have been assessed administrative penalties, that have had licenses suspended, or that have received a letter ordering the establishment to cease and desist for violations of Occupations Code, Chapter 651, or Rules of the Commission are subject to inspection at anytime within three years following the date that the Commission's action became final.

(3) If the Commission is in the process of conducting an investigation of an establishment, staff may inspect the establishment for the limited purpose of proving or disproving the validity of the com-

plaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

§203.43. Unprofessional Conduct.

(a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission, and may probate any license suspension if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Occupations Code, Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;

(3) operating a funeral establishment in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a Commission employee in the lawful performance of such employee's duties of enforcing Occupations Code, Chapter 651, or the Rules of the Commission;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;

(7) physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;

(10) communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;

(11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;

(12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;

(13) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead; or

(14) performing any duties as a licensee in a manner that is dishonest, deceptive, or shows a lack of trustworthiness and integrity.

§203.44. Price Disclosure.

(a) In selling or offering to sell funeral goods or funeral services to the public it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser or prospective customer for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies. Such price information must include at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.47(b)(1) of this title, funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) The list must contain the effective date and the retail prices of all caskets and alternative containers offered which do not require special ordering, and must include, at a minimum, the following specifications:

(i) The type of material that is predominately used in the construction of the merchandise, i.e.:

(I) steel, identified as stainless or by gauge, e.g., 18 gauge;

(II) wood, identified by type, e.g., pecan or cherry;

(III) bronze, described by weight, e.g., 32 oz.;

(IV) copper, described by weight, e.g., 32 oz.; or

(V) other specifically named material, e.g., such as cardboard or corrugated wood;

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:

(I) concrete, specifying type of construction, e.g., liner, box, or vault;

(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);

(III) wood;

(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or

(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."

(4) Urn price list.

(A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominately used in its construction. Bronze urns must be described as sheet bronze or cast bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."

(5) General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.48(a)(2) of this title, does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(iii) the price range for the direct cremations offered by the funeral provider, together with:

(I) a separate price for a direct cremation where the purchaser provides the container;

(II) separate prices for each direct cremation offered including an alternative container; and

(III) a description of the services and container (where applicable), included in each price;

(iv) the price range for the immediate burials offered by the funeral provider, together with:

(I) a separate price for an immediate burial where the purchaser provides the casket;

(II) separate prices for each immediate burial offered including a casket or alternative container; and

(III) a description of the services and container (where applicable) included in that price;

(v) transfer of remains to funeral home;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities and staff for viewing;

(ix) use of facilities and staff for funeral ceremony;

(x) use of facilities and staff for memorial service;

(xi) use of equipment and staff for graveside service;

(xii) hearse;

(xiii) limousine; and

(xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.

(C) Include on the general price list, in any order, the following information:

(i) Either of the following:

(I) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and

(ii) Either of the following:

(I) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and

(iii) Either of the following:

(I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)." If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(II) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

(iv) If the funeral home charges for processing the insurance claim, that fee shall be disclosed.

(v) If a consumer intends to use the proceeds from an insurance policy to pay for a funeral and the funeral provider requires payment before the proceeds from such policy can be obtained and, if the funeral provider does not provide the service of filing a claim seeking life insurance proceeds on behalf of the beneficiary (or, if the funeral provides the service and the consumer does not wish to utilize the services of the funeral provider), the funeral provider shall include the following statement on the general price list: "Please note that if you utilize a third party to file a claim seeking expedited receipt of life insurance proceeds on behalf of a beneficiary, there will be a fee to be paid associated with the filing of such a claim."

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(6) Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2) - (5) of this subsection so long as the statement required by §203.45 of this title is provided when required.

§203.45. Purchase Agreement (Statement of funeral goods and services selected).

(a) Funeral providers must give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The Purchase Agreement must list at least the following information:

(1) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;

(2) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.);

(3) the total cost of the goods and services selected;

(4) the complete description of all goods purchased as described in §203.44(2) - (5) of this title.

(b) The information required by this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(c) If a funeral provider's graphically illustrated logo or a bold listing of the logo is included in an obituary, the funeral provider shall list separately the additional cost, if any, related to the inclusion of such logo in the cash advance portion of the Purchase Agreement.

§203.46. Misrepresentations.

(a) Embalming provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed when such is not the case; or

(B) fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.47(b)(1) of this title and §203.48(a) of this title, funeral providers must:

(A) not represent that a deceased person is required to be embalmed for:

(i) Direct cremation;

(ii) Immediate burial; or

(iii) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(B) Place the following disclosure on the general price list, required by §203.44(b)(5) of this title, in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires a casket for direct cremations; or

(B) represent that a casket is required for direct cremations.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.47(a)(1) of this title, funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions.

(1) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; or

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §203.44(b)(3)(A) of this title, or, if the prices of outer burial containers are listed on the general price list, required by §203.44(b)(5) of this title, in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will

satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General provisions on legal and cemetery requirements.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b)(1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the Purchase Agreement (required by §203.45 of this title) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time; or

(2) represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash advance provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case; or

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) To prevent these deceptive acts or practices: Funeral providers must place the following sentence in the itemized Purchase Agreement in immediate conjunction with the list of itemized cash advance items required by §203.45 of this title: "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§203.47. Required Purchase of Funeral Goods or Funeral Services.

(a) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other required purchases of funeral goods or funeral services.

(1) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part; or

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) services of funeral director and staff, permitted by §203.44(b)(5)(C)(iii) of this title;

(ii) other funeral services and funeral goods selected by the purchaser; and

(iii) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §203.46(d)(2) of this title.

(2) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by §203.44(b)(5)(B) and (C) of this title: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the Purchase Agreement, required by §203.45 of this title: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(3) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§203.48. Embalming Provided Without Prior Approval.

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make;

(2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must

disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized Purchase Agreement, required by §203.45 of this title, the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§203.49. Comprehension of Disclosures.

To prevent the unfair or deceptive acts or practices specified in §§203.44 - 203.48 of this title, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, urn, and general price lists, required by §203.44(b)(2) - (5) of this title, any statement or information that alters or contradicts the information required to be included in those lists.

§203.50. Violation to Engage in Unfair or Deceptive Acts or Practices.

Except as otherwise provided in §203.44(a) of this title, it is a violation to engage in any unfair or deceptive acts or practices specified in Occupations Code, Chapter 651, or in the Rules of the Commission, or to fail to comply with any of the preventive requirements specified in Occupations Code, Chapter 651, or in the Rules of the Commission.

§203.51. Defense to Violation.

It is a defense to a violation if the license holder makes funeral arrangements with the person authorized to make funeral arrangements for the deceased as outlined by Health and Safety Code, §711.002(a).

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

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

TRD-201404633

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 936-5064



## **TITLE 34. PUBLIC FINANCE**

### **PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS**

#### **CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP**

##### **34 TAC §25.1**

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.1. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25

concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for employment that is eligible for membership in TRS.

Section 25.1 concerns the determination of regular full-time service. TRS proposes amending the section to clarify how TRS will count the time spent as an instructor in higher education in evaluating the position for membership in TRS. The proposed amendments provide that the class must be taken for college credit and that online classes will be counted as two clock hours for every college or semester hour assigned to the class rather than two clock hours for every hour spent teaching in the classroom or lab. The proposed amendment for online classes is needed because many of the online classes do not require that instruction be provided at a set time or to a group for a specified period of time. Also, the proposed changes clarify that the conversion ratio provided in §25.1(i) does not apply to continuing education classes, adult education classes, and/or classes taught to employees of companies and that instruction in these types of courses will be evaluated on the number of clock hours worked. The proposed amendments also clarify the minimum number of hours employed in concurrent employment that will qualify the combined employment for membership in TRS.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.1 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify guidance for determining regular full-time service and TRS membership eligibility of an instructor in higher education.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §25.1 are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect the following sections of the Government Code: §821.001(6), which defines "employee"; §822.001, which states the membership requirement; and §823.002, which addresses service credit in a year.

*§25.1. Full-time Service.*

(a) - (h) (No change.)

(i) For purposes of this section, employment in institutions of higher education (including community and junior colleges) as an instructor of classes taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course hour or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be considered for membership based on the number of clock hours worked.

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students in a class taken by students for college credit. If a person combines work as an adjunct faculty instructor and any other type of employment, the minimum number of hours worked per week that will qualify the person for membership is 20.

(k) - (l) (No change.)

(m) Beginning on September 1, 2015, if an employee is employed in two or more part-time positions, the minimum number of hours the employee must work in all positions in order to establish eligibility for membership in TRS must equal or exceed one-half of the hours required for the full-time equivalent position requiring the greater number of hours per week.

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 3, 2014.

TRD-201404655

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 542-6438



## SUBCHAPTER B. COMPENSATION

### 34 TAC §§25.21, 25.25, 25.26, 25.28, 25.34, 25.35

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§25.21, 25.25, 25.26, 25.28, 25.34, and 25.35. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter B, in Title 34, Part 3, of the

Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees and whether such compensation is creditable for TRS benefit calculation purposes.

Section 25.21 provides detailed descriptions of the types of compensation that are included as creditable compensation for TRS purposes as well as the types of compensation excluded from benefit calculation. The proposed amendments to §25.21(d)(3) clarify that continued payments of normal compensation while on administrative or emergency leave are creditable for TRS purposes. The proposed amendments to §25.21(d)(15) clarify that the requirement to obtain a determination from TRS before reporting compensation paid pursuant to a settlement agreement do not apply if the compensation is normal payment of salary paid to the employee while the employee is on paid leave of any type. Other proposed amendments standardize the citations to relevant statutory codes and are clerical in nature.

Section 25.25 establishes the rate of member contributions and requires that the employer must submit the member deposits with each regular payroll report to TRS. The rule also requires that a member must make contributions on all compensation paid by a TRS covered employer, once membership is established in one or a combination of positions. The proposed amendments to the section clarify that if a member has earned a year of service credit in the current school year and the member later works in the same school year for a TRS-covered employer in a position that is not eligible for membership in TRS, member contributions must be made on compensation earned in the position until the end of the school year.

Section 25.26 establishes how TRS determines a member's annual compensation for benefit calculation purposes. The most basic requirement is that it is the sum of 12 months of compensation paid from September 1 through August 31 for 12 months of work. This rule describes the "standard" school year now used by TRS to determine annual compensation and service credit. Experience with the standard school year over the last few years has highlighted the need for clarifying the requirement. The proposed amendments expressly state that the compensation must be for no more than 12 months of work and clarify how TRS will credit compensation earned during the final school year before retirement but not yet paid by the date of retirement. The proposed amendments also provide that if an error by the employer results in additional compensation being paid to the retiree after the effective date of retirement and the distribution of benefits has begun, TRS will adjust the annuity going forward from the date the correction is made and the deposits are paid to TRS, but the corrections must be made by the end of the school year following the year of retirement.

Proposed new §25.26(e) addresses the consequences of requiring all employers to report compensation in the month it is paid rather than the month it is earned. The requirement to report compensation when paid takes effect on September 1, 2015 if the proposed amendments to §25.28 are adopted. TRS anticipates that as a result of changing the month compensation is reported, in the year of transition members who are affected will lose one month of compensation credit. The proposed amendments allow TRS to attribute an additional month of compensation to the member in the 2014-2015 school year for purposes of benefit calculation.

Proposed new 25.26(f) applies to retirements and deaths after August 31, 2015 and simplifies the comparison of salaries re-

quired in §25.26(b) to only the 2012-2013 school year rather than all prior years. Proposed amendments to §25.26(b) clarify that the comparison of salaries outlined in that subsection applies to retirements and deaths that occurred prior to September 1, 2015.

Section 25.28 provides instruction to employers regarding the information and contributions that must be provided to TRS with each monthly payroll report. Anticipated changes due to the TRS Enterprise Application Modernization (TEAM) project as well as Governmental Accounting Standards Board (GASB) requirements have highlighted the need to address specific requirements for the reports as well as to clarify the month in which compensation should be reported to TRS. The proposed amendments to this rule include the requirement to provide information regarding compensation and employment on all employees and clarify that employers must report contract dates to TRS. The proposed amendments also clarify that it is not necessary to seek a written determination from TRS regarding amounts paid pursuant to a settlement agreement if the payments are continuing amounts of normal compensation paid while the employee is on any type of paid leave. The proposed amendments to §25.28(g) allow an employer to request a waiver of the requirement that all reports and contributions must be made to TRS before the seventh day after the last day of the month in which compensation was paid in order to correct errors of unreported compensation or service that occurred no earlier than the previous school year. The corrections may be made if the employee is still employed by the same employer and compensation is still due to the employee. The employer must submit corrected reports, the contributions that are due, and the interest required for late deposits and reports. The corrections must be made no later than the end of the school year following the school year in which the error occurred. The proposed amendments also clarify that employers may not delay reporting compensation to TRS of compensation paid in earlier months for the purpose of pushing compensation into the final year of compensation to avoid the consequences of the standard school year and may not spread compensation due in one month over more than one month in order to ensure the member receives a year of service credit. Finally, the proposed amendments require that, effective September 1, 2015, employers must report compensation to TRS in the month it is paid rather than the month it is earned. The proposed amendments will standardize reporting for all TRS-covered employers and result in consistent crediting and calculation of benefits.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§25.21, 25.25, 25.26, 25.28, 25.34, and 25.35 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide notice, clarification, and guidance to employers and members of the requirements and procedures relating to the determination of creditable compensation, the amount of contributions that must be paid by the member through an employer pick-up arrangement, the amount of contributions and interests that must be submitted to TRS by the employer and the duration of the contributions, calculation of annual compensation for determining benefits, and when the payroll reports from the employer are due to TRS.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules except those authorized in §825.408. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §§25.21, 25.25, 25.26, 25.28, 25.34, and 25.35 are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect the following sections of the Government Code: §821.001(4) of the Government Code, which defines "annual compensation," and §822.201 of the Government Code, which describes compensation subject to report and credit.

§25.21. *Compensation Subject to Deposit and Credit.*

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

(c) The following types of monetary compensation are to be included in annual compensation:

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

(6) performance pay provided it meets the requirements [of the ~~Texas Government Code~~] §822.201(b)(4), Government Code and §25.24 of this title [e~~chapter~~] (relating to Performance Pay);

(7) compensation received under the relevant parts of the educator excellence awards program under Subchapter O, [of] Chapter 21, Education Code, or a mentoring program under §21.458, Education Code, that authorize compensation for service, and compensation earned under the awards for student achievement program under Subchapter N of Chapter 21, Education Code, prior to the repeal of statutory provisions authorizing that program;

(8) a merit salary increase made under [Education Code,] §51.962, Education Code;

(9) amounts deducted from regular pay for a qualified transportation benefit under [Texas Government Code] §659.202, Government Code;

(10) compensation designated as health care supplementation by an employee under Subchapter D, [of] Chapter 22, Education Code; and

(11) (No change.)

(d) The following are excluded from annual compensation:

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

(3) payments for accrued compensatory time for overtime worked or for accrued sick leave or vacation, except that continued payments of normal compensation when vacation, [of] sick, administrative, or emergency leave or compensatory time is actually taken by



an employee will be included in annual compensation to the extent otherwise permitted by this section;

(4) (No change.)

(5) bonus and incentive payments, including signing or retention bonuses that are offered to entice a person to enter into an employment arrangement or to stay for a period of time in an employment arrangement, whether paid under Subchapter O, Chapter 21, [øf] the Education Code<sub>2</sub>, or other authority, unless state law expressly provides that a type of bonus or incentive payment is to be considered TRS-creditable compensation;

(6) - (13) (No change.)

(14) payments received under relevant parts of the educator excellence awards program under Subchapter O<sub>2</sub> [øf] Chapter 21, Education Code that do not represent payments for service rendered by the member;

(15) except as provided in §25.28(e) of this title (relating to Payroll Report Dates), amounts paid pursuant to a settlement agreement except that compensation paid to an employee while on paid leave of any type, including paid administrative or emergency leave under the terms of a settlement agreement is creditable under paragraph (3) of this subsection; and

(16) (No change.)

(e) The maximum amount of compensation of any member that may be taken into account under the retirement system shall not exceed \$150,000 for plan years commencing on or after September 1, 1996. For plan years commencing on or after January 1, 2002, the maximum amount of compensation shall not exceed the limit contained in the Internal Revenue Code §401(a)(17)(A), 26 United States Code §401(a)(17)(A). For plan years beginning before January 1, 1997, in determining the compensation of any member for any year, the family aggregation rules of the Internal Revenue Code[<sub>2</sub>] §414(q)(6), 26 United States Code §414(q)(6) shall apply except the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age 19 before the end of the year. The limits set forth in the first two sentences of this subsection shall be increased from time to time, to reflect cost of living increases, in accordance with the Internal Revenue Code[<sub>2</sub>] §401(a)(17), 26 United States Code §401(a)(17). The dollar limitation prescribed in the first two sentences of this subsection shall not apply to limit the compensation of any person who first becomes a member before September 1, 1996. Furthermore, that limitation shall not apply for any period during which such limitation is repealed or is not enforced by the Internal Revenue Service with regard to governmental plans. In applying the limits described in this section, a plan year is September 1 through August 31.

(f) (No change.)

#### §25.25. *Required Deposits.*

(a) Members shall deposit with the Teacher Retirement System of Texas 6.4% of the compensation received each pay period, including compensation received for part-time, irregular, seasonal, or temporary employment in a school year in which the member rendered service eligible for membership and in which a year of service credit is earned.

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

#### §25.26. *Annual Compensation Creditable for Benefit Calculation.*

(a) Except as provided in subsection (b) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code<sub>2</sub>, annual compensation means

creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before September 1, 2015 annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

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

(e) If as a result of the requirement in §25.28(c) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after August 31, 2015, annual compensation shall be:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).

#### §25.28. *Payroll Report Dates.*

(a) The executive director shall establish dates on which payroll reports are due and the method to be used in reporting information regarding compensation and employment and such member and employer deposits as are due to the Teacher Retirement System of Texas (TRS). School officials shall be notified of such regulations.

(b) Each employer must report each month in a form prescribed [on forms furnished] by TRS information on the total amount of salary paid to employees eligible to participate in TRS from federal funds and/or private grants. Reporting districts must transmit to TRS the current state contribution rate of the monies paid as salary for those employees covered by TRS in addition to the amount transmitted for member contributions. If the maximum percentage legally provided for retirement purposes from the funds is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(c) Effective September 1, 2015, each employer must report each calendar month in a form prescribed by TRS, information regarding the persons it employs, the positions held, the time worked and the compensation paid, including the number of days and/or hours worked and the amount and type of salary paid to employees during that calendar month, including salary paid from federal funds and/or private grants. Employers must transmit to TRS the current state contribution rate of the monies paid as salary from federal funds and/or private grants for those employees covered by TRS in addition to the amount transmitted for member contributions and contributions required by §§825.405, 825.4034 and 825.4071, Government Code. If the maximum percentage legally provided for retirement purposes from the federal funds and/or private grants is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(d) [(e)] Employees [Members] who have a qualified contract or an oral or written work agreement shall have information about the contract [be] reported by each school district in [on] a form prescribed [provided] by TRS.

(1) A qualified contract is an employment agreement which meets the following criteria.

(A) Service under the agreement must begin on or after July 1, but not later than August 31, of the same calendar year.

(B) Service contemplated by the agreement must be for a definite period extending past August 31 of the same calendar year in which service under the agreement began, as evidenced by an enforceable legal obligation on the part of the employer [public school] to employ and to compensate the employee for such period.

(C) Employees [Not included are employees] who can be terminated by the employer [school district] without the employer [school] being obligated to pay a fixed amount stated in a contract are not included in the report.

(2) Reports on contracts and oral or written work agreements with a beginning date in July should be submitted to TRS in the July report. Reports on contracts and oral or written work agreements with a beginning date in August should be filed with the August or September report.

(e) [(d)] Any employer may ask the retirement system for a written statement on whether a particular form of compensation is salary and wages subject to member deposits under the law and rules governing the system. A request for such a statement should be submitted in writing to the retirement system together with any contracts, board minutes, briefs, memoranda, or other material relevant to the request.

(f) [(e)] An employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes and will not be included in determining the amount of benefits payable by TRS. The requirement in this subsection to obtain a written determination from TRS before reporting amounts to TRS that are paid pursuant to a settlement agreement does not apply to normal amounts of compensation paid to the employee while the employee is on paid leave of any type, including paid administrative or emergency leave, pursuant to a settlement agreement.

(g) If due to a technological error, an employer does not report all service rendered and/or salary paid as required in subsection (b) of this section and the error regards service rendered and/or salary paid in the immediately preceding school year, the error may be corrected if the following requirements are met:

(1) the person for whom contributions were due is currently employed by the employer and compensation for the current year remains due to the employee;

(2) the employer requests a waiver of the reporting requirements under §825.408(a), Government Code and the request is granted by TRS;

(3) the employer submits member contributions on the unreported amounts pursuant to §825.409, Government Code, from any remaining compensation due and any employer contributions due on the compensation are paid by the employer;

(4) the employer pays the interest required by §825.408, Government Code and corrects the records for the report months in which the compensation was paid as directed by TRS; and

(5) the error is corrected by the end of the school year following the school year in which the service was rendered and/or the compensation was paid. Upon receipt of the member and employer contributions and the corrected report(s), the service credit and/or compensation credit will be credited to the member. In no event may service or compensation credit be granted under this subsection for service rendered or compensation received in a school year prior to the immediately preceding school year.

(h) An employer must report each calendar month only compensation paid in that calendar month in accordance with normal pay periods for all employees. In no event may an employer include salary paid in a prior month or may an employer delay payment of salary that should have been paid in a prior month for the purpose of increasing the employee's annual compensation for benefit calculation purposes. If compensation should have been paid in a prior month but due to a technological or accounting error, the compensation was not reported in the report month that it was paid and the error occurred in the current school year, or if the employer is required by law to correct an error in payment that occurred during the current school year, the monthly report shall be adjusted in the manner prescribed by TRS.

(i) An employer may not pay an employee less than the amount owed in a calendar month for the purpose of extending the employee on payroll in order to receive a year of service credit or to establish eligibility for participation in health care benefits as provided in Chapter 1579, Insurance Code, Title 8, Subtitle H.

§25.34. *Membership Waiting Period.*

An employee subject to the 90-day waiting period in effect from September 1, 2003, through August 31, 2005, may be eligible to receive a year of TRS service credit if the employee was employed

in a TRS-covered position and participated as a contributing member of TRS for the amount of time in a school year required by this title, including §25.1 of this title (relating to Full-Time Service) and §25.131 of this title (relating to Required Service). Employment service prior to the date on which a person is eligible for TRS membership may not be used to meet the minimum requirements for service creditable in a school year unless a member purchases it in accordance with applicable requirements. A member may not establish a membership start date earlier than the end of the 90-day waiting period by purchasing the service credit described in this section.

§25.35. *Employer Payments for New Members.*

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

(d) An employer shall submit employer payments and member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. An employer also shall submit such payments to TRS on compensation paid to an employee for the entire pay period that contains the 90th day of employment. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation. Effective September 1, 2015, an employer shall submit employer payments under this section beginning with the entire report month that contains the first date of the employee's eligibility for membership and continuing through the entire report month that contains the 90th day of employment.

(e) - (h) (No change.)

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

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Brian K. Guthrie

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## SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

### 34 TAC §§25.41 - 25.43, 25.45, 25.46

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§25.41 - 25.43, 25.45, and 25.46. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter C establishes policies related to service or compensation a member's employer must report but did not.

Section 25.41 concerns deposits for unreported service or compensation; deposits must be paid before TRS will pay benefits to a member. The proposed amendment to §25.41 clarifies the requirement that, when it is discovered that contributions have not been made on membership eligible employment, the member must immediately begin making contributions. The proposed amendments clarify that contributions owed but not paid in the current school year must be made. If the error is not corrected as required in proposed new §25.28(g), relating to Payroll Re-

port Dates and published elsewhere in this issue, the member must pay the actuarial cost to purchase the unreported service and/or compensation.

Section 25.42 concerns payment of benefits contingent on deposit. TRS proposes amendments to gain efficiencies in commencing benefit distributions. The proposed amendments allow TRS to begin a distribution before all deposits have been received if the compensation and deposits have been certified by the employer as due and payable.

Section 25.43 concerns fee on deposits for unreported service or compensation. Generally, a member must pay the actuarial cost of the increased benefits associated with the unreported service and/or compensation. However, in proposed §25.28(g), an employer may correct an error as authorized in §825.408 by complying with the requirements and paying the required deposits and interest provided the error is corrected no later than the end of the school year following the school year in which the error occurred. The proposed amendments to §25.43 reference the correction method proposed for §25.28(g) and make other non-substantive corrections to cites and recently adopted §25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit.

Section 25.45 concerns verification of unreported compensation or service. The proposed amendments include a reference to proposed §25.28(g) that provides that the error be corrected in the school year in which the error occurred or no later than the end of the following school year by requesting the waiver authorized in §825.408 and paying the interest authorized in that section. Also, the proposed amendments address how errors discovered after retirement should be corrected. Staff recommends adding a reference in this section to §25.26 of this title, which authorizes TRS to accept additional deposits after retirement provided the requirements of that section are met.

Section 25.46 concerns determination of compensation subject to deposit and credit. This rule explains how deposits on unreported service will be calculated. The proposed amendments add a reference to proposed §25.28(g), which allows an error to be corrected in the current school year or no later than the end of the school year following the year in which the error occurred by obtaining a waiver and submitting the corrected reports and all contributions and interest due.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§25.41, 25.42, 25.43, 25.45, and 25.46 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify current policies and processes concerning unreported service or compensation of a TRS member and to enhance the readability of the rules.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules except those authorized in §825.408. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory

authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments to §§25.41 - 25.43, 25.45, and 25.46 are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

**Cross-Reference to Statute:** The proposed amendments affect §825.403 and §825.408 of the Government Code.

*§25.41. Deposits for Unreported Service or Compensation.*

Persons who have been required by law to be members of the Teacher Retirement System of Texas (TRS) or who have service or compensation on which contributions were required but who have not made the required deposits shall start making deposits immediately for current service and in addition shall make required contributions on any service rendered or compensation received earlier in the current school year. If the service was rendered and/or compensation was received in a prior school year, except as provided in §25.28(g) of this title (relating to Payroll Report Dates), the member [and] may make payment of the actuarial cost to establish the [for] previous service or compensation under §25.43 of this title (relating to Cost for Unreported Service or Compensation).

*§25.42. Payment of Benefits Contingent on Deposits.*

No benefits will be paid until all required deposits have been received or the compensation and deposits have been certified to TRS as due and payable.

*§25.43. Cost for Unreported Service or Compensation.*

(a) Except as provided by §25.28(g) of this title (relating to Payroll Report Dates) and subsections (e), (f), and (g) of this section, the cost of establishing unreported service or compensation credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the unreported service or compensation credit purchased under this subchapter.

(b) To calculate the actuarial cost of purchasing a year of unreported service credit, TRS will use the cost factors and method described in §25.302 of this title (relating to Calculation of Actuarial Cost for Service Credit). To calculate the actuarial cost of purchasing unreported compensation credit, TRS will use the factors and method as set forth in §25.303 of this title (relating to the Calculation of Actuarial Cost for Purchase of Compensation Credit) [§25.302, modified as may be necessary to reflect the purchase of compensation credit instead of service credit].

(c) The purchase cost described in this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9 percent [9%] applies.

(d) If a member has membership service and contributions in the same school year as the year in which the unreported service was rendered, TRS shall adjust the actuarial cost as calculated under subsection (b) of this section proportionately by applying a ratio, the numerator of which is the number of TRS-covered service days rendered by the member and the denominator of which is 90 days of service required for a year of membership service credit.

(e) A member may establish unreported service or compensation credit by paying the deposits and fees required in subsection (f) of this section if the member meets all applicable requirements to purchase unreported service or compensation credit and if:

(1) the person otherwise meets all eligibility requirements of §825.403, Government Code [as amended by Acts of the 82nd Legislature, R.S., S.B. 1668 (2011)];

(2) the service for which credit is sought to be established was rendered, or the compensation for which credit is sought was paid, before September 1, 2011; and

(3) the person makes payment for the credit, or enters into an installment agreement for payment, not later than August 31, 2013.

(f) The cost of establishing unreported service or compensation credit under subsection (e) of this section is the amount of deposits previously required but not paid plus a fee computed at the rate of 5 percent [5.0%] per annum of the deposits due from the end of the school year in which the deposits were due or the end of the 1974-1975 school year, whichever is later, until the date of payment.

(g) For purposes of this section, workers' compensation paid as temporary wage replacement pay may be reported or verified to TRS until the end of the school year following the school year in which it is paid. If the workers' compensation is reported or verified to TRS no later than the end of the school year following the school year in which it is paid, member contributions on the workers' compensation paid are required to establish the compensation and service credit associated with the workers' compensation. The member contributions on the worker's compensation must be paid in full in a lump sum by the end of the school year following the year in which the workers' compensation was paid. If the workers' compensation is not reported or verified and member contributions are not paid by the end of the school year following the year in which the workers' compensation is paid, the member may establish the service and compensation as unreported compensation as provided in this section.

*§25.45. Verification of Unreported Compensation or Service.*

Members who claim unreported service or compensation after the school year in which it was received and for whom the employer has not requested a waiver as provided in §25.28(g) of this title (relating to Payroll Report Dates), must verify the claim on a form prescribed by the Teacher Retirement System and must present such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such service or compensation, such as a copy of the minutes of the governing board of the employing institution, copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such service or compensation was not reported earlier, and copies of income tax documents showing that the compensation was reported as income for the member. Except as provided in §25.26(a) of this title (relating to Annual Compensation Creditable for Benefit Calculation) for the calculation of a member's annual compensation in the school year in which the member retires, in [in] no event shall verification, salary reports, or member contributions for additional compensation or service credit be accepted after a member has retired from the system and the first monthly annuity payment has been issued, after the effective date of a member's participation in the Deferred Retirement Option Plan, or after the payment of a death benefit. The cost for unreported service or compensation shall be as provided in §25.43 of this title (relating to Cost for Unreported Service or Compensation).

*§25.46. Determination of Compensation Subject to Deposit and Credit.*

The amount of deposits due for unreported service rendered or compensation paid in the current school year or for unreported service ren-

dered or compensation paid in the immediately preceding school year and corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates) will be calculated at the member contribution rate in effect for the year in which the service was rendered or compensation was paid but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the laws and rules applicable at the time of the service.

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

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## SUBCHAPTER E. MILITARY SERVICE

### 34 TAC §25.61, §25.64

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.61 and §25.64. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter E, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter E establishes policies for an eligible member to purchase up to five years of military service credit in the system.

Section 25.61 establishes a limit on the number of years of military service that may be purchased for service credit and the amount of military service that must be rendered each year in order to receive a year of service credit in TRS for that military service. The proposed amendments provide a more general requirement than the current standard that requires the member must serve a minimum of four and one-half months in a school year. The proposal language provides that a person must serve an equivalent amount of military service as a member must serve in order to receive a year of service credit.

Section 25.64 provides the details of how a crediting fee is added to the cost to purchase military service credit based on the amount of time between the date the military service is rendered and the date payment is received by TRS. The cost to purchase military service is established in §25.61 relating to Service Credit for Eligible Military Duty and is stated as the member contributions due on the full rate of annual compensation for the last school year of membership service that preceded the military duty. Section 25.64 further provides a crediting fee of 8 percent compounded annually for each year from the date the service is rendered until payment for the credit is received. The proposed amendments clarify that the military service credit must be purchased in the order the service is rendered so that the earliest year of military service credit is purchased first.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.61 and 25.64 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify current policies and processes concerning the amount of military service that may be purchased for service credit and the cost of purchasing military service credit, including crediting fees.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §25.61 and §25.64 are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 823, Subchapter D, of the Government Code, which provides for the establishment of military service credit with TRS.

#### *§25.61. Service Credit for Eligible Military Duty.*

(a) (No change.)

(b) Credit for military duty under this section is limited to a maximum of five years. Eligible military duty will be evaluated for crediting only in the school year in which it was rendered. In order to obtain military service credit for that year, a [A] member must have served an equivalent amount of [a minimum of 4 1/2 months of] military duty to the amount of service required for a member to receive a year of service credit in that [a] school year [to be eligible to obtain military service credit for that year]. No credit may be given for any school year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Texas. If a member establishes military service credit but TRS determines that credit already has been given for the military service in another Texas public retirement system, TRS shall refund the amount paid for the military credit duplicated in TRS, less fees that are not refundable, and shall cancel the TRS credit and, if applicable, adjust the calculation of benefits. In accordance with §25.113(m)(3) of this title (relating to Transfer of Credit Between TRS and ERS), a person retiring from the Employees Retirement System of Texas (ERS) under Government Code, Chapter 805, and returning to work in a TRS-eligible position may not establish more than a total of five years of military service credit, including any military service established before retirement under either TRS or ERS.

(c) (No change.)

#### *§25.64. Crediting Fee.*

(a) A crediting fee of 8 percent [8.0%] compounded annually shall be charged for the purchase of credit from the end of the year in which the member was first eligible to purchase the credit until payment

for the credit is received. The date of first eligibility to purchase credit shall be the latest of the following:

- (1) the date the member obtains 5 years' credit for service in the public schools of Texas;
- (2) the date the Teacher Retirement Law made the military service available for credit;
- (3) the date the member completed military service to qualify for each year of credit.

(b) Service credit purchased under §25.61 of this title (relating to Service Credit for Eligible Military Duty) shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

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

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## SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

### 34 TAC §25.74

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.74. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter F, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter F establishes policies for an eligible member or retiree to purchase up to five years of eligible veteran's service credit in the retirement system or to establish compensation credit, in accordance with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), the federal law protecting veterans' benefits upon re-employment or application for re-employment following active military duty.

Section 25.74 establishes the cost to purchase USERRA service credit. The proposal clarifies that USERRA service credit, as in proposed amended §25.64 relating to Crediting Fee for military service credit and published elsewhere in this issue, must be purchased in the order the service is rendered so that the earliest year of active military service is purchased first.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.74 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify and simplify provisions relating to USERRA service credit and to ensure compliance with applicable federal law provisions

requiring such service credit be available for eligibility purposes to persons called to military duty from positions covered by TRS.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §823.304 of the Government Code, which authorizes the Board to adopt rules in order to comply with the federal law relating to USERRA service credit.

Cross-Reference to Statute: The proposed amendments affect Chapter 823, Subchapter D, of the Government Code, which provides for the establishment of military service credit with TRS.

§25.74. *Cost.*

(a) To obtain service credit for active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act), the member must deposit with the retirement system for each school year of service claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(b) To obtain credit for member compensation for active military duty under the USERRA and §25.71 of this title, the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(c) Credit for member compensation may be established for any school year of active military duty eligible under the USERRA and §25.71 of this title, even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 of this title on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

(f) Service credit purchased under this section shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

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

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## SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

### 34 TAC §25.81

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.81. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter G, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter G establishes policies for eligible members to purchase up to 15 years of out-of-state service credit in the system.

Section 25.81 addresses the type of service in an out-of-state public educational institution that is eligible for purchase. The rule currently requires that a member serve at least 90 days in the out-of-state public educational institution in order to establish an eligible year of service. The proposed amendments provide that a person must serve an equivalent amount of service in the out-of-state public educational institution as a member must serve in order to receive a year of service credit.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.81

will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide clarified guidance in administering the rule concerning establishing out-of-state service credit.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system.

Cross-Reference to Statute: The proposed amendment affects Texas Government Code §823.401, which concerns out-of-state service.

#### *§25.81. Out-of-State Service Eligible for Credit.*

A member may obtain out-of-state service credit for qualified employment in public educational institutions which are maintained in whole or in part by one of the states in the United States of America; by a commonwealth, territory, or possession of the United States of America; or by the United States government. Public educational institutions of the United States government must have been maintained for the primary purpose of educating the children of United States citizens either in foreign countries or in locations within the United States where state and local government have not provided public educational facilities. The service in eligible institutions must satisfy the requirements for membership in the Teacher Retirement System of Texas, except for the requirement that the employment be in Texas. Further, the service must have been for at least 4 1/2 months of the school year, or for at least a full semester of more than four calendar months, or for at least 90 days of a school year as a substitute in a position otherwise eligible for out-of-state service. For service rendered in the 2011-2012 school year and after, a member must have worked or received paid leave in a position otherwise eligible for out-of-state service credit for at least the minimum amount of time 90 days required of a member to receive service credit [90 days] in that [a] school year [in a position otherwise eligible for out-of-state service] or worked for at least 90 days in a school year as a substitute in a position otherwise eligible for out-of-state service credit. A member may satisfy any of these requirements by combining the out-of-state service with employment in the Texas public schools that occurred in the same school year and for which deposits are maintained in the member's account. A member eligible to establish normal membership service credit for a school year may not obtain out-of-state service credit for that year.

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

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Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

### 34 TAC §25.131, §25.135

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.131 and §25.135. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter J, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter J establishes the amount of time a member must serve in a TRS-eligible position in order to receive a year of service credit.

Section 25.131 provides that a member must serve at least 90 days or receive paid leave for at least 90 days in order to receive a year of service credit. The proposed amendments clarify that the member must not only work 90 days but must also receive pay for those 90 days in order to receive a year of service credit. Further, an additional proposed amendment would become effective on the first day of the 2015-2016 school year and provide an alternate standard for accruing a year of service credit for members who are regularly scheduled to work fewer than 5 days per week. The alternate standard for those members is 4 1/2 months; however, the member must serve at least 4 full calendar months during which the member must work at least 8 days, and an additional 5 days in either the preceding or following month(s). The proposed amendments also provide that a member may not receive a year of service credit before December 31 except in the year of retirement when a member may earn a full year of service credit by working the entire fall semester.

Section 25.135 establishes the deadline for notifying TRS of service credit missing from the member's annual statement and verifying that service credit to TRS. Generally, the deadline for verifying the service credit is the last day of the fifth school year following the end of the school year in which the service was rendered. The proposed amendments to §25.135 add a reference to proposed new §25.28(g) relating to Payroll Report Dates, which is published elsewhere in this issue and will establish an opportunity to correct unreported service or compensation in the same school year in which it was rendered or paid or no later than the end of the school year following the school year in which the service was rendered or the compensation was paid. In order to meet the requirements of proposed new §25.28(g), the member must notify TRS by May 31 of the error so that it can be corrected by the end of the school year as required.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.131 and §25.135 will be in effect, there will be no fiscal implications

to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning the amount of time a member must work or serve on paid leave in order to receive a year of service credit, provide clear guidance to employers and employees on how a creditable year of service is earned, and make the determination of service credit more consistent and administratively efficient.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §823.002 of the Government Code, which authorizes the board to determine by rule the amount of service equivalent to a year of service credit, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

#### §25.131. *Required Service.*

(a) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position and be paid or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year, receiving pay for that work, and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the work as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position who worked and was paid for that work or received paid leave for less than 90 days in the school year but worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work and be paid for work in an eligible position or receive paid leave from an eligible position for at least 90



[ninety] days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

(b) For school years prior to the 2011-2012 school year:

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

(c) Beginning on the first day of the 2015-2016 school year and thereafter, in lieu of the requirements in subsection (a) of this section, a member who is serving in a membership eligible position and who is regularly scheduled to work fewer than 5 days per week, may establish a year of service credit by working and receiving pay for that work or using paid leave, for four and one-half months. The four and one-half month period must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for at least 8 days and an additional five days of service rendered and for which the member is paid or paid leave used in another calendar month or months that precede and/or follow the four full calendar months.

(d) Except as provided in subsection (a) of this section, for service credit granted in the school year in which the member retires, in no event may a member receive a year of service credit earlier than December 31.

*§25.135. Service Credit Missing from Annual Statement.*

(a) If membership service has not been credited by TRS on a member's annual statement, the member must notify TRS in writing of the service that the member requests to be credited. If an error on the annual statement regards either service rendered or compensation paid in the immediately preceding school year and the error may be corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates), the member must notify TRS in writing of the error by May 31 of the school year following the school year in which the error occurred.

(b) Except as provided in subsection (a) of this section, for [For] service rendered after August 31, 2011, in order for service missing from an annual statement to be creditable, TRS must receive the written notification on or before the last day of the fifth school year after the end of the school year in which the service was rendered.

(c) - (g) (No change.)

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

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## SUBCHAPTER N. INSTALLMENT PAYMENTS

### 34 TAC §25.184

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.184. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter N, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less.

Section 25.184 describes the circumstances that result in a refund for nonpayment when a member is purchasing service credit on an installment payment plan. The proposed amendments delete §25.184(b), which prohibits a member from utilizing an installment plan to purchase service credit for 3 years after a refund for nonpayment has been issued to a member. Experience with installment payment plans and technology have resolved any administrative concerns about the amount of work required to establish or re-establish an installment payment plan.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.184 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to update the application of provisions concerning refunds of installment payments for the purchase of special service credit and to eliminate obsolete practices.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698.

Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board; and §825.410, which authorizes the TRS Board of Trustees to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit.

**Cross-Reference to Statute:** The proposed amendments affect §825.410, Government Code, providing for installment payments.

§25.184. *Refund for Nonpayment.*

(a) (No change.)

~~[(b) If TRS refunds payments pursuant to this section, the member is not permitted to use the installment payment method or the payroll deduction method of payment for the same service for a period of three years from the date of the refund.]~~

(b) ~~[(e)]~~ If TRS refunds payments to a member pursuant to this section and the member later makes payment by lump sum payment or by the installment method for the same service credit for which the refund was made, any fees required by law or rule will be calculated using the new date of payment rather than the date of initial participation in the installment payment method.

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

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## SUBCHAPTER P. CALCULATION OF FEES AND COSTS

### 34 TAC §25.302, §25.303

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.302 and §25.303. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter P, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter P addresses the cost to purchase service credit or compensation credit and provide the actuarial cost factor tables to be used in calculating the cost.

Section 25.302 addresses the cost and the cost factors for purchasing service credit based on the member's tier placement. In calculating the cost to purchase service credit that will make the member immediately eligible to retire, staff currently must estimate the salary for the current year. The proposed amendments authorize staff to use the annual salary for the most recent year of service credit so that the process for issuing a bill for service credit may be automated. The proposed amendments also authorize the use of the member's age and service credit on

September 1 of the year in which the bill is requested to avoid inequities in the cost of the service credit based on the date of the request.

Section 25.303 provides the methodology for calculating the cost of purchasing compensation credit and the actuarial cost factors used in calculating the cost of the compensation credit. This section was adopted in June 2014. After further review of the rule, TRS proposes amending §25.303 to eliminate §25.303(f). That subsection provides an additional actuarial factor to use in calculating the cost of compensation credit when a member is grandfathered to use a three-year salary average. TRS has determined, however, that subsection (f) is not needed because the actuarial factor tables in §25.303, which would remain intact, already take into account the differences in using a three-year versus five-year compensation average. The TRS actuary agrees that the elimination of §25.303(f) this subsection is appropriate.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.302 and §25.303 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to speed up the process of issuing service credit bills, to ensure equities in calculating the cost of the service credit, and to provide accurate guidance by eliminating unneeded requirements.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under the following authorities: §825.102, Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the board; §823.406, Government Code, authorizing the board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit; and §825.105, which requires the board to adopt rates and tables the board considers necessary for the retirement system.

**Cross-Reference to Statute:** The proposed amendments affect the following statutes: §825.403, Government Code, providing for collection of member contributions and requiring the payment of actuarial cost to establish unreported service or compensation credit; and §825.105, Government Code, authorizing the board to adopt actuarial tables.

§25.302. *Calculation of Actuarial Costs of Service Credit.*

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the cost factors obtained from the Actuarial Cost Tables adopted and method described in this section. Effective September 1, 2015, for purposes of this section, TRS will use the age of the member and the service credit established by the member on September 1 of the school year in which the cost of the purchase is established.

(b) The factors for individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, are shown in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. Within each set of tables, the number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the participant's salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per \$1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line), salary is the greater of the ~~current~~ annual salary for the last year of credited service or the average of the member's highest years of compensation calculated on September 1 of the school year in which the cost of the service credit is established, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line), salary is the average of the member's highest three years of compensation calculated on September 1 of the school year in which the cost of the service credit is established. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

Figure: 34 TAC §25.302(b)(2) (No change.)

(c) - (j) (No change.)

§25.303. *Calculation of Actuarial Cost for Purchase of Compensation Credit.*

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

~~{(f) If the member described in subsection (e) of this section is grandfathered to use a three-year salary average, the cost of establishing additional compensation credit shall be 1.04 times the cost as~~

~~calculated under subsection (e) of this section when a factor in the upper region of the table is 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.

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## CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS

### 34 TAC §27.4, §27.6

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §27.4 and §27.6. The proposed amendments arise from TRS' four-year rule review of Chapter 27 in Title 34, Part 3, of the Texas Administrative Code. Chapter 27 concerns termination of membership and refunds.

Section 27.4 establishes the requirement that a refund will not be made until the final deposit of contributions for the member is received from the last employer and posted to the member's account. The purpose of this rule was to prevent additional money from being submitted by the employer after the account was "closed" by TRS due to the termination of membership. With efficiencies anticipated as a result of the TRS Enterprise Application Modernization (TEAM) project, the proposed amendments will allow TRS to issue refunds more promptly. If additional deposits are received after the initial refund, a second refund will be made. The proposed amendments reorganize the rule and provide that a refund can be issued when the termination of employment is confirmed or when the final deposit is received.

Section 27.6 regards the circumstances under which a member may reinstate a withdrawn account; however, the rule does not address the reinstatement of accounts terminated by absence from service, i.e., "escheated accounts." Currently, if a person with an escheated account returns to TRS membership, the escheated account is not re-activated until the member requests TRS to do so. Based on changes in processes considered in the TEAM project, the proposed amendments will combine the accounts upon receipt of new member information from a TRS-covered employer. The language proposed by staff provides for the "activation" of the escheated account immediately upon return to TRS membership provided the former account was not refunded. This proposed change will result in more accurate annual statements and estimates of retirement benefits.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §27.4 and §27.6 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will

be to accelerate the issuance of refunds and to provide guidance in reinstating escheated accounts.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under Texas Government Code, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Texas Government Code Chapter 822, Subchapter A, and Texas Government Code §823.501.

#### §27.4. Refunds.

Refunds to members who are terminating accounts will not be made until required application forms have been filed and termination of the member's employment is confirmed or the final deposit of the withdrawing member is received and posted to his account [~~and required application forms have been filed~~].

#### §27.6. Reinstatement of an Account.

(a) Any member who has withdrawn an account resulting in the cancellation of service credit may reinstate this account and receive credit for the canceled service by meeting the following requirements:

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

(3) except as provided by subsections (b) and (c) of this section, pay a reinstatement fee of 8 percent [~~8.0%~~] compounded annually in whole year increments from August 31st of the plan year in which the withdrawal occurred to the date of redeposit;

(4) (No change.)

(b) A member may establish withdrawn service credit by paying the deposits and fees required in subsection (c) of this section if:

(1) the member otherwise meets all eligibility requirements under [~~Government Code,~~] §823.501, Government Code, as amended;

(2) - (3) (No change.)

(c) To reinstate withdrawn service credit under subsection (b) of this section, the member shall redeposit the amount withdrawn for the years during which the membership was terminated and shall pay a reinstatement fee of 6 percent [~~6%~~] compounded annually in whole year increments from August 31 of the plan year in which the withdrawal occurred to the date of redeposit.

(d) Membership service credit and the accumulated contributions associated with the membership terminated by not qualifying for service credit for five consecutive years as provided in §822.003(a)(4), Government Code, may be restored by TRS when the person returns to

TRS covered employment provided the accumulated contributions in the member account have not been withdrawn. If the accumulated contributions have been withdrawn, the member may reinstate the withdrawn account as provided in this section.

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

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## CHAPTER 29. BENEFITS

### SUBCHAPTER A. RETIREMENT

#### 34 TAC §29.15

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §29.15. The proposed amendments arise from TRS' four-year rule review of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 concerns benefits, and Subchapter A establishes policies related to service and disability retirement eligibility, the application process, the calculation of benefits, the payment plans available, and actuarial tables supporting the calculation of early age retirement reductions, optional payment plan reductions, and other benefits.

Section 29.15 addresses the requirement that employment must terminate in order to establish eligibility for retirement. The rule further establishes when a contract for future employment may result in a determination that employment has not terminated and when retirement is revoked by returning to work with a TRS-covered employer in the first month following retirement. Experience with the requirement to observe the one full calendar month break in service reflects a basic misunderstanding regarding how TRS views working as a substitute in the month following retirement. The proposed amendments clarify that working as a substitute in the month following retirement is prohibited and will revoke retirement.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §29.15 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify the rule concerning termination of employment in order to establish eligibility for retirement.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be

no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under Texas Government Code, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

**Cross-Reference to Statute:** The proposed amendments affect §824.002, Government Code, concerning effective date of retirement, and §824.005, Government Code, concerning revocation of retirement.

*§29.15. Termination of Employment.*

(a) Employment in any position, including as a substitute, by a TRS-covered employer, regardless of compensation, during the first month following a person's effective date of retirement, or during the first two months following a person's effective date of retirement if the retirement was established by using [Government Code] §824.002(d), Government Code, revokes the retirement and requires a return of any benefits received under retirement.

(b) A member who is eligible for normal age retirement and who has a contract or agreement for future employment that does not qualify for one of the exceptions in [Government Code] §824.602, Government Code, has not ended all employment with a TRS covered employer and may not retire and receive any benefits. Contracts or work agreements for employment that do not qualify for one of the exceptions in that section must be negotiated after the break in service required in [Government Code] §824.005, Government Code.

(c) A member who is eligible for early age retirement may not have a contract or promise of future employment with any TRS covered employer until after the required break in service referenced in subsection (a) of this section. A person who enters into such an agreement has not ended all employment with a TRS covered employer and may not retire and receive any benefits.

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

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## SUBCHAPTER D. PLAN LIMITATIONS

### 34 TAC §29.55

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §29.55. The proposed amendments arise from TRS' four-year rule review of Chapter 29, Subchapter D, in

Title 34, Part 3, of the Texas Administrative Code. Chapter 29 concerns benefits, and Subchapter D addresses requirements for qualified plans established by the Internal Revenue Code (IRC).

Section 29.55 expresses the limits on voluntary contributions to the TRS pension plan for the purchase of service credit and the parameters authorized by the IRC for testing the amount of voluntary contributions against the member compensation in order to determine if the limits have been exceeded. At the recommendation of TRS' outside tax counsel, the proposed amendments add language in §29.55(a) to specifically reference §823.006 of the Government Code, regarding limits on annual contributions for the purchase of service credit, and to clarify that TRS can decline to allow a participant to make a contribution for the purchase of service credit if the amount of the contribution would exceed the limits established in §415 of the Internal Revenue Code.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §29.55 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to update the rule to reflect current law.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that any probable economic costs to entities or persons required to comply with the proposed rule is the result of federal tax code and state law provisions applicable to qualified retirement plans. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amended rule is proposed under the following statutes: §823.006, Government Code, which authorizes the retirement system to limit the purchase of service credit to the extent required by applicable limits on the amount of annual contributions a participant may make to a qualified plan under Sections 401(a) and 415(c), Internal Revenue Code of 1986; and §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system.

**Cross-Reference to Statute:** The proposed amendments affect §825.506, which authorizes limitations on benefits and contributions in accordance with federal tax law.

*§29.55. Limitation on Contributions.*

(a) Notwithstanding any other provision of law to the contrary, and in accordance with §823.006, Government Code, this rule

describes application of the federal limits on service purchases. TRS may refuse a request by a member to make a contribution to the retirement system for the purchase of service credit if the amount of the contribution would exceed the limits provided in §415 of the Internal Revenue Code.

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

(f) Effective for permissive service credit contributions made in years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subsection (e)(2) of this section, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the System. Permissive service credit shall include:

(1) military service credit under [~~Tex. Gov't Code~~] §823.302, Government Code;

(2) developmental leave service credit under [~~Tex. Gov't Code~~] §823.402, Government Code;

(3) membership waiting period service credit under [~~Tex. Gov't Code~~] §823.406, Government Code;

(4) (No change.)

(5) out-of-state service credit under [~~Tex. Gov't Code~~] §823.401, Government Code;

(6) unused leave service credit under [~~Tex. Gov't Code~~] §823.403, Government Code;

(7) service credit for work experience by a career or technology teacher; and

(8) "additional service credit" under the service credit purchase option authorized by [~~Tex. Gov't Code~~] §823.405, Government Code.

(g) - (k) (No change.)

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

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Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

#### 34 TAC §§31.13 - 31.15

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§31.13 - 31.15. The proposed amendments arise from TRS' four-year rule review of Chapter 31, Subchapter B, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the

limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. Subchapter B addresses employment after service retirement.

Section 31.13 provides the requirements for working under the substitute service exception and clarifies that working as a substitute during the required one full calendar month break in service revokes retirement. Also, a retiree who is working as a substitute is not considered absent from service for the purpose of establishing the 12-month break in service required for full-time employment. The rule also clarifies that a retiree may combine work under the one-half time exception and under the substitute service exception in the same calendar month provided the retiree does not work more than half of the work days in that calendar month. Experience with this rule has revealed that many retirees and employers do not realize that the retiree may not work the one-half day that remains when working in a calendar month with an odd number of work days. The proposed amendments clarify that the retiree may not work the one-half day or any amount of additional time when dividing an odd number of work days in half to determine how many days the retiree may work in the combined employment.

Section 31.14 provides clarification on how much a retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work as much as the equivalent of four clock hours for every work day in the month. A work day is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each day. Currently, the rule provides special instructions for retirees employed as instructors in institutions of higher education and directs that the retiree must count every hour in the lab or classroom as two hours of work to take into consideration time spent preparing, grading, providing reviews, and performing similar duties. The proposed amendments clarify that, with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the instructor to utilize the two to one conversion ratio. The proposed amendments also clarify that online classes should be counted as two clock hours for every semester hour or college credit hour assigned to the class. Adult or continuing education classes would be counted hour for hour under the proposed amended rule. The proposed amendments to §31.14 incorporate the proposed changes to §31.13, which are published elsewhere in this issue and regard combining employment as a substitute and other employment in the same calendar month. Proposed amended §31.14 clarifies that, if a calendar month has an odd number of work days, the retiree may not work any part of the remaining one-half day after dividing the total number of days by two to determine how many days are "one-half" the working days in the month.

Section 31.15 establishes the requirements for observing a break in service of 12 full, consecutive calendar months before returning to full-time employment for retirees who retired January 1, 2011 or after. This section provides that working as a substitute or under the one-half time exception is considered employment that interrupts the 12-month break in service and that paid leave is also considered employment that must be counted. The proposed, non-substantive amendments address typographical errors and inconsistent statutory cites.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§31.13 -

31.15 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning the administration of the substitute and half-time exceptions for service retirees, their employers, and TRS.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amended rules are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

§31.13. *Substitute Service.*

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

(c) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this ~~title~~ [chapter] (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this ~~title~~ [chapter] (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the ~~other~~ [one-half time] employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.14 of this ~~title~~ [chapter] may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day

remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(e) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(f) (No change.)

§31.14. *One-half Time Employment.*

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as a [as] one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of ~~four~~ [4] clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

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

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) in classes taken by students for college credit and that is expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(f) - (g) (No change.)

§31.15. Full-time Employment after 12 Consecutive Month Break in Service.

(a) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity complies with subsection (b) of this section, the person may, without forfeiting payment of the annuity for the months of employment, be employed in any capacity in Texas public education, including as much as full-time [~~full time~~].

(b) To be eligible to be employed without forfeiting payment of the annuity under subsection (a) of this section, the service retiree must have been separated from service with all Texas public educational institutions for at least 12 full consecutive calendar months after the effective date of retirement. The 12-month [~~12 month~~] separation period required under [Government Code,] §824.602(a)(3), Government Code for the full-time exception may be any 12 consecutive calendar months following the month of retirement. During the separation period, the retiree may not be employed in any position or capacity by a public educational institution covered by TRS.

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

(c) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity does not meet the separation from service period required in subsection (b) of this section, the person will forfeit payment of the annuity for any month of full-time employment in Texas public education. In this section full-time employment means any employment that does not meet the substitute service exception as described in §31.13 of this title [~~chapter~~] (relating to Substitute Service) or the one-half time exception in §31.14 of this title [~~chapter~~] (relating to One-half Time Employment).

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

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

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Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

### 34 TAC §31.32

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §31.32. The proposed amendments arise from TRS' four-year rule review of Chapter 31, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. Subchapter C addresses the exceptions to forfeiture of annuities for disability retirees who return to work with a TRS-covered employer.

Section 31.32 establishes how much a disability retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work

as much as the equivalent of 4 clock hours for every work day in the month. A work day is defined as every Monday through Friday in the month, without regard to whether the day is a holiday, the employer is open for business, or the retiree is scheduled to work each day. However, disability retirees are also limited to working no more than 90 days in a school year. Currently, the rule provides special instructions for retirees employed as instructors in institutions of higher education. Under §31.32, the retiree must count every hour in the lab or classroom as 2 hours of work to take into consideration time spent preparing, grading, providing reviews, and performing similar duties.

The proposed amendments clarify that, with regard to employment as an instructor with an institution of higher education, the classes must be taken for college credit in order for the instructor to utilize the 2-to-1 conversion ratio. The proposal also clarifies that online classes should be counted as 2 clock hours for every semester hour or college credit hour assigned to the class. Adult or continuing education classes would be counted hour for hour under the proposed amended rule. The proposed amendments to §31.32 bring over the proposed changes from §31.13, which are published elsewhere in this issue and regard combining employment as a substitute and other employment in the same calendar month. Proposed amended §31.32 clarifies that, if a calendar month has an odd number of work days, the retiree may not work any part of the remaining one-half day after dividing the total number of days by 2 to determine how many days are "one-half" the working days in the month.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §31.32 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning employment after disability retirement and the one-half time exception for disability retirees, their employers, and TRS.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amended rule is proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for



membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code.

§31.32. *Half-time Employment Up to 90 Days.*

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four [4] clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) (No change.)

(c) Total substitute service under §31.33 of this title [chapter] (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) [chapter] and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. Working any part of a day as a substitute or half-time counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) (No change.)

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit that is measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be counted based on the number of clock hours worked.

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

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Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## CHAPTER 39. PROOF OF AGE

### 34 TAC §39.1

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §39.1, concerning Establishment of Date of Birth. The proposed amendments arise from TRS' four-year rule review of Chapter 31 in Title 34, Part 3, of the Texas Administrative Code. Chapter 39 and the single rule in that chapter, §39.1, address the acceptable methods by which individuals may establish their dates of birth with TRS.

The proposed amendments to §39.1 add a state issued driver license or ID and a U.S. or state issued military ID as acceptable documents for showing proof of date of birth. The proposed changes also give staff more discretion to determine other forms of acceptable proof of date of birth.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §39.1 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify for members and beneficiaries which documents TRS will accept as reliably establishing dates of birth.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §39.1 are proposed under §825.102, Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: No other laws are affected by these proposed changes.

§39.1. *Establishment of Date of Birth.*

(a) Date of birth may be established by any one of the following:

(1) - (11) (No change.)

(12) a U.S. passport; [øæ;]

(13) a state issued driver license or state issued ID card;

(14) a U.S. or state issued military ID; or

(15) [(13)] any [in the event none of these is obtainable, such] other evidence of age as may be approved by TRS.

(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.

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Brian K. Guthrie

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## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §§41.1, 41.2, 41.7, 41.10, 41.14

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§41.1, 41.2, 41.7, 41.10, and 41.14. The proposed amendments arise from TRS' four-year rule review of Chapter 41, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 addresses the two health benefit programs (TRS-Care and TRS-ActiveCare) administered by TRS, as trustee, and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter A concerns TRS-Care.

Section 41.1 concerns initial enrollment periods for the retiree health benefit program (TRS-Care). The proposed amendments to §41.1(f) clarify that retirees are allowed to add new spouses and new dependents during enrollment periods; however, due to state law provisions regarding dependents eligible to enroll in TRS-Care, surviving spouses are only allowed to add new dependents during enrollment periods. The revised language is consistent with §41.1(e) and makes no substantive changes to existing TRS-Care operations or rules.

Section 41.2 concerns additional enrollment opportunities. The proposed amendments delete the word "service" from the term "service retirees" in subsection (a)(1)(A). According to the state law and TRS-Care practices, both service retirees and disability retirees are qualified to exercise the Age 65 Additional En-

rollment Opportunity and are therefore considered to be "eligible participants." The proposed amendments also revise subsection (a)(8) to clarify that during an Age 65 Additional Enrollment Opportunity, individuals may not only add eligible dependents under TRS-Care, but also can change their level of coverage. The term "exercise" is sufficiently broad to address both types of opportunities.

Section 41.7 concerns effective date of coverage. Recent legislation has restricted the ability of individuals to enroll in the higher levels of coverage in TRS-Care until they reach the age of 62. The proposed amended subsection (b) clarifies that the rights under this subsection are subject to this new enrollment restriction. The proposed new language in subsection (d) provides that existing coverage for a surviving spouse and surviving dependent children will continue after the participant's death, without the need to submit an application to TRS-Care. The proposed amended subsection (i) provides the flexibility to accept other proof of Medicare Part A coverage. When making changes to coverage due to the acquisition of Medicare Part A, TRS-Care no longer requires receipt of a copy of a participant's or dependent's Medicare card. The proposed amended subsections (l) and (m) replace outdated language, more clearly stating that where TRS-Care has been paying primary to Medicare on claims associated with a participant with Medicare Part A coverage, TRS-Care may seek the recovery of overpaid funds paid by TRS-Care and may refund or credit any overpaid premium amounts to the participant to a maximum retroactive period of twelve months. This revised language does not alter current procedures of TRS-Care, nor does it make any substantive changes to existing rule language. The proposed amended section (n) replaces outdated language, more clearly providing that when TRS-Care discovers that its records incorrectly reflect that a participant has Medicare Part A coverage when the participant actually does not have such coverage, TRS-Care may adjust its records and claims processing. Further, TRS-Care will contact the participant to discuss the cost of Medicare Part A coverage and will advise the participant of the financial consequences under TRS-Care if the participant does not obtain such coverage. The revised language provides the flexibility to accept proof of Medicare Part A coverage other than just the participant's Medicare card.

Section 41.10 concerns eligibility to enroll in TRS-Care. The proposed amended subsection (c)(1)(F) clarifies that in order to be considered for eligibility in TRS-Care, military service credit must be purchased and credited in the system. In contrast, USERRA service credit does not need to be purchased and is acceptable upon satisfactory proof to TRS.

Section 41.14 concerns expulsion from TRS-Care for fraud. The proposed new language in subsection (b), concerning adjudicative hearings before the State Office of Administrative Hearings (SOAH), provide better clarity and/or greater flexibility to TRS in handling a petition for expulsion. The proposed changes to the "executive director" references are made for consistency between both the TRS-Care rules as well as TRS-ActiveCare rules.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§41.1, 41.2, 41.7, 41.10, and 41.14 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will

be to provide greater clarity concerning the rights of retirees, to no longer require certain forms to be filed with TRS, to allow TRS to accept various types of evidence of Medicare enrollment, to effectuate recent changes in the law, and to provide greater flexibility to TRS in handling a petition for expulsion.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §§41.1, 41.2, 41.7, 41.10, and 41.14 are proposed under the authority of §1575.052 of the Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers reasonably necessary to implement and administer the TRS-Care program.

Cross-Reference to Statute: The proposed amendments affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of TRS-Care.

§41.1. *Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).*

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

(f) If a retiree [or surviving spouse] fails to enroll a newly eligible spouse or dependent child or if a surviving spouse fails to enroll a newly eligible dependent child within the time periods set out in subsection (e) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

§41.2. *Additional Enrollment Opportunities.*

(a) Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").

(1) For purposes of this subsection, the term "eligible participants" means:

(A) all TRS [service] retirees who are enrolled in TRS-Care;

(B) - (C) (No change.)

(2) - (7) (No change.)

(8) The period to exercise [enroll in TRS-Care pursuant to] the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:

(A) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(B) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(b) - (d) (No change.)

§41.7. *Effective Date of Coverage.*

(a) (No change.)

(b) Subject to §1575.1581, Insurance Code, a [A] TRS member who takes a service or disability retirement and enrolls in coverage during his or her initial enrollment period may, at any time during his or her initial enrollment period, make changes to his or her coverage elections. The effective date of coverage for the new elections is the first day of the month following receipt by TRS-Care of the application requesting the change in coverage.

(c) (No change.)

(d) Surviving spouses and surviving dependent child(ren) who are currently enrolled with the participant at the time of the participant's death will continue to be enrolled in the same level of coverage and the same coverage plan. [The effective date of coverage for a surviving spouse or for a surviving dependent child is the first day of his or her eligibility if TRS-Care receives an application within the initial enrollment period as described in §41.1 of this title and the deceased participant had the surviving spouse or the surviving dependent child enrolled in TRS-Care before the participant died.]

(e) - (h) (No change.)

(i) Except as provided in subsections (l), (m), and (n) of this section, the effective date of changes in coverage due to the acquisition of Medicare Part A is the first of the month following the date of TRS-Care's receipt of proof, satisfactory to TRS-Care, [a copy] of the participant's or dependent's Medicare Part A coverage [card].

(j) - (k) (No change.)

(l) Where a participant [who] has Medicare Part A coverage [incorrectly enrolls in an insurance coverage option that provides for coverage without corresponding Medicare Part A coverage and payment is made by Medicare] and TRS-Care has been paying primary to Medicare on Medicare Part A claims, TRS-Care [in a manner that violates the provisions of Chapter 1575, Insurance Code, which requires TRS-Care to be secondary to Medicare, TRS] may seek the recovery of funds [paid in violation of Chapter 1575] and may make the effective date of the correct coverage retroactive to the first day of the earliest month for which recovery of such overpaid funds is possible under Medicare rules.

(m) Where a participant [who] has Medicare Part A coverage, TRS-Care has been paying primary to Medicare on Medicare Part A claims, [incorrectly enrolls in a TRS-Care coverage option that provides for coverage without corresponding Medicare Part A coverage and there is no claim made upon TRS-Care or the legitimate claim is less than the amount of overpaid contributions,] TRS-Care may [refund or credit the amount due to the participant and may] make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and TRS-Care to a maximum retroactive period of twelve months, including the month in which proof, satisfactory to TRS-Care, of Medicare Part A coverage is received by TRS-Care, and based thereon, TRS-Care may refund or credit the amount due to the participant.

(n) Upon TRS-Care's discovery that a participant does not have Medicare Part A coverage, in contrast to TRS-Care records indicating the participant has [and is incorrectly enrolled in a TRS-Care coverage option that requires] Medicare Part A coverage, TRS-Care

will contact the participant and advise the participant that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless proof, satisfactory to TRS-Care, of [a copy of a Medicare card showing] Medicare Part A coverage is received by TRS-Care prior to that date. Claims will be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if Medicare Part A were in effect will not be adjusted.

§41.10. *Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).*

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

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) - (E) (No change.)

(F) up to five years of military service credit that the member has purchased [or re-employed veteran's (USERRA) service credit that the member has purchased] and that has been credited to the member's account, or up to five years of re-employed veteran's (USERRA) service credit, whether purchased or not, evidence of which is provided by the service retiree to the satisfaction of TRS; and

(2) (No change.)

(d) - (i) (No change.)

(j) A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (h) of this section or the deceased active member met the conditions of subsection (i) of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of or a child who was lawfully placed for legal adoption with the deceased retiree or member or must be a foster child, stepchild, or other child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be ~~[unmarried and]~~ under age 26, ~~[25] or if 26 years of age or older, must be [age 25 or older but still]~~ unmarried and have a mental disability or is physically incapacitated ~~[fully disabled]~~ to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003.

(k) Combined service credit under the Proportionate Retirement Program may not be used to establish eligibility for TRS-Care.

§41.14. *Expulsion from TRS-Care for Fraud.*

(a) The trustee, acting through the executive director [TRS Executive Director], may expel from participation in TRS-Care a person who has engaged in, caused, or attempted to engage in fraudulent activity relating to the program or any benefits offered under the program.

(b) Upon receipt of a complaint or upon its own motion, the TRS staff may file a petition for expulsion with the executive director [Executive Director]. The executive director [Executive Director], may docket the petition and refer the matter for an adjudicative [a] hearing before [by] the State Office of Administrative Hearings or otherwise as authorized by law. If a petition is docketed, the provisions of

Chapter 43 of this title (relating to Contested Cases) shall apply to the proceeding.

(c) Following a hearing, the executive director [Executive Director] may expel a person from participation in TRS-Care for a period of time not to exceed five years. Pursuant to the delegation of authority through this section, the order of the executive director [Executive Director] is the final decision of TRS.

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 3, 2014.

TRD-201404612

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 542-6438



## SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

### 34 TAC §§41.30, 41.33, 41.34, 41.36 - 41.39, 41.50 - 41.52

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§41.30, 41.33, 41.34, 41.36 - 41.39, and 41.50 - 41.52. The proposed amendments arise from TRS' four-year rule review of Chapter 41, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 addresses the two health benefit programs (TRS-Care and TRS-ActiveCare) administered by TRS, as trustee, and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter C concerns TRS-ActiveCare.

Section 41.30 concerns participation in TRS-ActiveCare. The proposed changes to the "executive director" references are made for consistency between both the TRS-Care rules as well as TRS-ActiveCare rules.

Section 41.33 concerns definitions that are applicable to TRS-ActiveCare. The proposed amendments to the introductory language of §41.33(1) and §41.33(1)(D)(iii) effectuate recent changes to state law that have an impact on age limits and the use of marital status as an element of eligibility as a dependent. The proposed amendments to §41.33(2) more accurately align the definition of a full-time employee with the operations of the pension and remove references to other rules that are no longer necessary. The amendments make no substantive changes to existing TRS-Care operations or rules.

The proposed amendments to §41.33(5) align the definition of a participating member with the operations of the pension. This definition now takes into consideration two possible situations: (1) an individual is working in a TRS-eligible position, currently contributing to the pension during the entire year of service; and (2) an individual began the year working in a TRS-eligible position and contributing to the pension, but during the same year, the individual's work hours later drop to the point where he or she is no longer working in a TRS-eligible position. If the individual

has already earned a year of service credit, he or she is required to continue making payments to the pension for the remainder of the school year.

The newly proposed §41.33(6)(B) more accurately aligns the definition of a part-time employee to the proposed amendments noted in paragraph (2) above concerning the definition for a full-time employee.

The proposed amendments to §41.34(3) effectuates recent changes to state law that impact age limits under TRS-Active-Care.

Section 41.36 concerns the enrollment periods for TRS-Active-Care. Section 41.37 concerns the effective date of coverage under TRS-ActiveCare. Section 41.39 concerns coverage under TRS-ActiveCare for individuals changing employers.

The proposed amendments to §41.36(i) result in the delegation of authority from the board to the executive director or a designee to establish open-enrollment periods for TRS-ActiveCare and to establish the conditions for enrollment during open-enrollment periods. This will provide flexibility and reduce time and effort associated with the establishment of the annual enrollment periods. The resolution process will no longer be needed to establish open-enrollment periods. The proposed amendments to §41.37(c) and §41.39(d) are consistent with the proposed amendments to §41.36(i).

Section 41.38 concerns the termination date of coverage under TRS-ActiveCare. The proposed amendments to §41.38(b) effectuate changes to state law. From a practical standpoint, the changes to state law and now to this rule have little if any impact upon the operations of TRS-ActiveCare.

Section 41.50 concerns appeals relating to claims or other benefits under TRS-ActiveCare. Section 41.51 concerns appeals relating to eligibility under TRS-ActiveCare. Section 41.52 concerns expulsion from TRS-ActiveCare.

As with the proposed amendments to §41.14 and §41.30 discussed in this publication, the changes to references regarding the "executive director" made in §§41.50, 41.51 and 41.52 are made simply for the sake of consistency between the TRS-Care rules and the TRS-ActiveCare rules.

The proposed new language in §41.52 concerning petitions for expulsion for fraud mirrors existing and proposed language in §41.14, the TRS-Care rule that also addresses expulsion for fraud. These proposed changes provide greater flexibility to TRS in handling a petition for expulsion and results in consistency between TRS-Care and TRS-ActiveCare.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§41.30, 41.33, 41.34, 41.36, 41.37, 41.38, 41.39, 41.50, 41.51, and 41.52 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify and update provisions concerning the administration of TRS-ActiveCare, to more accurately align several definitions with the operations of the pension, to remove unnecessary references to other rules, to shift the authority from the board to the executive director to establish open-enrollment periods for TRS-ActiveCare and to establish the conditions for enrollment

during open-enrollment periods, to effectuate recent changes in the law, and to provide greater flexibility to TRS in handling a petition for expulsion.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §§41.30, 41.33, 41.34, 41.36 - 41.39, and 41.50 - 41.52 are proposed under the authority of §1579.052 of the Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers necessary to implement and administer the TRS-ActiveCare program.

Cross-Reference to Statute: The proposed amendments affect Chapter 1579 of the Insurance Code, which provides for the establishment and administration of TRS-ActiveCare.

*§41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.*

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

(d) School districts with 1001 or more employees. A school district with 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year, may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the executive director [~~Executive Director~~], if applicable, as described in subsection (i) of this section.

(e) (No change.)

(f) Charter schools. Pursuant to §1579.154, Insurance Code, an open-enrollment charter school established under Chapter 12, Subchapter D, Education Code, ("charter school") may elect to participate in TRS-ActiveCare by complying with both paragraphs (1) and (2) of this subsection. Only an eligible charter school under the Act may elect to participate.

(1) (No change.)

(2) Eligible charter schools may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event:

(A) (No change.)

(B) alternatively, the eligible charter school will become a participating entity effective on the date approved by the

executive director [Executive Director], if applicable, as described in subsection (i) of this section.

(g) (No change.)

(h) School districts that opted out of participation in TRS-ActiveCare as described in subsection (b) or (c) of this section and educational districts that opted out of participation in TRS-ActiveCare as described in subsection (e) of this section may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the executive director [Executive Director], if applicable, as described in subsection (i) of this section.

(i) An entity that will become a participating entity in TRS-ActiveCare on the first day of the month following six (6) months after the date on which TRS receives the entity's notice of election but desires to become a participating entity on an earlier date may include in its notice of election a request that the executive director [Executive Director] consider an exception to the notice requirement. The notice of election must include the earlier date on which the entity desires its coverage to begin. The executive director [Executive Director] will grant the exception if, in his or her sole discretion, upon considering the following criteria, he or she finds that an exception is in the best interest of TRS-ActiveCare:

- (1) the impact on the requesting entity's employees and dependents;
- (2) the impact on the health plan administrator of TRS-ActiveCare;
- (3) the impact on the provider network of TRS-ActiveCare;
- (4) the number of potential enrollees that would be coming into TRS-ActiveCare for the first time on the same date; and
- (5) the impact on TRS-ActiveCare as a whole, taking into account any recommendations and observations of TRS's health care consultant.

*§41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program.*

The following words and terms when used in this subchapter or in connection with the administration of Chapter 1579, Insurance Code, shall have the following meanings unless the context clearly indicates otherwise.

(1) Dependent--Only those individuals described by §1579.004, Insurance Code, and an [unmarried] individual under 26 [25] years of age ("child") who is described by any one of the following subparagraphs (A), (B), or (C) at all times during which the child is receiving coverage under TRS-ActiveCare.

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

(D) For clarification and without intending to identify all persons who are not a Dependent for purposes of coverage, even though the individual may be in a dependent relationship with a full-time or part-time employee, the following are not included in the definition of Dependent in this section:

(i) - (ii) (No change.)

(iii) A Dependent does not include a brother or a sister of a full-time or part-time employee unless the brother or sister is an unmarried individual under 26 [25] years of age who is either:

(I) under the legal guardianship of a full-time or part-time employee; or

(II) in a regular parent-child relationship with a full-time or part-time employee, meaning that the brother or sister's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the brother or sister's support, neither of the brother or sister's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the brother or sister's medical care.

(2) Full-time employee--A participating member who:

(A) is currently employed by a participating entity;

(B) is employed in a position that is eligible for membership in the Teacher Retirement System of Texas [based on current full-time services as described by §25.1 of this title (relating to Full-Time Service), or based on current employment as a bus driver as described by §25.2 of this title (relating to Bus Drivers)]; and

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(3) - (4) (No change.)

(5) Participating member--A person defined by §822.001 and §822.002, Government Code, whose membership in the retirement system has not been terminated as described by §§822.003 - 822.006, Government Code, and who is required to contribute [currently contributing] to the Teacher Retirement System of Texas pension trust fund in accordance with §825.403, Government Code.

(6) Part-time employee--An individual who:

(A) is currently employed by a participating entity for 10 hours or more each week; [and:]

(B) is employed in a position that is not eligible for membership in the Teacher Retirement System of Texas;

[(A) is not a full-time employee;]

(C) [(B)] is not a retiree who waived coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act, Chapter 1575, Insurance Code, also known as TRS-Care; and

(D) [(C)] is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(7) Plan year--A plan year begins on the first day of September and ends on the last day of the following August.

(8) TRS-ActiveCare--The health benefits program under the Texas School Employees Uniform Group Health Coverage Act, Chapter 1579, Insurance Code.

(9) Trustee or TRS--The Teacher Retirement System of Texas acting in its capacity as trustee under Chapter 1579, Insurance Code.

§41.34. *Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program.*

The following persons are eligible to be enrolled in TRS-ActiveCare under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1579, Insurance Code:

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

(3) Dependents, as defined in §41.33 of this chapter pursuant to §1579.004, Insurance Code. A child defined in §1579.004(3), Insurance Code, who is 26 [25] years of age or older, is eligible for coverage only if, and only for so long as, such child's mental disability or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

(4) - (10) (No change.)

§41.36. *Enrollment Periods for TRS-ActiveCare.*

(a) - (h) (No change.)

(i) On behalf of the [The] trustee, the executive director or a designee [by resolution] may prescribe open-enrollment [open enrollment] periods and the conditions under which an eligible full-time or part-time employee and his eligible dependents may enroll during an open-enrollment period [open enrollment].

§41.37. *Effective Date of Coverage.*

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

(c) For eligible full-time employees, eligible part-time employees and their eligible dependents who enroll during an open-enrollment [open enrollment] period as prescribed [established] by [resolution of] the trustee, coverage shall become effective on the date specified by resolution of the trustee.

§41.38. *Termination Date of Coverage.*

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, a covered individual who resigns his employment position with a participating entity effective after the last day of an instructional year and who is in "good standing" with TRS-ActiveCare at the time of the effective date of resignation, is entitled to automatically remain enrolled in TRS-ActiveCare, through the earlier of (1) the first anniversary of the date participation in or coverage under TRS-ActiveCare was first made available to employees of that participating entity for the last instructional year in which the covered individual was employed by the participating entity, or (2) the last calendar day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the participating entity, provided none of the events described in provisions of subsection (a) of this section occur after the effective date of the covered individual's resignation. Consequently, if the employer of the covered individual became a participating entity in TRS-ActiveCare on or before the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual may [shall] automatically be entitled to coverage through the August 31st that immediately follows the effective date of resignation, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective date of the covered individual's resignation. Alternatively, if the employer of the covered individual became a participating entity in TRS-ActiveCare after the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual may [shall] automatically

be entitled to coverage through the end of the 12th month of that participating entity's participation in TRS-ActiveCare, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective date of the covered individual's resignation. A dependent enrolled in TRS-ActiveCare under a covered individual who qualifies for continued coverage pursuant to this subsection is also automatically entitled to remain enrolled in TRS-ActiveCare only for such time as the covered individual remains enrolled in TRS-ActiveCare. For purposes of this subsection only, the following applies:

(1) A covered individual is in "good standing" with TRS-ActiveCare if, on the effective date of the individual's resignation:

(A) the covered individual has not been expelled from TRS-ActiveCare;

(B) TRS has not received a notification from the participating entity that employed the covered individual, in the form prescribed by TRS, that the covered individual failed to make a required monthly TRS-ActiveCare premium payment to the participating entity; and

(C) neither the participating entity that employed the covered individual, nor the covered individual under whom a dependent qualified for coverage, failed to make all premium payments due for a period of 90 days or longer.

(2) For each participating entity that provides instruction to students, the term "instructional year" shall be the locally established calendar period during which that participating entity holds classes, exclusive of summer school. In no event may this "instructional year" extend beyond June 30th.

(3) For each participating entity that does not provide instruction to students, the participating entity may establish an "instructional year" that begins no earlier than August 1st and does not extend beyond June 30th.

(4) If a participating entity does not establish an "instructional year," the "instructional year" shall be deemed to begin on September 1st and to extend through May 31st.

(5) Each participating entity shall have only one "instructional year," which shall be applicable to all covered individuals employed by the participating entity.

(c) (No change.)

§41.39. *Coverage for Individuals Changing Employers.*

(a) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or after September 1, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996));

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open-enrollment [open enrollment] conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(b) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or before August 31, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under special enrollment provisions of TRS-ActiveCare;

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open-enrollment [~~open enrollment~~] conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(c) (No change.)

(d) Full-time or part-time employees who initially waive coverage under TRS-ActiveCare may enroll during any open-enrollment period [~~open enrollment~~] as prescribed by [~~resolution of~~] the trustee; however, they may not enroll due to a change in employment from one participating entity to another during the same plan year unless the change occurs during a concurrent open enrollment.

§41.50. *Appeals Relating to Claims or Other Benefits.*

(a) (No change.)

(b) For appeals that relate to claims or other benefits and that are received before September 1, 2011, the following procedures apply:

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

(8) If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written decision, which shall include an explanation of the reasons for the decision, to the Claimant and to the administering firm. The written decision shall include information on how the Claimant may request an appeal conference or an appeal to the executive director [~~Executive Director~~].

(9) - (13) (No change.)

(14) The initial written decision of the Committee or the written decision by the Committee made pursuant to an appeal conference may be appealed by the Claimant to the executive director [~~TRS Executive Director~~]. A request for an appeal to the executive director [~~Executive Director~~] must be submitted by the Claimant in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference. The request for an appeal to the executive director [~~Executive Director~~] shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. The appeal shall specifically describe why the Claimant alleges that the Committee's decision is erroneous. The executive director [~~Executive Director~~] shall make a decision based on the written appeal and based on the written decision of the Committee, as well as any written documents reviewed by the Committee. Subject to paragraph (15) of this subsection and pursuant to the delegation of authority through this section, the decision of the executive director [~~Executive Director~~] is the final decision of TRS.

(15) (No change.)

(c) (No change.)

§41.51. *Appeals Relating to Eligibility.*

(a) - (g) (No change.)

(h) The Petitioner may appeal the written decision of the TRS Appeal Committee relating to eligibility to the executive director [~~TRS Executive Director~~]. A request for an appeal to the executive director [~~Executive Director~~] must be submitted by the Petitioner in writing and must be received by TRS no later than 30 days after the date of the initial written decision by the TRS Appeal Committee. The request for an appeal to the executive director [~~Executive Director~~] shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. Subject to subsection (i) of this section and pursuant to the delegation of authority through this section, the decision of the executive director [~~Executive Director~~] is the final decision of TRS.

(i) (No change.)

§41.52. *Expulsion from TRS-ActiveCare.*

(a) The trustee, acting through the executive director [~~TRS Executive Director~~], may expel from participation in TRS-ActiveCare a participant who submits or causes to be submitted a false or fraudulent claim or enrollment application, or who has defrauded or attempted to defraud, any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare.

(b) Upon receipt of a complaint or upon its own motion, the TRS staff may file a petition for expulsion with the executive director [~~Executive Director~~]. The executive director [~~Executive Director~~] may docket the petition and refer the matter for an adjudicative [a] hearing before [by] the State Office of Administrative Hearings or otherwise as authorized by law. If a petition is docketed, the provisions of Chapter 43 of this title (relating to Contested Cases) shall apply to the proceeding.

(c) Following a hearing, the executive director [~~Executive Director~~] may expel a person from participation in TRS-ActiveCare for a period of time not to exceed five years if the executive director [~~Executive Director~~] finds that the person submitted or caused to be submitted a false or fraudulent claim or enrollment application or has defrauded or attempted to defraud any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare. Pursuant to the delegation of authority through this section, the order of the executive director [~~Executive Director~~] is the final decision of TRS.

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

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TRD-201404613

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

### 34 TAC §41.91

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §41.91. The proposed amendments arise from TRS' four-year rule review of Chapter 41, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 addresses the two health benefit programs (TRS-Care



and TRS-ActiveCare) administered by TRS, as trustee, and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter D contains one rule that deals with the responsibilities of school districts that do not participate in TRS-ActiveCare to determine the comparability of the health coverage offered to their respective employees.

Section 41.91 concerns the certification of insurance coverage offered to employees of school districts that do not participate in TRS-ActiveCare. As with the revisions to §§41.14, 41.30, 41.50, 41.51, and 41.52 discussed above, the changes to the reference regarding the "executive director" made in §41.91 are made simply for the sake of consistency between the TRS-Care rules and the TRS-ActiveCare rules.

The deleted language in §41.91(f) is no longer needed in light of the repeal of §22.004(e) of the Texas Education Code.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §41.91 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide greater clarity through the removal of language associated with a repealed law.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §41.91 are proposed under the authority of §22.004, Education Code, which requires the TRS Board of Trustees to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code).

Cross-Reference to Statute: No other laws are affected by this proposal.

§41.91. *Certification of Insurance Coverage.*

(a) - (f) (No change.)

(g) Each school district shall report, using a uniform reporting form or method of reporting prescribed by TRS, the district's compliance with Education Code, §22.004, to the executive director [~~Executive Director~~] of TRS by March 1 of each even-numbered school year. This compliance statement must state whether or not the

school district has complied with the requirements of Education Code, §22.004, specifically as to whether or not the school district:

(1) provides health coverage to its employees that is comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code); and

(2) has complied with the other requirements of this section. [~~A school district's failure to make the completed report required in subsection (e) of this section available as required in subsection (f) of this section or to submit to TRS the required compliance statement, on or before March 1 of each even numbered year, may result in the TRS report to the legislature reflecting the school district's non-compliance with one or more of the requirements of this section.]~~

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

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Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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## CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

### 34 TAC §47.10

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §47.10, concerning Determination of Whether an Order is a Qualified Domestic Relations Order. The proposed amendments arise from TRS' four-year rule review of Chapter 47 in Title 34, Part 3, of the Texas Administrative Code. Chapter 47 addresses the requirements and procedures applicable to orders awarding a portion of TRS benefits to an alternate payee, most commonly as a division of community property in a divorce. Section 47.10 concerns the determination of whether an order is a Qualified Domestic Relations Order (QDRO).

Section 47.10 provides the detailed requirements for determining the status of a domestic relations order as a qualified order. TRS received legislative authority to require that the order be in a form prescribed by TRS. The proposed amendments extend the effective date of the requirement to use the model order prescribed by TRS until January 1, 2015.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §47.10 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide guidance in drafting a QDRO and to allow courts and parties additional time in incorporating TRS' model form into related proceedings.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with

the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments to §47.10 are proposed under Texas Government Code §804.003 and §804.005, which authorize TRS to adopt rules relating to QDROs, and §825.102, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments to §47.10 affect Texas Government Code §804.003, which sets out the requirements for QDROs.

*§47.10. Determination of Whether an Order is a Qualified Domestic Relations Order.*

(a) A domestic relations order entered by a court of competent jurisdiction on January 1, 2015 [~~September 1, 2013~~] or after must be in a form prescribed by TRS. The form prescribed by TRS must ensure compliance with the requirements in subsection (b) of this section.

(b) For domestic relations orders entered by a court of competent jurisdiction before January 1, 2015 [~~September 1, 2013~~], TRS shall apply the statutory criteria to determine whether an order is a QDRO. The following provisions shall also be used in making the determination.

(1) - (12) (No change.)

(13) The order may contain provisions consistent with ~~[Government Code]~~ §824.1012 or §824.1013, Government Code, and TRS may rely on the provisions of the order as though the provisions were included in the decree of divorce or order accepting a property settlement.

(14) (No change.)

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

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Brian K. Guthrie  
Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## CHAPTER 51. GENERAL ADMINISTRATION

### 34 TAC §51.5

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §51.5. The proposed amendments arise from TRS' four-year rule review of Chapter 51 in Title 34, Part 3, of the Texas Administrative Code. Chapter 51 addresses a number of administrative matters concerning benefits.

Section 51.5 provides the process to be used by employers to obtain a one-time waiver of the deadline imposed by §825.408, Government Code, for submitting contributions owed to TRS and the reports related to those contributions. Section 825.408 gives TRS discretion to grant such a waiver. The proposed amendments to rule §51.5 reference the proposed amendments to §25.28 relating to Payroll Report Dates and published elsewhere in this issue, that would authorize an employer to correct errors that occurred in the current school year as well as errors that occurred in the immediately preceding school year. The proposal for §51.5 would ensure consistent application of the authority in §25.28.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §51.5 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to ensure consistency in applying the rules concerning the information provided to TRS in monthly payroll reports.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments to §51.5 are proposed under §825.102, Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and the transaction of the business of the Board. The amendments to §51.5 are also proposed under §825.408(a), Government Code, which authorizes TRS to grant a waiver of the deadline.

**Cross-Reference to Statute:** No other laws are affected by these proposed changes.

*§51.5. Waiver of Deadline to Remit Deposits and Documentation.*

(a) Except as provided in §25.28 of this title (relating to Payroll Report Dates), on ~~[On]~~ written request by an employer ~~[a district]~~, the Teacher Retirement System of Texas (TRS) may grant a one-time waiver for three months, of the deadline imposed by ~~[Gov't Code]~~ §825.408(a), Government Code, to remit all member and employer deposits and documentation of deposits before the seventh day after the last day of a month. In support of the request, an employer ~~[a dis-~~

triet] is required to submit the reasons for a waiver and an explanation of corrective measures being taken by the employer [district] toward compliance with Section 825.408(a), Government Code, and to pay the required interest on the unpaid and/or undocumented amounts. The employer shall also submit corrected reports for the months in question in the form and manner prescribed by TRS.

(b) Except as provided in §25.28 of this title (relating to Payroll Report Dates), TRS shall not consider additional requests for a waiver of the deadline except in the case of a catastrophic event affecting the district's financial or technological resources.

(c) This section does not apply to health insurance.

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

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Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER C. PROGRAM SERVICES

The Texas Juvenile Justice Department (TJJD) proposes the repeal of §380.9143, concerning Basic Education, §380.9163, concerning Youth Industries Program, Initial Preparation, and §380.9194, concerning Automated External Defibrillators.

TJJD also proposes amendments to §§380.9103, 380.9105, 380.9107, 380.9113, 380.9115, 380.9117, 380.9125, 380.9141, 380.9145, 380.9149, 380.9151, 380.9155, 380.9175, 380.9183, 380.9184, 380.9186 - 380.9193, and 380.9197.

#### SECTION-BY-SECTION SUMMARY

Throughout Subchapter C, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the subchapter are listed in the following paragraphs.

The proposed amendment to §380.9103 will change the subject of the rule to focus on physical plant requirements instead of housekeeping duties, hygiene, and bedding/linens, which are addressed in other rules.

The proposed amendment to §380.9105 will narrow the scope of the rule to apply only to TJJD-operated facilities, not contract facilities. The amendment will also require TJJD to provide clean linens at least once per week and to provide appropriate hygiene products. The proposed amendment will also clarify that youth must adhere to TJJD hairstyle requirements unless a religious accommodation is granted. The proposed amendment will also

remove the permanent prohibition on certain hairstyles that may conceal contraband and add an allowance for such hairstyles to be temporarily restricted. The amended rule will also clarify that at any facility, not just at mental health units, TJJD may require a female youth to keep her hair above the shoulder if there is justification to believe the hair may be used for self-injury or to conceal objects or injuries related to self-injury. Additionally, the proposed amendment will clarify that male youth must be clean-shaven, unless an exception is ordered by a medical provider. The revised rule will also add a general requirement that youth must comply with the dress code and will remove specific dress code requirements. The requirement to disinfect clothing before storage will be removed. The proposed amendment will delete provisions that are covered by other rules, such as the prohibited on symbolic expression that endangers others and the prohibition on tattooing and body piercing.

The proposed amendment to §380.9107 will clarify that youth in medium restriction facilities are allowed to possess money in certain circumstances. The proposed amendment will also clarify that an article of clothing that has been altered from the original design is considered contraband even if it is listed on the youth's personal property inventory. The rule will add "approved religious items" to the list of personal items every youth is allowed to possess at facilities other than the orientation and assessment unit. The amendment will also add a requirement for TJJD to provide each youth with a copy of his/her current personal property inventory and will add a provision allowing youth to personalize their rooms within certain limits. The proposed rule will also delete provisions relating to facility-provided clothing and hygiene products as these are addressed in other rules. The amended rule will also grant authority to the facility administrator to allow, on a case-by-case basis, a male youth to wear makeup.

The proposed amendment to §380.9113 will update organization names and federal program names. The amendment will also clarify that standardized menus for institutions and halfway houses will be developed or revised and reviewed annually. Additionally, the rule will clarify that the 14-hour maximum interval between the scheduled start time of the evening meal and the breakfast meal refers to the following day's breakfast meal.

The proposed amendment to §380.9115 will clarify that an initial orientation is completed within 24 hours after admission, in addition to the comprehensive orientation that is completed within 10 days. The amendment will also clarify that youth who are transferred to a long-term placement at the same facility where the intake orientation occurred do not receive a new orientation. Additionally, the rule will update the list of required orientation topics to match current practice.

The proposed amendment to §380.9117 will add a description of the minimum required elements of each facility's recreation program. The amendment will also remove the requirement to provide recreational activities that promote interaction with the community.

The proposed amendment to §380.9125 will specify that youth are provided accommodations on an individual basis to ensure equitable participation in facility programs and that the Language Proficiency Assessment Committee (LPAC) determines what these accommodations will be on an individual basis.

The proposed amendment to §380.9141 will clarify that TJJD's school schedule must average at least 5 1/2 hours of instruction per day over the entire 180-day school term. The rule no longer

requires each day to include at least 7 hours excluding intermissions. The amendment will also add an option for youth who have completed a high school diploma or equivalent to participate in a post-high school vocational program. The rule will no longer require each youth to participate in reading and math instruction until they have reached 12.9 in both areas on the Test of Adult Basic Education. The amendment will also add a reference to the sections in the Texas Human Resources Code that authorize TJJJ to operate schools. The amended rule will also clarify that the 45-minute teacher preparation period is required at least 4 days per week, not necessarily every day. The amendment will also add a reference to the Texas Education Agency rule that requires school districts to provide education to TJJJ youth with disabilities residing in community-based facilities. Additionally, the rule will clarify that only TJJJ-operated medium restriction facilities, not contract facilities, are bound by the subsection on medium restriction facilities.

The proposed repeal of §380.9143 will allow for the content of this section to be moved to §380.9141.

The proposed amendment to §380.9145 will narrow the rule to focus only on career and technology programming provided through TJJJ. The amendment will also remove a reference to placing youth assessed as eligible for advanced vocational training into specialized vocational contract programs. Eligibility for vocational training is not used by TJJJ as the primary factor in placing a youth.

The proposed amendment to §380.9149 will remove information relating to scholarships provided through private trusts administered by TJJJ. The rule will only address financial assistance provided with General Revenue funding. The amendment will also limit the program to apply only to community colleges or technical schools, not four-year institutions. The amended rule will make the following changes to the eligibility criteria: remove the requirement to complete the SAT or ACT exam; add a requirement that the youth must document that all applicable financial assistance in addition to the Pell Grant has been applied for; add behavioral requirements; and add a requirement to sign the TJJJ financial assistance agreement. Additionally, the amendment will also add limitations on financial assistance. The specific requirements for the number of credit hours that must be taken each semester will be removed from the rule. The proposed amendment will also specify the factors TJJJ will review when determining whether to continue a youth's financial assistance.

The proposed amendment to §380.9151 will clarify that anyone, not just employees, may file a challenge to TJJJ's use of a learning resource. The amendment will also remove the ability to appeal challenges of learning resources to the executive director. The second appeal (i.e., superintendent of education) will now be final.

The proposed amendment to §380.9155 will include only minor, non-substantive wording changes.

The repealed §380.9163 will allow for the basic information of this section to be moved to §380.9161.

The proposed amendment to §380.9175 will incorporate definitions from §380.9198.

The proposed amendment to §380.9181 will clarify that this section does not apply to youth committed to TJJJ who are under the managing conservatorship of Texas Department of Family and Protective Services (DFPS). Medical consent for these

youth is governed by an MOU between TJJJ and DFPS. The amendment will clarify that TJJJ has the authority to consent for medical treatment of a youth under age 18 if the person having the right to consent cannot be contacted and the youth's health care need constitutes a medical emergency for a life-threatening condition. The amendment will also clarify that if TJJJ is able to contact the person with the authority to consent, TJJJ will defer to his/her decision as long as consent is not withheld for treatment of a life-threatening condition. The proposed amendment to §380.9183 add a description of the role of the local health authority. The amended rule will also add that in institutions, nurses are available seven days a week to triage youth health concerns and to respond to onsite emergencies and that dental services are provided onsite on a routine basis. The amendment will clarify that at halfway houses, nurses provide services on a regularly scheduled basis and are available by telephone as needed and that medical and psychiatric services are provided via telemedicine/telepsychiatry or at the nearest institution. The proposed amendment will also clarify that dental intake screening and examination are not required if performed and documented within the past 180 days and clarify that youth will receive dental examinations annually and treatment as needed. The amendment will also add a requirement to provide dental cleanings when a dentist determines a cleaning is necessary and remove the requirement to provide dental cleanings annually. The amended rule will add that youth receive a hearing screening at intake and are referred to an audiologist for evaluation and treatment as needed. Additionally, the amendment will add that family planning services are available by referral for youth who request information. The proposed amendment will add that TJJJ is not responsible for medical cost incurred by a youth on conditional placement status with a parent, relative, or guardian. The amendment will also clarify that in a life-threatening situation, non-medical personnel may contact 911 in accordance with medical emergency procedures.

The proposed amendment to §380.9184 will clarify that TJJJ and its health care contractors may, rather than shall, pursue reimbursement by third party payers for youths' medical care.

The proposed amendment to §380.9186 will clarify that youth may be admitted to TJJJ infirmaries for psychiatric monitoring rather than solely for psychiatric crises. The amended rule will also add that a physician may admit a youth to the infirmary for psychiatric monitoring. Additionally, the amendment will add that a registered nurse designee may admit a youth to the infirmary for a medical diagnosis or condition for up to 24 hours.

The proposed amendment to §380.9187 will change the definition of "constant observation" to require a staff member to remain within 12 feet of the youth even when the youth is placed in a locked room in a security unit or crisis stabilization unit. The amendment will also clarify that the purpose of the critical incident review is to recommend corrective action where necessary and will add a list of information sources the review may consider. The amendment will replace the term "associate psychologist" with "masters-level mental health specialist." The amendment will also add licensed psychological associate to the list of individuals defined as mental health professionals. The amended rule will also clarify that a Morbidity and Mortality Review is not necessarily conducted for every life-threatening suicide attempt.

The proposed amendment to §380.9188 will change the time frame for some suicide assessments conducted upon admission and upon transfer. Specifically, if the mental health professional (MHP) determines based on screening results the youth is not

actively suicidal and did not engage in a suicide attempt but did engage in some other type of suicidal behavior or ideation, the assessment may be done within 24 hours after the screening (instead of within 4 hours). The proposed amendment will also clarify that the time frame for an MHP to conduct a suicide assessment does not include time a youth may spend in the ER. The amended rule will add a requirement that facility staff must consult with an MHP before authorizing a strip search in connection with issuing suicide-resistant clothing. The amendment will also clarify whether each post-incident action (e.g., critical incident review, morbidity and mortality review, etc.) is required after life-threatening suicide attempts, suicides, or both. Additionally, the proposed amendment will clarify that TJJD notifies parents/guardians after all suicide attempts, not just life-threatening attempts, TJJD notifies parents/guardians of youth who are 18 or older of the youth's suicidal behavior only if the youth has given consent.

The proposed amendment to §380.9189 will change the frequency of MHP assessments for youth who are on suicide alert to once every two calendar days (rather than every five calendar days). The proposed amendment will also clarify that when the rule requires MHPs to take certain actions, it applies only to MHPs employed by TJJD. If a facility uses a contract MHP or psychiatrist, the contract would govern his/her responsibilities. The amended rule will clarify whether each post-incident action (e.g., critical incident review, morbidity and mortality review, etc.) is required after life-threatening suicide attempts, suicides, or both. Additionally, the proposed amendment will clarify that TJJD notifies parents/guardians of youth who are 18 or older of the youth's suicidal behavior only if the youth has given consent.

The proposed amendment to §380.9190 will clarify that for youth on parole who engage in suicidal behavior, the parole staff may immediately contact the local mental health authority instead of local law enforcement, if appropriate. The proposed amendment will also clarify that TJJD notifies parents/guardians of youth who are 18 or older of the youth's suicidal behavior only if the youth has given consent.

The proposed amendment to §380.9191 will add that prescription of psychotropic medication is a collaborative effort among the psychiatric provider, the youth, and the parent/guardian when feasible. The amended rule will also add that the youth/parent/guardian will be notified of treatment objectives, medication disadvantages, available alternatives, consequences of not following the recommended treatment plan, and potential medication side effects. The proposed amendment will add that psychotropic medication is prescribed in accordance with disease management guidelines and the formulary adopted for use by TJJD and the University of Texas Medical Branch - Correctional Managed Care.

The proposed amendment to §380.9192 will include only minor, non-substantive wording changes.

The proposed amendment to §380.9193 will change the availability of family planning education for youth in TJJD-operated residential placements. Formerly available on site and by referral to appropriate community agencies, the proposed change to this section makes these services available only by referral to appropriate community agencies.

Section 380.9194 is proposed for repeal as this information is currently addressed in TJJD's internal agency manuals and in employee training.

The proposed amendment to §380.9197 will clarify that testing is for HIV rather than HIV/AIDS. The amendment will also add that medical staff educate youth regarding HIV/AIDS as indicated and/or requested, in addition to HIV/AIDS education provided upon admission and as part of the academic program. Additionally, the amended rule will delete the following topics from health education programs for TJJD youth: infection control procedures, comprehensive services available including treatment, and occupational precautions.

The proposed amendment to §380.9198 will clarify that a nurse (rather than a healthcare staff) performs regular checks of the youth's physical condition and placement of restraints, along with an assessment of circulation, position, and open airway at least every 15 minutes. The amendment will remove the requirement for a nurse to check the physical condition of the youth within the first 30 minutes and every hour thereafter because these checks are part of the 15-minute checks performed by the nurse.

#### RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review all rules in Chapter 380, Subchapter C, as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

#### FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

#### PUBLIC BENEFIT/COSTS

Chelsea Buchholtz, Chief of Staff, has determined that for each year of the first five years the amended and repealed sections are in effect, the public benefit anticipated as a result of administering the sections will be improved outcomes for TJJD students in the form of an increase in the numbers of high school diplomas and high school equivalency certificates and industry certifications, successful re-entry into the workforce and/or academic environment, and increased gains in reading and math skills.

Another anticipated public benefit will be the promotion of youth rehabilitation through more clear and concise rules that improve structure and safety regarding the living environment, daily schedules, and basic expectations for youth appearance, dress, and personal possessions. Additionally, the sections are designed to promote youth rehabilitation, safety, and access to health care through a more efficient, clear, and streamlined process and adherence to best practices in the area of suicide prevention.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

#### PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

## DIVISION 1. BASIC SERVICES

**37 TAC §§380.9103, 380.9105, 380.9107, 380.9113, 380.9115, 380.9117**

### STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

#### §380.9103. *Living Environment.*

(a) Purpose. The purpose of this rule is to establish basic physical plant requirements for the living areas within TJJD residential facilities.

(b) Applicability. This rule applies to high and medium restriction facilities operated by TJJD, unless otherwise indicated.

#### (c) General Provisions.

(1) Heating, ventilation, lighting, and acoustical systems provide for comfortable living and working conditions for youth and staff.

(2) Ventilation systems provide at least 15 cubic feet of outside or recirculated filtered air per minute, per occupant, in housing areas, staff stations, and dining areas.

(3) All housing units have access to a drinking fountain within the housing unit.

(4) Dayrooms are situated adjacent to youth sleeping areas and provide the following:

(A) a minimum of 35 square feet per youth for the maximum number of youth who use the room at one time, not including lavatories, showers, and toilets;

(B) furnishings consistent with the custody level of the youth assigned; and

(C) sufficient seating and writing surfaces for the maximum number of youth who use the room at one time.

(5) At least 20 foot-candles of light is provided at the writing level and in personal grooming areas.

(6) Light from an opening or window that has a view to the outside is available:

(A) in each sleeping room; or

(B) from a source within 20 feet of each sleeping room.

[(a) Purpose. The purpose of this rule is to ensure that living areas in facilities provide for and enhance cleanliness, personal security and, to the extent possible, privacy of youth.]

[(b) Facilities shall be clean and orderly.]

[(c) Youth shall be required to participate in cleaning the living areas according to a written housekeeping plan. Youth will be taught proper housekeeping practices.]

[(d) Facilities shall provide personal hygiene articles for each youth. When a youth has attained the appropriate phase in the program and if he or she has personal money, he may be allowed to purchase specific articles.]

[(e) Barber and beautician services will be provided.]

[(f) Youth will be taught personal hygiene skills.]

[(g) Facilities will provide and have readily available for each youth clean bedding and linens.]

§380.9105. *Clothing, Bedding, Hygiene, and Hairstyles [Hair, and Symbolic Expression].*

(a) Purpose. This [The purpose of this] rule provides [is to provide] for adequate and appropriate clothing and bedding for youth in residential facilities. This rule also provides [programs as well as provide] guidelines concerning personal appearance that [for clear and meaningful expectations regarding youth's overall appearance. The guidelines established] are no more restrictive than necessary to maintain security and order and to promote rehabilitative goals [as well as achieve the agency's mission and philosophy].

(b) Applicability. This rule applies [The rules for dress, hair, piercing, and symbolic expression apply] only to youth in high and medium restriction facilities operated by the Texas Juvenile Justice Department (TJJD) [Texas Youth Commission (TYC) operated residential facilities and residential contract programs].

#### (c) Clothing Requirements [Dress Code].

(1) Facilities [Programs] may require all youth [in the program] to wear uniform clothing to promote [in order to ensure a] safe and efficient facility operations [operation and program]. Dress code requirements are [will be] based upon the youth's progress in the agency's established rehabilitation [treatment] program [in order to easily identify a youth's phase, and in order to enhance the youth's incentive to participate in such program].

[(2) Youth will wear clothing issued and required by the agency or contract provider.]

(2) [(3)] TJJD facilities provide youth with clothing that is [Clothing will be] clean, fitted [fit] properly, and [be] appropriate to the weather and activity [at all times].

(3) [(4)] Youth are required to comply with the TJJD dress code [Shoes or acceptable footwear will be worn as appropriate to the activity at all times].

[(5) Undergarments must be worn and must not show. Females will wear bras during non-sleeping hours.]

(4) [(6)] TJJD ensures each youth is provided [Laundry services shall be sufficient to provide] clean clothing at least three [(3)] times per week, except clean underwear and socks, which are [shall be] provided daily.

[(7) Clothing will be disinfected when necessary and before storage of personal items.]

(5) [(8)] As needed, the facility issues: [program will issue]

(A) clothing for temporary use in special events such as community employment or service, sports, or high school graduation; [camping] and

(B) protective clothing for work activity.

(6) [(9)] Youth who have achieved higher stages in the TJJD rehabilitation program may be allowed to purchase some personal clothing. See §380.9107 of this title. [pursuant to §87.4 of this title (relating to Resocialization Earned Privilege System)].

(7) [(10)] Youth are not permitted to purchase or possess any clothing that: [Patches, embroidery, buttons, and writing on clothing must not signify anything about]

(A) makes reference to gangs, drugs, alcohol, sex, obscene language, violent acts;[5] or

(B) shows [show] disrespect to any group or class of people.

(d) Linens. Clean linens are provided for each youth at least once per week and are readily available for emergencies. Each youth is provided at least two sheets, a blanket, and a pillowcase, unless the youth is placed in suicide-resistant housing by a mental health professional.

(e) Hygiene Products. Youth are provided appropriate and adequate hygiene products.

(f) ~~[(d)]~~ Piercing.

(1) Youth [For health and safety reasons, youth] in [TYC-operated institutions or] high restriction facilities are not permitted to [contract programs will not] wear earrings or other piercing paraphernalia.

(2) Youth [In the case of a unique health or safety issue, a youth] in [a] medium restriction facilities [program] may be restricted from wearing [not be allowed to wear] earrings if unique health or safety issues arise. These restrictions are [will be] made on a case-by-case [an individual] basis and are documented [in the youth's Individual Case Plan (ICP)].

(3) In an effort to eliminate impediments to the youth's successful reestablishment in society, including non-traditional appearance, youth shall not take part in tattooing or body piercing.]

(g) ~~[(e)]~~ Hairstyles [Hair].

(1) Youth in high and medium restriction facilities are required to [TYC-operated residential facilities and residential contract programs shall] adhere to certain hairstyle requirements, unless a religious accommodation is granted under §380.9121 of this title [in order to maintain a degree of uniformity, and to encourage youth to maintain a pro-social appearance and increased self-respect].

(2) Males must be clean-shaven, unless an exception is ordered by a medical provider. Sideburns [and sideburns] may not extend below the middle of the ears.

(3) Females will be allowed to shave as appropriate. [This will not be a privilege tied to phase.]

(4) TJJD provides barber and beautician services and instructions on acceptable hairstyles.

(3) Hair should be neatly cut, clean and well groomed. No block style, natural or shag haircuts will be permitted.]

(5) ~~[(4)]~~ Fads and extreme hairstyles are not permitted, such as [No fads or extremes are allowed. No] mohawks, spikes, tails, partially shaved heads, or designs cut into the hair or eyebrows [are allowed. No shaved/partially-shaved heads will be allowed. Hair parts must be straight].

(6) The following additional hairstyles requirements apply to youth in high restriction facilities.

(5) Youth in TYC institutions or secure contract programs will be held to the following standards:]

(A) Hairstyle requirements are [for males will be] based upon the youth's progress in the agency's rehabilitation [Resocialization] program [as set forth in §87.4 of this title].

(B) Females may be required to keep their hair length above the shoulder [In secure facilities populated only by emotionally disturbed youth, female youth may be restricted to maintain their hair length above the shoulder for safety reasons. In other facilities, female

youth may be restricted to maintain their hair length above the shoulder] if there is reason to believe the youth may use her hair [may be used] for self-injury, [used] to conceal [other] objects used for self-injury, or [used] to obscure staff's view of the neckline and conceal evidence of self-injury. Individual restrictions and the justification shall be documented [in the youth's Individual Case Plan (ICP)].

(C) Females [Female youth] may be required to tie their hair up or back in a ponytail with one elastic hair tie provided by the facility [pony-tail (if the hair [it] is long enough to obscure staff's view of the neckline or face)] with one (1) black, white, or black and white serunehie, elastic band, or rubber band that will be provided by the facility].

(D) Hairstyles that may conceal [facilitate hiding] contraband may be temporarily restricted, such as: [will not be allowed, e.g.]

(i) buns;[;]

(ii) thick braids;[;]

(iii) curly hair that stands out more than two inches from the head; or[;]

(iv) use of multiple hair ties [serunehies, etc].

(F) Symbolic Expression. Symbolic expression(s) that have been shown to precipitate violent behavior, which endangers the safety of youth, staff or visitors at the facility, is prohibited.]

§380.9107. Youth Personal Property.

(a) Purpose. This [The purpose of this] policy establishes [is to establish] limits on the personal property a youth may possess while assigned to a residential facility. Restrictions on [The restriction and prohibition of] personal property are [is] necessary [in order] to maintain facility order and to provide a safe[, sanitary and constructive] environment that is conducive to [the youth's] rehabilitation. This rule also defines items that are considered contraband in a residential setting.

(b) Applicability. This rule applies to high and medium restriction facilities operated by TJJD.

(1) Contraband items other than contraband money will be disposed of in accordance with §97.11 of this title.]

(2) Contraband money as defined in subsection (e)(7) of this section will be disposed of in accordance with §95.11 of this title.]

(c) Definitions.

(1) Contraband--includes any of the following: [The following items are considered contraband. Possession (care, custody or control) of such items within a Texas Youth Commission (TYC)-operated or contract residential facility is prohibited.]

(A) ~~[(1)]~~ Any item which is a crime to possess under municipal ordinances or state or federal law, including solvent inhalants, drugs [including synthetic drugs], and alcohol.

(B) ~~[(2)]~~ Unauthorized [possession of] prescription drugs or over-the-counter [over the counter] medication. For example, possession of[;] medication;

(i) not prescribed to the youth;[; or]

(ii) in excess of the amount prescribed; [to the youth, or]

(iii) without the consent or knowledge of staff;[;] or

(iv) at an unauthorized time[; etc].

(C) ~~[(3)]~~ Narcotics paraphernalia.

(D) ~~Jewelry (high restriction facilities only).~~

(E) ~~[(4)]~~ Items that can be used, made, or adapted for ~~[to]~~ use as a ~~weapon.~~ ~~[weapons against self or others. Because jewelry represents a risk to facility safety (e.g. items may be used as weapons or may injure staff/student during a restraint), youth are not allowed to possess any jewelry.]~~

(F) ~~[(5)]~~ Pictures, printouts, or drawings that depict exploitive or sexually explicit male or female nudity or partial nudity or sexual acts, including magazines or periodicals that ~~;~~ which routinely publish such pictures. ~~[No forms of nudity will be allowed to be posted.]~~

(G) ~~[(6)]~~ Posters, printouts, pictures, magazines, periodicals, clothing, or any other ~~[Any]~~ items with slogans, mottos, or emblems that ~~[which]~~ are obscene, advocate illegal or immoral conduct, hold individuals or groups up to ridicule, advocate violence, or reinforce delinquent subcultural values, or in any way disrupt programs or activities ~~;~~ including but not limited to posters, pictures, magazines, periodicals, or clothing].

(H) ~~[(7)]~~ Money, except in medium restriction facilities during an approved activity ~~[in excess of the amount or not in a form permitted by facility rules].~~

(I) ~~[(8)]~~ Gambling paraphernalia such as ~~[(dice or)]~~ playing cards ~~;~~ etc.].

(J) ~~[(9)]~~ Devices that ~~[which]~~ have been fashioned to produce tattoos.

(K) ~~[(10)]~~ Any item not listed on the youth's personal property and clothing inventory ~~[Personal Property and Clothing Inventory form]~~ (other than personal letters or photographs), including any articles of clothing that have been altered from the original design.

(2) Possession--having care, custody, or control of an item.

(d) Prohibition on Contraband.

(1) Youth are prohibited from possessing contraband. Youth found in possession of contraband are subject to disciplinary consequences in accordance with §380.9503 of this title.

(2) Seized contraband is disposed of in accordance with §380.9711 of this title.

(c) ~~[(d)]~~ Authorized Personal Property [General Requirements].

(1) At the Orientation and Assessment Unit, youth are not permitted to possess any [The TYC assessment center shall prohibit youth possessing] personal property except for medically necessary items. If a youth arrives at the Orientation and Assessment Unit with personal property other than [All personal property except for] medically necessary items, TJJD staff members inventory the property and return it [will be inventoried, receipted and returned] to the county transporter [person transporting the youth to the facility to be returned to the youth's home. The county transporter is responsible for ensuring that all personal items are returned to the youth's home].

(2) At facilities other than the Orientation and Assessment Unit, youth may possess [Other residential programs may prohibit youth from possessing personal property except for medically necessary items.] personal letters, [and] photographs, approved religious items, and medically necessary items. Youth may be allowed to [that are otherwise acceptable. Programs may allow youth to] possess additional [limited] personal property as earned privileges based on the youth's progress in the TJJD rehabilitation program. TJJD staff

members maintain a current inventory of each youth's personal property other than pictures and letters. A copy of the inventory is given to the youth. [consistent with the program's privilege system and/or interaction in the community in accordance with §93.1 of this title].

(3) Due to space limitations and fire safety regulations, the number or amount of personal items a youth may possess is limited to what ~~;~~ youth may be restricted to possessions that] will fit in the youth's ~~[their]~~ designated storage space in a neat and orderly manner. ~~[This includes letters, pictures, books and magazines.]~~

(A) ~~[(4)]~~ The size of the designated storage space provided to each youth is ~~[amount of space a youth has to store personal belongings will be left up to the facility.]~~ dependent on the facility's physical plant and dorm configuration ~~[local issues such as the configuration of the dorm].~~

(B) ~~[(5)]~~ No youth will be denied the right to possess a type of item allowed by this rule due to ~~[what the agency allows based on] inadequate storage space. However, TJJD ~~;~~ however, local administration] may limit the number or amount of a specific type of item ~~[these items based on space limitations].~~~~

(C) Youth may personalize their areas within reasonable guidelines. Items on walls in bedrooms will be limited to space available on individual bulletin boards.

(4) ~~[(6)]~~ For youth ~~[Youth]~~ with a documented history of self-harm, TJJD may restrict ~~[self-injury may have restricted] access to certain possessions that are otherwise allowed if the item(s) may be used for self-harming behavior [authorized under this policy that might be used to cause themselves harm]. These restrictions are [will be] made on a case-by-case [an individual] basis and documented [in the youth's Individual Case Plan (ICP)].~~

(5) ~~[(7)]~~ TJJD is not ~~[A program is neither] liable for and [nor] will not~~ replace lost, stolen, or damaged personal items of youth unless the loss or damage can be shown to have resulted from staff negligence.

~~[(8)]~~ An inventory of any personal property or clothing a youth is allowed to possess will be established and maintained. Any item not listed on this inventory will be considered contraband and disposed of according to §97.11 of this title.]

(6) ~~[(9)]~~ When a youth is transferred to another facility, TJJD transports any ~~[Any]~~ personal property or clothing ~~the [a] youth is allowed to possess to the new facility [will move with the youth to each assigned placement].~~

(7) ~~[(10)]~~ Youth may not give, take, borrow, steal, ~~[barter,] or trade possessions with other youth.~~

(8) ~~[(11)]~~ A youth who escapes is ~~[shall be] considered to have abandoned his/her [his] property. TJJD [The administrator] will notify the youth's [youth and his or her] parents, guardian, [head of household,] or managing conservator [of the inventory of property and] that the property will be disposed of in 30 days unless shipping COD is authorized. [If authorization is given, all property is shipped COD by the least expensive means available. If after 30 days in storage the property has not been demanded, then the property is disposed of.] Should a youth be returned before the end of the 30-day period, TJJD will make [subsequently return from an escape,] reasonable efforts [will be made] to return any property remaining at the facility. [However, a youth shall not be entitled to compensation for any loss or damage caused by disposition or shipping of property in accordance with this procedure.]~~

(9) ~~[(12)]~~ Parents and youth are ~~[will be] notified in writing of the rules relating to personal possessions.~~



[(13) Youth in TYC-operated institutions:]

[(A) will be provided with standardized clothing and shoes. See §91.5 of this title for dress code requirements;]

[(B) may be allowed to possess additional appropriate clothing to wear to off-campus privileges such as community jobs or school;]

[(C) will be allowed to possess personal shoes if they are medically necessary; however, the facility may choose to provide this to the youth in lieu of the family;]

[(D) will be provided appropriate and adequate hygiene products;]

[(E) will be provided tweezers (girls only) to groom their eyebrows/ facial hair. However, the female youth will have only controlled access, and shared tweezers will be sterilized between uses. If tweezers are being inappropriately used, access to tweezers will be prohibited. This restriction will be documented on the youth's ICP; and]

[(F) may possess personal magazines, books or other publications; however, the policy on contraband will limit the content. The youth will be limited in the number or the amount of publications based on storage space limitations, and based on what the local fire marshal will allow (e.g. three books, four publications, etc).]

(f) Restrictions on Makeup. The following restrictions on possessing makeup apply only to youth in high restriction facilities.

[(14) Youth in TYC-operated institutions are restricted from the following:]

(1) [(A)] Makeup [For sanitary reasons, makeup] may not be shared among youth.

[(B) Girls on the Corsicana Stabilization Unit may not wear makeup.]

(2) [(C)] Boys are not permitted to wear [will not be allowed access to] makeup, except as allowed by the facility administrator on a case-by-case basis [for safety issues (violating the social norms would leave the boys vulnerable to ridicule and/or harassment)].

(3) [(D)] Youth are not permitted [will not be allowed] to possess [any] talcum powder, aerosol products, [or] products in metal or glass containers, lip [or] eans. The following types of makeup will be prohibited: Lip liner pencils, eyeliner (liquid or pencil), eye shadow (cream, powder or pencil), eyebrow pencil, eyelash curler, loose powder, waterproof cosmetics, or [and] nail polish. TJJD [Institution administrators] may place additional [local] restrictions on certain types or brands of makeup or hygiene products based on safety concerns such as [; e.g.] alcohol content or [;] toxicity [; etc].

[(E) Youth may not possess any item that is not expressly allowed in TYC policy.]

(g) Restrictions on Purchased Items. The following restrictions on purchasing items apply only to youth in high restriction facilities.

[(15) Youth in TYC-operated institutions may obtain the following items:]

(1) The only items youth are permitted to purchase are:

(A) personal [Personal] clothing; [for off-campus privileges;]

(B) shoes; [;]

(C) makeup and other hygiene products; and

(D) any items stocked in the facility commissary. [may be purchased by the youth through a local commissary or purchased by the facility on the youth's behalf.]

(2) All purchases for a youth must be made using money from the youth's student trust fund in accordance with §380.9931 of this title. Staff members are prohibited from taking money directly from youth for this purpose. [See §87.4 of this title.]

(3) Purchased items must be:

(A) purchased from the facility's commissary; or

(B) shipped directly from the vendor to the facility. Shipments are searched for contraband in accordance with §380.9315 of this title. Youth are not permitted to receive personal items during visitation.

[(B) Youth will be allowed to receive phase-appropriate shoes or clothing through the mail, only if it is shipped directly from the store. These items will be searched for contraband by staff in the presence of the youth and placed on the youth's inventory the day they are received.]

[(C) If a facility chooses to purchase these items on the youth's behalf, a local procedure shall be outlined to include a standard approval procedure and proper accounting procedures. Staff shall not take money directly from youth for this purpose.]

§380.9113. Food and Nutrition.

(a) This rule establishes [Purpose: The purpose of this rule is to establish] standards to ensure that the Texas Juvenile Justice Department (TJJD) provides [agency programs provide] food services to meet the basic nutrition needs of its youth.

(b) Food services departments in TJJD [TYC] facilities may be operated by TJJD [TYC] employees or through contracts with private organizations.

(c) Facility food service departments shall meet applicable state and local sanitation and health standards.

(d) Facilities shall comply with participation requirements for the United States [U.S.] Department of Agriculture [National Breakfast Program and the] National School Lunch Program and School Breakfast Program.

(e) The [diet provided shall meet the] most recent Recommended Dietary Allowances (RDA) published by the National Research Council shall be utilized in planning menus.

(f) Standardized menus will be developed or revised as needed and reviewed annually for institutions and for halfway houses by a dietitian.

(1) A single menu for staff and youth will be followed.

(2) Medical diets shall be provided as prescribed by appropriate medical or dental personnel.

(3) Religious diets will be provided when a youth's religious beliefs require adherence to religious dietary laws consistent with §380.9121 [(GAP) §91.24] of this title [(relating to Moral Values, Worship and Religious Education)].

(g) Food will be served in an appetizing and attractive manner.

(h) Youth shall be served three meals and a snack(s) daily; at least two of the meals are hot.

(i) The scheduled start time between the evening meal and the following day's breakfast meal shall not exceed 14 hours.

(j) On-duty correctional care staff shall supervise youth during meals.

(k) Meals and snacks shall not be used as disciplinary measures.

(l) Facilities will implement a system for determining and responding within reason[;] to youth food preferences.

§380.9115. *Youth Orientation.*

~~[(a) Purpose. The purpose of this rule is to provide for written and oral program orientation to all youth.]~~

~~(a) [(b)] TJJJ provides youth an orientation [Youth shall be oriented to TYC and] to the programs in which they are placed, except as noted in subsection (b) of this section [within ten days of admission].~~

~~(1) An initial verbal orientation is completed within 24 hours after the youth's arrival.~~

~~(2) A comprehensive verbal orientation is completed within 10 calendar days after the youth's arrival.~~

~~(b) Youth who are transferred to a long-term placement at the same facility where the intake orientation was provided do not receive a new orientation.~~

~~(c) If a youth does [Youth shall be provided orientation in their own language if they do] not understand English, TJJJ provides the verbal and written orientation in the preferred language.~~

~~(d) If a literacy problem exists, staff members [Staff will] assist youth to understand written orientation [the] information [provided].~~

~~(e) The orientation includes verbal and written information on at least the following topics:~~

~~[(d) Orientation will include but will not be limited to the following topics on which both oral and written information is provided:]~~

- ~~(1) intake assessment process;~~
- ~~(2) program goals;~~
- ~~(3) services available;~~
- ~~(4) daily living program;~~
- ~~(5) procedures for gaining access to health care [medical] services;~~
- ~~(6) procedures [procedure] governing mail, telephone, and visitation [correspondence];~~
- ~~(7) youth rights;~~
- ~~(8) program rules [and regulations];~~
- ~~(9) behavioral rules and possible consequences;~~
- ~~(10) grievance [complaint] resolution procedure;~~
- ~~(11) release criteria;~~
- ~~[(12) TYC liability for youth personal items;]~~
- ~~(12) [(13)] search policy;~~
- ~~(13) [(14)] emergency evacuation procedure; [information; and]~~
- ~~(14) [(15)] [notice of] confidentiality of alcohol and drug abuse records; [Notice to Youth, LS-021-]~~
- ~~(15) zero-tolerance policy for sexual abuse, sexual activity, and sexual harassment;~~

~~(16) trust fund procedures;~~

~~(17) religious activities;~~

~~(18) education services;~~

~~(19) clothing and personal property;~~

~~(20) drug testing policy; and~~

~~(21) earned privileges.~~

§380.9117. *Structured Activity and Recreation [Activity/Recreation].*

~~(a) Purpose. The purpose of this rule is to provide for [and require participation in] structured activity and [and/or] recreation programs for [all] youth [in residential facilities] as a vital and essential aspect of individual development and as opportunity for appropriate social interaction.~~

~~(b) Applicability. This rule applies to high and medium restriction facilities operated by the Texas Juvenile Justice Department (TJJJ).~~

~~[(b) TYC facility programs shall provide activities that expend energy and allow physical and psychological release for youth.]~~

~~(c) General Provisions.~~

~~(1) Each facility's schedule includes the following:~~

~~(A) at least one hour of large-muscle exercise:~~

~~(i) seven days per week in high restriction facilities;~~

~~and~~

~~(ii) five days per week in medium restriction facilities; and~~

~~and~~

~~(B) structured recreational activities or leisure-time activities:~~

~~(i) for at least one hour each day in high restriction facilities; and~~

~~(ii) for at least two hours each day in medium restriction facilities.~~

~~(2) The recreation and large-muscle exercise program at each facility:~~

~~(A) is conducted in cooperation with staff from various facility departments;~~

~~(B) provides access to:~~

~~(i) a variety of indoor and outdoor recreational activities as weather permits; and~~

~~(ii) fixed and movable recreation equipment and adequate indoor and outdoor recreation and activity space; and~~

~~(C) includes:~~

~~(i) a variety of physical activities to reflect the expressed interests of the youth and to expose youth to different opportunities;~~

~~(ii) physical skill-building to help maintain lifetime health and fitness;~~

~~(iii) encouragement for youth to self-monitor and set personal fitness goals; and~~

~~(iv) a means to individualize the intensity of activities and measure individual improvement.~~

~~(3) [(e)] A written schedule of large-muscle exercise activities [activity] and recreation events is [will be] available to youth.~~

(4) TJJD ensures adequate staff are available to provide proper supervision during recreational activities.

~~[(d) When possible, activities which promote interaction with the community will be provided.]~~

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 3, 2014.

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For further information, please call: (512) 490-7278



## DIVISION 2. EDUCATION PROGRAMS

**37 TAC §§380.9125, 380.9141, 380.9145, 380.9149, 380.9151, 380.9155**

### STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 380.9141 is also proposed under Texas Human Resources Code §242.051, which authorizes TJJD to have general charge of and be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the department. The section is also proposed under Texas Education Code, Chapter 30, Subchapter E, which provides the state available school fund apportionment to children committed to the TJJD. To provide the state available school fund apportionment for educational purposes, the educational programs provided to those children are considered to be educational services provided by public schools.

Section 380.9155 is also proposed under Texas Education Code §30.106, which authorizes TJJD implement a comprehensive plan to improve the reading skills and behavior of students committed to TJJD.

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

*§380.9125. Youth with Limited English Proficiency.*

(a) Purpose. This rule ensures that the Texas Juvenile Justice Department provides every youth who has a home language other than English and who is identified as limited English proficient a full opportunity to participate in an English as a Second Language program. [The Texas Youth Commission will provide reasonable access to all programs and services for youth that are determined to be English language learners.]

(b) Definitions. English Language Learner--a youth whose primary language is one other than English and whose English language skills are such that the youth has difficulty performing ordinary classwork in English. The terms English language learner and limited English proficient are used interchangeably. [is the term to identify youth who have insufficient English to succeed in the English-only environment within TYC.]

(c) General Provisions.

(1) TJJD provides reasonable access to all programs and services for youth who are determined to be English language learners.

(2) ~~[(e)]~~ Upon admission to an orientation and assessment unit, each [all] youth is [are] screened to determine if a language other than English is primary. Youth with a primary language other than English are assessed for the degree of English proficiency. TJJD uses state-approved assessments for classification purposes.

(3) The Language Proficiency Assessment Committee (LPAC) reviews youth assessments and determines language and instructional accommodations on an individual basis.

(4) ~~[(d)]~~ The results and conclusions of all educational, psychological, and other assessments will consider the possible influence of limited English proficiency on the outcome or test scores.

(5) Youth are provided the necessary linguistic accommodations to ensure competency in listening, speaking, reading, and writing in the English language and to ensure equitable participation in facility programs.

(6) All appropriate linguistic accommodations, as determined by the LPAC, must be provided to youth in accordance with state law.

*§380.9141. Education Administration.*

(a) Purpose. This [The purpose of this] rule establishes [is to establish] basic requirements for the administration of educational and vocational services consistent with applicable federal and state laws and the educational needs of Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)] youth.

(b) Orientation and Assessment Units.

(1) Upon admission to a TJJD orientation and assessment unit, each youth's educational needs are assessed and education records are requested from previously attended schools.

(2) An individual case plan is developed for each youth in accordance with §380.8701 of this title. The case plan includes academic and vocational objectives.

~~[(b) All youth shall attend school unless staff has approved a youth over the compulsory school attendance age for alternative training or a work program. Youth under the state compulsory school attendance majority age will be enrolled in school.]~~

(c) High Restriction Facilities. The following provisions apply to education services provided at high restriction facilities with TJJD-operated educational programs. [Institutions:]

(1) TJJD operates schools as provided for in Texas Human Resources Code §242.003 and §242.051, as well as [TYC schools are accredited under the provisions of the] Texas Education Code, Chapter 30, Subchapter E.

(2) TJJD educational [Educational] programs [will] comply with applicable federal and state requirements.

~~[(3) All youth will be enrolled in an education program. Youth who have completed high school will be in a post high school training/education program and may be employed part-time. Youth who have completed a high school diploma or the equivalent will continue to participate in reading and math instruction until they have reached 12.9 on the Test of Adult Basic Education in both areas, or until they are released from TYC institutions.]~~

(3) ~~[(4)]~~ TJJD provides competency-based instruction, [The principal, assistant principal, diagnostician, Reintegration of Offenders-Youth (RIO-Y) Counselor, licensed school psychologist, or

qualified teacher will provide] educational counseling, and vocational counseling to youth.

(4) The school calendar is established annually by the TJJJ Education Division and is approved by the executive director.

(5) TJJJ offers 180 instructional days per school year for all youth enrolled in school. The school schedule includes a daily average of at least five and one-half hours (330 minutes) of instruction in required secondary curriculum based on a 180-day school term or its equivalent. [The school schedule will include a minimum of seven (7) hours of instruction daily, including intermissions and recesses, according to the school calendar established annually by the central office education department. Four (4) of the seven (7) hours must be in core curriculum areas. The superintendent of education may grant waivers for less than seven (7) hours, but not less than four (4) hours, of school.]

(6) Teaching schedules for each teacher include a preparation period of at least 45 minutes for a minimum of four days per week.

(7) [(6)] Each [The] school offers [will offer] all credits necessary to meet [the minimum] high school graduation [program] requirements following the state curriculum and administers [will administer] state assessments required for graduation. As needed, youth are scheduled for special education, remedial education, English as a second language, and career and technology education courses. Youth who complete all Texas Education Agency (TEA) requirements for high school graduation while enrolled in a TJJJ school will graduate from the TJJJ school.

[(7)] Student mastery of state curriculum requirements for high school credits will be documented and retained in student education files for verification of course completion.

(8) GED preparation classes and testing are [will be] available to all age-appropriate youth who express an interest in obtaining a high school equivalency diploma [students].

(9) A four-year diploma plan is developed and revised at least annually for each youth who is 14 years of age or older and has not completed a high school diploma. An appropriate education plan is developed for each youth under 14 years of age and for each youth who has already obtained a high school diploma or equivalent.

(10) Youth who have received a high school diploma or equivalent are required to participate in a post-high school training/education program in either an educational or vocational setting.

(11) Youth have the opportunity to receive credit for courses offered by TJJJ schools and credit earned from post-secondary courses.

(12) Student mastery of state curriculum requirements for high school credits is documented and retained in student education files for verification of course completion.

(13) [(9)] Schools [will] provide library services and materials for youth in accordance with §380.9151 of this title [on campus].

(14) [(10)] Schools [will] use available federal funds to provide required specialized education and vocational [training] instruction/training not otherwise available in the institution.

(15) Youth must complete:

(A) progress tests on designated dates to determine their improvement since completing admission testing; and

(B) required reading and math assessments prior to release.

(16) A youth's participation and progress in the education program, the reading improvement program, and the Positive Behavioral Interventions and Supports system are considered in decisions regarding the youth's privileges and progress toward release. See §380.9155 of this title for more information.

[(11)] Teaching schedule provides each teacher a minimum of 45 minutes per day for preparation.

(d) Medium Restriction Facilities. The following provisions apply to TJJJ youth placed in TJJJ-operated medium restriction facilities. [Halfway Houses and Contract Programs.]

(1) Medium restriction facilities and local school districts are required to follow 19 TAC §89.115 concerning the provision of public school services to TJJJ youth in addition to any memorandum of understanding entered into between TJJJ and the local school district.

(2) TJJJ shares educational assessment information with the serving school in the community.

(3) TJJJ confers with school officials to advocate for appropriate academic and vocational course assignments for TJJJ youth.

(4) Daily study time and tutorial assistance are provided to youth.

(5) A youth's educational participation and progress are considered in decisions regarding the youth's privileges and progress toward release.

[(14)] Staff will ensure that all community facilities serving TYC youth have access to approved educational services.]

[(2)] Staff will ensure that community facilities follow the guidelines established jointly by TYC and TEA for their utilizing public school services.]

(e) Parole.

(1) Youth who have not received a high school diploma or equivalent [high school equivalency certificate] are required as a condition of parole [expected] to be enrolled in an education or vocational program and attending regularly.

(2) TJJJ assists paroled [Staff will assist] youth who have received a high school diploma or equivalent to enroll [high school equivalency certificate in enrolling] in a post-secondary [post secondary] training/education program or to obtain [in obtaining] full-time employment.

§380.9145. Career and Technology Education.

(a) Purpose. This [The purpose of this] rule establishes a program [is] to provide [for] youth with opportunities for career and technology education [opportunities].

(b) General Provisions [Institutions].

(1) Upon admission to TJJJ, each [Each] youth completes a vocational assessment. The results of the assessment may be [are] considered when determining appropriate career and technology education program placement for the youth.

(2) Youth enrolled in a career and technology education program complete a course in which they explore [prepare] an individual career path [plan].

(3) Youth who are academically ready and are in compliance with behavioral expectations have an opportunity to enroll in [introductory] career and technology education courses in conjunction with their [basic] academic courses.

(4) Factors such as age [Age], interest, safety, and basic literacy [factors] are considered when placing youth in advanced [pre-employment] career and technology education courses.

(5) Community vocational resources, including job placement services and training programs, are utilized to supplement career and technology agency resources.]

(5) [(6)] TJJD regularly reviews career [Career] and technology training options [are reviewed regularly] to determine their relevance [relevaney] to employment opportunities in the community.

(6) [(7)] TJJD [TYC] uses business, industry, and community resources in developing academic and vocational education programs for selected youth.

[(e) Halfway Houses and Contract Programs:]

[(1) Contract programs which focus on vocational training receive youth assessed as eligible for advanced vocational training. Such programs also provide opportunities for completion of high school equivalency diplomas.]

[(2) Youth attending public schools have the opportunity to enroll in career and technology education courses the same as other youth attending the school.]

[(3) Youth beyond the compulsory school attendance age may enroll in training programs other than those affiliated with the public schools.]

§380.9149. [College/Technical Institute] Financial Assistance for College or Technical School.

(a) Purpose. This [The purpose of this] rule provides [is to provide for] an opportunity for qualified Texas Juvenile Justice Department (TJJD) youth on parole to receive financial assistance from TJJD, subject to availability of funds, to enroll in community colleges [in TYC custody who are qualified and wish to attend public or private institutions of higher education] or technical schools [institutes] in Texas [to apply for TYC college or technical institute financial assistance].

(b) Applicability. This rule applies only to financial assistance provided by TJJD:

- (1) from general revenue funds;
- (2) for community college or technical school courses other than dual-credit high school courses; and
- (3) for youth who are on parole status at the time of enrollment in the community college or technical school course(s).

[(b) Eligibility [Acceptance] Criteria.

(1) Academic Criteria. A youth must meet the following academic criteria to be eligible to receive financial assistance from TJJD:

[(4) All youth requesting financial assistance complete an application and document:]

(A) complete [completion of] a GED or high school diploma;

(B) complete [completion of] the state-required assessment [TASP] test, unless documented as exempt;

[(C) completion of the appropriate college admissions examination, i.e., SAT or ACT;]

(C) [(D)] document that he/she has applied for [that] the Pell Grant and document that those funds will be [has been applied for

and is] available for the requested semester [college admission date]; and

(D) document that all other applicable financial assistance has been applied for and document whether any additional assistance has been approved.

[(E) completion of an independent living preparatory program when appropriate.]

(2) Behavioral Criteria. A youth must meet the following behavioral criteria to be eligible to receive financial assistance from TJJD:

(A) have no major rule violations within the previous 60 days, as confirmed in a Level I or II due process hearing; and

(B) adhere to requirements outlined in his/her individual case plan, conditions of placement, and/or conditions of parole, as applicable.

(3) Programmatic and Other Criteria. A youth must meet the following programmatic and other criteria to be eligible to receive financial assistance from TJJD:

(A) [(E)] complete [completion of] an independent living preparatory program, if required by TJJD; and [when appropriate.]

(B) sign a financial assistance agreement with TJJD, which may contain any additional requirements as deemed appropriate by TJJD.

(d) Limitations on Financial Assistance.

(1) The provision of financial assistance is contingent on the availability of funds. Not all youth who are eligible will receive financial assistance.

(2) The youth must be under TJJD jurisdiction at the beginning of each semester for which TJJD provides financial assistance.

(3) Financial assistance may be used only for the following expenses:

- (A) GED testing;
- (B) tuition and fees;
- (C) books;
- (D) technical school expenses such as uniforms or tools;
- (E) other education-related expenses, as approved on a case-by-case basis by the division director over education services or designee.

(4) TJJD is the payer of last resort. All other funds, such as Pell Grant funds, must be applied to the cost of tuition, fees, books, and required supplies before TJJD funds are used.

(5) TJJD funds may not be used for to pay for late fees, library fines, parking tickets, or similar expenses.

(e) Requirements for Receiving Continued Financial Assistance.

(1) TJJD may discontinue financial assistance for any of the following reasons:

(A) behavior that results in arrest, a TJJD administrative due process hearing, or other disciplinary referral of any type;

(B) unacceptable academic performance in classed paid with financial assistance, such as a grade point average below 2.0, poor attendance, or unapproved schedule changes; and/or

(C) failure to provide TJJD with information regarding the youth's attendance, participation, grades, and progress throughout the term of the financial assistance.

(2) TJJD reviews the youth's eligibility for continued financial assistance following receipt of the youth's grades.

[(2) Youth who are orphan eligible and meet the acceptance criteria are eligible to receive financial assistance from the Wende or Parrie Haynes Trust. Youth are considered orphan eligible when they meet the following criteria:]

[(A) Parental rights are terminated:]

[(B) One or both parents are deceased:]

[(C) There is no knowledge or record of parents whereabouts:]

[(e) Restrictions:]

[(1) Certain restrictions apply for youth attending academic institutions of higher learning including colleges and community colleges:]

[(A) Youth are required to attend community college or junior college for the first semester:]

[(B) Financial assistance is provided for no less than three semester hours and no more than 12 semester hours during the first semester, and no less than nine semester hours each semester thereafter:]

[(C) Financial assistance is limited to four complete semesters. Summer sessions consisting of 12 semester hours shall constitute one semester:]

[(2) Continued assistance eligibility is reviewed each succeeding semester following youth submitting a grade slip:]

[(3) Completion of an approved independent living preparatory program is required before a youth may live on campus or in an apartment while attending college or technical institutes:]

[(4) Any exceptions to the stated restrictions must be approved by the Service Area College Assistance Committee:]

§380.9151. Library and Instructional Resources.

(a) Purpose. This rule ensures that each Texas Juvenile Justice Department (TJJD) school provides [Each Texas Youth Commission (TYC) facility shall provide] a wide range of learning resources at various levels of difficulty that appeal to a variety of interests and represent different points of view to support, enrich, and assist in meeting the needs of the youth and teachers in the education program.

(b) Definitions [Explanation of Term Used]. Learning Resource-- [Resources - refers to] any print, video, or other material with instructional content or an instructional function.

(c) Responsibility for Learning Resources Selection.

[(1) The selection [and acquisition] of [the] learning resources is [shall be] made by a Library and Media Review Committee (LMRC) at each school [facility], which is composed of:

(1) [(A)] professional education staff;

(2) [(B)] librarians;

[(C) teachers; or]

(3) [(D)] teachers or aides trained in the use of reviewing sources; and

(4) [(E)] administrators.

(d) Selection Criteria.

(1) [(2)] The LMRC selects [will select] learning resources that [will]:

(A) stimulate growth in factual knowledge, literacy, appreciation, aesthetic values, and societal standards that will promote lifelong learning and reading habits;

(B) present opposing sides of controversial issues so that youth may develop, with guidance, the practice of critical analysis and the ability to make informed decisions in their daily lives;

(C) enrich and support the curriculum, taking into consideration the varied interests, abilities, learning styles, and maturity levels of the youths;

(D) provide a background of information that will motivate students and staff to examine their own attitudes and behavior, to comprehend their duties, responsibilities, rights, and privileges as participating citizens in our society, and to make intelligent judgments in their daily lives;

[(E) guided by the physical examination, and judicious use of standard reviewing tools and authoritative lists;]

(E) [(F)] are [be] representative of religious, ethnic, social, and cultural groups and their contribution to our national heritage and the world community; and

(F) [(G)] are [be] of various formats [(i.e., print, non-print, and electronic);:]

[(d) Selection Criteria. The criteria employed in the selection of learning resources are:]

(G) [(1)] support and are [be] consistent with the educational goals of the state [State] and TJJD [TYC] as well as the goals and objectives of the individual facility and the courses taught;

(H) [(2)] are [be] appropriate for the subject area, [resocialization,] special treatment needs, age, emotional development, ability level, learning styles, and social development; and

(I) [(3)] meet high standards of quality in:

(i) [(A)] presentation;

(ii) [(B)] physical format;

(iii) [(C)] educational significance;

(iv) [(D)] readability;

(v) [(E)] authenticity;

(vi) [(F)] artistic quality and/or literary style; and

(vii) [(G)] factual content.

(2) [(e)] TJJD [TYC] facilities will not show [R-rated or X-rated] videos with an R-rating or any other rating designed for audiences age 17 or older [to any youth]. No video may be shown to youth without the approval of the principal.

[(f) Other videos may be shown to TYC youth with the approval of the principal.]

(e) [(g)] Request for Reconsideration of Learning Resources.

(1) Any youth or person on behalf of a youth [resident or TYC employee] may challenge a facility's use [request an informal or formal challenge] of a learning resource [resources,] if he/she feels the material [learning resources] will have a negative or harmful impact on a youth. Any such challenge applies only [request for reconsideration

of learning resources is only binding] to the [individual] facility where the challenge is filed.

(2) To challenge a learning resource, the complainant must file an informal reconsideration request on the agency-provided form. The principal must respond to the request [request reconsideration of learning resources; the Request for an Informal Reconsideration form must be completed and submitted to the principal].

(3) If the informal request does not resolve the issue to the complainant's satisfaction, the complainant may file a formal reconsideration request on the agency-provided form. [In the event that an informal challenge cannot be resolved; the Appeal for Reconsideration of Learning Resources for a formal challenge must be completed and submitted to the principal and the facility superintendent.]

(4) Upon the receipt of a formal [request for] reconsideration request, the principal must form [shall direct the formation of] a reconsideration committee [Reconsideration Committee], which is composed of:

(A) a teacher from the area of concern and/or grade level;

(B) a program supervisor [administrator];

(C) a case manager [caseworker] appointed by the facility superintendent or designee; and

(D) the principal.

(5) The reconsideration committee must [Reconsideration Committee shall] review the challenged material, [and] decide if it conforms to the selection criteria [and procedures] outlined in this rule, and issue a written decision [ruling].

(6) The complainant may [has the right to] appeal the decision of [made by] the reconsideration committee by submitting an appeal of the agency-provided form [Reconsideration Committee] to the TJJD superintendent of education. The superintendent of education must respond to the appeal in writing. [in central office. If the complainant has a valid reason for not agreeing with the decision of the superintendent of education; the complainant may appeal to the executive director for the final decision.]

§380.9155. *Participation and Reporting Requirements of the Reading Improvement Program and PBIS System.*

(a) Purpose. This [The purpose of this] rule establishes [is to establish] participation requirements and certain reporting requirements for the Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)] reading improvement program and Positive Behavioral Interventions and Supports [positive behavioral interventions and supports] (PBIS) system, as required by Education Code §30.106.

(b) Applicability.

(1) For purposes of the reading improvement program, this rule applies only to youth in facilities with a TJJD-operated [TYC-operated] educational program who are required to participate in the reading improvement program based on their scores on the agency-approved reading assessments.

(2) For purposes of the PBIS system, this rule applies to all youth in facilities with a TJJD-operated [TYC-operated] educational program.

(3) Decisions concerning whether to release a youth on parole are [will be] made in accordance with §§380.8555, 380.8559, and 380.8569 [§§85.55, 85.59, and 85.69] of this title.

(c) Definitions.

(1) Designated Education Location--the assigned location for instructional delivery, including the educational building, [or] alternate classroom, or [and] security classroom.

(2) Instructional Minutes--time designated by a youth's school schedule for the delivery of academic and vocational services.

(3) Positive Behavioral Interventions and Supports (PBIS) System--a framework for systemic and individualized interventions to achieve important social and learning outcomes while preventing problematic behavior.

(4) Reading Improvement Program--a comprehensive instructional system designed to improve reading skills. The program is delivered in a tiered system that [which] provides increasing levels of support and intervention based on the level of assessed reading deficit.

(5) Removal for Disciplinary Reason--removal from a designated education location due to a violation of the rules of conduct or a subsequent failure to participate in positive behavioral interventions.

(d) General Provisions.

(1) All facilities with TJJD-operated [TYC-operated] schools must develop and implement an agency-approved reading improvement program and PBIS system.

(2) Youth are [will be] provided written and verbal information that clearly explains participation requirements for the reading improvement program and PBIS system.

(3) The extent to which a youth is expected to participate in the reading improvement program and/or PBIS system must [shall] be consistent with a youth's individualized education plan and/or Limited Proficiency Assessment Committee (LPAC) [limited proficiency assessment committee] recommendations, as applicable.

(4) Participation in the reading improvement program and PBIS system contributes [will contribute] toward a youth's stage progression and the ability to earn privileges, in accordance with §380.8703 and §380.9502 [§87.3 and §95.2] of this title.

(5) Before [Prior to] a youth is [being] considered for release on parole, a review must [shall] be conducted to determine whether the youth has met participation requirements in the reading improvement program and PBIS system. Lack of participation in the reading improvement program and/or PBIS system prior to September 1, 2010, must [the effective date of this rule shall] not delay a youth's release.

(6) Youth and parents/guardians must [shall] be provided prior written notice concerning the right to provide input into the determination of whether a youth has participated in the reading improvement program and/or PBIS system.

(7) A staff representative from a youth's Admission, Review, and Dismissal [admissions, review, and dismissal] committee and/or LPAC [limited proficiency assessment committee], as applicable, must [shall] participate in determining whether the youth has participated in the reading improvement program and/or PBIS system.

(e) Youth Participation in the Reading Improvement Program. Participation in the reading improvement program means a youth has:

(1) completed the program as demonstrated by achieving the reading level corresponding to the youth's age based on an agency-approved reading assessment; or

(2) participated in the program prior to completion of the youth's minimum length of stay (MLOS) or minimum period of confinement (MPC), as demonstrated by:

(A) the youth's:

(i) attendance for at least 90% of available reading instructional periods during the youth's enrollment in the program; and

(ii) completion of all required reading assessments during the youth's enrollment in the program; or

(B) progress in the program commensurate with ability and opportunities for participation; or

(3) participated in the program after completion of the youth's MLOS or MPC, as demonstrated by:

(A) the youth's:

(i) attendance for at least 90% of available reading instructional periods during the most recent 30-day period; or

(ii) progress in the reading improvement program during the most recent 30-day period, commensurate with ability and opportunities for participation; and

(B) completion of all required reading program assessments during the most recent 30-day period.

(f) Youth Participation in the PBIS System. Participation in the PBIS system means:

(1) during the most recent six-month period, a youth has responded to PBIS prevention and/or intervention strategies to the extent that:

(A) the youth has no more than a total of three:

(i) days on which he/she was removed from a designated education location for a disciplinary reason; and/or

(ii) written refusals to attend class in the designated education location; or

(B) the youth has:

(i) missed no more than 10% [~~ten percent~~] of available instructional minutes due to removal from a designated education location for a disciplinary reason and/or written refusal to attend class in the designated education location; and

(ii) demonstrated a pattern of increased time spent in class; or

(2) the youth has responded to PBIS prevention and/or intervention strategies to the extent that:

(A) the youth possesses the behavioral skills necessary to transition to his/her future academic, vocational, or vocational training placement; or

(B) appropriate transition supports are in place to promote the youth's transition to his/her future academic, vocational, or vocational training placement.

(g) Evaluation for Effectiveness.

(1) Reading Improvement Program. The reading improvement program is [shall be] evaluated for effectiveness according to the following criteria and subgroups.

(A) The rate of improvement in reading performance, as measured by monthly progress monitoring using curricular-based assessments in each of the essential components of reading instruction including, but not limited to:

(i) phonemic awareness;

(ii) phonics;

(iii) fluency;

(iv) vocabulary; and

(v) comprehension.

(B) The annual rate of improvement in reading performance as measured using the battery of assessments set forth in subparagraph (A) of this paragraph, disaggregated by subgroups including, but not limited to:

(i) students receiving general education services;

(ii) students receiving special education services;

(iii) students receiving English as a Second Language services; and

(iv) ethnicity.

(C) Student ratings of the quality and impact of the reading improvement program, as measured on a student self-reporting instrument.

(2) PBIS System. The PBIS system is [shall be] evaluated for effectiveness according to the following criteria and subgroups.

(A) Documentation of school-related disciplinary referrals, disaggregated by factors and subgroups including, but not limited to:

(i) type of infraction;

(ii) location of infraction;

(iii) time of infraction;

(iv) students receiving general education services;

(v) students receiving special education services;

(vi) students receiving English as a Second Language services; and

(vii) ethnicity.

(B) Documentation of school-related disciplinary actions, including time-out, placement in the security unit, use of restraints, and other aversive control measures, disaggregated by subgroups including, but not limited to:

(i) general education;

(ii) eligibility for special education services;

(iii) eligibility for English as a Second Language services; and

(iv) ethnicity.

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

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**37 TAC §380.9143**



*(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 Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9143. *Basic Education.*

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

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### DIVISION 3. YOUTH EMPLOYMENT AND WORK

#### 37 TAC §380.9163

*(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 Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9163. *Youth Industries Program, Initial Preparation.*

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

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### DIVISION 4. HEALTH CARE SERVICES

#### 37 TAC §§380.9175, 380.9181, 380.9183, 380.9184, 380.9186 - 380.9193, 380.9197, 380.9198

#### STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 380.9181 is also proposed under Texas Family Code §32.001, which authorizes TJJD to give consent for medical, dental, psychological, and surgical treatment for a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary.

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

§380.9175. *Health Care Definitions.*

The following words and terms[~~]~~ when used in this subchapter[~~]~~ shall have the following meanings[~~]~~ unless the context clearly indicates otherwise.

(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this title.

(2) Four-Point Restraint--a professionally manufactured and commercially available restraint chair or bed designed to secure both arms and both legs to the chair or bed with cloth or leather straps.

~~(4) Automated External Defibrillator (AED)--a United States Food and Drug Administration approved electronic device which is programmed to analyze the heart's rhythm for any abnormalities and, if necessary, directs the rescuer to deliver an electrical shock (defibrillation) to assist the heart in reestablishing a normal rhythm.]~~

(3) ~~(2)~~ Health Care Professional--an individual [~~who is~~] licensed by a professional board to practice in the State of Texas in a [~~field of~~] health care field including nursing, medicine, psychiatry or dentistry.

(4) ~~(3)~~ Health Services Administrator--[~~an individual who is~~] a licensed registered nurse who manages and coordinates[~~]~~ at the facility[~~]~~ the delivery of [~~on and off-site~~] health care services for youth at a Texas Juvenile Justice Department (TJJD) facility.

~~(4) Medical Provider--a physician or mid-level practitioner who provides health care services to Texas Youth Commission (TYC) youth under a contractual agreement with TYC.]~~

(5) Life-Threatening Medical Emergency--a situation that is [~~either~~] imminently life-threatening or that requires immediate health care to prevent [~~the development of~~] a life-threatening condition [~~from developing~~]. Examples [~~of an imminently life threatening situation would~~] include a youth being unresponsive, being unconscious, not breathing, [~~or~~] experiencing severe respiratory distress, or [~~experiencing~~] severe bleeding in streams or spurts.

(6) Medical Alert--a flagging or identifying process that alerts staff of a potentially dangerous or life-threatening diagnosed condition. These [~~Examples of these~~] conditions may include, but are not limited to, a history or current diagnosis of chronic/acute asthma, cardiac problems, diabetes, seizures, serious injury, anaphylactic allergic reactions, or any other serious condition that significantly affects [~~affecting~~] daily living activities and requires [~~requiring~~] special assistance or special attention.

(7) Medical Provider--a:

(A) Texas-licensed physician; or

(B) Texas-licensed mid-level practitioner, such as a nurse practitioner or physician assistant, acting under the authorization of a physician.

(8) Mental Health Professional--has the meaning assigned by §380.9187 of this title.

(9) ~~[(7)]~~ Psychiatric Emergency--a situation that may require administering [in which it may be necessary to administer] psychotropic medication to prevent harmful behaviors associated with a diagnosed psychiatric condition.

(10) Psychiatric Provider--a:

(A) Texas-licensed psychiatrist; or

(B) Texas-licensed psychiatric physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.

(11) ~~[(8)]~~ Sick Call--a regularly-scheduled [routine] time when [during which] a health care professional addresses the [youth] health care needs of youth.

§380.9181. *Medical Consent.*

(a) Purpose. This rule establishes [The purpose of this rule is to establish] a procedure for [by which] the Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC) may exercise its authority] to consent to particular medical services for youth in TJJD [TYC] jurisdiction in accordance with the Texas Family Code[;] §32.001(b).

(b) Definitions. See §380.9175 of this title for definitions of certain terms in this rule. [Applicability.]

~~[(1)]~~ Definitions pertaining to this rule are under §91.75 of this title.

(c) Applicability. This rule does not apply to youth committed to TJJD who are under the managing conservatorship of the Texas Department of Family and Protective Services. See Texas Administrative Code, Title 40, §702.425 for rules governing consent for these youth.

(d) ~~[(2)]~~ General Provisions. TJJD [TYC] does not have the authority to consent to medical treatment [of any nature] for youth on parole [status] in a home placement. For purposes of this policy, the term "home placement" does not include subsidized independent living [the Independent Living Program as] described in §380.8583 [§87.23] of this title.

(e) ~~[(e)]~~ Medical Consent.

(1) For Youth under Age 18.

(A) TJJD [TYC] has the authority to consent to the medical treatment of [his] youth under [the] age [of] 18 only when:

(i) the person having the right to consent (youth's parent or guardian) has been notified and TJJD has not received notification that the person objects; or

(ii) the person having the right to consent cannot be contacted and the youth's health care need constitutes a medical emergency for a life-threatening condition. [actual objection has not been received by TYC. Though TYC has the authority to consent to treatment other than that specified in §91.83 of this title, TYC will defer to and attempt to contact the person having authority to consent when such medical treatment may be necessary.]

(B) If TJJD is able to contact the person with authority to consent, TJJD will defer to his/her decision as long as consent is not withheld for treatment of a life-threatening condition.

(C) ~~[(B)]~~ When a medical or dental provider determines a youth needs a diagnostic or treatment procedure or treatment for a serious injury or illness that requires parental/guardian consent, the parent/guardian will be contacted to provide written or verbal consent directly to the medical provider. If the parent/guardian cannot be con-

tacted, [If this is not possible,] the facility administrator has the authority to [give his/her] consent for treatment of the youth under certain conditions pursuant to Texas [§32.001,] Family Code §32.001.

(D) ~~[(C)]~~ If a parent or guardian notifies TJJD [TYC] that he/she objects to TJJD [TYC] having medical consent authority, the parent or guardian will be asked to provide written consent for routine physical, dental, mental health, and chemical dependency examinations and/or evaluations[;] and certain immunizations required by law.

(E) ~~[(D)]~~ When a youth is temporarily admitted to a facility of the Texas Department of State Health Services, the TJJD [TYC] medical director may consent to the specific care outlined in §380.9183 [§91.83] of this title if the parent or guardian cannot be contacted directly for consent.

(2) For Youth Age 18 or Older. When a youth reaches age 18, he/she has the legal right to [legally] consent to medical treatment. The youth's consent [with respect] to treatment for non-life threatening conditions will prevail if there is a conflict between the youth and the parent/guardian and/or TJJD [TYC].

(f) ~~[(d)]~~ Notification. Notification about providing [regarding the provision of] routine health care services and TJJD's [TYC's] authority to consent to treatment:

(1) will occur during the youth's initial admission and any subsequent recommitment to TJJD; [TYC] and

(2) will be by certified mail to the last known address of the person having the right to consent.

§380.9183. *Health Care Services for Youth.*

(a) Purpose. This [The purpose of this] rule establishes [is to establish] basic criteria, standards, and guidelines for delivering [delivery of] health care services to youth [who are] assigned to [Texas Youth Commission (TYC) operated] residential facilities operated by the Texas Juvenile Justice Department (TJJD) and to certain identified contract care programs.

(b) Definitions. See §380.9175 of this title for definitions of certain terms in this rule. [Applicability.]

~~[(1)]~~ Definitions pertaining to this rule are under §91.75 of this title.

~~[(2)]~~ For consent to treatment, see §91.81 of this title.]

(c) Criteria for Medical Care.

(1) Medical providers provide [As established by the TYC medical director,] primary medical care [will be provided by medical providers] according to the following criteria established by the TJJD medical director:

(A) lifesaving [life saving] treatment;

(B) limb-saving [limb saving] treatment;

(C) reasonable care to relieve pain;

(D) reasonable care for a degenerative condition;

(E) preventive services including [to include] age-appropriate immunizations; and

(F) treatment for medical conditions which[;] if left untreated[;] could result in serious bodily harm.

(2) Procedures outside these criteria for medical care must be approved by the TJJD [TYC] medical director in consultation with TJJD's [TYC's] executive director.

(d) Criteria for Dental Care.

(1) The dentist assures [will assure] equitable access to basic preventive services and essential treatment procedures when [based upon the occurrence of] disease, significant malfunction, or injury occurs. Treatment priorities [Priority of treatment categories] are:

(A) emergency/urgent [Emergency/urgent]--treatment for conditions that [which] will worsen or become life-threatening or acute without immediate intervention.

(B) interceptive [Interceptive]--intermediate treatment for asymptomatic advanced hard- or soft-tissue [hard or soft tissue] disease or loss of masticatory function.

(C) rehabilitative [Rehabilitative]--definitive treatment for chronic hard- or soft-tissue [hard or soft tissue] disease or loss of masticatory function.

(D) elective [Elective] or special needs.

(2) The attending dentist may deviate [vary] from this prioritization if [on an individual basis if judged to be] necessary to protect a [for the protection of the] youth's overall health.

(3) TJJJ provides neither [TYC will provide for necessary care of] orthodontic braces nor maintenance of orthodontic braces for youth. However, if a youth has orthodontic braces when admitted to TJJJ, TJJJ provides necessary care to prevent injury to the mouth.

(A) The youth's [Maintenance and treatment will be arranged by and paid for by the] parent/guardian is responsible for the maintenance and adjustment of orthodontic braces after notification of TJJJ [TYC] policy.

(B) TJJJ [TYC] staff may [will] assist youth and parents/guardians in making orthodontic appointments, if needed. Appointments are usually made with the treating orthodontist, although a local orthodontist who agrees to examine and treat the youth may be used. [and providing transportation for orthodontic care.]

(C) TJJJ staff may provide transportation for orthodontic care if the staff can accommodate traveling the distance required to return a youth to the treating orthodontist.

(e) Services.

(1) TJJJ administers at least [TYC will administer] the following services, either directly or through contractual arrangements~~[-]. These services include but are not limited to the following~~:

(A) physical examinations and treatment;

(B) dental examinations and treatment;

(C) treatment of injuries;

(D) mental health evaluations;

(E) immunizations;

(F) laboratory and diagnostic tests;

(G) administration of prescription or non-prescription medication for an illness or condition;

(H) chemical dependency evaluations; and

(I) examination following use of physical force and/or following decontamination resulting from using [contamination caused by use of] oleoresin capsicum spray [; also known as] pepper spray).

(2) Each TJJJ-operated [TYC-operated] facility and certain identified contract care programs [will] have a health services ad-

ministrators designated [who is designated] to act as the local health authority. The local health authority provides coordination and/or supervision of medical services for youth.

(3) Contract health care professionals provide [The appropriate level of] health care services [will be provided] in the infirmary at each institution [through contract health care professionals] for youth [who are not in need of hospitalization, but] who need increased observation or medical care, but who do not need hospitalization.

(4) In institutions:

(A) nurses are available seven days a week to triage youth health concerns and respond to onsite emergencies;

(B) nurses conduct a regularly-scheduled [Nurses will provide services for routine] sick call [requests at least] five days a [per] week to address non-urgent, sick-call requests;[-]

(C) medical and psychiatric [Medical] providers deliver [; dentists, and a psychiatrist will provide] services on site [on-site] or via telemedicine/telepsychiatry at least once weekly; and[-]

(D) dental staff provides services on site on a routine basis.

(5) In halfway houses;[-]

(A) nurses provide on-site [nursing] case management and consultation on a regularly scheduled basis and are available by telephone as needed; [will be provided as needed.]

(B) medical and psychiatric [Medical] providers deliver services to youth via telemedicine/telepsychiatry and/or at the nearest institution as needed; and[; dentists, and psychiatrists will provide services as needed.]

(C) dental services are provided at the nearest institution.

(6) When admitted to TJJJ [Upon admission to TYC], all youth [will] receive a:

(A) health screening;[-]

(B) physical examination, unless a physical examination was performed and documented [(if no documentation) within the past 90 days;];[-]

(C) mental health screening and evaluation;[-; a]

(D) dental screening and [;] examination, unless a dental screening and examination have been performed and documented within the past 180 days; and [and dental cleaning as prescribed by the dentist. Youth will receive a health screening, physical examination, dental examination, and dental cleaning annually thereafter.]

(E) vision and hearing screening.

(7) [Upon admission to TYC, all youth will receive a vision screening.] If the vision screening indicates [that] the youth needs a new prescription for eyewear, state-issued prescription eyewear is [will be] provided. Youth placed [whose placement is] in high-restriction facilities [a high restriction facility] are prohibited from wearing contact lenses, except when [where] medically necessary [as a form of treatment] and when glasses are ineffective for correcting vision.

(8) If the youth fails the hearing screening, the youth is referred to an audiologist for evaluation and treatment as needed.

(9) If the dentist determines a dental cleaning is necessary, the procedure is scheduled, performed by a dental hygienist, and documented in the electronic medical record.

(10) Youth receive physical and dental examinations annually and treatment as needed, in accordance with (c) and (d) above.

(11) [(8)] In facilities housing females, obstetrical and[;] gynecological[;] and family planning[;] services are are [will be] available on-site or by referral.

(12) Family planning services are available by referral for youth who request information.

(f) Limitation of Services.

(1) TJJJ [TYC] is not responsible for medical costs incurred by a youth:

(A) on furlough or conditional placement status with a parent, relative, or guardian;

(B) on parole status, unless the youth's placement is in a TJJJ-operated/contract [TYC-operated/contract] residential program;

(C) on escape/abscond status; or

(D) in a detention center or a county facility.

(2) Pharmaceutical, cosmetic, and medical experiments are prohibited. This policy does not preclude individual treatment of a youth who needs [based on the need for] a specific medical procedure that [which] is not generally available.

(g) Health Care Requirements.

(1) Facilities housing more than 25 youth must have a central medical room with medical examination facilities.

(2) When youth are in the infirmary, they are supervised by a TJJJ [Youth present in the infirmary will be supervised by a TYC] staff member at all times.

(3) The physician or dentist at each facility is the decision authority for clinical decisions under their respective areas of responsibility [medical/dental services at the respective facility].

(4) The medical provider develops [will develop] the youth's medical plan of care.

(5) A medical provider is [will be] available once each week to provide health care services to youth and to respond to youths' health concerns.

(6) Youth [respond to youth] complaints about [regarding] services [which] they did or did not receive are processed through the youth grievance system in accordance with §380.9331 of this title.

(7) [(6)] In each TJJJ-operated [TYC-operated] residential program [and certain identified contract care programs], the superintendent, health services administrator, medical provider, and dentist must have regularly scheduled meetings to review health care services at the facility, including any concerns, [of] problems, or barriers related to providing [the provision of] health care. If concerns [problems] are identified, a corrective action plan is developed, implemented, and monitored to ensure that issues are adequately addressed [follow-up must occur to ensure that the recommended actions are implemented and the problem has been resolved].

(8) [(7)] A youth who, by history or examination, has a serious or life-threatening medical condition may be placed on medical alert status by a medical provider. A nurse may temporarily place a youth on medical alert status [if such conditions occur during movement from one facility to another] until a medical provider can be notified.

(9) [(8)] The medical provider or psychiatric provider [psychiatrist] may authorize medical and pharmacological intervention

when required in a life-threatening situation consistent with §380.9181 [§91-81] of this title. When [this] intervention requires [the use of] psychotropic medication, the authorization must meet [be consistent with] criteria in §380.9192 [§91-92] of this title.

(10) [(9)] Each TJJJ-operated [TYC-operated] residential program and certain identified contract care programs [will] post emergency medical procedures including, but not limited to, how to contact the on-call nurse and medical, dental, and psychiatric providers in an emergency [for providing health care to youth when there is not a nurse on duty, including how to contact the on-call nurse].

(11) [(10)] Pharmaceutical procedures [will] comply with federal and state laws and accepted industry practices about the [pertaining to the] acquisition, storage, administration, and documentation of prescription drugs.

(h) Medical Concerns Reported by Youth.

(1) Any youth may request a sick call for the evaluation of health care concerns.

(2) TJJJ staff may contact a nurse if a youth reports a health concern or if the staff is concerned about a youth's health status.

[(2) Any youth may file a complaint related to his/her health care service through the youth grievance procedure in accordance with §93.34 of this title.]

(i) Emergency Room Referrals. Emergency room referrals may [only] be authorized only by a medical provider, health services administrator or designee, or the medical or nursing director. In a life-threatening situation, non-medical personnel may contact 911 in accordance with medical emergency procedures.

(j) Notification. TJJJ staff immediately notifies a youth's parents [Parents] or guardians if a [will immediately be notified of a youth's] serious illness or[;] injury occurs[;] or [recommended need for] surgery is recommended.

§380.9184. *Health Insurance.*

(a) Purpose. The Texas Juvenile Justice Department (TJJJ) may [The purpose of this rule is to establish procedures whereby the Texas Youth Commission (TYC) shall] pursue reimbursement by third party payers for the medical care of youth committed to the agency.

(b) TJJJ [TYC] staff will obtain [shall pursue] information about [regarding] medical insurance coverage of youth, including whether a court order requires [exists for] the parent/guardian to provide insurance. The information will be systematically made available to TJJJ [TYC] managed health care contractors and residential contract care providers.

(c) TJJJ [TYC] managed health care contractors may [will] seek reimbursement for medical care from insurance companies.

§380.9186. *Infirmary Admission and Discharge.*

(a) Purpose. This rule establishes [The purpose of this rule is to establish] conditions and procedures for youth to be admitted to and discharged from [use of] infirmaries in Texas Juvenile Justice Department (TJJJ) [Youth Commission (TYC)] facilities.

(b) General Provisions.

(1) Nursing care will be provided in the infirmary at each institution through contract health care staff for youth who do [are] not [in] need [of] hospitalization[;] but who need increased observation or medical care. Infirmary admissions are utilized for [include] youth who are acutely ill, injured, medically compromised due to mental health decompensation, or [are] recovering from surgery or illness[;] or youth

who need increased observation as result of a psychiatric crisis (identified by a Ph.D. level psychologist or psychiatrist).

(2) Juvenile correctional officers [Corrections Officers (JCO's)] shall supervise youth admitted to the infirmary at all times.

(3) Only nursing staff may receive medical [Physician] orders [shall be received only by nursing staff directly] from the medical provider [physician].

(c) Infirmary Admission for Medical Diagnosis.

(1) The medical provider or health services administrator or designee determines if a youth requires observation or treatment for a medical diagnosis or condition.

(2) The health services administrator or registered nurse designee may admit a youth to the infirmary for a medical diagnosis or condition [to the infirmary] for up to 24 hours. Only a medical provider may authorize admission [Admission] to the infirmary for 24 hours or longer [may only be authorized by the medical provider].

(3) Only a medical provider may discharge the youth if the youth:

(A) was admitted to the infirmary for 24 hours or longer; or

(B) was admitted by a medical provider [for any length of time].

(4) A nurse or medical provider may discharge the youth if he/she was admitted to the infirmary by a nurse.

[3] Discharge from the infirmary may be ordered only by a physician if the youth was admitted for 24 hours or longer. A physician or nurse may discharge youth admitted for less than 24 hours.]

(d) Infirmary Admission for Psychiatric Monitoring [Crisis].

(1) A psychiatrist or physician, if readily available, may admit a youth to the infirmary for [Admission to the infirmary for youth needing] close observation and/or monitoring after a psychiatric-related incident [for a psychiatric crisis may be authorized by a psychiatrist, if available]. The designated mental health professional [director of clinical services] may authorize the admission when a psychiatrist or medical provider is not readily available. The nurse [on-site, and] will immediately notify the psychiatrist, or a physician if a psychiatrist is not available, and document the notification and any order/instructions in the electronic medical record. Psychiatrist or physician orders shall be obtained for youth admitted to the infirmary within two hours of admission.

(2) In obtaining psychiatrist or physician orders for youth experiencing a psychiatric crisis, nursing staff provides [should provide to] the psychiatrist relevant medical information such as current medications, vital signs, subjective or objective data (e.g., laboratory values), observations, and assessment. The psychiatrist or physician order includes [should include] instructions regarding any observations that nursing staff must make about the youth's mental status, as well as instructions for any other type of monitoring or medications that are to be administered.

(3) A Ph.D. level psychologist or psychologist associate (if a Ph.D. level is not available) evaluates [will evaluate] the youth at least once a day.

(4) Disposition (discharge or referral) is [will be] made by the psychiatrist or physician.

§380.9187. Suicide Alert Definitions.

(a) Purpose. This [The purpose of this] rule establishes [is to establish] definitions of terms used in the Texas Juvenile Justice Department's (TJJD's) [Youth Commission's (TYC's)] suicide prevention policies as set forth in §§380.9188, 380.9189, and 380.9190 [established by §§91.88, 91.89, and 91.90] of this title.

(b) Definitions.

(1) Constant Motion Check--a type of room check in which a staff member walks through the housing unit in an irregular pattern at random intervals to prevent youth from "timing" room checks. Constant motion checks are [to be] performed in addition to regular room checks and documented on the regular room check log.

(2) Critical Incident Review [Committee]--a [multidisciplinary] review conducted by a multi-disciplinary team designed [convened] to critically review the circumstances surrounding a death or serious incident and to recommend corrective action where necessary. The critical incident review may consider information such as incident reports, training/personnel records, policies/procedures, other relevant documents, facility practices, any non-confidential information resulting from a morbidity and mortality review, and any other information the review team determines is necessary for a comprehensive review.

(3) Critical Incident Support Team--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TJJD [TYC] youth or staff member.

(4) Designated Mental Health Professional (DMHP)--a doctoral-level [doetoral level] psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred for suicide risk in high restriction facilities. In the absence of a doctoral-level [doetoral level] psychologist [due to position vacaney], an MHP may be appointed to serve as the acting DMHP with the approval of the central office [division] director over treatment services.

(5) Mental Health Professional (MHP)--a doctoral-level [doetoral level] psychologist, masters-level mental health specialist [masters level associate psychologist], licensed professional counselor, licensed psychological associate or [a] licensed clinical social worker.

(6) Morbidity and Mortality Review--an assessment of the overall clinical care provided and the circumstances leading up to a [life-threatening suicide attempt or] death or certain serious medical incidents. Its purpose is to identify program strengths and opportunities for improvement in clinical care [and/or system policies and procedures].

(7) Protective Custody--a temporary program in high restriction facilities designed for the placement of youth who cannot be safely managed in the current dorm/living unit due to risk of self-harm, as determined by an MHP after a face-to-face assessment.

(8) Psychiatric Provider--a psychiatrist or psychiatric mid-level practitioner licensed to practice in the state of Texas.

(9) Rescue Kit--an emergency medical treatment kit carried by designated employees or placed in designated secure locations that contains items such as a CPR pocket mask, latex gloves, and a tool capable of cutting ligatures.

(10) Suicidal Behavior--includes suicide attempts, suicidal gestures, intentional self-injurious behavior, or development of a plan or strategy for committing suicide. Suicidal behavior generally involves some overt action or clear indication of the development of a specific plan or strategy to injure or kill oneself.

(A) Life-Threatening [~~Life Threatening~~] Suicide Attempt--a suicide attempt that a health care professional determines would have resulted in death except for circumstances beyond the youth's control.

(B) Suicide Attempt--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(C) Self-Injurious Behavior--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-injurious behavior is considered a type of suicidal behavior for reporting purposes.

(11) Suicidal Ideation--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to kill himself/herself, but lacks a specific plan or strategy to carry it out. Suicidal ideation is not considered a type of suicidal behavior for reporting purposes.

(12) Suicide Alert--a status that begins following a face-to-face suicide risk assessment by an MHP, indicating that a youth is at risk to attempt suicide or self-injury and is in need of increased supervision.

(13) Suicide Observation Folder--a folder containing suicide observation logs/check sheets and any other pertinent information as determined by an MHP. The staff directly responsible for monitoring the youth will possess the folder at all times while the youth is on suicide alert.

(14) Suicide Observation Level--levels of observation determined by an MHP to provide enhanced supervision for youth who are awaiting a suicide risk assessment or placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) - (C) of this paragraph, however the MHP may assign any level of observation deemed appropriate under the circumstances based on his/her clinical judgment.

(A) One-to-One Observation is generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in self-injury, and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff remains [is] within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in his/her room or while the youth is sleeping.

(iii) Assigned staff documents [~~will document~~] the youth's status at least once every ten minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the one-to-one [~~1-1~~] status.

(v) Doors to individual rooms [~~will~~] remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. Procedures for obtaining approval to lock the door for such behavior are set forth in §380.9745 [~~§97.45~~] of this title.

(B) Constant Observation is generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in self-injury, but does not appear to require emergency psychiatric placement. Constant observation includes the following:

[~~(f)~~] For youth not placed in a security unit or the Corsicana Stabilization Unit:]

(i) [(H)] During waking hours, the youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff documents [~~will document~~] the youth's status at least once every ten minutes (or every five minutes if the youth is placed in a security unit or a crisis stabilization unit).

(ii) [(H)] During sleeping hours, assigned staff observes and documents [~~will observe and document~~] the youth's status at least once every five minutes and performs [~~will perform~~] constant motion checks at least once every hour.

[~~(ii)~~] For youth who are placed in a security unit or the Corsicana Stabilization Unit:]

[~~(f)~~] Assigned staff will observe and document the youth's status at least once every five minutes and will perform constant motion checks at least once every 30 minutes.]

(iii) [(H)] For youth in a security unit or crisis stabilization unit, doors [~~Doors~~] to individual rooms remain [~~will be~~] locked.

(C) Close Observation is generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide[,] but expresses suicidal ideation and/or has a recent history of self-injurious behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide, but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-injury. Close observation includes the following:

(i) Assigned staff observes and documents the [~~will observe and document~~] youth's status at least once every ten minutes and performs [~~will perform~~] constant motion checks at least once every hour. The staff is [~~Staff will~~] generally [~~be~~] involved in concurrent duties that do not interfere with required observation of the youth.

(ii) This level of observation may not be applied to youth who are placed in a security unit or a crisis stabilization unit [~~the Corsicana Stabilization Unit~~].

(15) Suicide-Resistant [~~Suicide Resistant~~] Room--a room that [~~which~~] provides a safe environment and has no obvious materials/possessions that can be used in self-injurious behavior or any item that [~~which~~] may be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof and there are no switches or electrical outlets in the room. The door of the room has a heavy-gauge, [~~heavy gauge~~] clear panel that provides [~~which allows~~] staff an unobstructed view of the room.

(16) Suicide Risk Assessment--a standardized, face-to-face assessment by an MHP that contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(17) Suicide Risk Screening--a standardized, face-to-face interview by an MHP or by a trained designated staff in consultation with an MHP to determine the appropriate suicide observation level until a suicide risk assessment is conducted.

(18) Trained Designated Staff--staff trained to conduct a suicide risk screening. In TJJJ [TYC] programs this will include at least the following staff: [~~a minimum the~~] superintendent, assistant superintendent, administrative duty officer, dorm supervisor, case managers [program specialists, case managers], on-duty supervisor, placement coordinator [~~coordinators~~], principal, and juvenile correctional officer [~~Juvenile Corrections Officer (JCO)~~] V or VI.

§380.9188. *Suicide Alert for High Restriction Facilities.*

(a) Purpose. ~~This [The purpose of this] rule establishes [is to establish] procedures for [suicide prevention by] identification, assessment, treatment, and protection of youth in high restriction facilities that may be at risk for suicide.~~

(b) Applicability. This rule applies to all youth currently assigned to placement in high restriction facilities operated by the Texas Juvenile Justice Department (TJJD) [~~Youth Commission (TYC)~~].

(c) Definitions. Definitions pertaining to this rule are under §380.9187 [~~§91.87~~] of this title.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide ~~is [will be] provided within the least restrictive environment necessary to ensure safety.~~

(2) Youth determined to be at risk for suicide ~~[will] participate in regular programming to the extent possible, as determined by a mental health professional (MHP). Only an MHP may make exceptions to the provision of regular programming, housing placement, or clothing.~~

(3) Designated staff ~~[will] carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are [will] also [be] placed in designated buildings or areas of the campus that are not accessible to youth.~~

(4) ~~As soon as possible, but [Immediately,] not to exceed two hours, after a suicide or a suicide attempt, the facility administrator or designee notifies the [will notify a] youth's parent or guardian (with the youth's consent if the youth is age 18 or older) [parent/guardian after a life-threatening suicide attempt or suicide].~~

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TJJD [~~TYC~~].

(A) Upon arrival to a TJJD [~~TYC~~] orientation and assessment unit, designated intake staff ~~[will] keep youth within direct line-of-sight [line of sight] supervision until the youth is screened or assessed for suicide risk.~~

(B) Within one hour ~~after [of] the youth's arrival to a TJJD [~~TYC~~] orientation and assessment unit, an MHP conducts [will conduct] an initial mental health screening and documents [document] the results [on the agency-approved form].~~

(C) If the youth is identified by the MHP as potentially at risk ~~[at-risk] for suicide, the youth is [will] immediately [be] referred for a suicide risk assessment, to be conducted by an MHP in accordance with time frames established in subsection (f)(3) of this section [within four hours after referral]. In the interim, the youth is maintained [will be] on constant observation.~~

(D) Within 14 days after [a youth's] arrival at the orientation and assessment unit, all youth ~~[will] receive a comprehensive mental health evaluation conducted by an MHP. The mental health evaluation will include a suicide risk assessment if one has not already been completed.~~

(E) The suicide risk assessment ~~completed upon initial admission includes [will include]:~~

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by MHPs relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments ~~[that are available]; and~~

(iv) referrals for follow-up ~~[follow up] treatment or further assessment, as indicated.~~

(F) The designated mental health professional (DMHP) ~~signs [will sign] the suicide risk assessment, acknowledging his/her review.~~

(2) Upon Admission at a Subsequent Placement (Intrasystem Transfers).

(A) Upon arrival of a youth who is not currently on suicide alert, a nurse completes ~~[will complete] an intrasystem health screening, including questions relating to suicidal ideation and behavior.~~

(B) If the youth is identified by the screening as potentially at risk ~~[at-risk] for suicide, the nurse immediately refers the youth [will make an immediate referral] to an MHP for completion of a suicide risk assessment.~~

(C) An MHP conducts ~~[will conduct] a suicide risk assessment (including all items listed in subsection (f)(5) of this section) within:~~

(i) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal ~~[youth's arrival if referred by the nurse]; or~~

(ii) 24 hours after the screening if the MHP determines the youth does not appear to be actively suicidal but engaged in some other type of suicidal behavior or ideation; or

(iii) ~~[(ii)] seven calendar days after the screening if the MHP determines the youth does not appear to be at risk for suicide [after the youth's arrival for all other youth].~~

(3) Upon Return to TJJD [~~TYC~~].

(A) Within one hour ~~after [of] a youth's arrival at a high restriction facility following a period of at least 48 hours spent out of TJJD's [~~TYC~~'s] physical custody (e.g., revocation of parole, return from bench warrant), a trained designated staff member or MHP initiates [will initiate] a suicide risk screening. The youth is [will be] kept within direct line-of-sight [line of sight] supervision until the youth is screened. If the screening is conducted by a trained designated staff member, he/she [will] immediately contacts [contact] an MHP to communicate the results of the screening.~~

(B) ~~An [Based on the results of the screening, an] MHP conducts [will conduct] a suicide risk assessment (including all items listed in subsection (f)(5) of this section) within:~~

(i) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal;

(ii) 24 hours after the screening if the MHP determines the youth does not appear to be actively suicidal but engaged in some other type of ~~[may otherwise be at-risk for] suicidal behavior or ideation; or~~

(iii) seven calendar days after the screening if the MHP determines the youth does not appear to be at risk for suicide.

(f) Responding to Suicidal Behavior or Ideation ~~[Behavior/Ideation].~~

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) ~~[for medical emergencies,]~~ immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) provide constant observation unless an MHP directs a higher observation level;

(D) begin a suicide observation log to document youth status checks;

(E) immediately notify the on-duty supervisor or the duty officer;

(F) document in the dorm/shift log that he/she notified [the notification of] the on-duty supervisor or duty officer [in the dorm/shift log]; and

(G) complete [for suicidal behavior, document the incident on] an incident report if suicidal behavior was involved.

(2) As soon as possible, but no later than one hour after notification, the on-duty supervisor or duty officer ensures [will ensure] a trained designated staff member or MHP initiates a suicide risk screening. If the screening is conducted by a trained designated staff member, that staff member [he/she will] immediately communicates [communicate] the results of the screening to the MHP.

(3) If the youth is not transported to the emergency room, an [An] MHP conducts [shall conduct] a face-to-face suicide risk assessment within:

(A) four hours after the screening if the MHP determines the youth engaged in a suicide attempt or is actively suicidal; or

(B) 24 hours after the screening if the MHP determines the youth did not engage in a suicide attempt and does not appear to be actively suicidal, but engaged in some other type of suicidal behavior or ideation.

(4) If the youth is transported to the emergency room:

(A) the MHP decides, before the youth returns from the emergency room, whether the youth will be placed on constant or one-to-one observation upon his/her return to the facility; and

(B) the MHP conducts a face-to-face suicide risk assessment within four hours after the youth's return to the facility.

(5) ~~[(4)]~~ The suicide risk assessment includes [will include]:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, assignment of an observation level, and designation of appropriate precautions; and

(E) a review of the assessment by the DMHP.

(6) ~~[(5)]~~ Whenever possible, suicide risk screenings and assessments are [will be] conducted in a confidential setting [suitable environment, free from distractions].

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the MHP documents [will document] the results of the assessment, including any changes in the youth's observation level[, on the agency-approved form(s)].

(B) If the youth is placed on suicide alert, the MHP ensures [will ensure] that the youth's name is placed on the facility's suicide alert list and the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) the MHP [will] immediately notifies [notify] in-firmiry staff, the youth's case manager, dorm staff, and the on-duty supervisor of the youth's observation level and any additional instructions; and[-]

(ii) the youth's case manager notifies [will notify] the youth's parent or guardian [parent/guardian] as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the MHP notifies [will notify] the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the on-duty supervisor assigns [will assign] a specific staff member to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide-resistant [suicide resistant] room, the on-duty supervisor or trained designated staff coordinates [will coordinate] a search of the youth's room or personal area and removes [remove] any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and [and/or]

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended or let the youth out of his/her sight.

(A) When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(i) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(ii) maintain verbal contact.

(B) When the youth is engaged in regular programming (e.g., education, group counseling, recreation, etc.), the monitoring staff will accompany the youth to the activity and remain within the re-



quired distance (i.e., six or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, the MHP must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure that the youth can be appropriately monitored.

(5) Removal of a youth's clothing and issuance of suicide-resistant clothing, as well as cancellation of programming and routine privileges, will be avoided whenever possible and only used ~~[utilized]~~ as a last resort for periods during which the youth is physically engaging in self-injurious behavior. Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may ~~[only]~~ be made only by the MHP. A decision to conduct a strip search if criteria in §380.9709 of this title are met may be made only in consultation with the MHP.

(6) Unless approved by the DMHP in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are ~~[will be]~~ made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP develops ~~[will develop]~~ a written treatment plan (or revises ~~[revise]~~ an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, self-injurious behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes ~~[will describe]~~:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-injurious behavior is likely to recur;

(B) how recurrence of suicidal and other self-injurious behavior can be avoided; and

(C) actions ~~[both]~~ the youth and staff can take if the suicidal and other self-injurious behavior does ~~[do]~~ occur.

(2) The MHP consults ~~[will consult]~~ with the youth's case manager to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The MHP consults ~~[will consult]~~ with direct care staff regarding the youth's progress.

(3) While the youth is on suicide alert, the MHP assesses ~~[will assess]~~ the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the MHP assesses ~~[will assess]~~ the youth at least once every 24 hours.

(4) For each assessment, the MHP ~~[will]~~:

(A) reviews ~~[review]~~ the contents of the suicide observation folder, as well as progress notes from other MHPs as applicable;

(B) determines ~~[determine]~~ whether any changes should be made to the youth's observation level or other precautions, in consultation with the DMHP;

(C) documents ~~[document]~~ any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents ~~[document]~~ the assessment as a progress note that provides a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, the MHP notifies ~~[will notify]~~ direct care staff and ensures ~~[ensure]~~ an updated suicide alert list is distributed to facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the DMHP or designee discusses ~~[will discuss]~~ information concerning youth on suicide alert with the psychiatric provider.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) If an MHP, in consultation with the DMHP, determines that the youth is a serious and immediate danger to himself/herself and cannot be safely managed in the living unit, the MHP may initiate placement in a suicide-resistant ~~[suicide resistant]~~ room by referring the youth to the protective custody program in accordance with §380.9745 ~~[§97.45]~~ of this title. All treatment, re-assessment, and observation requirements established in this rule will continue to apply while the youth is assigned to protective custody, unless otherwise noted in §380.9745 of this title ~~[§97.45]~~.

(2) If the DMHP or psychiatric provider determines that the youth is in serious and imminent risk of self-injury and cannot be safely or appropriately managed in protective custody, the DMHP or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this title. The youth will be placed on one-to-one observation until received at the emergency placement. ~~[The DMHP or psychiatric provider will seek placement in the following order:]~~

~~[(A) the Corsicana Stabilization Unit, in accordance with §87.67 of this title;]~~

~~[(B) the nearest state hospital, in accordance with §87.69 of this title; or]~~

~~[(C) as a last resort and only with the approval of the appropriate administrator, a private psychiatric facility in accordance with §87.71 of this title.]~~

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high restriction facility:

(A) within 24 hours prior to transfer, the MHP at the sending facility ~~[will]~~:

(i) sends ~~[forward]~~ a summary of the youth's suicidal behavior, assessments, and treatment ~~[via email]~~ to the DMHP and facility administrator or designee at the receiving facility and any transitional facilities en route to the receiving facility;

(ii) calls ~~[call]~~ the DMHP at the receiving and any transitional facilities to communicate the observation level of the youth and any other pertinent information; and

(iii) notifies ~~[notify]~~ the health services administrator at the sending facility, who will communicate the observation level of the youth and any other pertinent information to the receiving facility's infirmary; and

(B) direct care staff at the sending facility ~~[will]~~ provide the suicide observation folder to the transporting staff.

(2) An MHP at the receiving facility ~~[will]~~:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews ~~[review]~~ the transfer summary and meets ~~[meet]~~ with the youth;

(B) notifies ~~[notify]~~ direct care and nursing staff of the youth's suicide observation level prior to assignment of the youth to a dorm/living unit;

(C) places ~~[place]~~ the youth on the facility's suicide alert list;

(D) ensures [~~ensure~~] the suicide observation log is provided to the staff assigned to monitor the youth;

(E) consults [~~consult~~] with the DMHP regarding the plan for treatment and assessment.

(l) Release or Discharge of Youth on Suicide Alert.

(1) Prior to releasing or discharging a youth on suicide alert to a community placement (medium restriction or home placement), the MHP [~~will~~]:

(A) provides [~~provide~~] the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;

(B) coordinates [~~coordinate~~] with appropriate clinical staff to schedule a follow-up appointment;

(C) identifies [~~identify~~] emergency resources, if needed; and

(D) notifies [~~notify~~] the youth's parole officer, as applicable.

(2) The MHP sends [~~will forward~~] mental health records to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP, in consultation with the DMHP.

(2) The MHP may reduce the youth's suicide observation level by no more than one level every 24 hours, unless otherwise approved by the DMHP on a case-by-case basis.

(3) Only an MHP or the DMHP may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available [~~elose~~] observation level may be removed from suicide alert.

(4) The MHP notifies appropriate [~~will notify dorm staff and infirmary~~] staff when a youth's observation level is reduced and when a youth is removed from suicide alert. Infirmary staff [~~will~~] notify the psychiatric provider of all such changes.

(5) The youth's case manager notifies [~~will notify~~] the youth's parent or guardian [~~parent/guardian~~] when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the MHP identifies [~~will identify~~] in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have direct contact with youth (including security, direct care, nursing, mental health, and education staff) [~~will~~] receive initial training in suicide prevention and response during pre-service training. Training addresses [~~will address~~] topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) high-risk [~~high risk~~] periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) All personnel who have direct contact with youth [~~will~~] receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(o) Post-Incident Debriefing and Analysis [~~for Completed Suicides and Life-Threatening Attempts~~].

(1) After a suicide or a life-threatening suicide attempt, the [~~The~~] facility administrator or designee coordinates [~~will coordinate~~] a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a suicide, the executive director [~~The chief executive officer~~] or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a suicide, the [~~The~~] medical director conducts [~~will conduct~~] a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a suicide or a life-threatening suicide attempt, a [~~A cross-divisional central office~~] critical incident review is convened [~~committee will convene~~] to [~~examine all relevant information;~~] determine if the incident reveals system-wide deficiencies[;] and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a suicide, all actions, notifications, and reports required under §385.9951 [~~§99.51~~] of this title must [~~will~~] be completed.

§380.9189. *Suicide Alert for Medium Restriction Facilities.*

(a) Purpose. This [~~The purpose of this~~] rule establishes [~~is to establish~~] procedures for [~~suicide prevention by~~] identification, assessment, treatment, and protection of youth in medium restriction facilities who [~~that~~] may be at risk for suicide.

(b) Applicability.

(1) This rule applies to all youth currently assigned to placement in medium restriction facilities operated by the Texas Juvenile Justice Department (TJJD) [~~Youth Commission (TYC)~~].

(2) Responsibilities assigned to mental health professionals (MHPs) in this rule apply only to MHPs employed by TJJD.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 [~~§91.87~~] of this title. [~~For purposes of this rule, the definition of mental health professional (MHP) may also include psychiatric providers.~~]

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is [~~will be~~] provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide [will] participate in regular programming to the extent possible, as determined by an MHP. Only an MHP may make exceptions to the provision of regular programming, community access, housing placement, or clothing.

(3) Rescue kits for use in medical emergencies are [will be] placed in designated locations within the facility that are not accessible to youth.

(4) As soon as possible, but [Immediately,] not to exceed two hours, after a suicide or a suicide attempt, the facility administrator or designee notifies the youth's parent or guardian (with the youth's consent if the youth is age 18 or older) [will notify the parent/guardian after a suicide attempt or suicide].

(e) Intake Screening.

(1) Upon a youth's admission to a medium restriction facility, a trained staff administers [will administer] a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening are [will be] documented [on the agency-approved form].

(2) If a youth is identified during the screening as potentially at risk [at-risk] for suicide:

(A) the trained staff [will] immediately notifies [notify] the facility administrator or designee;

(B) the facility administrator or designee contacts [will contact] an MHP to conduct a suicide risk assessment; and

(C) the facility administrator or designee assigns [will assign] a suicide observation level. If possible, the administrator consults [will consult] with an MHP in determining the appropriate level.

(3) The suicide risk assessment must be completed as soon as possible, not to exceed 72 hours.

(f) Responding to Suicidal Behavior or Ideation [Behavior/Ideation].

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) [for medical emergencies,] immediately seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee;

(D) provide constant observation unless the facility administrator or designee directs a higher observation level;

(E) document in the appropriate shift log that he/she notified [the notification of] the facility administrator or designee [in the appropriate shift log]; and

(F) complete [for suicidal behavior, document the incident on] an incident report if suicidal behavior was involved.

(2) Upon notification by a staff member, the facility administrator or designee begins [will begin] a suicide observation log to document youth status checks.

(3) Within one hour after notification, a trained designated staff initiates [will initiate] a suicide risk screening. The trained staff [will] immediately communicates [communicate] the results of the screening to the facility administrator or designee.

(4) The facility administrator or designee assigns [will assign] an observation level[;] based on the results of the suicide screening. If possible, the administrator consults [will consult] with an MHP in determining the appropriate level.

(A) For youth engaging in suicidal behavior, the administrator ensures [will ensure] the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(B) For youth engaging in suicidal ideation only, the administrator ensures [will ensure] the youth remains on at least constant observation until an MHP conducts a face-to-face suicide risk assessment.

(C) Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TJJD [TYC] staff supervise the youth on at least constant observation.

(5) The facility administrator or designee contacts [will contact] an MHP to conduct a face-to-face suicide risk assessment. The assessment must be completed within:

(A) four hours if the youth engaged in a suicide attempt; or

(B) as soon as possible, but not to exceed 72 hours, if the youth engaged in any other type of suicidal behavior or ideation.

(6) If the time required for an MHP to conduct a suicide risk assessment is exceeded, the youth will be maintained on at least constant observation until he/she is assessed. If necessary, the facility administrator or designee may secure emergency psychiatric care to obtain an evaluation of the youth.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements. Upon completion of a suicide risk assessment, the MHP documents [will document] the results of the assessment, including any changes in the youth's observation level.

(2) Notification of Assessment Results.

(A) Upon completion of a suicide risk assessment, the MHP communicates [will communicate] the results of the assessment to the facility administrator or designee.

(B) If the youth is placed on suicide alert:

(i) the facility administrator or designee [will] immediately notifies [notify] facility staff of the youth's [placement on suicide alert, the youth's] observation level[;] and any additional instructions; and

(ii) the youth's case manager notifies [will notify] the youth's parent or guardian [parent/guardian] as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(C) If the youth is not placed on suicide alert, the facility administrator or designee notifies [will notify] the referring staff that the youth was assessed and not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the facility administrator or designee assigns [will assign] a specific staff member to monitor the youth and document status checks.

(h) Supervision of Youth on Suicide Alert.

(1) The facility administrator or designee coordinates [~~will coordinate~~] a search of the youth's room and removes [~~remove~~] any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member with direct supervisory responsibility for the youth at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and [~~and/or~~]

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended or let the youth out of his/her sight. When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(B) maintain verbal contact.

(5) Youth [~~Unless approved by the MHP in consultation with the facility administrator, youth~~] on suicide alert are not allowed access to off-site activities or appointments unless it is approved by the MHP in consultation with the facility administrator. In such cases, the youth must be supervised on at least constant observation.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP prepares [~~will prepare~~] a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan includes [~~will include~~]:

(A) identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(B) a plan of action to address these issues; and

(C) the degree of community restriction necessary to provide for the youth's safety.

(2) The MHP consults [~~will consult~~] with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(3) While the youth is on suicide alert, the MHP re-assesses [~~will re-assess~~] the youth as needed, but at least once every two [~~five~~] calendar days.

(4) During each assessment, the MHP [~~will~~]:

(A) reviews [~~review~~] relevant suicide alert documentation and information;

(B) determines [~~determine~~] whether any changes should be made to the youth's observation level or other precautions; and

(C) documents [~~document~~] any changes in the observation level, community restrictions, or other safety precautions.

(5) Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee ensures [~~will ensure~~] the changes are documented and facility staff are notified.

(6) If the youth is receiving psychiatric services, the facility administrator or designee ensures [~~will ensure~~] the psychiatric provider is notified of the youth's placement on suicide alert and of any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) Youth Who Cannot Be Safely Managed in Current Placement.

(1) If the facility administrator or ~~an~~ MHP determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of serious self-injury, the facility administrator or designee [~~will~~]:

(A) ensures [~~ensure~~] one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtains [~~obtain~~] emergency psychiatric placement in accordance with §380.8771 of this title [~~at the Corsicana Stabilization Unit (CSU) or, if the CSU is not able to receive the youth, placement in a local state hospital, or as a last resort, a private psychiatric facility~~]. For youth not on parole status, the administrator may also seek temporary admission to protective custody in a high restriction TJJD [~~TYC~~] facility pending emergency psychiatric placement if none of the above placements are immediately available; and

(C) maintains [~~maintain~~] communication with staff at the emergency placement to obtain current mental status information and assess the length and suitability of the current placement. If the emergency placement exceeds five days, the administrator must [~~will~~] initiate alternate placement in a more secure facility.

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium restriction facility, the facility administrator or designee must [~~will~~] pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision [~~where the youth may be safely managed~~].

(k) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP.

(2) The facility administrator or designee notifies [~~will notify~~] facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert. The designated [~~Designated~~] facility staff notifies [~~will notify~~] the psychiatric provider of all such changes.

(3) The youth's case manager notifies [~~will notify~~] the youth's parent or guardian [~~parent/guardian~~] when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(l) Release or Discharge of Youth on Suicide Alert. Prior to releasing or discharging a youth on suicide alert to a community placement (i.e., another non-secure placement or home placement), [~~the MHP, in coordination with~~] the youth's case manager contacts the MHP to ensure the following are completed [~~will~~]:

(1) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;

(2) coordinate with appropriate clinical staff to schedule a follow-up appointment;

(3) identify emergency resources, if needed; and

(4) forward mental health records to the receiving mental health provider upon request.

(m) Training.

(1) All direct care staff ~~will~~ receive initial training in suicide prevention and response during pre-service training, as well as annual updates during in-service training. Training ~~addresses~~ addresses ~~will address~~ topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) ~~high-risk~~ high risk periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(n) Post-Incident Debriefing and Analysis ~~[for Completed Suicides and Life-Threatening Attempts]~~.

(1) ~~After a suicide or a life-threatening suicide attempt, the [The] facility administrator or designee coordinates [will coordinate] a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.~~

(2) ~~After a suicide, the executive director [The chief executive officer] or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.~~

(3) ~~After a suicide, the [The] medical director conducts [will conduct] a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.~~

(4) ~~After a suicide or a life-threatening suicide attempt, a [A cross-divisional central office] critical incident review is convened to [committee will convene to examine all relevant information,] determine if the incident reveals system-wide deficiencies[,] and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.~~

(5) In the event of a suicide, all actions, notifications, and reports required under §380.9951 ~~[§99.51]~~ of this title must ~~will~~ be completed.

§380.9190. Suicide Prevention for Parole.

(a) Purpose. ~~This [The purpose of this] rule establishes [is to establish] procedures for the protection of youth on parole in the com-~~

~~munity who [that] may be at risk for suicide [within the community while on parole].~~

(b) Applicability. This rule applies to all youth under the jurisdiction of the Texas Juvenile Justice Department (TJJD) ~~[Youth Commission (TYC)]~~ who are assigned to parole in home placements ~~[the community]~~.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 ~~[§91.87]~~ of this title.

(d) General Provisions.

(1) Any staff member who observes a youth engaging in suicidal behavior or ideation must immediately respond in a manner that protects youth safety.

(2) If a staff member observes or becomes aware of a youth engaging in suicidal ideation, the staff member ~~will~~:

(A) immediately ensures ~~[ensure]~~ that the following individuals are ~~[youth's parent/legal guardian and parole officer have been]~~ notified of the youth's behavior: ~~;~~ and

(i) the youth's parent/guardian (with the youth's consent if the youth is age 18 or older); and

(ii) the youth's parole officer; and

(B) ~~provides the youth and/or parent/guardian [provide community resource] information regarding community resources where a mental health professional may be consulted.~~

(3) If a staff member observes or becomes aware of a youth engaging in suicidal behavior, the staff member ~~will~~:

(A) immediately ensures ~~[ensure]~~ that the following are ~~[local law enforcement and the youth's parent/legal guardian and parole officer have been]~~ notified of the youth's behavior: ~~;~~

(i) the local mental health authority or local law enforcement, as appropriate;

(ii) the youth's parent/guardian (with the youth's consent if the youth is age 18 or older); and

(iii) the youth's parole officer;

(B) ~~provides the youth and/or parent/guardian [provide community resource] information regarding community resources where a mental health professional may be consulted; and~~

(C) ~~refers the youth for emergency psychiatric placement in accordance with §380.8771 of this title if the staff member determines, in consultation with the appropriate administrator, that the youth is in imminent danger of serious self-injury and is not receiving adequate treatment and supervision in the community[,] refer the youth for emergency psychiatric placement in accordance with §87.71 of this title].~~

§380.9191. Psychopharmacotherapy.

(a) Purpose. ~~This rule provides guidelines for using [The purpose of this policy is to provide for the use of] psychopharmacotherapy as part of an established treatment plan for Texas Juvenile Justice Department (TJJD) [an established method of treatment for Texas Youth Commission (TYC)] youth exhibiting symptoms of mental illness, mental disorder, or emotional distress [in accordance with an established treatment plan].~~

(b) General Provisions. Under no circumstances are tranquilizers, psychostimulants, or other psychotropic medications administered;

(1) for [purposes of] discipline, security, or control purposes;];

(2) for experimental research; or

(3) as a sleep aid (unless sleep disturbance is related to a primary mental health diagnosis)]; or experimental research].

(c) Prescribing Psychotropic Medication.

(1) TJJD strives to ensure that prescribing psychotropic medication is a collaborative effort among the psychiatric provider, the youth, and the parent/guardian when feasible. All discussions and/or notifications to the youth and/or the parent/guardian regarding treatment objectives, medication disadvantages, available alternatives, consequences of not following the recommended treatment plan, and potential medication side effects are documented in the youth's medical record. During the intake and assessment process, the psychiatric provider may continue the medication after reviewing the youth's medical record and/or conducting a psychiatric evaluation. Indication for the psychopharmacotherapy must be documented in the youth's medical record.

(2) [(4)] Psychotropic [Unless psychotropic medication is being prescribed for purposes of ensuring continuity of care upon admission or transfer, psychotropic] medication may [only] be prescribed only as part of [in accordance with] an established treatment plan after a youth has received nursing, medical, and mental health screenings and evaluations. A previously prescribed medication may be continued upon TJJD admission or transfer to promote continuity of care in accordance with subsection (c)(1) of this section.

(3) [(2)] Psychotropic medication is [shall be] prescribed only to a youth who exhibits symptoms that meet criteria in the [meets the] current Diagnostic and Statistical Manual [criteria] for a psychiatric disorder. [During the intake and placement process, a chart review, psychiatric evaluation, and/or psychotropic medication review shall be performed by the treating psychiatric provider prior to continuing, initiating, or changing a psychotropic medication order. Indication for the psychopharmacotherapy must be documented. Every effort will be made to ensure that prescribing of psychotropic medication is a collaborative effort between the psychiatric provider and the youth, necessitating, whenever reasonable or possible, the sharing of information such as treatment objectives, disadvantages, available alternatives, and side effects.]

(4) [(3)] The schedule and dosage of prescribed psychotropic medication are consistent with established community standards of care and nationally accepted practice guidelines. If the schedule and dosage differ [there is a departure] from these standards or guidelines, the psychiatric provider must clearly document his/her rationale.

(5) [(4)] Standing orders will not be utilized for prescribing psychotropic medication[, except where psychiatric mid-level practitioners are used to provide services under a supervising psychiatrist]. The use of standing orders shall comply with applicable state regulations.

(6) Psychotropic medication is prescribed in accordance with disease management guidelines and the formulary adopted for use by TJJD and the University of Texas Medical Branch - Correctional Managed Care (UTMB). The guidelines and formulary are developed and revised as needed by the TJJD/UTMB Pharmacy and Therapeutics Committee, consisting of psychiatrists, pharmacists, nurses, the TJJD medical director, and the UTMB mental health directors.

(d) Psychotropic Medication Administration.

(1) Psychotropic medication is administered orally [The preferred method of medication administration will be the oral route] unless [there is documentation of] specific contraindications have been documented.

(2) Psychotropic medication may not be administered against the will of a youth except in a psychiatric emergency as specified in §380.9192 [§91.92] of this title.

§380.9192. *Involuntary Emergency Administration of Psychotropic Medication.*

(a) Purpose. This rule establishes [The purpose of this rule is to establish] criteria [and procedure] for the Texas Juvenile Justice Department (TJJD) to administer [administering] psychotropic medication to youth in TJJD-operated [TYC-operated] high restriction residential facilities. These criteria apply in a psychiatric emergency when the youth cannot or will not give consent for the administration.

(b) Definitions. See §380.9175 of this title for definitions of certain terms in this rule.

(c) [(b)] References.

[(4)] For definitions pertaining to this rule, see §91.75 of this title.]

[(2)] See §380.9723 [§97.23] of this title for use of force procedures and approved techniques.

(d) [(e)] Criteria for the Involuntary Emergency Administration of Psychotropic Medication.

(1) Psychotropic medication may be administered in an injectable form to a youth with a diagnosed mental health condition in a psychiatric emergency when the youth cannot or will not give consent [if the youth has a diagnosed psychiatric disorder] and the youth demonstrates any of the actions listed below [one or both of the following criteria are met]:

(A) imminent and substantial harm to self because of overt [the youth is overtly engaging in] behaviors that could result in bodily harm or death; or

(B) imminent and substantial physical harm to another because of acts the youth overtly commits.

(2) Only a facility psychiatric or medical provider as defined in §380.9175 of this title [(under the direction of a psychiatrist) or physician] may prescribe the involuntary emergency use of psychotropic medication.

(e) [(d)] Restrictions for Administering Psychotropic Medication.

(1) Psychotropic drugs shall not be administered for [the purposes of] punishment or for program management or control. Pharmaceutical experimentation or research using TJJD [TYC] youth is strictly prohibited.

(2) Standing medication orders are prohibited in a psychiatric emergency.

(f) [(e)] Emergency Commitment to a State Hospital or Admission to a Crisis [Corsicana] Stabilization Unit.

(1) TJJD initiates [For a youth who requires continued medication against his/her will,] commitment to a state hospital for a youth requiring compelled psychotropic medication [will be initiated]. See §380.8769 [§87.69] of this title for state hospital commitment [regarding] procedures [for commitment to a state hospital].

(2) If the youth qualifies for admission to a crisis stabilization unit [Corsicana Stabilization Unit (CSU)], staff [shall] immedi-

ately initiates [initiate] an admission referral [to CSU]. See §380.8767 [§87-67] of this title regarding admission to a crisis stabilization unit [CSU].

(g) [(f)] Notification.

(1) The facility administrator or designee notifies [will notify] the parent/guardian of involuntary administration of psychotropic medication as soon as possible following the action.

(2) Psychiatric emergencies are [will be] reported in accordance with agency procedures for reporting serious incidents.

§380.9193. *Family Planning Services.*

(a) This rule establishes the [Purpose. The purpose of this rule is to establish TYC's] role of the Texas Juvenile Justice Department (TJJD) in providing family planning education and services to [its] youth in TJJD-operated residential placements.

(b) Family planning education is [will be made] available to youth in TJJD-operated [TYC operated] residential placements; either on-site or] by referral to appropriate community agencies.

(c) If requested by a youth, family [Family] planning services, [(including contraception, provision of contraceptive methods)] will be made available by referring him/her to appropriate community agencies when the youth is released from TJJD [to youth in TYC] residential placement [placements at the time of their release by referral to appropriate community agencies; if requested by the youth].

(d) TJJD [The TYC] staff [will] act as a liaison with community organizations that [to] provide comprehensive family planning services for TJJD [TYC] youth.

(e) Medical providers [Physicians] paid; either] directly or indirectly;] by TJJD do [TYC will] not provide contraceptives to TJJD [TYC] youth as a family planning service.

§380.9197. *HIV/AIDS [Acquired Immune Deficiency Syndrome/HIV].*

(a) Purpose. This rule provides [The purpose of this rule is to provide] for a safe and healthy environment for youth in Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)] residential facilities by offering [regarding] HIV/AIDS education, testing, and counseling/treatment and by ensuring compliance with confidentialityand;] reporting laws. Each youth; and counseling/treatment. Every individual] is treated equally, and every youth's [individual's] right to privacy is respected.

(b) Definitions.

(1) AIDS--Acquired immune deficiency syndrome [Immune Deficiency Syndrome] as defined by the [United States] Centers for Disease Control and Prevention (CDC).

(2) HIV--Human immunodeficiency virus [Immunodeficiency Virus].

(3) Test Result--Any statement indicating [that indicates] that an identifiable individual has or has not been tested for [AIDS or] HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. This includes; including] a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

(c) Testing.

(1) Testing for HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is part of routine laboratory testing performed when a youth is admitted to TJJD [upon admission to TYC] and does not require a specific consent form.

(2) Youth [Except as provided by law, youth] have the right to refuse HIV testing in writing, including routine HIV testing performed during admission, except as provided by law.

(3) HIV [HIV/AIDS] testing is not [shall not be] performed routinely as a result of an assault.

(4) HIV [HIV/AIDS] testing may be performed on a youth only when [under the following circumstances only]:

(A) admitted to TJJD [Upon admission to TYC];

(B) requested by the youth [Upon request] and/or with the youth's consent [by the youth] after his/her admission to TJJD [TYC];

(C) [As] compelled by court order;] following a request made by TJJD staff in accordance with Health and Safety Code §81.050 and agency policy relating to occupational exposure to reportable diseases, including HIV [AIDS/HIV] infection and AIDS; and/or [and]

(D) directed by [Pursuant to] a warrant obtained by the Office of Inspector General or other law enforcement entity.

(5) Blood may be collected for HIV testing only by nurses, medical providers, or [by] the Texas Department of State Health Services (DSHS) or its local testing designee.

(6) Post-test counseling is [shall be] provided for youth with positive HIV [HIV/AIDS] test results. Pre-test counseling is [shall be] provided for any HIV test conducted after admission to TJJD [TYC].

(d) Confidentiality. HIV [HIV/AIDS] test results or a youth's HIV/AIDS status are confidential and may not be released or disclosed except to:

(1) the TJJD [TYC] medical director;

(2) the TJJD [TYC] director of nursing;

(3) a physician, nurse, or other health care personnel who has a legitimate need to know the information [in order] to provide for the youth's health and welfare;

(4) the youth's parent/guardian if the youth is under age 18 [years of age] or with the youth's consent if the youth is [over] 18 [years of age];

(5) any medical professional with a signed release from the youth or the youth's parent/guardian, as appropriate. The written consent [release] must [specifically] state that HIV test results are to be released;

(6) a TJJD [TYC] employee for a result obtained in accordance with Health and Safety Code §81.050 and subsection (c)(4)(C) of this section; or

(7) [pursuant to law;] any person with a [legal] right pursuant to law to obtain the information.

(e) Reporting. As required by state law, TJJD [TYC] reports any AIDS cases or the HIV positive status [positivity] of a youth diagnosed by a physician in accordance with [the] CDC standards to the appropriate DSHS authority through the facility medical provider.

(f) Housing. HIV positive youth are not [will not be] segregated from the general population based solely on positive HIV status. Housing assignments are made in accordance with §380.8524 [§85-24] of this title.

(g) Treatment. HIV positive youth are [will be] referred immediately to appropriate health care facilities or specialists for further evaluation, treatment, and counseling.

(h) Access to Services. Youth in TJJD [TYC] facilities are not [shall not be] denied equal access to appropriate medical services because of their HIV/AIDS [AIDS/HIV] status.

(i) Education.

(1) TJJD [TYC] provides education information to youth [ongoing training] regarding HIV/AIDS as follows [AIDS to youth].

(A) All youth participate in an education session when admitted to TJJD [upon admission to TYC].

(B) Education may continue as part [continues as a routine segment] of the academic program.

(C) Medical staff educate youth as indicated and/or requested.

(2) HIV/AIDS education for youth is based upon [on] current, accurate scientific information provided by officially recognized authorities on public health. Information is communicated in a manner that youth comprehend and is sensitive to cultural and other differences.

(3) Education programs address topics including, but not limited to:

(A) disease and disease process;

(B) signs and symptoms;

(C) modes of HIV transmission, including high-risk [high risk] and criminal behaviors that are [a] potential risks [risk] for HIV transmission during confinement and after release;

(D) methods of preventing [prevention of] HIV transmission; and

~~(E) infection control procedures;~~

~~(F) including treatment; comprehensive services available;~~

~~(E) [(G)] confidentiality of medical information and the civil and criminal penalties for failing to comply. [adhere; and]~~

~~[(H) occupational precautions.]~~

(j) Training.

(1) All TJJD direct-care [direct care] staff receives [receive] training initially during [at] orientation and annually thereafter [for review].

(2) Staff at TJJD district offices and Austin [Central] Office receive educational information [pamphlets] annually.

§380.9198. *Four-Point Restraints for Medical and Mental Health Purposes.*

(a) Purpose. This rule establishes the criteria, procedures, and limitations for use of four-point restraints when used for medical or mental health purposes.

(b) Applicability.

(1) This rule applies to all residential facilities operated by the Texas Juvenile Justice Department (TJJD) that are authorized to administer four-point restraints.

(2) This rule applies only to four-point mechanical restraints. For all other types of restraint used for medical or mental health purposes, provisions of §380.9723 of this title apply.

(c) Additional References. For criteria [and procedures] on administering a psychotropic drug in a psychiatric emergency when a youth will not give consent for the administration, see §380.9192 of this title.

(d) Definitions. For definitions of terms used in this section, see §380.9175 of this title.

[(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this title.]

[(2) Four-Point Restraint--a professionally manufactured and commercially available restraint chair or bed designed to secure both arms and both legs to the chair or bed with cloth or leather straps.]

[(3) Medical Provider--a:]

[(A) Texas-licensed physician; or]

[(B) Texas-licensed mid-level practitioner, such as a nurse practitioner or physician assistant, acting under the authorization of a physician.]

[(4) Mental Health Professional--has the meaning assigned by §380.9187 of this title.]

[(5) Psychiatric Provider--a:]

[(A) Texas-licensed psychiatrist; or]

[(B) Texas-licensed psychiatric physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.]

(e) General Provisions.

(1) Four-point restraints may only be used for medical or mental health purposes as described by this rule. Four-point restraints may not be used for any other purpose.

(2) Restraint equipment used for medical or mental health purposes must be used only in a manner consistent with its intended design and purpose.

(3) Only restraint equipment approved by the executive director or designee may be used in TJJD facilities.

(4) TJJD staff who will [may be expected to] participate in the application of four-point restraints or monitoring, managing, or approving the restraint must receive special training and may not participate in its implementation until the training has been received. The training will include proper use and application of restraint devices and applicable TJJD policies and guidelines regarding the implementation, documentation, and possible continuation of the restraint.

(5) If facility resources are not sufficient to support the procedural requirements specified in this rule, four-point restraints must not be used.

(6) A medical provider must be consulted prior to placing a youth in a four-point restraint device if the youth is pregnant or has a seizure disorder or any other medical condition that contraindicates such restraint.

(7) The facility administrator or designee must ensure that the parent/guardian of a youth placed in a four-point restraint is notified within 24 hours after the restraint is initiated.

(f) Four-Point Restraints for Medical Purposes.

(1) Authorized Facilities. Four-point medical restraints are authorized only at high restriction facilities that:

(A) operate an on-site infirmary; and



(B) have been authorized by the executive director or designee to administer four-point restraints.

(2) **Criteria for Use.** Medical restraints may be used only to administer medical treatment to a resistant youth when failure to administer the treatment could have serious health implications as determined by a physician or mid-level practitioner (such as a nurse practitioner or physician assistant).

(3) **Authorization for Use.**

(A) Only a medical provider may order a medical restraint. The order must be based upon a determination that:

(i) all appropriate, less restrictive interventions have proved unsuccessful in controlling the youth's behavior to a degree that would allow the medical treatment to be administered; and

(ii) transfer to a local emergency room or other appropriate facility is not immediately feasible.

(B) An order for medical restraint must specify the type of restraint to be used, duration of the restraint, any special instructions, and justification for the restraint.

(C) Prior to the expiration of the first hour, a registered nurse must contact the medical provider to develop a treatment plan, if the restraint is still needed. The treatment plan must include transfer to a local emergency room or other appropriate facility if the need for restraint exceeds one hour.

(4) **Procedural Requirements.**

(A) A medical provider or nurse must be present during the application of restraints.

(B) Youth are provided:

(i) 15-minute checks by healthcare staff to assess the youth's condition, including circulation, position, and open airway. Such checks must be documented in the youth's medical record;

(ii) range-of-motion exercises performed by a nurse at least every 30 minutes for a period of at least five minutes;

(iii) regularly scheduled meals and drinks;

(iv) continuous visual supervision by staff; and

(v) opportunities for elimination of bodily waste as needed.

(C) A medical restraint must be terminated upon a determination by the medical provider that the youth's behavior no longer justifies application of medical restraints or expiration of the provider's order, whichever occurs first.

(g) **Four-Point Restraints for Mental Health Purposes.**

(1) **Authorized Facilities.** Four-point mental health restraints are authorized only at facilities designated by the executive director or designee.

(2) **Criteria for Use.**

(A) Four-point restraints for mental health purposes are authorized for use only when the restraint is necessary to prevent serious self-injury and all appropriate, less restrictive interventions have proven unsuccessful in controlling the youth's self-injurious behavior, as determined by a designated mental health professional or a psychiatric provider.

(B) The restraint must be terminated as soon as the youth's behavior indicates the threat of imminent self-injury is absent,

as determined by a designated mental health professional or psychiatric provider.

(3) **Authorization to Initiate and Continue Restraint.**

(A) Only a designated mental health professional or a psychiatric provider may authorize the initiation of a mental health restraint.

(B) At least one staff member trained specifically in mental health restraint techniques must be involved in the application of the restraint. If at least one trained staff member is not available, the restraint may not be used.

(C) Before the end of the first hour of restraint, the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(D) Before the end of the second hour of restraint:

(i) a mental health professional must conduct a face-to-face assessment of the youth; and

(ii) the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(E) Before the end of the fourth hour of restraint and at least once every four hours thereafter:

(i) a mental health professional must conduct a face-to-face assessment of the youth;

(ii) the designated mental health professional and psychiatric provider must be notified of the youth's status; and

(iii) the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(F) No order or approval for mental health restraint may be in force for longer than eight hours without consultation with a psychiatric provider.

(G) No order or approval for mental health restraint may be in force for longer than 12 hours without:

(i) direct observation of the youth by the designated mental health professional;

(ii) a written order to extend the restraint from the psychiatric provider; and

(iii) written instructions from the designated mental health professional regarding continued assessments and monitoring.

(4) **Procedural Requirements.**

(A) A specially trained, on-site staff member must manage the entire restraint incident. Duties of this staff member include:

(i) ensuring policy and procedure are followed;

(ii) notifying the designated mental health professional or psychiatric provider of any significant changes in the youth's behavior;

(iii) ensuring required documentation and notifications are completed; and

(iv) assigning one or more staff members to:

(I) provide continuous supervision of the youth for the duration of the incident;

(II) document the youth's behavior and emotional state; and

(III) facilitate communication between all staff members involved in the restraint.

(B) Staff must ensure the youth's personal dignity by providing a protected environment and as much privacy as possible.

(C) Youth must be provided:

~~(i)~~ regular checks, performed by a nurse, of the physical condition of the youth and the placement of the restraints within the first 30 minutes and every hour during the restraint;

~~(i)~~ [(ii)] regular checks, performed by a nurse, of the youth's physical condition and placement of the restraints, along with an assessment of circulation, position, and open airway [checks] at least every 15 minutes [by healthcare staff];

~~(ii)~~ [(iii)] opportunity for range of motion exercises at least every 30 minutes for a period of at least five minutes by trained staff;

~~(iii)~~ [(iv)] regularly scheduled meals and drinks;

~~(iv)~~ [(v)] opportunity for elimination of bodily waste at least once every two hours; and

~~(v)~~ [(vi)] continuous visual supervision by staff.

(D) The designated mental health professional, in consultation with a psychiatric provider if indicated, must develop a detailed plan for clinical follow-up, which may include referral to a TJJD stabilization unit or state hospital if the youth meets criteria in §380.8767 or §380.8769 of this title.

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

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

TRD-201404648

Karen Kennedy

Interim General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 490-7278



### 37 TAC §380.9194

*(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 Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9194. *Automated External Defibrillators.*

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

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Karen Kennedy

Interim General Counsel

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## CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

### SUBCHAPTER C. MISCELLANEOUS

#### 37 TAC §385.9981

The Texas Juvenile Justice Department (TJJD) proposes new §385.9981, concerning Sick Leave Pool Administration.

#### SUMMARY OF RULE

The proposed new rule will identify the sick leave pool administrator and describe the basic operations of the agency sick leave pool.

#### FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the new section will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the section.

#### PUBLIC BENEFIT/COSTS

Royce Myers, Director of Human Resources, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section is compliance with state law.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to [policy.proposals@tjtd.texas.gov](mailto:policy.proposals@tjtd.texas.gov).

#### STATUTORY AUTHORITY

The new section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The section is also proposed under Texas Government Code §661.002, which requires the governing body of a state agency to adopt a rule relating to the operation of the agency sick leave pool.

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

§385.9981. Sick Leave Pool Administration.

(a) Purpose. The purpose of this rule is to establish a sick leave pool for Texas Juvenile Justice Department (TJJD) employees as mandated by Texas Government Code, §661.002.

(b) General Provisions.

(1) The director of human resources or designee is the pool administrator.

(2) All contributions to the TJJD sick leave pool are voluntary.

(3) The donating employee may not designate a specific employee to receive the donated hours.

(4) An employee is eligible to use time contributed to the sick leave pool if the employee has exhausted his/her sick leave because of:

(A) a catastrophic illness or injury; or

(B) a previous donation of time to the pool.

(5) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.

(6) The following provisions apply to employees who withdraw sick leave pool time that is beyond what they contributed.

(A) The pool administrator determines the number of hours that an employee may withdraw from the pool; however, the amount withdrawn may never exceed the lesser of:

(i) one-third of the total time in the pool; or

(ii) 90 days.

(B) An employee absent on time withdrawn from the sick leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.

(C) The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the sick leave pool.

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

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Karen Kennedy

Interim General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 100. MISCELLANEOUS**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter C, consisting of §§100.151 - 100.169, concerning department responsibility for minimizing fraud and abuse; confidentiality of fraud or abuse investigation records; statutory bases; department responsibilities in relation to provider fraud and abuse; grounds for fraud referral and administrative sanction; administrative sanctions/actions, restitution, and recoupment; definitions; administrative sanctions and actions; scope of sanction; imposing a sanction; notice of

adverse action; informing other interested parties; provider education; request for reinstatement; obligation of health care practitioners and providers; department responsibility for recovery of funds; recovery from providers; recovery when fraud is involved; provider re-enrollment or provider contract or agreement modification; the repeal of Subchapter F, consisting of §§100.251 - 100.267, concerning purpose; application; definitions; office of internal audit authority and function; responsibilities of the audit committee chairman and the TDMHMR board; responsibilities of the director; access to records; standards of conduct; standards for conducting audits and investigations; scope of audit work; exit conference procedures for audits; responses to audit findings; final audit report distribution; implementing audit recommendations; investigating alleged fraud, misconduct, or other wrongdoing; references; distribution; and the repeal of Subchapter H, consisting of §§100.353 - 100.356, 100.358 - 100.369, 100.371 - 100.381 concerning confidentiality of records; freedom of choice; allowable services and limitations; dental examination and treatment; preventive services; therapeutic services; orthodontic services; eligibility for orthodontic services; application for participation; requirements for participation; orthodontic provider participation; post-payment review; termination of a provider agreement; maximum payment; charges to ICF/MR; payment of claims; time limits, return, and denial of claims; dental problems discovered by the utilization-review dentist; utilization of peer review or grievance committees; utilization of Texas State Board of Dental Examiners; types of reviews; notification to provider about utilization review; provider cooperation; report of findings; classification of review findings; restitution of overpayments; and administrative actions, in Chapter 100, Miscellaneous.

#### **BACKGROUND AND PURPOSE**

When the health and human service agencies were reorganized in 2004, the Texas Department of Mental Health and Mental Retardation (TDMHMR) rules were administratively transferred to Title 40 from Title 25 of the TAC. Rules that should be considered for repeal were transferred to Chapter 100. The three subchapters of Chapter 100 proposed for repeal describe responsibilities of the former TDMHMR regarding fraud and abuse and recovery of benefits, internal audits and investigations, and the intermediate care facility for individuals with an intellectual disability dental program. These topics are now governed by rules of HHSC and the Department of State Health Services, and by the Texas Internal Audit Act (Government Code, Chapter 2102, Internal Auditing).

DADS has determined that the rules in Chapter 100 are no longer necessary and, therefore, DADS is proposing to repeal them.

#### **SECTION-BY-SECTION SUMMARY**

The proposed repeal of Subchapter C deletes rules regarding department responsibility for minimizing fraud and abuse; confidentiality of fraud or abuse investigation records; statutory bases; department responsibilities in relation to provider fraud and abuse; grounds for fraud referral and administrative sanction; administrative sanctions/actions, restitution, and recoupment; definitions; administrative sanctions and actions; scope of sanction; imposing a sanction; notice of adverse action; informing other interested parties; provider education; request for reinstatement; obligation of health care practitioners and providers; department responsibility for recovery of funds; recovery from providers; recovery when fraud is involved; and provider re-enrollment or provider contract or agreement modification

The proposed repeal of Subchapter F deletes rules regarding the purpose of the subchapter; application; definitions; office of internal audit authority and function; responsibilities of the audit committee chairman and the TDMHMR board; responsibilities of the director; access to records; standards of conduct; standards for conducting audits and investigations; scope of audit work; exit conference procedures for audits; responses to audit findings; final audit report distribution; implementing audit recommendations; investigating alleged fraud, misconduct, or other wrongdoing; references; and distribution.

The proposed repeal of Subchapter H deletes rules regarding confidentiality of records; freedom of choice; allowable services and limitations; dental examination and treatment; preventive services; therapeutic services; orthodontic services; eligibility for orthodontic services; application for participation; requirements for participation; orthodontic provider participation; post-payment review; termination of a provider agreement; maximum payment; charges to ICF/MR; payment of claims; time limits, return, and denial of claims; dental problems discovered by the utilization-review dentist; utilization of peer review or grievance committees; utilization of Texas State Board of Dental Examiners; types of reviews; notification to provider about utilization review; provider cooperation; report of findings; classification of review findings; restitution of overpayments; and administrative actions.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses because no obligations are imposed by repealed rules.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the repeals are in effect, the public benefit expected as a result of enforcing the repeals is the removal of outdated rules from the DADS rule base.

Mr. Adams anticipates that there will not be an economic cost to any persons because no obligations are imposed by repealed rules. The repeals will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sylvia Trevino at (361) 334-6105 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-14R02, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St.,

Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R02" in the subject line.

## SUBCHAPTER C. FRAUD AND ABUSE AND RECOVERY OF BENEFITS

### 40 TAC §§100.151 - 100.169

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

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

- §100.151. *Department Responsibility for Minimizing Fraud and Abuse.*
- §100.152. *Confidentiality of Fraud or Abuse Investigation Records.*
- §100.153. *Statutory Bases.*
- §100.154. *Department Responsibilities in Relation to Provider Fraud and Abuse.*
- §100.155. *Grounds for Fraud Referral and Administrative Sanction.*
- §100.156. *Administrative Sanctions/Actions, Restitution, and Recoupment.*
- §100.157. *Definitions.*
- §100.158. *Administrative Sanctions and Actions.*
- §100.159. *Scope of Sanction.*
- §100.160. *Imposing a Sanction.*
- §100.161. *Notice of Adverse Action.*
- §100.162. *Informing Other Interested Parties.*
- §100.163. *Provider Education.*
- §100.164. *Request for Reinstatement.*
- §100.165. *Obligation of Health Care Practitioners and Providers.*
- §100.166. *Department Responsibility for Recovery of Funds.*
- §100.167. *Recovery from Providers.*

§100.168. *Recovery When Fraud Is Involved.*

§100.169. *Provider Re-enrollment or Provider Contract or Agreement Modification.*

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 September 30, 2014.

TRD-201404589

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: November 16, 2014

For further information, please call: (512) 438-3734



## SUBCHAPTER F. INTERNAL AUDITS AND INVESTIGATIONS

### 40 TAC §§100.251 - 100.267

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

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§100.251. *Purpose.*

§100.252. *Application.*

§100.253. *Definitions.*

§100.254. *Office of Internal Audit Authority and Function.*

§100.255. *Responsibilities of the Audit Committee Chairman and the TDMHMR Board.*

§100.256. *Responsibilities of the Director.*

§100.257. *Access to Records.*

§100.258. *Standards of Conduct.*

§100.259. *Standards for Conducting Audits and Investigations.*

§100.260. *Scope of Audit Work.*

§100.261. *Exit Conference Procedures for Audits.*

§100.262. *Responses to Audit Findings.*

§100.263. *Final Audit Report Distribution.*

§100.264. *Implementing Audit Recommendations.*

§100.265. *Investigating Alleged Fraud, Misconduct, or Other Wrongdoing.*

§100.266. *References.*

§100.267. *Distribution.*

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

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General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER H. DENTAL PROGRAM

### 40 TAC §§100.353 - 100.356, 100.358 - 100.369, 100.371 - 100.381

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

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§100.353. *Confidentiality of Records.*

§100.354. *Freedom of Choice.*

§100.355. *Allowable Services and Limitations.*

§100.356. *Dental Examination and Treatment.*

§100.358. *Preventive Services.*

§100.359. *Therapeutic Services.*

§100.360. *Orthodontic Services.*

§100.361. *Eligibility for Orthodontic Services.*

§100.362. *Application for Participation.*

§100.363. *Requirements for Participation.*

§100.364. *Orthodontic Provider Participation.*

§100.365. *Post-payment Review.*

- §100.366. *Termination of a Provider Agreement.*
- §100.367. *Maximum Payment.*
- §100.368. *Charges to ICF/MR.*
- §100.369. *Payment of Claims.*
- §100.371. *Time Limits, Return, and Denial of Claims.*
- §100.372. *Dental Problems Discovered by the Utilization-review Dentist.*
- §100.373. *Utilization of Peer Review or Grievance Committees.*
- §100.374. *Utilization of Texas State Board of Dental Examiners.*
- §100.375. *Types of Reviews.*
- §100.376. *Notification to Provider about Utilization Review.*
- §100.377. *Provider Cooperation.*
- §100.378. *Report of Findings.*
- §100.379. *Classification of Review Findings.*
- §100.380. *Restitution of Overpayments.*
- §100.381. *Administrative Actions.*

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

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) proposes the repeal of Chapter 218, Subchapter D, §218.40, Applicability. The department also proposes amendments to Subchapter A, §218.1, Purpose; §218.2, Definitions; Subchapter B, §218.11, Motor Carrier Registration; §218.12, Issuance of United States Department of Transportation Numbers; §218.13, Application for Motor Carrier Registration; §218.14, Expiration and Renewal of Commercial Motor Vehicle Registration; §218.16, Insurance Requirements; §218.17, Unified Carrier Registration System; §218.18, Short-term Lease and Substitute Vehicles; Subchapter C, §218.31, Investigations and Inspections of Motor Carrier Records; §218.32, Motor Carrier Records; §218.33, Enforcement; Subchapter D, §218.41, Bond; §218.42, Fees; Subchapter E, §218.51, Household Goods Agents; §218.52, Advertising; §218.54, Selling Insurance to Shippers; §218.55, Information for Shippers; §218.56, Proposals and Estimates for Moving Services; §218.57, Moving Services Contract; §218.58, Moving Services Contract - Options for Carrier Limitation of Liability; §218.61, Claims; §218.62, Mediation by the Department; §218.64, Rates; §218.65, Tariff Registration; Subchapter F, §218.70, Purpose; §218.71, Administrative Penalties; §218.73, Administrative Proceedings; §218.74, Settlement Agreements; and §218.76, Registration Suspension Ordered under Family Code. The department further proposes new Subchapter G,

Financial Responsibility for Foreign Commercial Motor Vehicles, §218.80, Purpose and Scope; §218.81, Definitions; and §218.82, Financial Responsibility.

#### EXPLANATION OF PROPOSED REPEAL, AMENDMENTS, AND NEW SUBCHAPTER

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that §218.40 should be repealed because it duplicates language that is already in statute.

Amendments to §218.1, Purpose, are proposed to include Transportation Code, Chapters 646 and 648 because the rules in Chapter 218 also implement the provisions of these two chapters of the Transportation Code.

Amendments to §218.2, Definitions, are proposed to modify definitions of existing terms and to add new terms for consistency and accuracy. An amendment is proposed to delete a portion of the definition of a commercial motor vehicle because the definition of a commercial motor vehicle under Transportation Code, §643.051(a) differs from the definition under 49 C.F.R. §390.5 and because a proposed amendment adds a definition for a foreign commercial motor vehicle. An amendment is proposed to add a definition for a foreign commercial motor vehicle for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102.

Amendments to §218.12 are proposed to delete language that is already contained in statute.

Amendments to §218.13 are proposed to delete language that is already contained in statute and in a Texas Department of Public Safety administrative rule. A proposed amendment clarifies that certain qualifying interstate motor carriers are not required to renew certificates of registration. Also, a proposed amendment allows motor carriers to display insurance cab card information via a wireless communication device. Further, a proposed amendment deletes language about incomplete applications because the language is not consistent with agency practice.

Amendments to §218.14 are proposed for consistency with 49 U.S.C. §14504a and Transportation Code, Chapter 643. Additional amendments clarify the procedure for a motor carrier to obtain a non-expiring certificate of registration, as well as the procedure when the motor carrier no longer qualifies for a non-expiring certificate of registration.

Amendments to §218.16 are proposed for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102. Amendments to Figure: 43 TAC §218.16(a) are made for clarity and for consistency with Transportation Code, Chapter 643 and 49 C.F.R. Part 387. An amendment is proposed to delete the adoption of all final orders of the Railroad Commission of Texas because department rules establish the current procedures regarding self-insurance and because any final orders that were in effect on August 31, 1995, are outdated. In addition, the department proposes amendments to clarify the procedures for self-insurance versus the procedures for a motor carrier's insurer to file evidence of insurance with the department. Further, proposed amendments replace terminology with defined terms and delete language that is already contained in statute.

Amendments to §218.17 are proposed to correct the citation to 49 U.S.C. §14504a. Amendments are also proposed to clarify that the department, interstate motor carriers, brokers, freight forwarders, motor private carriers of property, and leasing companies must comply with 49 U.S.C. §14504a, as well as the plan and agreement under 49 U.S.C. §14504a. Amendments are further proposed to adopt the Unified Carrier Registration Agreement by reference and to address the methods for applying for registration under the plan and agreement under 49 U.S.C. §14504a.

An amendment to §218.32 is proposed to add a reference to proposed amendments regarding the display of the insurance cab card information via a wireless communication device. An amendment is also proposed to clarify that a motor carrier is not required to carry in its vehicle proof of compliance with 49 U.S.C. §14504a or the plan or agreement under 49 U.S.C. §14504a.

Amendments to §218.52 are proposed to require household goods carriers to provide their USDOT number in addition to the TxDMV certificate of registration number on print advertisements and on websites. An amendment is proposed to delete "nationally placed billboards" because all billboards are considered to be print advertisements. Household goods carriers are currently required to include on their Internet websites the department's toll free telephone number as listed in §218.52. An amendment is proposed to delete the department's toll-free telephone number from §218.52 and to replace the language with a reference to the department's toll-free consumer helpline as listed on the department's website, in case the department ever changes this number.

The proposed amendments to §218.52 will not be effective until August 5, 2015, to give the household goods carriers time to implement the changes and to lessen any economic impact to the household goods carriers. If a household goods carrier chooses to implement the adopted amendments sooner than August 5, 2015, the household goods carrier will not be in violation of the requirements in §218.52.

Amendments to §218.61 are proposed to direct questions or complaints concerning household goods carrier's claims handling to the department's Enforcement Division because the department's Motor Carrier Division does not handle these questions or complaints. Also, an amendment is proposed to delete the department's toll-free telephone number from §218.61 and to replace the language with a reference to the department's toll-free consumer helpline as listed on the department's website. Similar amendments are proposed to §218.65 regarding public inspection of the tariffs that household goods carriers file with the department pursuant to Transportation Code, §643.153.

Amendments to §218.71 are proposed to revise the definition of "knowingly" because the current definition is not sufficient. Also, proposed amendments delete language already contained in statute.

Amendments to §218.73 and §218.74 are proposed to delete the word "unappealable," so the language is consistent with Transportation Code, §643.2525.

An additional amendment to §218.74 is proposed to delete subsection (d) regarding the revocation of the settlement agreement because the clause is unnecessary. According to §218.74(b), if the settlement agreement requires the payment of a penalty, the motor carrier must submit payment in an agreed amount before the agreement may be executed. In addition, if the settlement agreement involves revocation or suspension of the operating

authority, the revocation or suspension is activated by the department.

New Subchapter G, §§218.80 - 218.82, is proposed to comply with Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

Proposed amendments are made throughout the proposed amended sections to revise terminology for consistency with other department rules and with current department 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 repeal, amendments, and new subchapter as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the repeal, amendments, and new subchapter.

Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal, amendments, and new subchapter.

#### PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the repeal, amendments, and new subchapter are in effect, the public benefit anticipated as a result of adoption of the proposed repeal, amendments, and new subchapter will be accuracy and clarity of the department's rules and greater protection for the traveling public on public roads and highways in Texas.

There are no anticipated economic costs for persons required to comply with the repeal of §218.40 or the proposed amendments or new subchapter, other than the proposed amendments to §218.52. Any economic costs associated with compliance with the rules in proposed new Subchapter G are the result of Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility. There may be anticipated economic costs for persons required to comply with the proposed amendments to §218.52 regarding required language on household goods carriers' print advertisements and Internet websites. There may be adverse economic effect on small businesses or micro-businesses required to comply with the proposed amendments to §218.52. However, the department has attempted to reduce any adverse economic effect by delaying the effective date of these amendments until August 5, 2015, so the household goods carriers have time to implement the changes.

#### ECONOMIC IMPACT STATEMENT

Out of the 511 active household goods carriers that are registered with the Texas Workforce Commission, the department determined that 98% are small businesses. Out of this 98%, 78% fall within the definition of a micro-business because the carrier has 20 or fewer employees. A review of the North American Industry Classification System (NAICS) on the U.S. Census Bureau website revealed that there are five different types of movers that are included in this classification. The five differ-

ent types of movers are Furniture Moving, Used; Motor Freight Carrier, Used Household Goods; Trucking Used Household, Office, or Institutional Furniture and Equipment; Used Household and Office Goods Moving; and Van Lines, Moving and Storage Services.

The department performed research to determine the estimated cost for small businesses to comply with the proposed amendments to §218.52 regarding print advertising and websites. The department concluded that an entity would have to create new advertising materials, discard any old print advertisement, and absorb the costs of doing so. However, it is possible that a small business may utilize a different approach to comply with the new advertising requirements.

The department priced office stationery and basic print advertising that a small business might need in order to conduct business. We estimate that it would cost approximately \$1,970.00 to replace envelopes, letterhead, flyers, brochures, door hangers, and presentation folders in a quantity of one thousand for each item.

If a household goods carrier manages its website in-house, the cost would be minimal for the time spent in updating their website. If a household goods carrier hired an external company to create and maintain the carrier's website, the carrier would not incur a cost if the update is covered by the monthly maintenance fee under their contract. However, if a household goods carrier has to hire someone to update the carrier's website, the carrier might have to pay an hourly rate of \$125.00 for an update that takes about 15 minutes.

While billboard advertisement might only be cost-efficient for a large household goods carrier, it is possible that a small business might advertise on billboards. A carrier would have to commit to advertising on multiple signs in order to get adequate market exposure and a reasonable rate. Based on a rate chart from Lamar Signs, the average cost per month is \$1,747.00 per panel. The price per panel is based on an order of eight (14'x48') signs. This would cost the carrier \$13,976.00 per month. Even if a carrier is required to replace all of the panels to comply with the amendments to §218.52, the estimated cost is approximately \$8,800.00. This estimated cost is based upon an estimated average cost of \$1,095.36 per sign for the design, material, production, and installation costs.

If a publication or an electronic news medium is not already in print or production, there is no charge for a modification as long as the household goods carrier does not exceed the allotted characters or spacing under their contract. However, if a publication or an electronic news medium is already in print or production, the household goods carrier will likely have to pay extra to modify their advertisement. Since there are so many variations in the publications and the sizes of advertisements, an exact cost cannot be determined. The economic impact would vary from business to business, and the associated cost would ultimately have to be absorbed by each household goods carrier.

The department did not find evidence that the proposed amendments to §218.52 would have an adverse economic effect on micro-businesses that is distinct from any potential adverse economic effect on small businesses. However, it is possible that any potential adverse economic effects on micro-businesses would be less to the extent that micro-businesses are less likely to advertise on nationally placed billboards.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, requires state agencies to prepare a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The department has considered several alternative options for minimizing the potential adverse economic impact on small businesses. After considering the alternative options, the department decided to move forward with Option 4 by delaying the effective date of the proposed amendments to §218.52 until August 5, 2015.

Option 1 - Maintaining §218.52 as it is currently written. If the department does not amend §218.52, this option would eliminate the potential adverse economic impact on small businesses. However, the proposed amendments to §218.52 provide the public with the information to search the Federal Motor Carrier Safety Administration (FMCSA) website for additional information on the household goods carrier. The information from the FMCSA website may help the public to make a more informed decision in selecting a household goods carrier.

Option 2 - Not including the nationally placed billboards within the definition of print advertisement. Since this is the largest potential expense that a small business might incur if the department amends §218.52, this option could reduce the potential adverse economic impact on small businesses. However, the department does not have evidence on the number of household goods carriers that fall within the definition of a small business and that advertise on nationally placed billboards.

A small business could also reduce the potential adverse economic impact by choosing to alter an existing vinyl sign by overlaying the required information onto the existing sign. However, the sign may not be aesthetically pleasing with an overlay.

Option 3 - Requiring the additional information on written proposals and binding contracts, rather than on print advertisements and websites. This option would provide the same information as a print advertisement or a website when it is most critical. For example, the department rule could require that all proposals include a brightly colored sheet that specifically provides the potential customer with all of same information as the proposed changes to §218.52, as well as specific instructions on how to conduct a due diligence investigation on their potential household goods carrier. This would inform the public and also save the small business the added expense of complying with the proposed changes to §218.52. However, the proposed changes to §218.52 give the potential customer earlier access to additional information that may help the customer make a more informed decision in selecting a household goods carrier.

Option 4 - Delaying the effective date of the proposed amendments to §218.52. It is possible that the proposed amendments to §218.52 could become effective as early as February 5, 2015. However, it is likely that a delay in the effective date of these proposed amendments could reduce the potential adverse economic impact on small businesses, while still providing additional information to help the public make a more informed decision in selecting a household goods carrier.

The adopted changes to §218.52 could be published as early as January 30, 2015. Since the proposed amendments could become effective as early as February 5, 2015, a delay of the effective date until August 5, 2015, gives the household goods carriers six additional months to comply with the proposed amendments if the amendments are adopted.

TAKINGS IMPACT ASSESSMENT



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

#### SUBMITTAL OF COMMENTS

Written comments on the proposed repeal, amendments, and new subchapter may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for receipt of comments is 5:00 p.m. on November 17, 2014.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §218.1, §218.2

##### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

##### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

##### §218.1. Purpose.

Transportation Code, Chapters 643, 645, 646, and 648 [and 646] require the department to regulate motor carriers, leasing businesses, [as defined in §218.2 of this subchapter (relating to Definitions),] and motor transportation brokers in order to protect the welfare of the public and ensure fair treatment of consumers by household goods carriers. The sections under this chapter prescribe the policies and procedures for the regulation of motor carriers, leasing businesses, and transportation brokers by providing for insurance limits, the issuance of motor carrier credentials, the filing of performance bonds for transportation brokers, audit and record keeping functions, and enforcement.

##### §218.2. Definitions.

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

(1) **Approved association**--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this title [chapter] (relating to Rates).

(2) **Binding proposal**--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(3) **Board**--**Board of the Texas Department of Motor Vehicles.** [The Texas Motor Vehicle Board.]

(4) **Certificate of insurance**--A certificate prescribed by and filed with the department in which an insurance carrier or surety com-

pany warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §218.16 of this title [chapter] (relating to Insurance Requirements).

(5) **Certificate of registration**--A certificate issued by the department to a motor carrier and containing a unique number.

(6) **Certified scale**--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(7) **Commercial motor vehicle**--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver; and

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101-5128). [; and]

~~(iv) a commercial motor vehicle, as defined by 49 C.F.R. §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.~~

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle operated by a governmental entity;

(v) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(vi) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(8) **Commercial school bus**--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code, Chapter 548; and

(E) complies with Transportation Code, §521.022.

(9) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(10) Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Business and Organizations Code, §10.154. [Texas Business Corporation Act, Article 5.218.]

(11) Department--Texas Department of Motor Vehicles (TxDMV). [(DMV).]

(12) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(13) Division--The Motor Carrier Division.

[(14) DOI--Texas Department of Insurance.]

(14) [(15)] Estimate--An informal oral calculation of the approximate price of transporting household goods.

(15) [(16)] Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(16) [(17)] Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(17) FMCSA--Federal Motor Carrier Safety Administration.

(18) Foreign commercial motor vehicle--A commercial motor vehicle that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(19) [(18)] Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

(20) [(19)] Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(21) [(20)] Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(22) [(21)] Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise.

(23) [(22)] Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.

(24) [(23)] Inventory--A list of the items in a household goods shipment and the condition of the items.

(25) [(24)] Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(26) [(25)] Manager--The manager of the department's Motor Carrier Division, Credentialing Section. [Motor Carrier Operations Section.]

(27) [(26)] Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(28) [(27)] Motor Carrier or carrier--A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(29) [(28)] Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(30) [(29)] Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(31) [(30)] Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(32) [(31)] Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(33) [(32)] Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(34) [(33)] Public highway--Any publicly owned and maintained street, road, or highway in this state.

(35) [(34)] Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(36) [(35)] Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(37) [(36)] Revocation--The withdrawal of registration and privileges by the department or a registration state.

(38) [(37)] Shipper--The owner of household goods or the owner's representative.

(39) [(38)] Short-term lease--A lease of 30 days or less.

(40) [(39)] SOAH--The State Office of Administrative Hearings.

(41) [(40)] Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(42) [(41)] Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(43) [(42)] Unified Carrier Registration System or UCR [carrier registration system]--A motor vehicle registration system established under 49 U.S.C. §14504a or a successor federal registration program.

(44) USDOT--United States Department of Transportation.

(45) USDOT number--An identification number issued by or under the authority of the FMCSA or its successor.

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

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## SUBCHAPTER B. MOTOR CARRIER REGISTRATION

### 43 TAC §§218.11 - 218.14, 218.16 - 218.18

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

#### §218.11. Motor Carrier Registration.

(a) A motor carrier may not operate a commercial motor vehicle upon the public roads or highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number. [United States Department of Transportation (USDOT) number issued by or under the authority of the Federal Motor Carrier Safety Administration (FMCSA).]

(b) A household goods carrier may not operate a vehicle upon the public roads or highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number. [issued by or under the authority of the FMCSA.]

(c) For the purposes of this subchapter, a valid USDOT number is an active USDOT number.

#### §218.12. Issuance of United States Department of Transportation Numbers.

USDOT numbers for intrastate and interstate operations can be obtained by filing a FMCSA MCS-150 form available from the FMCSA or by registering online at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

[(a) Every person or entity operating or intending to operate as a motor carrier in intrastate or interstate commerce shall obtain a valid USDOT number.]

[(b) USDOT numbers for intrastate and interstate operations can be obtained by filing a FMCSA MCS-150 form available from the FMCSA or by registering online at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).]

[(e) USDOT numbers for intrastate only operations can be obtained utilizing an application form prescribed by the department.]

#### §218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT number. [numbers issued by or under the authority of the FMCSA.]

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(4) Principal place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(5) Legal agent. [Agent.]

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household goods, or hazardous materials; or

(B) is domiciled in a foreign country.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title [subchapter] (relating to Insurance Requirements).

(9) Safety affidavit. Each motor carrier must complete, as part of the application, an affidavit stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

~~[(A) Drug-testing consortium participants. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.]~~

~~[(B) Report of positive result. A motor carrier required to register under this section shall report to the Department of Public Safety, in the manner required by the Department of Public Safety, a valid positive result on a controlled substances test performed as part of the carrier's drug testing program on an employee of the carrier who holds a commercial driver's license under Transportation Code, Chapter 522. The term "employee" as used in this subparagraph includes all employees as defined in 49 C.F.R. §40.3.]~~

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Registration may be for seven calendar days or for 90 days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles. Household goods carriers may not obtain seven day or 90 day certificates of registration.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Registration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees and information must be submitted with all applications.

(A) An application must be accompanied by an application fee of:

- (i) \$100 for annual and biennial registrations;
- (ii) \$25 for 90 day registrations; or
- (iii) \$5 for seven day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

- (i) \$10 for each vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration; or
- (ii) \$20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §218.16. ~~[of this subchapter.]~~

(D) An application must be accompanied by any other information required by law.

~~[(b) Incomplete applications. The director will return an application to the applicant if it is not accompanied by all fees and by proof of insurance or financial responsibility.]~~

~~(b) [(e)] Conditional acceptance of application. The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.~~

~~(c) [(d)] Approved application. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents: [Disposition of application.]~~

~~[(1) Approval. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents.]~~

~~(1) [(A)] Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.~~

~~(2) [(B)] Insurance cab card. The department will issue an [original] insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier.~~

(A) [(i)] A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) [(ii)] On demand by a department-certified inspector or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver must locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) [(iii)] The motor carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its insurance cab card.

(D) [(iv)] Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void[,; alteration, or unauthorized use of an insurance cab card renders it void.]

(E) [(v)] If an [original] insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department will print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system. [; if it becomes illegible, or if it otherwise requires replacement, a new insurance cab card will be issued by the department at the request of the motor carrier.]

(F) The department is not responsible for a motor carrier's inability to access the insurance information using the department's online system.

(G) The display of an image of the insurance cab card or the display of insurance information from the department's online system via a wireless communication device by the motor carrier does not constitute effective consent for a law enforcement officer, the department-certified inspector, or any other person to access any other content of the wireless communication device.

~~[(vi) Registration listings previously issued by the department will remain valid until expiration or renewal or until revoked or suspended by the department.]~~

~~[(2) Denial: The department may deny a registration if the applicant:]~~

~~[(A) had a registration revoked under §218.72 of this chapter (relating to Administrative Sanctions); or]~~

~~[(B) is a for-hire motor carrier of passengers required to register with the FMSCA and the federal registration is denied, revoked, suspended, or terminated.]~~

(d) [(e)] Additional and replacement vehicles. [Replacement Vehicles:] A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of \$10 for each additional vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of \$20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of \$10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(e) [(f)] Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16. ~~[of this subchapter.]~~

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the

amounts specified by §218.16. ~~[of this subchapter.]~~ A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to re-register instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the facts that gave rise to the suspension or revocation.

(f) [(g)] Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) [(h)] Alternative vehicle registration for household goods agents. To avoid multiple registrations of a commercial motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate will include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) [(i)] Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title ~~[subchapter]~~ (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of

this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

*§218.14. Expiration and Renewal of Commercial Motor Vehicle Registration.*

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration will be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart:

Figure: 43 TAC §218.14(a)(1) (No change.)

(2) 90 day certificates of registration are valid for 90 calendar days from the effective date.

(3) Seven day certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) Approximately 60 days before the expiration of registration, the department will mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration. The notice will be mailed to the carrier's last known address according to the division's records. Failure to receive the notice does not relieve the registrant of the responsibility to renew. A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section. A supplement to an application for motor carrier registration renewal must:

(A) supply any new information required under §218.13(e) of this title [~~§218.13(f) of this subchapter~~] (relating to Application for Motor Carrier Registration) if the information has not previously been supplied to the department; and

(B) include a \$10 fee for each vehicle that the carrier operates under an annual certificate of registration and a \$20 fee for each vehicle that the carrier operates under a biennial certificate of registration.

(2) Seven day and 90 day registrations may not be renewed.

(3) A motor carrier shall maintain continuous insurance or evidence of financial responsibility in an amount at least equal to the amount prescribed under §218.16 of this title [~~subchapter~~] (relating to Insurance Requirements).

(4) The insurance cab card issued to a motor carrier is valid for the same period as the motor carrier's certificate of registration.

(5) To renew registration after it has expired, a motor carrier must identify its vehicles on a form prescribed by the director, pay all vehicle fees, and if current proof of insurance is not on file with the division, meet all insurance requirements.

(c) Interstate motor carrier operating in intrastate commerce.

(1) An interstate motor carrier registered under §218.17 of this title [~~subchapter~~] (relating to Unified Carrier Registration System) is not required to renew a certificate of registration issued under §218.11 of this title [~~subchapter~~] (relating to Motor Carrier Registration) except when the motor carrier is operating [~~commercial motor vehicles~~] as a

(A) non-charter [~~charter~~] bus carrier;

(B) [~~for-hire~~] household goods carrier; or

(C) recyclable materials or waste carrier.

(2) If a motor carrier that registered under §218.17 [~~of this subchapter~~] does not maintain continuous motor carrier registration un-

der §218.11, [~~of this subchapter~~], the motor carrier must file a supplemental application to re-register [~~an application~~] under §218.13 [~~of this subchapter~~] to operate on public streets and highways in this state.

(3) The motor carrier must notify the department if the motor carrier is registered under UCR. The notification must be filed with the department on a form prescribed by the department. Once the department receives the notification, the department will convert the motor carrier's certificate of registration to a non-expiring certificate of registration if the motor carrier qualifies for a non-expiring certificate of registration.

(4) If the department issues the motor carrier a non-expiring certificate of registration, the motor carrier must notify the department if the motor carrier is no longer registered under UCR or if the motor carrier operates as a non-charter bus carrier, household goods carrier, or recyclable materials or waste carrier. The notification must be filed with the department on a form prescribed by the department.

*§218.16. Insurance Requirements.*

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.  
Figure: 43 TAC §218.16(a)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses and coverage for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) \$500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept USDOT [~~United States Department of Transportation~~] evidence of the motor carrier's qualifications as a self-insured.

~~[(2) Adopted final orders. The department adopts all final orders of the Railroad Commission of Texas to the extent that they concern self-insurance and were in effect on August 31, 1995. Those final orders are continued in effect until changed by order of the department.]~~

(2) [(3)] Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

- (i) reserves;
- (ii) sinking funds;
- (iii) third-party financial guarantees;
- (iv) parent company or affiliate sureties;
- (v) excess insurance coverage; and
- (vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the federal motor carrier safety regulations [~~Federal Motor Carrier Safety Regulations~~] as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(3) [(4)] Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) [(5)] Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) [(6)] Duration and coverage of self-insured status. The department may approve an applicant as a self-insured for any specific

time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the applicant reported to the department in the application for self-insured status.

(6) [(7)] Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured to provide additional information. On 10 days' [~~days~~] notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance orders issued or adopted by the department. If an applicant fails to comply with this paragraph, its self-insured status may be revoked.

(7) [(8)] Appeal. An applicant may appeal a denial or revocation of self-insurance status by filing a petition for an administrative hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). [ ~~§§206.61 et seq. of this title (relating to Scope and Purpose).~~]

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. [~~and financial responsibility.~~] A motor carrier's insurer [~~insurance or surety company, bank, or other financial institution~~] shall file and maintain proof of insurance [~~or financial responsibility~~] on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title [~~§218.13(f)(2) of this subchapter~~] (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of \$100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the

department and approved by an authorized agent of the insurer. [The department will accept an insurance policy or certificate of insurance:]

~~[(A) issued by:]~~

~~[(i) an insurance company licensed and authorized to do business in the state of Texas; or]~~

~~[(ii) a surplus lines insurer that meets the requirements of Insurance Code, Chapter 981, and rules adopted by the DOI under that chapter; and]~~

~~[(B) in a form prescribed or approved by the DOI and signed or countersigned by an authorized agent of the insurance company.]~~

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurer [insurance company] in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurer [insurance company] without 30 days' [days] notice if the certificate of registration is expired, suspended, or revoked, and the insurer [insurance company] provides a cancellation date on the proof of insurance coverage. [The department will revoke a certificate of registration under §218.72 of this chapter (relating to Administrative Sanctions) for failure to maintain proof of current insurance.]

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no accidents have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

~~[(i) Notifications. The department shall notify the Texas Department of Public Safety and other law enforcement agencies of each motor carrier whose certificate of registration has been revoked for failing to maintain liability insurance coverage.]~~

#### *§218.17. Unified Carrier Registration System.*

(a) The State of Texas, through the department, shall participate in the federal motor carrier registration program under the Unified Carrier Registration System plan and agreement. [system as defined in §218.2(42) of this chapter (relating to Definitions).]

(b) An interstate motor carrier operating in Texas, as well as a broker, freight forwarder, motor private carrier of property, and leasing company, must register and comply with the provisions of the Unified Carrier Registration System as required by 49 U.S.C. §14504a and the UCR plan and agreement. [14504(a).]

(c) The department adopts by reference the May 20, 2010, version of the Unified Carrier Registration Agreement. A copy of the agreement is available for review in the Motor Carrier Division, Texas Department of Motor Vehicles.

~~(d) An application for UCR must be filed online as prescribed by the department, or an application must be filed with the department on a form prescribed by the department.~~

#### *§218.18. Short-term Lease and Substitute Vehicles.*

(a) Registration. A short-term lease vehicle registered under this section is exempt from the registration requirements described in §218.13 of this title [subchapter] (relating to Application for Motor Carrier Registration) while leased to a registered motor carrier.

(1) Application. A leasing business registering vehicles under this section shall file an application on a form prescribed by the director.

(2) Annual report. [Report.] The operation of a short-term lease vehicle shall be reported to the department on a form prescribed by the director not later than April 1 of each calendar year for the previous calendar year's operations. The report must identify the number of short-term lease vehicles that would otherwise be subject to the registration requirements of this subchapter.

(3) Fees. An annual registration fee of \$10 per vehicle operated must be paid at the time the report is filed under paragraph (2) of this subsection.

~~(4) Cancellation, expiration, and revocation. [Expiration, and Revocation.]~~

(A) A leasing business must make a written request for cancellation of registration.

(B) A leasing business registration expires on April 30 of each year unless the leasing business reports by April 1 the actual number of vehicles requiring registration operated in the previous calendar year.

(C) The department may suspend or revoke a leasing business registration under §218.72 of this title [chapter] (relating to Administrative Sanctions).

(b) Proof of contingency liability insurance. A leasing business registering a vehicle under this section must file and maintain proof of liability insurance on a form prescribed by the director as required by §218.16 of this title [subchapter] (relating to Insurance Requirements).

(1) Filings. A leasing business shall file proof of insurance at the time of its initial registration and whenever it changes insurance carriers in accordance with §218.16. [of this subchapter.]

(2) Filing fee. Each proof of insurance filing under this section shall be accompanied by a nonrefundable \$100 filing fee.

(3) Cancellation of insurance coverage. Any cancellation of insurance filed under this section must comply with the requirements set out in §218.16. [of this subchapter.]

(c) Substitute vehicles. A registered motor carrier is not required to comply with the provisions of §218.13(d) [§218.13(e) of this subchapter] for a vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(d) Identification. A registered motor carrier is not required to carry proof of registration, as required by §218.13(c)(2), [§218.13(d)(1)(B) of this subchapter], in a vehicle leased from a registered leasing business. A copy of the lease agreement or of the lease for the originally leased vehicle, in the case of a temporary replacement vehicle, must be carried in the cab of the vehicle.



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

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## SUBCHAPTER C. RECORDS AND INSPECTIONS

### 43 TAC §§218.31 - 218.33

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

#### §218.31. *Investigations and Inspections of Motor Carrier Records.*

(a) Certification of inspectors. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified inspectors for the purpose of entering the premises of a motor carrier to copy or verify documents required by this section to be maintained by the motor carrier. The executive director or designee shall provide credentials to certified inspectors identifying them as department certified inspectors.

#### (b) Inspections.

(1) A motor carrier shall grant [~~admit~~] a certified inspector access to the carrier's premises to conduct inspections or investigations of alleged violations of this chapter and of [~~of~~] Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate work space with reasonable working conditions [~~and~~] and allow the certified inspector to copy and verify records and documents required to be maintained by the carrier under §218.32 of this title [~~subchapter~~] (relating to Motor Carrier Records).

(2) The certified inspector may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The certified inspector will present his or her credentials and a written statement from the department to the motor carrier indicating the inspector's authority to inspect and investigate the motor carrier.

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal place of business; or

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting and provide notice by certified mail or facsimile.

#### §218.32. *Motor Carrier Records.*

(a) General records to be maintained. Every motor carrier shall prepare and maintain:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) complete and accurate records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

(b) Additional records for household goods carriers. In order to verify compliance with Subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every household goods carrier shall retain complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce. Household goods carriers shall retain all of the following information and documents:

(1) moving services contracts, such as [~~s~~] bills of lading or receipts;

(2) proposals for moving services;

(3) inventories, if applicable;

(4) freight bills;

(5) time cards, trip sheets, or driver's logs;

(6) claim records;

(7) ledgers and journals;

(8) canceled checks;

(9) bank statements and deposit slips;

(10) invoices, vouchers, or statements supporting disbursements; and

(11) dispatch records.

#### (c) Proof of motor carrier registration.

(1) Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this title (relating to Application for Motor Carrier Registration), every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a certified inspector or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is regis-

tered under §218.18 of this title [chapter] (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(3) A motor carrier is not required to carry proof of compliance with UCR or the UCR plan or agreement in its vehicle.

(d) Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal place of business in Texas all records and information required by the department.

(1) Texas firms. If a motor carrier wishes to maintain records at a specific location other than its principal place of business in Texas, the motor carrier shall make a written request to the manager. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the manager.

(2) Out-of-state firms. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal place of business in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this title [subchapter] (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location, whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made available for inspection upon request at the motor carrier's principal place of business or other location specified by the Department within 48 hours after a request is made. Saturdays, Sundays, and federal and state [Federal and State] holidays are excluded from the computation of the 48-hour period of time in accordance with 49 C.F.R. §390.29.

(e) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

#### §218.33. *Enforcement.*

A motor carrier who fails or refuses to permit an inspection, fails to [does not] maintain and make available the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a violation subject to enforcement under Subchapter F of this chapter (relating to Enforcement).

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## SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

### 43 TAC §218.40

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

#### STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.40. *Applicability.*

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

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### 43 TAC §218.41, §218.42

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.41. *Bond.*

(a) Filing. A motor transportation broker shall file a bond with the department before it may act as a motor transportation broker.

(b) Conditions of bond.

(1) The bond shall be:

(A) in an [the] amount of at least \$10,000;

(B) [be] executed by a bonding company authorized to do business in the state of Texas; and

(C) [be] payable to the State [state] of Texas or a person to whom the motor transportation broker provides services.

(2) The bond shall be conditioned upon:

(A) the faithful performance of the contracts or agreements of transportation by the motor carrier or motor carriers for whom the motor transportation broker is acting, and which were negotiated by the broker; and

(B) the honest and faithful performance by the motor transportation broker in that capacity.

(3) The bond shall provide that all defenses available to the motor carrier shall be available to the principal and surety, but no condition or provision of the bond shall otherwise affect the right of the shipper to collect all damages to which it may be entitled at law.

(c) Expiration or cancellation of bond. The bond shall not expire or be subject to cancellation until the 30th day after written notice of expiration or cancellation has been served on the principal and the department, either personally or by certified mail. Unless the principal files a new bond in compliance with the requirements of this section on or before the expiration of the 30-day period, the person may not act as a motor transportation broker.

(d) Amount of recovery. [~~Recovery.~~] In no event shall the total of all recoveries under a bond exceed the penal amount.

#### §218.42. Fees.

(a) Bond review fee. Upon submission of a bond to the department, the motor transportation broker shall include a bond review fee of \$5, payable as described in subsection (b) of this section.

(b) Payment of fees. [~~Fees.~~]

(1) Non-refundable. All fees paid to the department as provided for in this section are non-refundable.

(2) Payment methods. All fees shall be paid to the department as provided by §209.23 of this title (relating to Methods of Payment).

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

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## SUBCHAPTER E. CONSUMER PROTECTION

## 43 TAC §§218.51, 218.52, 218.54 - 218.58, 218.61, 218.62, 218.64, 218.65

### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

#### §218.51. Household Goods Agents.

(a) Appointment of household goods agent. A household goods carrier may appoint a household goods agent to represent the household goods carrier's business interests in Texas.

(b) Liability. A household goods carrier is responsible for the acts, delinquencies, omissions, and conduct of each of its household goods agents while acting on behalf of the household goods carrier.

(c) Agent filing. A household goods carrier shall file with the department, on a form approved by the director, a current, accurate list of its household goods agents and their addresses.

(1) A household goods carrier using alternative vehicle registration under §218.13(g) of this title [~~§218.13(e) of this chapter~~] (relating to Application for Motor Carrier Registration) shall notify the department 30 days prior to the creation or termination of an agency agreement.

(2) A household goods carrier not using the alternative vehicle registration shall notify the department on or before January 1, April 1, July 1, and October 1, of each year of the creation or termination of an agency agreement.

(d) Use of household goods carrier's name. When representing a household goods carrier, the agent:

(1) shall operate under the name of the represented household goods carrier, as shown on the certificate of registration issued by the department;

(2) shall use only the moving services contract of the represented household goods carrier; and

(3) may include its name, as listed on the household goods carrier's agent filing, on the carrier's advertisements.

(e) Availability of tariff records. A household goods carrier shall require each of its household goods agents to keep copies of the applicable tariff in the household goods agent's office and open to public inspection.

(f) Shipping records maintained. A household goods agent shall keep a record of every shipment that it sells or handles for at least two years after the date of shipment.

(g) Agency agreements. An agreement between a household goods carrier and its household goods agent shall be in writing and

signed by the household goods carrier and the household goods agent, and copies of any agreement must be kept in the files of the household goods carrier for a period of not less than two years following the date of termination of each agreement.

§218.52. Advertising.

(a) Print advertising through August 4, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "DMV No. \_\_\_\_\_".

(b) Print advertising on or after August 5, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "TxDMV No. \_\_\_\_\_" and the household goods carrier's identification number issued by FMCSA, in the following form, "USDOT No. \_\_\_\_\_".

(c) ~~[(b)]~~ Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(d) ~~[(e)]~~ Items not considered to be print advertisements through August 4, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent;
- (5) nationally placed billboards; and
- (6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.

(e) Items not considered to be print advertisements on or after August 5, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) Internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent; and
- (5) single-line listings of a household goods carrier's name, address, and telephone number in a directory or similar publication.

(f) ~~[(d)]~~ Internet websites through August 4, 2015. A household goods carrier shall provide the department's toll-free telephone

number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.

(g) Internet websites on or after August 5, 2015. A household goods carrier shall provide the following information on any website operated by or for the household goods carrier:

- (1) department's toll-free consumer helpline as listed on the department's website;
  - (2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. \_\_\_\_\_", and
  - (3) the household goods carrier's identification number issued by FMCSA, in the following form, "USDOT No. \_\_\_\_\_".
- (h) ~~[(e)]~~ Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of either the power unit or trailer:

- (A) the name of the carrier as it appears on the motor carrier certificate of registration; and
- (B) the carrier's registration number as it appears on the motor carrier certificate of registration.

(2) The markings required by paragraph (1) of this subsection shall have clearly legible letters and numbers at least two [2] inches in height.

(3) This subsection does not apply to vehicles:

- (A) required to comply with Transportation Code, Chapter 642; or
- (B) operated under a short-term lease.

(i) ~~[(f)]~~ Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

§218.54. Selling Insurance to Shippers.

(a) Type of insurance. A household goods carrier and its representatives may sell, or offer to sell, or procure insurance for a shipper for transported or stored property. The insurance policy must cover loss or damage in excess of the household goods carrier liability as specified in §218.53 of this title [~~subchapter~~] (relating to Household Goods Carrier Cargo Liability).

(b) Policy issuance. A copy of the policy or other appropriate evidence of purchased insurance must be issued to the shipper before the shipment is loaded.

(c) Policy language. Policies or other appropriate evidence of purchased insurance must be written in a clear and concise manner, specifying the nature and extent of coverage including any deductibles. The policies or other appropriate evidence of purchased insurance must also clearly indicate:

- (1) the name, address, and telephone number of the insurance company;
- (2) the policy number; and
- (3) a statement of whether claims are to be filed with the insurance company or with the household goods carrier.

(d) Penalty. If the shipper purchased insurance from the household goods carrier and the household goods carrier does not

obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper, the household goods carrier shall be subject to full liability for all of the loss or damage caused by the household goods carrier.

§218.55. *Information for Shippers.*

(a) When the household goods carrier provides the shipper with an original written proposal, as required in §218.56 of this title [subchapter] (relating to Proposals and Estimates for Moving Services), the household goods carrier shall also provide a copy of the information sheet entitled, Your Rights and Responsibilities When You Move in Texas as prescribed by the director.

(b) The household goods carrier may duplicate the department's form provided the exact text is reproduced in a legible manner in at least 10 point type font. No additional information that interferes with or alters the text may be added to the form.

§218.56. *Proposals and Estimates for Moving Services.*

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent. A proposal may not include the name, logo, or motor carrier registration number of any other motor carrier.

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as[,] if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as[,] a cashier's check.

(5) A proposal must conspicuously state that a household goods carrier's liability for loss or damage to cargo is limited to \$.60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability.

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional

services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

- (1) allow the original proposal to remain in effect;
- (2) amend the original proposal or moving services contract; or
- (3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage according to the terms in §218.58 of this title [subchapter] (relating to Moving Services Contract - Options for Carrier Limitation of Liability), without a written agreement with the shipper to amend or substitute the original proposal.

(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

§218.57. *Moving Services Contract.*

(a) Requirements. A household goods carrier must give a copy of the moving services contract to the shipper prior to the loading of the shipment. This copy must include:

(1) the name and motor carrier registration number of the household goods carrier as they appear on the motor carrier certificate of registration, and the address and telephone number of the household goods carrier or the household goods agent that prepared the moving services contract;

(2) the date the shipment is loaded and a description of the shipment as household goods;

(3) the name and address of the shipper;

(4) the addresses of the:

(A) origin;

(B) destination, if known; and

(C) any stops in transit, if known;

(5) the moving services to be performed;

(6) the conspicuous statement, "A household goods carrier's liability for loss or damage to any shipment is \$.60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability.";

(7) a conspicuous explanation of any agreement for increased carrier liability limit, the amount of increased carrier liability, the cost of the increased limit, any deductible above the carrier's \$.60 per pound per article liability, and the statement, "This is not insurance.";

(8) a clear notice of the amount of any insurance for property that is transported or stored, the amount of insurance premiums, and the insurance policy number, if insurance for the shipment was purchased from or through the household goods carrier;

(9) the conspicuous statement, "This is a contract for moving services and is subject to the terms and conditions on the front and back of this document and any addendum.";

(10) a description of whether the proposal is a binding or not-to-exceed proposal, and the maximum price the shipper could be required to pay for the services listed;

(11) a statement authorizing performance of the listed services, signed and dated by the household goods carrier and the shipper; and

(12) a statement signed and dated by the shipper authorizing delivery of household goods at a destination where the shipper is not present if the shipper intends for the household goods carrier to deliver to a site where the shipper will not be present.

(b) Delivery. A household goods carrier must give a completed copy of the moving services contract to the shipper upon delivery of the shipment. The household goods carrier must release the household goods to the shipper at destination if the shipper pays the maximum price listed on the moving services contract. Except as provided by subsection (c) of this section, the moving services contract shall be signed and dated by the household goods carrier and the shipper confirming the shipment has been delivered. This signature only confirms delivery of the shipment. Except as provided in subsection (e) of this section, this copy must include the information listed in subsection (a) of this section and:

(1) the total charges for the shipment and the specific nature of each charge, including the method used to calculate the minimum and total charges if the shipment was not transported based on a binding proposal;

(2) an explanation of all additional moving services provided in accordance with §218.56(d) of this title [subchapter] (relating to Proposals and Estimates for Moving Services); and

(3) the addresses of the origin, destination, and any stops in transit if not previously provided on the moving services contract at the origin.

(c) Delivery to a destination where the shipper is not present. If a shipper authorizes the household goods carrier to deliver household goods to a destination where the shipper is not present, as allowed in subsection (a)(12) of this section, the moving services contract need not be signed and dated by the shipper at the time of delivery.

(d) Pre-existing transportation contracts. A household goods carrier is not required to comply with subsection (b)(1) and (2) of this section if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation ser-

vices. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(e) Signatures. The signatures of the shipper, as required by subsections (a)(11) and (b) of this section, may be transmitted by facsimile or other electronic means. These signatures must be separate from any signatures required by the household goods carrier such as the acknowledgment of the statement of value of the shipment.

§218.58. *Moving Services Contract - Options for Carrier Limitation of Liability.*

(a) General.

(1) Household goods shipments transported between points in Texas shall be subject to all terms and conditions of the moving services contract, as set forth in §218.57 of this title [subchapter] (relating to Moving Services Contract), except in cases where such terms and conditions are in conflict with the laws of the State of Texas.

(2) If a household goods carrier chooses to use additional limitations of liability on a shipment, the limitations shall be either of the options specified in subsections [subsection] (b) or (c) of this section. A household goods carrier may not alter or expand on the limitation to its liability or the exact wording set out in subsections [subsection] (b) or (c) of this section. The option selected by the household goods carrier shall be included with and is part of the moving services contract.

(b) Option 1. If this option is chosen, the following language must be used verbatim.

(1) Section 1 - General Provisions.

(A) For the purposes of this subsection, the following terms will mean:

(i) Household goods carrier--The motor carrier/mover contracted to transport a shipment of household goods.

(ii) Shipper--The owner of the household goods shipment or his representative.

(B) Changes to the moving service contract are not valid unless agreed to in writing by the household goods carrier and the shipper.

(C) Household goods carriers will transport shipments with reasonable dispatch. Reasonable dispatch requires the transportation of a shipment within the agreed period of time shown on the moving services contract, except when circumstances beyond the carrier's control, force majeure, prevent or delay transportation.

(D) Moving services contracts must comply with all other applicable laws of the State of Texas.

(2) Section 2 - Cargo Liability Provisions.

(A) The household goods carrier is liable for any loss or damage to the shipment, except as listed in subparagraphs (B) and (C) of this paragraph.

(B) The household goods carrier is not responsible for loss, damage, or delay due to acts of God, acts of civil authorities, defects in the shipment, a riot, a strike, or an act or default of the shipper.

(C) The household goods carrier is not liable for loss or damage caused by dangerous or explosive goods unless the shipper notifies the carrier, in writing, of the nature of the goods and the carrier agrees, in writing, to the transportation of these goods.

(3) Section 3 - Claims Provisions.

(A) A written claim must be filed by the shipper within 90 days of delivery of the shipment to the final destination. In case of failure to make delivery, then a written claim must be filed by the shipper within 90 days after a reasonable time for delivery has elapsed.

(B) A household goods carrier is not liable for any claim that is not filed within 90 days of the delivery of the shipment to the final destination. A household goods carrier is not liable for any claim that is not filed within 90 days after a reasonable time for delivery has elapsed for shipments that were not delivered.

(4) Section 4 - Payment Provisions. The shipper must pay the freight charges upon delivery unless the shipper and household goods carrier agree otherwise.

(5) Section 5 - Provisions for Shipments Not Delivered.

(A) A household goods carrier may place a shipment of household goods into storage if the shipper is not available for delivery of the goods as scheduled.

(B) The cost of such storage is the responsibility of the shipper of the household goods.

(C) A shipment of household goods placed in storage is subject to liens for storage, freight, and other lawful charges.

(D) A household goods carrier must issue written notice of the storage of the household goods to the shipper at each address shown on the moving services contract within three days of placing the goods in storage.

(E) If the shipper refuses to accept or does not claim the household goods within 15 days of the written notice of storage, the household goods carrier may begin the process of selling the goods at public sale, as prescribed in Transportation Code, Chapter 6.

(F) A household goods carrier must give written notice of the public sale to the shipper at each address shown on the moving services contract.

(G) The moving services contract does not prohibit the sale of the goods under any other lawful manner if the method set out in the contract cannot be reasonably accomplished.

(c) Option 2. If this option is chosen, the following language must be used verbatim.

(1) Section 1 of contract terms and conditions.

(A) The household goods carrier or party in possession of any of the property herein described shall be liable at common law for any loss thereof or damage thereto, except as hereinafter provided.

(B) No household goods carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by an act of God, the public enemy, the authority of law, or an act or default of the shipper or owner. The household goods carrier's liability shall be that of warehouseman only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file after notice of the arrival of the property at destination has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the household goods carrier or party in possession (and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession), the household goods carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or inher-

ent vice of the article, including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein, or from riots or strikes. Except in the case of household goods carrier's negligence, no household goods carrier, or party in possession of all or any of the property herein described, shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession.

(C) In case of quarantine the property may be discharged at the risk and expense of the owner into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the household goods carrier's dispatch at the nearest available point in the household goods carrier's judgment, and in any such case the household goods carrier's responsibility shall cease when property is so discharged, or property may be returned by the household goods carrier at the owner's expense to the shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owner of the property or the household goods carrier may file a lien. The household goods carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by the household goods carrier's officers, local agents, or employees, nor for detention, loss, or damage of any kind occasioned by the quarantine or its enforcement. A household goods carrier shall not be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the household goods carrier, its local agents, or officers, as to quarantine laws or regulations. The shipper shall hold the household goods carrier harmless from any expense it may incur, or damages it may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

(2) Section 2 of contract terms and conditions.

(A) A household goods carrier is not bound to transport property by any particular scheduled vehicle or in time for any particular market other than with reasonable dispatch. A household goods carrier shall have the right, in case of physical necessity, to forward the property by any household goods carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges, if paid, shall be the maximum amount recovered, whether or not such loss or damage occurs from negligence.

(B) As a condition precedent to recovery, a claim must be filed in writing with the receiving or delivering household goods carrier, or the household goods carrier issuing the bill of lading or receipt, or the household goods carrier on whose line the loss, damage, injury, or delay occurred, or the household goods carrier in possession of the property when the loss, damage, injury, or delay occurred, within 90 days after delivery of the property or, in case of failure to make delivery, then within 90 days after a reasonable time for delivery has elapsed; and suits shall be instituted against any household goods carrier only within two years and one day from the day when notice in writing is given by the household goods carrier to the claimant that the household goods carrier has disallowed the claim or any of its part or parts specified in the notice. Where a claim is not filed or a suit is not instituted in accordance with the foregoing provisions, a household goods carrier hereunder shall not be held liable, and the claim will not be paid.

(C) Any household goods carrier or party liable on account of loss of or damage to any of the property shall have the full benefit of any insurance that may have been effected, upon, or on account of, said property, so far as this shall not avoid the policies or contracts of insurance; provided, that the household goods carrier reimburses the claimant for the premium paid.

(3) Section 3 of contract terms and conditions. Except where such service is required as the result of household goods carrier's negligence, all property shall be subject to necessary cooperation and baling at the owner's cost.

(4) Section 4 of contract terms and conditions.

(A) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination has been duly sent or given, and after tender of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vehicle, warehouse, or place of business of the household goods carrier, subject to the tariff charge for storage and to household goods carrier's responsibility as warehouseman, only, or at the option of the household goods carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available storage facility, at the cost of the owner and there held without liability on the part of the household goods carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading or receipt for notification, showing the warehouse in which the property has been placed.

(B) If nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the household goods carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the household goods carrier; provided, that the household goods carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading or receipt if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Thirty days must elapse after notice that the property was refused or remains unclaimed was mailed, sent, or given before notice of sale may be published.

(C) If perishable property which has been transported is refused by the consignee or party entitled to receive it, or the consignee or party entitled to receive it shall fail to receive it promptly, the household goods carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale; provided, that if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, notification shall be given, in such manner as the exercise of due diligence requires before the property is sold.

(D) If the procedure provided for in this section is not possible, it is agreed that nothing contained in the section shall be construed to abridge the right of the household goods carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(E) The proceeds of the sale shall be applied by the household goods carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care requires special expense. If there is a balance it shall be paid to the owner of the property.

(F) If the household goods carrier is directed by the consignor or its agent to load property from (or render any services at) a place or places at which the consignor or its agent is not present, the property shall be at the risk of the owner before loading.

(G) If the household goods carrier is directed by the consignee or its agent to unload or deliver property (or render any services) at the place or places at which the consignee or its agent is not present, the property shall be at the risk of the owner after unloading or delivery.

(5) Section 5 of contract terms and conditions. A household goods carrier shall not carry or be liable in any way for documents, specie, or for articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed.

(6) Section 6 of contract terms and conditions. Every party, whether the principal or local agent, shipping explosives or dangerous goods, without previous full written disclosure to the household goods carrier of their nature, shall be liable for and indemnify the household goods carrier against all loss or damage caused by the goods, and the goods may be warehoused at the owner's risk and expense or destroyed without compensation.

(7) Section 7 of contract terms and conditions.

(A) The owner or consignee shall pay the freight and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no household goods carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading or receipt until all rates and charges have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading or receipt that the household goods carrier shall not make delivery without requiring payment of the charges and the household goods carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for the charges. Where the household goods carrier has been instructed by the shipper or consignor to deliver the property to a consignee other than the shipper or consignor, the consignee shall not be legally liable for transportation charges in respect of the transportation of the property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee is an agent only and has no beneficial title in said property, and prior to delivery of said property has notified the delivering household goods carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading or receipt, has also notified the delivering household goods carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges.



(B) If the consignee has given to the household goods carrier erroneous information as to whom the beneficial owner is, such consignee shall be liable for the additional charges. Nothing herein shall limit the right of the household goods carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading or receipt, the freight charges must be paid on the articles actually shipped.

(8) Section 8 of contract terms and conditions. If this bill of lading or receipt is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading or receipt, the shipper's signature to the prior bill of lading or receipt as to the statement of value or otherwise, or election of common law or bill of lading or receipt, in or in connection with such prior bill of lading or receipt, shall be considered a part of this bill of lading or receipt as fully as if the same were written or made in or in connection with this bill of lading or receipt.

(9) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in this bill of lading or receipt which shall be made without the special notation herein of the agent of the household goods carrier issuing this bill of lading or receipt, shall be without effect, and this bill of lading or receipt shall be enforceable according to its original tenor.

*§218.61. Claims.*

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic document transfer with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier. A shipper must file a written claim within 90 days:

(A) of delivery of the shipment to the final destination;

or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send a written acknowledgment of the claim to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or his agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the department's Enforcement Division via the toll-free consumer helpline as listed on the department's website. [DMV's Motor Carrier Division at 1-888-368-4689.] Additionally, a claimant has the right to request mediation from TxDMV [DMV] within 30 days (excluding Sundays and nationally rec-

ognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved or the household goods carrier has initiated communication with the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim. However, the burden of proof of the claim resolution or communication with the claimant is the responsibility of the household goods carrier.

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through TxDMV [DMV] within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title [chapter] (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

(1) claim number (if assigned), date received, and amount of money or the requested remedy;

(2) number (if assigned) and date of the moving services contract;

(3) name of the claimant;

(4) date the carrier issued its claim acknowledgment letter;

(5) date and total amount paid on the claim or date and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.

*§218.62. Mediation by the Department.*

(a) The claimant may make a written request to the department for mediation.

(b) The claimant must attempt to resolve the claim with the household goods carrier by making a reasonable effort to follow the household goods carrier's claim process before requesting mediation by the department.

(c) Requests for mediation must be made within 30 days (excluding Sundays and nationally recognized holidays) after the earliest of the following events:

- (1) any portion of the claim is denied by the carrier;
- (2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or

(3) 90 days has elapsed since the carrier received the claim and the carrier has not responded to the claimant as prescribed in §218.61(b)(2) of this title [subchapter] (relating to Claims).

(d) Except as provided in subsection (e) of this section, the department will deny a request for mediation made more than 120 days (excluding Sundays and nationally recognized holidays) after the carrier received the claim. Additionally, the department will deny a request for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to the final destination or within 90 days after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(e) The department may grant a mediation request if the claimant and the carrier agree to participate in the mediation process and:

(1) the claimant was not advised in writing at least one time of the right to mediation as required by §218.61(b)(1)(A) or (2) [of this subchapter]; or

(2) the claimant does not receive the written denial or settlement offer letter required by §218.61(b)(2) [of this subchapter].

(f) For purposes of subsection (c)(1) and (2) of this section, the 30 day deadline for requesting mediation is calculated from the latter of:

- (1) the date of the claim denial or settlement offer letter; or
- (2) the date the claim denial or settlement offer letter is mailed or faxed to the claimant.

(g) The department will not grant more than one mediation request to a claimant for one shipment of household goods.

(h) The department will coordinate the selection of a mediator. The mediation will be conducted by written submissions, telephone conferences, or mediation sessions held at the department's facilities in Austin. The department will establish the time, date, and form of the mediation session.

(i) Household goods carriers must participate in this mediation process. The department may impose administrative sanctions, under §218.71 of this title [chapter] (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the mediation process or otherwise fails to comply with the requirements of this section.

(j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines the claimant has not cooperated in the mediation process, the department's mediation process shall be considered concluded. The claimant may consider pursuing the claim through an appropriate court of law.

(k) The mediator shall preside and have discretion over the mediation procedures, including the ability to require the claimant and the household goods carrier to provide information and documents in a timely fashion.

(l) If the household goods carrier makes a written report of the results of the inspection documenting the lost or damaged household

goods and uses the report during the department's mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

#### §218.64. Rates.

(a) **Rate-making.** A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) **Prohibited charges and allowances.** A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) **Collective ratemaking agreements.**

(1) **Eligibility.** In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) **Designation of collective ratemaking associations.** An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title [subchapter] (relating to Tariff Registration).

(3) **Submission.** In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) **Signature.** The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) **Incomplete agreement.** If the department receives an agreement which does not comply with this subsection, the department will send a letter to the individual submitting the agreement. The letter

shall identify the information that is missing and advise the association that the agreement will not be processed until the information is received.

(6) Approval. In accordance with Transportation Code, §643.154, the director or designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) Noncompliance.

(A) If the director or designee determines that an agreement does not comply with paragraph (6) of this subsection, the department will notify the association representative by certified mail of:

(i) the specific reason that an agreement is not being approved; and

(ii) the hearing date.

(B) If the association representative resubmits an acceptable agreement which meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing date, the hearing will be canceled and the agreement will be approved. The State Office of Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). [~~§206.61 et seq. of this title (relating to Procedures in Contested Cases).~~]

(C) If the hearing is held, the presiding officer shall explain the reason(s) that the agreement was rejected. The association representative will be allowed to respond to the objections and present evidence or exhibits which relate to his or her response. The hearing examiner, based on the evidence provided, will make a recommendation to the board [~~commission~~] whether the agreement should be approved or resubmitted. The association representative shall be advised of the examiner's recommendation. The final order will be submitted to the board [~~commission~~] for approval.

(8) New parties to an agreement. An updated agreement shall be filed with the department as new parties are added.

(9) Amendments to approved agreements. Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

#### §218.65. *Tariff Registration.*

(a) Submission. In accordance with Transportation Code, §643.153, a household goods carrier and/or its household goods agent shall file a tariff with the department. The tariff shall establish maximum rates and charges for transportation services when a highway between two or more incorporated cities, towns or villages is traversed. A household goods carrier who is not a member of an approved association under §218.64 of this title [~~subchapter~~] (relating to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, that is a member of an approved association in accordance with §218.64 [~~of this subchapter~~], may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) Contents. The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) may provide for the offering, selling, or procuring of insurance as provided in §218.54 of this title [~~subchapter~~] (relating to Selling Insurance to Shippers);

(C) may provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper from the household goods carrier is not issued to the shipper at the time of purchase;

(D) shall describe the procedure for determining charges that are below the maximum rate for each service performed; and

(E) shall reference a specific mileage guide or source, if information on rates and charges based on mileage is included in the tariff (The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer database as a mileage guide, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier).

(2) Interstate tariff. In accordance with Transportation Code, §643.153, a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal office;

(C) the household goods carrier's registration number;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff; and

(v) the tariff number; and

(C) separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than 10 days prior to the effective date of the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended

tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department will reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(8) Electronic filings. A household goods carrier may file an electronic copy of its tariff provided that the document is consistent with the provision of this subsection and is formatted in Microsoft Word or other format approved by the director.

(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff was submitted prior to November 1, 1995.

(c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with this section will be made available for public inspection at the TxDMV Enforcement Division or by calling the department's toll-free consumer helpline as listed on the department's website. [Motor Carrier Division, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731, and by calling 1-888-368-4689.]

(d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they may conflict with the provisions of this chapter.

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



## SUBCHAPTER F. ENFORCEMENT

### 43 TAC §§218.70, 218.71, 218.73, 218.74, 218.76

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

#### §218.70. Purpose.

The purpose of this subchapter is to provide for an efficient and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by establishing [setting out] procedures for the assessment of administrative penalties;[;] the suspension, revocation, and denial of motor carrier registration and leasing business registration;[;] cease and desist orders;[;] and probation of the suspension of a motor carrier's certificate of registration.

#### §218.71. Administrative Penalties.

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against the following:

(1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645; or

(2) a motor carrier or broker that violates a federal law or regulation, the enforcement of which has been delegated to the department.

(b) Amount of administrative penalty for violations of state laws, rules, or orders.

(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a violation.

(2) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed \$15,000. A motor carrier acts knowingly if that motor carrier knew or should have known [has acted with knowledge] that the acts are in violation of Transportation Code, Chapter 643 or Chapter 645, or a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645. A motor carrier acts knowingly if the motor carrier or its agent had or should have had actual knowledge of the violation, acted in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the truth or falsity of the information. Proof of a person's specific intent to commit a violation is not required in an administrative proceeding to show that a motor carrier acted knowingly. For example, knowledge may be inferred from the department's records regarding the motor carrier, law enforcement records, or the motor carrier's records.

(3) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

~~{(5) Any recommendation that a penalty should be imposed must be based on the following factors:}~~

~~{(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;}~~

~~{(B) the economic harm to property or the environment caused by the violation;}~~

~~{(C) the history of previous violations;}~~

~~{(D) the amount necessary to deter future violations;}~~

~~{(E) efforts made to correct the violation; and}~~

~~{(F) any other matters that justice may require.}~~

(c) Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the department and the Federal Motor Carrier Safety Administration, United States Department of Transportation, the department is authorized to initiate an enforcement action and assess civil penalties against a motor carrier or broker, as applicable, under the authority of the following:

(1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915, as amended;

(2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111, 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403, and Part 386 Appendix B(g)(22) - (23), as amended; and

(3) any future delegations pursuant to 49 U.S.C. §14710.

(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection(c) of this section via an administrative proceeding.

§218.73. *Administrative Proceedings.*

(a) If the department decides to take an enforcement action under §218.71 of this title [subchapter] (relating to Administrative Penalties) or §218.72 of this title [subchapter] (relating to Administrative Sanctions), the department shall give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of the department.

(b) The notice required by subsection (a) of this section must include:

- (1) a brief summary of the alleged violation;
- (2) a statement of each sanction;
- (3) the effective date of each sanction;
- (4) a statement informing the carrier of the carrier's right to request a hearing;
- (5) a statement as to the procedure for requesting a hearing, including the period during which a request must be made; and
- (6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the motor carrier fails to request a hearing.

(c) The motor carrier must submit a written request for a hearing to the address provided in the notice not later than the 26th day after the date the notice is mailed.

(d) On receipt of the written request for a hearing the department will refer the matter to the State Office of Administrative Hearings. When the hearing is set, the department will give notice of the time and place of the hearing to the carrier.

(e) If the motor carrier does not make a written request for a hearing or enter into a settlement agreement under §218.74 of this title [subchapter] (relating to Settlement Agreements) before the 27th day after the date the notice is mailed, the department's decision becomes final [and unappealable].

§218.74. *Settlement Agreements.*

(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to other specified action by the department

against the violator and must be signed by the alleged violator and the director. A compromise agreement is not an admission of the alleged violation.

(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit a cashier's check or money order to the department in the agreed amount before the agreement may be executed.

(c) Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement is a department order that is final [and unappealable].

~~{(d) The settlement agreement must include a clause that allows the department the authority to revoke the settlement agreement and initiate a hearing on the original alleged violations if the alleged violator fails to abide by the terms of the settlement agreement.}~~

§218.76. *Registration Suspension Ordered under Family Code.*

(a) On receipt of a final order issued under Family Code, §232.003, §232.008, or §232.009, regarding child support enforcement, the department will suspend:

(1) a certificate of registration issued under Subchapter B of this chapter (relating to Motor Carrier Registration); or

(2) the registration of an interstate motor carrier issued under §218.17 of this title [~~§218.18 of this chapter~~] (relating to Unified Carrier Registration System).

(b) The department will charge an administrative fee of \$10 to a person whose registration is suspended under this section.

(c) A suspension under this section does not require the department to give notice or otherwise follow the administrative process provided under §218.73 of this title [subchapter] (relating to Administrative Proceedings).

(d) A registration suspended under this section may only be reinstated on receipt of an order issued under Family Code, §232.013.

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

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## SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

### 43 TAC §§218.80 - 218.82

#### STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes

the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

##### §218.80. Purpose and Scope.

The purpose of this subchapter is to comply with Transportation Code, §648.102.

##### §218.81. Definitions.

The words and terms used in this subchapter are defined in Transportation Code, Chapter 648, unless the context clearly indicates otherwise.

##### §218.82. Financial Responsibility.

(a) Intrastate transportation. No motor carrier shall operate a foreign commercial motor vehicle in intrastate transportation in Texas, unless the motor carrier obtains and has in effect an insurance policy which covers at least the minimum level required by 49 C.F.R. Part

387. However, if the motor carrier is required to register with the department under Transportation Code, Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to Insurance Requirements). For the purposes of this subsection, intrastate transportation is any transportation on a public road or highway in Texas that is not described in 49 U.S.C. §13501.

(b) The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.

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

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# 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 100. CHARTERS

##### SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

The State Board of Education (SBOE) adopts the repeal of §§100.1, 100.101, 100.103, and 100.105 and new §100.1, concerning open-enrollment charter schools. The repeals are adopted without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6134) and will not be republished. New §100.1 is adopted with changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6134). Repealed §100.1 addresses charter school application and selection procedures and criteria, §100.101 addresses the annual report on open-enrollment charter governance, §100.103 addresses optional open-enrollment charter provisions for contracting and purchasing, and §100.105 addresses application of provisions to public senior college or university charters and public junior college charters. The adopted repeals and new section align SBOE rules with the Texas Education Code (TEC), Chapter 12, Subchapters D and E, as amended by Senate Bill (SB) 2, 83rd Texas Legislature, Regular Session, 2013.

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

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

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

At adoption, the SBOE amended new §100.1 to remove any type of directive language.

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

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

The SBOE took action to approve the repeals and new section 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 is necessary to align rules with the requirements of SB 2.

Following is a summary of the public comment and corresponding response regarding the proposed new §100.1.

Comment: An individual commented that the proposed amendments to 19 TAC Chapter 100, Charters, Subchapter A, Open-Enrollment Charter Schools, do not align with the Texas Education Code, Chapter 12, Subchapters D and E, as amended by SB 2, 83rd Texas Legislature, Regular Session, 2013. The individual stated that the rules conflict with the clear terms of that law and noted that the SBOE's rulemaking authority over the process of awarding open-enrollment charter schools was expressly removed by SB 2. The individual commented that adoption of the rules as proposed would constitute an *ultra vires* action, and the resulting rules would be null and void. The individual stated that under SB 2, the SBOE is given veto authority over a proposed application once it has been approved by the commissioner and presented for SBOE review. The individual stated that to accomplish this function, the SBOE does have authority to amend its own operating procedures, setting forth how the SBOE will accomplish its own assigned function, but this does not extend to regulating a sister state agency in the performance of statutory functions that the legislature has assigned entirely to that other agency. The individual reiterated that the TEC, §12.101(b-0), empowers the SBOE to exercise a veto of an applicant after that applicant has been selected and presented to the SBOE, but commented that the SBOE is not given authority to adopt a rule that regulates the commissioner in the exercise of his own functions. The individual noted that, for example, subsection (e) attempts to regulate the activities assigned by statute to the commissioner by imposing a "no-contact rule" both on the commis-

sioner and on the commissioner's outside-review panels. The individual commented that this may be good policy, but the SBOE lacks any authority to adopt it for the commissioner or to impose its version of such policies on the commissioner or the commissioner's review panels.

Response: The SBOE provides the following clarification. The new rule is not an attempt to regulate a sister agency. Rather, the rule is attempting to fully outline the approval process by citing language directly from the statute as well as adopted commissioner rule. Additional language in the new rule codifies the no-contact provision previously ratified by the SBOE in the application. In response to public comment, however, the SBOE modified the rule at adoption to remove any type of directive language.

### 19 TAC §§100.1, 100.101, 100.103, 100.105

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



### 19 TAC §100.1

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

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

#### §100.1. Selection Process.

(a) In accordance with the Texas Education Code (TEC), §12.101, a State Board of Education (SBOE) member shall be designated by the SBOE chair to work in coordination with the commissioner of education on the review of TEC, Chapter 12, Subchapter D, open-enrollment charter school applicants.

(b) Following the commissioner's notification to the SBOE of the charters the commissioner proposes to grant, a majority of the SBOE members present and voting may vote to veto the commissioner's proposed charter(s) or may vote to take no action. The SBOE's consideration of the proposed charters will occur no later than 90 days following the commissioner's notification.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §92.15, concerning renewal procedures and qualifications; the repeal of §92.82, concerning determinations and actions pursuant to inspections; and new §92.82, concerning determinations and actions, §92.83, concerning informal dispute resolution, and §92.601, concerning arbitration, in Chapter 92, Licensing Standards for Assisted Living Facilities. New §92.83 is adopted with changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5564). The amendment to §92.15, the repeal



of §92.82, and new §92.82 and §92.601 are adopted without changes to the proposed text.

#### BACKGROUND AND PURPOSE

The purpose of the amendment, repeal, and new sections is to implement House Bill (HB) 33, 83rd Legislature, Regular Session, 2013. HB 33 amended Texas Health and Safety Code (THSC) §247.051, relating to informal dispute resolution (IDR) of disputes between an assisted living facility (ALF) and DADS regarding a statement of violations prepared by DADS. The amendments reflect that the IDR process will be conducted by HHSC in accordance with THSC §247.051 and HHSC procedures. HB 33 also amended THSC Chapter 247 to add a new Subchapter E, regarding the arbitration of certain disputes between an ALF and DADS. The amendment to §92.15 and new §92.601 identify the disputes an ALF may elect to resolve through binding arbitration.

A change was made to §92.83 to remove the requirement of a facility to provide a copy of a request for an informal dispute resolution to the DADS regional office for the region in which the facility is located and notify HHSC that the regional office was provided a copy because this is not consistent with HHSC's procedures for submitting a request. As stated in new subsection (b), a request must be submitted in accordance with HHSC procedures.

DADS received no comments regarding adoption of the amendments.

#### SUBCHAPTER B. APPLICATION PROCEDURES

##### 40 TAC §92.15

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; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §247.025, which requires the adoption of rules related to the licensure of assisted living facilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



#### SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

##### 40 TAC §92.82

The repeal 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; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §247.025, which requires the adoption of rules related to the licensure of assisted living facilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

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##### 40 TAC §92.82, §92.83

The new sections are 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; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §247.025, which requires the adoption of rules related to the licensure of assisted living facilities.

§92.83. *Informal Dispute Resolution.*

(a) If a facility and DADS cannot resolve a dispute regarding a violation of a licensing rule, the facility is entitled to an informal dispute resolution (IDR) conducted by the Texas Health and Human Services Commission (HHSC) in accordance with Texas Health and Safety Code §247.051.

(b) Within 10 days after the facility receives the statement of violations described in §92.82(f) of this subchapter (relating to Determinations and Actions), the facility must submit a written request for an IDR using the form and in accordance with procedures on the HHSC website at [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201404584

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## SUBCHAPTER H. ENFORCEMENT

### DIVISION 10. ARBITRATION

#### 40 TAC §92.601

The new section 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; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §247.025, which requires the adoption of rules related to the licensure of assisted living facilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

#### 40 TAC §§93.1 - 93.9

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §93.1, concerning the purpose of Chapter 93; §93.2, concerning definitions; §93.3, concerning employment and registry information; §93.4, concerning investigations; §93.5, concerning notice to employee of reportable conduct; §93.6, concerning informal review; §93.7, concerning notice of opportunity for administrative hearing; §93.8, concerning entering information in the employee misconduct registry; and §93.9, concerning removing information from the EMR, in Chapter 93, Employee Misconduct Registry (EMR). The amendments to §93.3 are adopted with changes to the proposed text

as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5726). The amendments to §§93.1, 93.2, and 93.4 - 93.9 are adopted without changes to the proposed text.

#### BACKGROUND AND PURPOSE

The adoption revises and clarifies rules regarding the employee misconduct registry (EMR), which is maintained by DADS. The adopted rules also implement House Bill (H.B.) 2683 and Senate Bill (S.B.) 492, 83rd Legislature, Regular Session, 2013. H.B. 2683 amended Texas Health and Safety Code (THSC), Chapter 253, to make individual employers, financial management service agencies, and employees in the consumer directed services (CDS) option subject to EMR requirements. S.B. 492 also amended THSC, Chapter 253, to make prescribed pediatric extended care centers, which are licensed under THSC, Chapter 248A, and employees of those centers subject to the EMR requirements.

The adoption also updates terminology and makes editorial and organizational changes for clarity and consistency.

The agency made minor changes to §93.3(c) to clarify that the information described in the subsection must be provided by a facility, agency, or individual employer within five working days after hiring an employee.

DADS received two written comments. A summary of the comments and responses follows.

Comment: Concerning 40 TAC §93.3(a) and (d), two commenters questioned why an individual employer is included in the rule as an entity that has access to the EMR since the FMSA is required to conduct the EMR check for individual employers at initial hire and annually thereafter. The commenters suggested deleting individual employer and using only an FMSA on behalf of an individual employer in these rules.

Response: The rules use the statutory language in THSC §250.003(d) (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illness). The rule was not changed in response to this comment. The agency acknowledges, however, that Chapter 41, Consumer Directed Services Option, requires an FMSA, not an individual employer, to conduct the searches described in §93.3(a) and (d).

Comment: Concerning 40 TAC §93.3(e), two commenters expressed concern that requiring an FMSA on behalf of an individual employer to maintain a copy of the EMR search results in the individual employer's books and records would be expensive and time-consuming for the FMSA. The FMSA gives employers written notification of EMR results at the time of initial hire. Mailing the annual results to individual employers would be difficult, time-consuming, and expensive. The commenters requested that the rules be amended to allow the FMSA to maintain a copy of the search results in the FMSA's books and records.

Response: The agency agrees with the commenters and has revised the rule to allow an FMSA to maintain a copy of the EMR search results in the FMSA's books and records instead of sending a copy of the results to the individual employer. The commenters are reminded that Chapter 41, Consumer Directed Services Option, requires an FMSA to notify an individual employer or designated representative, in writing, to immediately terminate a service provider who is listed as unemployable in the EMR.

The amendments are 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; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the employee misconduct registry.

*§93.3. Employment and Registry Information.*

(a) Before a facility, agency, or individual employer hires an employee, the facility, the agency, the individual employer, or an FMSA on behalf of the individual employer must search the EMR and NAR to determine if the person applying for employment is listed as unemployable on either registry.

(b) A facility, agency, or individual employer must not hire or continue to employ a person listed in the EMR or NAR as unemployable.

(c) A facility, agency, or individual employer must, within five working days after hiring an employee, provide written information to the employee explaining:

(1) that a person listed in the EMR is not employable by a facility, agency, or individual employer; and

(2) that the EMR is governed by this chapter and THSC, Chapter 253.

(d) A facility, or agency, individual employer, or FMSA on behalf of an individual employer must search the EMR and NAR annually to determine if an employee is listed on either registry as unemployable.

(e) A facility, or agency, individual employer, or FMSA on behalf of an individual employer must maintain a copy of the results of the searches required by subsections (a) and (d) of this section in the books and records maintained by the entity that conducted the search.

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 September 29, 2014.

TRD-201404581

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

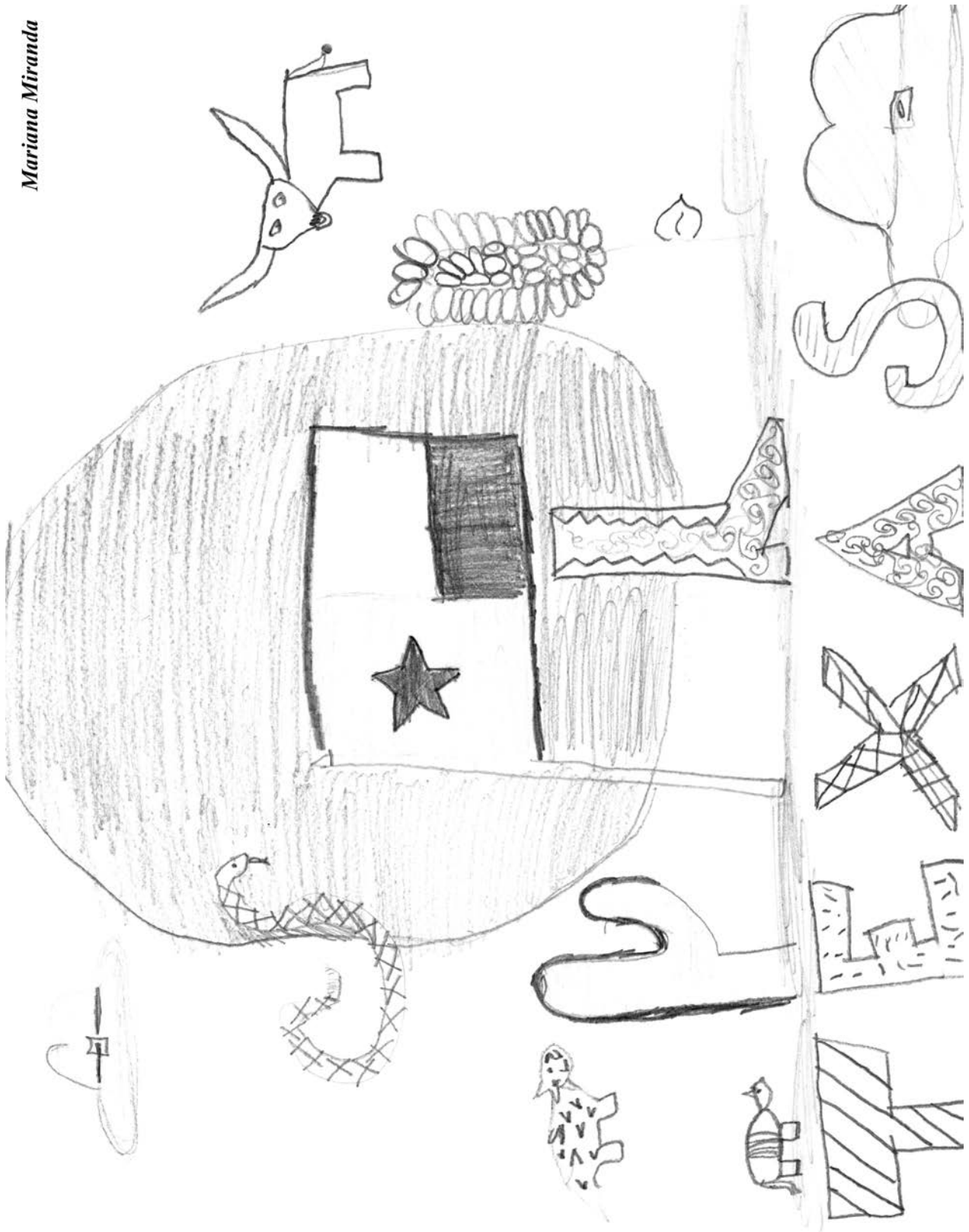
Effective date: October 19, 2014

Proposal publication date: July 25, 2014

For further information, please call: (512) 438-4466



Mariana Miranda



# 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.

## Agency Rule Review Plans

Coastal Coordination Advisory Committee

### Title 31, Part 16

TRD-201404739

Filed: October 9, 2014



General Land Office

### Title 31, Part 1

TRD-201404719

Filed: October 8, 2014



Boards for Lease of State-Owned Lands

### Title 31, Part 5

TRD-201404721

Filed: October 8, 2014



School Land Board

### Title 31, Part 4

TRD-201404720

Filed: October 8, 2014



Texas Veterans Land Board

### Title 40, Part 5

TRD-201404722

Filed: October 8, 2014



## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 62 continue to exist.

The public comment period on the review of 19 TAC Chapter 62 begins October 17, 2014, and ends November 17, 2014. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337.

TRD-201404714

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 8, 2014



Texas Department of Licensing and Regulation

### Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 16, Chapter 55, Rules for Administrative Services. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

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

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Subchapter A. General Provisions

§55.1. Authority

§55.10. Definitions

Subchapter B. Procurements

§55.20. Historically Underutilized Businesses Program

§55.30. Bid Opening and Tabulation

Subchapter C. Vendor Protests

§55.40. Protest Procedures

Subchapter D. Negotiation of Certain Contract Disputes

§55.50. Applicability

§55.51. Prerequisites to Suit

§55.52. Sovereign Immunity

§55.53. Notice of Claim for Breach of Contract

§55.54. Department Counterclaim

§55.55. Duty to Negotiate

§55.56. Timetable

§55.57. Conduct of Negotiation

§55.58. Settlement Approval Procedures

§55.59. Settlement Agreement

§55.60. Cost of Negotiation

§55.61. Contested Case Hearings for Contract Disputes

Subchapter E. Mediation of Certain Contract Disputes

§55.70. Applicability

§55.71. Prerequisites to Suit

§55.72. Sovereign Immunity

§55.73. Mediation

§55.74. Appointment of the Mediator

§55.75. Qualifications of the Mediator

§55.76. Disqualifications of the Mediator

§55.77. Qualified Immunity of the Mediator

§55.78. Confidentiality of Mediation and Final Settlement Agreement

§55.79. Settlement Approval Procedures

§55.80. Initial Settlement Agreement

§55.81. Final Settlement Agreement

§55.82. Referral to State Office of Administrative Hearings

TRD-201404704

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 8, 2014



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 16, Chapter 89, Vehicle Booting and Immobilization. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

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

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§89.1. Authority and Purpose

§89.10. Definitions

§89.21. License Required to Install Boots or Operate Booting Company

§89.22. License--License Nontransferable and Valid for One Year

§89.23. License Requirement--Booting Operator License

§89.24. License Requirement--Booting Operator License Renewal

§89.25. License Requirement--Booting Company License

§89.26. License Requirement--Booting Company License Renewal

§89.27. License--Notice of Proposed Denial, Opportunity to Comply

§89.28. Department Notification to Licensee

§89.29. License Requirements--Booting Operator Continuing Education

§89.30. Exemptions

§89.40. Insurance Requirements

§89.45. Inspections--General

§89.46. Periodic Inspections

§89.47. Risk-based Inspections

§89.48. Corrective Actions Following Inspection

§89.65. Towing, Storage, and Booting Advisory Board

§89.66. Responsibilities of Licensee--Change to Booting Operator License

§89.67. Responsibilities of Licensee--Change to Booting Company License

§89.68. Responsibilities of Licensee--Booting of Vehicles

§89.69. Responsibilities of Licensee--Proof of Authority to Install Boot

§89.70. Responsibilities of Licensee--Conspicuous Notice of Booting

§89.71. Responsibilities of Licensee--Receipt on Removal of Boot

§89.72. Responsibilities of Licensee--Inspection of Records

§89.73. Responsibilities of Licensee--Form of Payment

§89.75. Responsibilities of Licensee--Removal of Boot

- §89.76. Responsibilities of Licensee--Deposits
- §89.77. Responsibilities of Licensee--Independent Contractors
- §89.78. Responsibilities of Licensee--Prohibited Financial Benefits
- §89.79. Responsibilities of Licensee--Prohibitions Against Booting and Towing the Same Vehicle
- §89.80. Fees
- §89.90. Administrative Sanctions and Penalties
- §89.91. Enforcement Authority
- §89.100. Technical Requirements--Provide Insurance Information to Vehicle Owner or Operator
- §89.101. Technical Requirements--Municipal Booting Fees
- §89.102. Technical Requirements--Vehicle Signage
- §89.103. Technical Requirements--Booting Operator Safety Clothing and Identification

TRD-201404705  
 William H. Kuntz, Jr.  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Filed: October 8, 2014



Texas Department of Motor Vehicles

**Title 43, Part 10**

The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 218, Motor Carriers. 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 department's review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The department is conducting this rule review in conjunction with proposing amendments, repeals, and new sections, which are published in the Proposed Rules section of this issue of the *Texas Register* and in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6215).

Comments regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on November 17, 2014.

TRD-201404718  
 David D. Duncan  
 General Counsel  
 Texas Department of Motor Vehicles  
 Filed: October 8, 2014



Matthew Garcia

TEXAS RULES AND





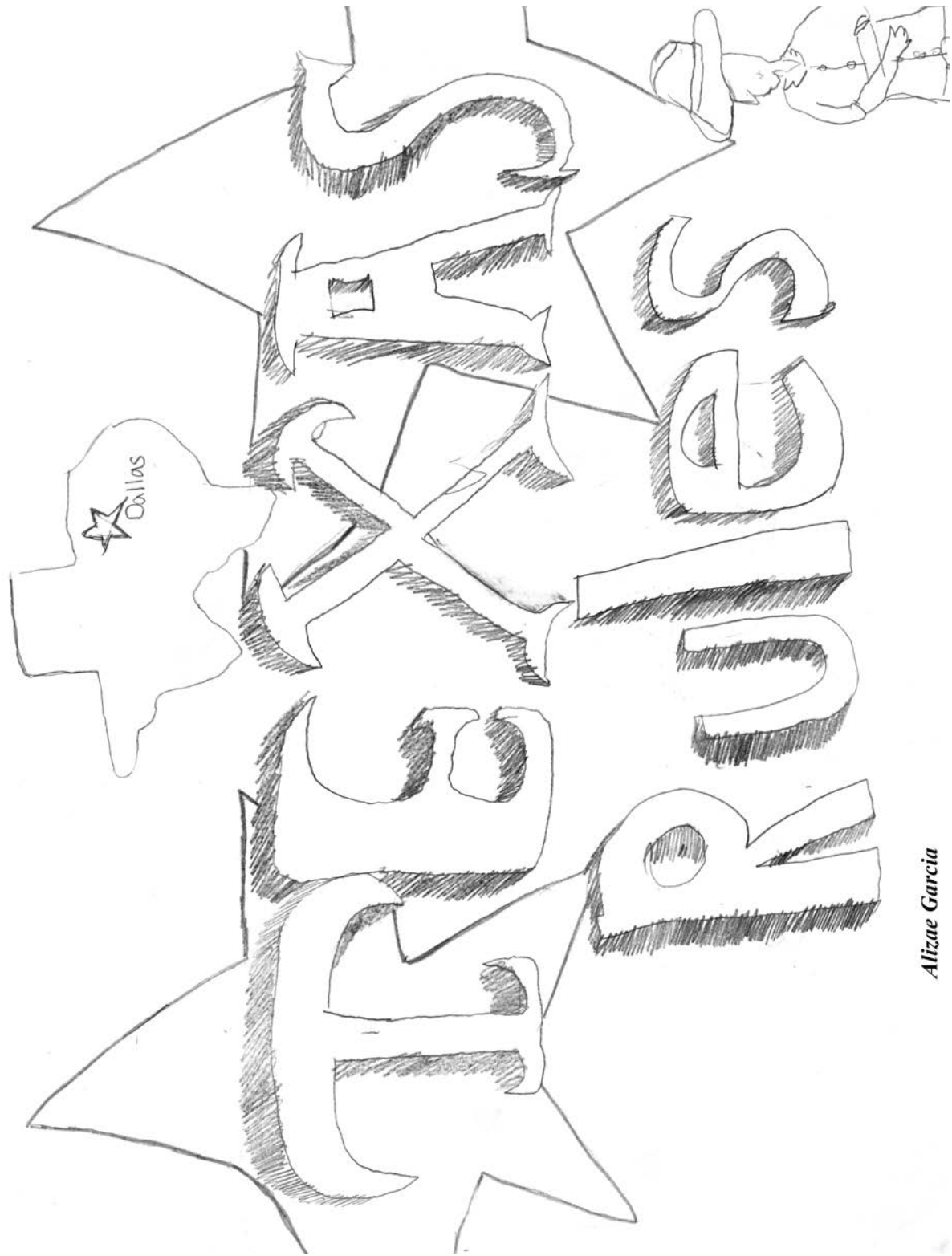
# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 43 TAC §218.16(a)

Type of Vehicle	Minimum Insurance Level
1. Vehicles transporting household goods (gross vehicle weight, registered weight, or gross weight rating of 26,000 lbs. or less).	\$300,000
2. Buses designed or used to transport more than 15 people, but fewer than 27 people.	\$500,000
3. Buses designed or used to transport 27 or more people.	\$5,000,000
4. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015.	\$500,000
5. Farm trucks (gross vehicle weight, registered weight, or gross weight rating of 48,000 lbs. or more).	\$500,000
6. Commercial motor vehicles and vehicles transporting household goods (gross vehicle weight, registered weight, or gross weight rating in excess of 26,000 lbs.).	\$500,000
7. Commercial motor vehicles - Oil listed in 49 C.F.R. §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. §171.8 and listed in 49 C.F.R. §172.101, but not mentioned in items 8 or 9 of this table.	\$1,000,000
8. Commercial motor vehicles with a gross vehicle weight rating of 10,001 or more pounds - Hazardous substances, as defined in 49 C.F.R. §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials. Division 2.3, Hazard Zone A material, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. §173.403.	\$5,000,000
9. Commercial motor vehicles with a gross vehicle weight rating of less than 10,001 pounds – Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 C.F.R. §173.403.	\$5,000,000



Alizae Garcia

# 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.

## State Office of Administrative Hearings

Notice of Public Hearing - 1 TAC Chapter 159, Subchapter C - Witnesses and Subpoenas

**The State Office of Administrative Hearings (SOAH) will conduct a public hearing on Tuesday, October 28, 2014. The hearing will begin at 10:00 a.m. in Room 404 of the William P. Clements Building, 300 W. 15th Street (15th and Lavaca), Austin, Texas.**

SOAH will hear public comment on proposed amendment to 1 TAC Chapter 159, Subchapter C - Witnesses and Subpoenas, §159.103 (concerning Subpoenas). The proposed amendment was published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3919). The comment period for the rules closed as of June 22, 2014; however, additional comments will be accepted at the public hearing.

SOAH's field offices in Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, and San Antonio will be connected to the October 28, 2014 hearing by videoconference. Those who wish to offer comment on the rules without traveling to Austin may do so via the videoconference.

So that SOAH can plan and prepare for the comment hearing, SOAH requests that persons wishing to offer comment at the October 28, 2014 hearing via videoconference notify the field office at which the person will appear of his or her intent to attend the comment hearing via videoconference. Notification may be accomplished in one of the following two ways: 1) Each field office has a sign-up sheet available on which prospective commenters may signify their intent to appear at the comment hearing via videoconference; or 2) Prospective commenters may contact the particular field office by telephone to advise the staff there of the intent to appear at the comment hearing via videoconference.

SOAH will take comment from anyone who appears on October 28, 2014 at the comment hearing, even if the person has not previously notified the field office of the intent to appear, but SOAH would appreciate knowing approximately how many people intend to comment from each office so that we may assure the comment hearing runs smoothly, efficiently, and without technical difficulty.

SOAH offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact SOAH's Docketing office at (512) 475-3445 a minimum of two days prior to the hearing date.

For further information regarding this notice, you may contact Tom Walston, General Counsel, at (512) 475-4993.

TRD-201404658

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Filed: October 6, 2014

◆ ◆ ◆  
**Office of the Attorney General**

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas v. Jagger Industries, LLC*, Cause No. 2013-68798; in the 281st Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant Jagger Industries, LLC operated a waste grease recycling and processing facility in Baytown, Harris County, Texas. Harris County Pollution Control received multiple odor complaints regarding the facility. Harris County alleges that the odors emitted from the facility were of such frequency and of such a level as to interfere with the public's normal use and enjoyment of Harris County's air resources. During the pendency of the lawsuit, Defendant declared bankruptcy.

Proposed Agreed Judgment: The Agreed Final Judgment orders Jagger Industries, LLC to pay civil penalties to the State and Harris County in the amount of \$100,000 to be divided equally between the State and Harris County. The Judgment also awards attorney's fees to the State in the amount of \$4,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201404694

Katherine Cary

General Counsel

Office of the Attorney General

Filed: October 7, 2014

◆ ◆ ◆  
**Comptroller of Public Accounts**

Certification of the Average Closing Price of Gas and Oil - September 2014

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period September 2014 is \$74.70 per barrel for the three-month period beginning on June 1, 2014, and ending August 31, 2014. There-

fore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2014 from a qualified low-producing oil lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2014 is \$3.25 per mcf for the three-month period beginning on June 1, 2014, and ending August 31, 2014. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2014 from a qualified low-producing well is eligible for a 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2014 is \$93.03 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2014 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of September 2014 is \$3.92 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of September 2014 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201404733  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: October 8, 2014



#### Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Plains Spotted Skunk ("RFP 209b"):

Angelo State University, a member of the Texas Tech University System, 2601 West Avenue N, San Angelo, Texas 76909. The total maximum amount of the contract is \$248,799.00. The term of the contract is October 7, 2014 through July 30, 2017.

The notice of issuance was published in the April 25, 2014, issue of *Texas Register* (39 TexReg 3476).

TRD-201404730  
Jette Withers  
Deputy General Counsel for Contracts  
Comptroller of Public Accounts  
Filed: October 8, 2014



#### Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.301 and 403.3011, Texas Government Code; and the Property Tax Code, the

Texas Comptroller of Public Accounts ("Comptroller") announces the issuance of Request for Proposals No. 211a ("RFP") from qualified, independent individuals and firms to provide consulting services to Comptroller. The successful respondent(s) will assist Comptroller in accurately estimating the fiscal impacts to state property tax-related legislation and related tasks for the upcoming session of the Texas Legislature. Comptroller reserves the right to select multiple contractors to participate in conducting the reviews as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about December 1, 2014, or as soon thereafter as practical.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, October 17, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Jason Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, October 24, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, October 31, 2014, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, November 7, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - October 17, 2014, after 10:00 a.m. CT; Questions Due - October 24, 2014, 2:00 p.m. CT; Official Responses to Questions Posted - October 31, 2014, or as soon thereafter as practical; Proposals Due - November 7, 2014, 2:00 p.m. CT; Contract Execution - December 1, 2014, or as soon thereafter as practical; Commencement of Project Activities - December 1, 2014, or as soon thereafter as practical. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201404709  
Jason C. Frizzell  
Assistant General Counsel  
Comptroller of Public Accounts  
Filed: October 8, 2014



#### Office of Consumer Credit Commissioner

##### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/13/14 - 10/19/14 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/13/14 - 10/19/14 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 10/01/14 - 10/31/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/14 - 10/31/14 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201404693

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 7, 2014

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 17, 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 November 17, 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: BETWAY PARKS, L.P. dba Ed Lou Mobile Home Park; DOCKET NUMBER: 2014-1085-PWS-E; IDENTIFIER: RN101439073; LOCATION: Cypress, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC

§290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: \$3,733; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Big 5 Management Company, LLC dba Burton Short Stop; DOCKET NUMBER: 2014-0746-PST-E; IDENTIFIER: RN102252145; LOCATION: Burton, Washington County; TYPE OF FACILITY: convenience store with retail sale of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$4,231; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Bloomington Independent School District; DOCKET NUMBER: 2014-1007-PWS-E; IDENTIFIER: RN101274140; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level for total coliform; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; and 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; PENALTY: \$1,029; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Brownsville Public Utility Board; DOCKET NUMBER: 2014-0701-MWD-E; IDENTIFIER: RN102180205; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (18), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010397005, Other Requirements Number 3, by failing to achieve compliance with the interim phase construction schedule; and TWC, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0010397005, Interim I and II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$55,688; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: City of Como; DOCKET NUMBER: 2014-1023-MWD-E; IDENTIFIER: RN101917367; LOCATION: Como, Hopkins 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 WQ0011313001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits;

PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Roby; DOCKET NUMBER: 2014-0889-PWS-E; IDENTIFIER: RN101384659; LOCATION: Roby, Fisher County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit a DLQOR; and 30 TAC §290.109(c)(4)(C)(i), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample collected from a consecutive system served by the facility for the month of November 2011; PENALTY: \$525; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Weinert; DOCKET NUMBER: 2014-1056-MWD-E; IDENTIFIER: RN101920825; LOCATION: Weinert, Haskell County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §§305.65, 305.42, and 305.125(2), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: CLARKSVILLE OIL & GAS COMPANY, LIMITED; DOCKET NUMBER: 2014-1174-PST-E; IDENTIFIER: RN102028198; LOCATION: Clarksville, Red River County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,225; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Farishta Investment, Incorporated dba ANS Market 3; DOCKET NUMBER: 2014-0900-PST-E; IDENTIFIER: RN101443554; LOCATION: Corpus Christi, Nueces 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; and 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; PENALTY: \$5,438; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: First Student Incorporated and Navasota Independent School District; DOCKET NUMBER: 2014-1075-PST-E; IDENTIFIER: RN101672582; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Highland Homes - San Antonio, Limited; DOCKET NUMBER: 2014-0946-WQ-E; IDENTIFIER: RN105813042; 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 TXRX15OR85, Part III, Section G.1, by failing to install and implement erosion and sediment controls; and TWC, §26.121(a)(2), 30 TAC §281.25(a)(4), and TPDES General Permit Number TXRX15OR85, Part III, Section F.6.(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: \$1,301; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: ISP TECHNOLOGIES INCORPORATED; DOCKET NUMBER: 2014-0748-MLM-E; IDENTIFIER: RN100825272; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: basic organic chemicals manufacturing plant; RULES VIOLATED: 30 TAC §331.63(c) and 40 Code of Federal Regulations (CFR) §146.67(a), Underground Injection Control (UIC) Permit Numbers WDW034 and WDW299, Provisions VII.B and VIII.B, by failing to maintain an operating wellhead injection pressure that does not exceed the permitted maximum; 30 TAC §331.63(g), by failing to conduct quarterly testing and calibrations on all injection and wellhead flow gauges; 30 TAC §331.65(c)(1) and 40 CFR §146.69(a), by failing to timely submit Class I well injection operation quarterly reports to the commission within 20 days of the end of each quarter; 30 TAC §331.66(b)(1), by failing to post a legible sign indicating the company name and commission permit number on WDW034 and WDW299; 30 TAC §335.6(c), by failing to update the facility Notice of Registration; and 30 TAC §331.64(g) and UIC Permit Numbers WDW034 and WDW113, Provision VIII.H and UIC Permit WDW299, Provision IX.H, by failing to conduct adequate quarterly corrosion monitoring on well materials; PENALTY: \$33,768; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: MAUM INCORPORATED DBA GINAS KWIK PANTRY; DOCKET NUMBER: 2014-0872-PST-E; IDENTIFIER: RN102351103; LOCATION: Granger, Williamson 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 underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(14) COMPANY: Parkside at Mayfield Ranch, Limited; DOCKET NUMBER: 2014-0469-EAQ-E; IDENTIFIER: RN106876873; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential subdivision; RULE VIOLATED: 30 TAC §213.5(b)(4)(C)(iv), by failing to maintain flow to a naturally occurring sensitive feature identified in either the geologic assessment, executive director review, or during excavation, blasting, or construction; PENALTY: \$15,276; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: Pettus Municipal Utility District; DOCKET NUMBER: 2014-0705-MWD-E; IDENTIFIER: RN102079100; LOCATION: Bee County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010748001, Monitoring and Reporting

Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §§305.125(1) and (17), 319.1, and 319.7(a)(4), and TPDES Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 1, by failing to submit all effluent analytical results; PENALTY: \$2,512; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: RACETRAC PETROLEUM, INCORPORATED dba Racetrac 626; DOCKET NUMBER: 2014-1144-PST-E; IDENTIFIER: RN102230711; 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: \$3,347; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Sebastien Bonneu dba Countryside Farm; DOCKET NUMBER: 2014-0854-AIR-E; IDENTIFIER: RN106631021; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: animal farm; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization before constructing and operating an incinerator; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: SHARDA CONVENIENCE STORE, INCORPORATED dba Sunrise Market 1; DOCKET NUMBER: 2014-1235-PST-E; IDENTIFIER: RN102358108; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Solvay USA Incorporated; DOCKET NUMBER: 2014-0939-AIR-E; IDENTIFIER: RN100220581; LOCATION: Houston, Harris County; TYPE OF FACILITY: sulfur acid production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3049, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: ST. PAUL UNITED METHODIST CHURCH - HUNTSVILLE; DOCKET NUMBER: 2014-0995-PWS-E; IDENTIFIER: RN105915268; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; and 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; PENALTY: \$980; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: STROUHAL FAMILY PARTNERSHIP, LIMITED; DOCKET NUMBER: 2014-0824-PWS-E; IDENTIFIER: RN105248744; LOCATION: near Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 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 collect routine distribution coliform samples for the month of October 2009; 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 and provide the results to the executive director; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: SYLVESTER MCCAULLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0836-MLM-E; IDENTIFIER: RN101267185; LOCATION: Sylvester, Fisher County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(8), by failing to maintain the facility's clearwells, ground storage tanks, standpipes, and elevated tanks so that they are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of facility's four wells; 30 TAC §290.45(b)(1)(C)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; and 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: \$806; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2014-0903-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: \$25,000; Supplemental Environmental Project offset amount of \$12,500 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: TPC Group LLC; DOCKET NUMBER: 2014-0906-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit Number O2884, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance for at least each 12-month period following permit issuance; PENALTY: \$3,975; Supplemental Environmental Project

offset amount of \$1,590 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Trinity SO GP, L.L.C.; DOCKET NUMBER: 2014-0941-MWD-E; IDENTIFIER: RN102075827; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d); and Texas Pollutant Discharge Elimination System Permit Number WQ0012650001, Monitoring and Reporting Requirements Number 1, by failing to timely submit results at the intervals specified in the permit; PENALTY: \$1,525; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Union Carbide Corporation; DOCKET NUMBER: 2014-0968-AIR-E; IDENTIFIER: RN100219351; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.142(b)(2)(A) and Texas Health and Safety Code, §382.085(b), by failing to include all applicable requirements for each emissions unit in a Federal Operating Permit; PENALTY: \$297; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Walnut Bend Independent School District; DOCKET NUMBER: 2014-1034-PWS-E; IDENTIFIER: RN101176063; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of September 2012; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect semiannual lead and copper tap samples at the required ten sample sites, 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: \$1,350; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: WATER ASSOCIATION OF NORTH LAKE, INCORPORATED; DOCKET NUMBER: 2014-0863-PWS-E; IDENTIFIER: RN101450047; LOCATION: Aubrey, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the executive director by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit a DLQOR to the executive director; and 30 TAC §290.106(e), by failing to provide the results of asbestos sampling to the executive director for the January 1, 2005 - December 31, 2013 monitoring period; PENALTY: \$1,349; ENFORCEMENT COORDINATOR: Epi-fanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201404690

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: October 7, 2014



### Enforcement Orders

An agreed order was entered regarding Greatwood Hospitality, Inc., Docket No. 2012-2085-MWD-E on September 30, 2014 assessing \$51,969 in administrative penalties with \$48,369 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIVER MART, INC., Docket No. 2013-0189-PST-E on September 30, 2014 assessing \$16,975 in administrative penalties with \$3,395 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.

A default order was entered regarding Joshua G. Duke, Docket No. 2013-0808-LII-E on September 30, 2014 assessing \$1,390 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Curtis White and Brenda White dba El Pinon Estates Water System, Docket No. 2013-1012-PWS-E on September 30, 2014 assessing \$4,054 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Leldon B. Higgs, Docket No. 2013-1043-PST-E on September 30, 2014 assessing \$14,153 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blue Streak Transportation, Inc., Docket No. 2013-1077-PST-E on September 30, 2014 assessing \$26,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colleen Lenahan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jeremy Bellman, Docket No. 2013-1401-LII-E on September 30, 2014 assessing \$2,021 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



A default order was entered regarding HNQ, Inc. dba Kool Corner, Docket No. 2013-1447-PST-E on September 30, 2014 assessing \$10,630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Vitris, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge G&P (North Texas) L.P., Docket No. 2013-1854-AIR-E on September 30, 2014 assessing \$62,461 in administrative penalties with \$12,491 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plano, Docket No. 2013-1868-WQ-E on September 30, 2014 assessing \$15,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2013-2014-MLM-E on September 30, 2014 assessing \$59,252 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PANJGRAYIAN INC. dba 2 GS Country Store, Docket No. 2013-2080-PST-E on September 30, 2014 assessing \$53,359 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEER CREEK RANCH, INC. and Deer Creek Ranch Water Co., LLC, Docket No. 2013-2146-PWS-E on September 30, 2014 assessing \$217 in administrative penalties with \$217 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 The Dow Chemical Company, Docket No. 2013-2215-AIR-E on September 30, 2014 assessing \$49,726 in administrative penalties with \$9,945 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kerry Trest, Docket No. 2014-0032-MLM-E on September 30, 2014 assessing \$11,800 in administrative penalties with \$2,360 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 Western Dairy Transport, L.L.C., Docket No. 2014-0038-IWD-E on September 30, 2014 assessing \$15,946 in administrative penalties with \$3,189 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2014-0046-AIR-E on September 30, 2014 assessing \$14,563 in administrative penalties with \$2,912 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 Equistar Chemicals, L.P., Docket No. 2014-0048-AIR-E on September 30, 2014 assessing \$34,836 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, L.P., Docket No. 2014-0115-AIR-E on September 30, 2014 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MACC Collision Repair Experts, Inc., Docket No. 2014-0153-AIR-E on September 30, 2014 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Evans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2014-0158-PWS-E on September 30, 2014 assessing \$174 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ore City, Docket No. 2014-0173-MWD-E on September 30, 2014 assessing \$25,737 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burkland, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wyman-Gordon Forgings, Inc., Docket No. 2014-0229-AIR-E on September 30, 2014 assessing \$23,400 in administrative penalties with \$4,680 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 WTG FUELS, INC. dba Uncles 130205, Docket No. 2014-0293-PWS-E on September 30, 2014 assessing \$660 in administrative penalties with \$660 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 Sharon Stephenson, Docket No. 2014-0310-PWS-E on September 30, 2014 assessing \$2,329 in administrative penalties.

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.

A default order was entered regarding High Tech Auto Restyling Inc., Docket No. 2014-0327-AIR-E on September 30, 2014 assessing \$13,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, L.P., Docket No. 2014-0395-AIR-E on September 30, 2014 assessing \$19,688 in administrative penalties with \$3,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terry Bourbon dba River View Estates, Docket No. 2014-0416-PWS-E on September 30, 2014 assessing \$1,567 in administrative penalties with \$1,567 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. R. Carpenter, L.P., Docket No. 2014-0424-AIR-E on September 30, 2014 assessing \$57,405 in administrative penalties with \$11,480 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 MILBERGER LANDSCAPING, INC., Docket No. 2014-0455-PWS-E on September 30, 2014 assessing \$2,046 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Riesel, Docket No. 2014-0478-PWS-E on September 30, 2014 assessing \$1,092 in administrative penalties with \$1,092 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James L. Oxford dba Country Villa Mobile Home Park, Docket No. 2014-0491-PWS-E on September 30, 2014 assessing \$210 in administrative penalties with \$210 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 City of Pharr, Docket No. 2014-0531-MWD-E on September 30, 2014 assessing \$876 in administrative penalties.

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.

TRD-201404708

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 8, 2014



### Notice of Water Quality Applications

The following notices were issued on September 26, 2014 through October 3, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

CITY OF MULESHOE has applied for a renewal of TCEQ Permit No. WQ0010049001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day via surface irrigation of 78 acres of golf course (Outfall 001) and surface irrigation of 240 acres of non-public access agricultural land (Outfall 002). This permit will not authorize a discharge of pollutants into waters in the State. The domestic wastewater treatment facility and southern disposal area are located approximately 1.5 miles south of the intersection of State Highway 214 and U.S. Highway 84, in Bailey County, Texas 79347. The northern disposal area is located 0.75 mile east of the intersection of State Highway 214 and U.S. Highway 70, in Bailey County, Texas 79347 in Bailey County, Texas 79347.

CITY OF JASPER has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010197001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,250,000 gallons per day. The facility is located at 650 Marvin Hancock Drive, Jasper, approximately 0.8 mile east of the intersection of Farm-to-Market Road 2799 and 777, and approximately 1.0 mile northeast of the intersection of U.S. Highway 190 and State Highway 63 in Jasper County, Texas 75951.

CITY OF STRATFORD has applied for a renewal of TCEQ Permit No. WQ0010293002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day via surface irrigation of 331 acres of non-public access agricultural land. The wastewater treatment facility and disposal site are located approximately 600 feet north of State Highway 15 and 1.3 miles east of the intersection of State Highway 15 and U.S. Highway 287, in

Sherman County, Texas 79084. The wastewater treatment facility and disposal site are located in the drainage basin of Coldwater Creek which flows into the State of Oklahoma in Segment No. 100 of the Canadian River Basin. This permit shall not authorize a discharge of pollutants into waters in the state.

SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010749006 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 14542 Cassiano Road, Elmendorf in Bexar County, Texas 78112.

CITY OF BEASLEY has applied for a renewal of TPDES Permit No. WQ0011450001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located approximately 3,000 feet east of the intersection of U.S. Highway 59 (Southwest Freeway) and Farm-to-Market Road 1875, approximately 3,000 feet west-southwest of the intersection of U.S. Highway 59 and Eslieb Road, on the frontage of Emerson Road south of the City of Beasley in Fort Bend County, Texas 77417.

LUTHERAN OUTDOORS MINISTRY OF TEXAS INC. has applied for a renewal of TPDES Permit No. WQ0012168001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 2016 Camp Lone Star Road, LaGrange, Texas in Fayette County, Texas 78945.

KAUFMAN COUNTY FRESH WATER SUPPLY DISTRICT NO. 1A has applied for a renewal of TPDES Permit No. WQ0013910001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 600 feet north of U.S. Highway 80, approximately 2.0 miles east of the City of Forney in Kaufman County, Texas 75126.

SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014042001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 0.35 mile south on Loop 1604 from the intersection of Interstate Highway 10 and Loop 1604, 600 feet west of Loop 1604 in Bexar County, Texas 78263.

GRAND PARKWAY 529 LP has applied for new TPDES Permit No. WQ0015258001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility will be located approximately 2,020 feet south of the intersection of Stockdick School Road and Farm-to-Market Road 529, bordering Stockdick School Road and Bear Creek in Harris County, Texas 77493.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201404706

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 8, 2014



Notice of Water Rights Application

Notice issued October 1, 2014.

APPLICATION NO. 13095

Haas Anderson Construction Ltd, 1402 Holly Road, Corpus Christi, Texas 78417, seeks a Temporary Water Use Permit to divert and use not to exceed 100 acre-feet of water within a period of three years from a point on Oso Creek, Nueces-Rio Grande Coastal Basin for industrial purposes in Nueces County.

The application and partial fees were received on November 21, 2013. Additional information and fees were received on December 12, 2013 and February 24, 2014. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 4, 2014.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by October 20, 2014.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201404707

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 7, 2014



## 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: 8-Day Pre-election Report due February 24, 2014, for Candidates and Officeholders**

Nigel H. Redmond, 320 S. R.L. Thornton Fwy., Ste. 300, Dallas, Texas 75203-1842

Thomas C. Merritt, P.O. Box 2962, Longview, Texas 75606-2962

#### **Deadline: 8-Day Pre-election Report due May 2, 2014, for Committees**

Maria D. Montes, Harris County Young Democrats PAC, 2208 Buffalo Terrace, Houston, Texas 77019-2408

#### **Deadline: 8-Day Pre-election Report due May 19, 2014, for Committees**

Susan Bennett-Schaffer, State Farm Agents Political Action Committee, P.O. Box 1002, Austin, Texas 78767-1002

#### **Deadline: Semiannual Report due July 15, 2014, for Committees**

Anessa Anchondo Rivera, Uncompromised Leadership PAC, 8944 Sandhill Ct., El Paso, Texas 79907

Serena D. Mackey, Pecan Valley Republican Women, P.O. Box 1044, Brownwood, Texas 76804

TRD-201404675

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Filed: October 6, 2014

## Texas Facilities Commission

### Request for Proposals #303-5-20469

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20469. TFC seeks a five (5) or ten (10) year lease of approximately 1,990 square feet of office space in Sinton, San Patricio County, Texas.

The deadline for questions is October 27, 2014 and the deadline for proposals is November 5, 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=114151](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=114151).

TRD-201404683

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 7, 2014

### Request for Proposals #303-5-20470

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20470. TFC seeks a five (5) or ten (10) year lease of approximately 2,458 square feet of office space in Kerrville, Kerr County, Texas.

The deadline for questions is October 27, 2014 and the deadline for proposals is November 6, 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=114168](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=114168).

TRD-201404716

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 8, 2014

## 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 July 21, 2014 through October 6, 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 10, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, November 10, 2014.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Novaria, LLC;** Location: The project site is located within the Gulf of Mexico, at the end of Jimmy's on the Pier and Galveston Fishing Pier, at 9001 Seawall Boulevard, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: GALVESTON, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.248587 North; Longitude: 94.851704 West. Project Description: The applicant proposes to restore the Galveston Fishing Pier to its original configuration. Please reference the areas of work in deeper water, depicted on sheet 2 of 4 of the attached plans. All nearshore activities have been completed. No work is proposed in nearshore areas or from land. Construction will be accomplished from the waterside. CMP Project No: 15-1041-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00690. This application

will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

**Applicant: Phillips 66 Company;** Location: The project site is located along the Old Brazos River and wetlands adjacent to the Old Brazos River at 1000 County Road 731, in Freeport, Brazoria County, Texas. The site can be located on the U.S.G.S. quadrangle maps titled: FREEPORT, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.932378 North Longitude: 95.337661 West. Project Description: The applicant proposes to discharge fill material into 7.1 acres of non-tidal wetlands (reduced from 14.8 acres) for the proposed construction of infrastructure required to refrigerate, store, and load Liquid Petroleum Gas. Additionally, the applicant proposes to expand and relocate existing dock structures and install new loading arms, breasting dolphins, and pipe piles within open water of the Old Brazos River. Such activities include installing a total of 121 pilings into 3 dock areas, temporarily impacting approximately 1.14 acre and permanently impacting 0.02 acre of the Old Brazos River. CMP Project No: 14-1762-F1. Type of Application: U.S.A.C.E. permit application #SWG-2014-00116. 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: Michael Grudzinsky;** Location: The project site is located in the Gulf Intracoastal Waterway (GIWW), at the end of Diamond Drive, in Crystal Beach, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: FLAKE, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.46599 North; Longitude: 94.64643 West. Project Description: The applicant is proposing to retain approximately 0.5 acre of fill placed in tidal wetlands. Additionally, the applicant proposes to place approximately 160 linear feet of concrete bulkheading near the high tide line of the GIWW. The applicant also proposes to place approximately 200 linear feet of timber bulkheading along the northwest property line, to contain the existing fill. The applicant proposes to create 2 waterfront lots, and install 2 100-foot-long piers; 1 with a 20-foot-long by eight-foot-wide T-head and the other with a 20-foot-long by 24-foot-wide L-head with a boathouse. CMP Project No: 14-1991-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00713. 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: John Wayne Williams;** Location: The project site is located at 504 1st Street, in an approximately 0.24-acre residential lot with approximately 103 feet of meandering canal frontage, located completely within the Fingers Canal which extends from the Laguna Madre in Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: PORT ISABEL, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 26.07558 North; Longitude: 97.22362 West. Project Description: The applicant proposes to construct a 75-foot-long by approximately 10-foot-high seawall with wing walls on each end along the shoreline of a residential canal. Approximately 544.5 square feet of jurisdictional waters with a narrow band of mangrove-dominated shoreline will be filled behind the proposed bulkhead. CMP Project No: 15-1045-F1. Type of Application: U.S.A.C.E. permit application #SWG-2014-00071. 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.

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](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201404731

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: October 8, 2014

## Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Gynecological and Reproductive Health Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Gynecological and Reproductive Health Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Gynecological and Reproductive Health Services are proposed to be effective January 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis,

Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404728

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: October 8, 2014



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Medicaid Biennial Calendar Fee Review are proposed to be effective January 1, 2015, for the following services:

- (1) Combination Type of Service 1-2-I-T (Medical Services, Surgery, and Interpretation and Technical components)
- (2) Medical and Surgical Supplies
- (3) Medical Nutrition Therapy
- (4) Durable Medical Equipment - E Codes

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030,

Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404727

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: October 8, 2014



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Prognostic Breast and Gynecological Cancer Studies

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Prognostic Breast and Gynecological Cancer Studies.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Prognostic Breast and Gynecological Cancer Studies are proposed to be effective January 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404729

Jack Stick  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: October 8, 2014



### Notice of Public Hearing on Proposed Medicaid Payment Rates for Third Quarter 2014 Healthcare Common Procedure Coding System Updates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 3rd Quarter 2014 Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for 3rd Quarter 2014 HCPCS Updates are proposed to be effective January 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404723

Jack Stick  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: October 8, 2014



### Notice of Public Hearing on the Proposed Medicaid Payment Rate for Indian Health Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2014, at 1:30 p.m., to receive comment on the proposed Medicaid payment rate for Indian Health Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rate for Indian Health Services is proposed to be effective January 1, 2014.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with the rate specified in the April 8, 2014, issue of the Federal Register (79 Fed. Reg. 19345) and in accordance with 1 TAC §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 28, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201404732  
Jack Stick  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: October 8, 2014



### Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-044 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to revise the qualifications for anesthesiologist assistants. The proposed amendment is effective October 1, 2014.

The proposed amendment is estimated to have no fiscal impact. Revision of anesthesiologist assistant qualifications is not expected to increase Medicaid utilization or cost.

To obtain copies of the proposed amendment, interested parties may contact Meghan Young, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6238; by facsimile at (512) 730-7472; or by e-mail at [meghan.young@hhsc.state.tx.us](mailto:meghan.young@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201404692

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2014



## Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-050 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to update the requirements for providers performing case management services for children enrolled in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program and high risk pregnant women. The proposed amendment is effective October 1, 2014.

The proposed amendment is estimated to have no fiscal impact, as it is not expected to have an effect on Medicaid utilization or costs.

To obtain copies of the proposed amendment, interested parties may contact Meghan Young, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6238; by facsimile at (512) 730-7472; or by e-mail at [meghan.young@hhsc.state.tx.us](mailto:meghan.young@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201404713

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: October 8, 2014



## Texas Department of Housing and Community Affairs

Release of the Housing Trust Fund Fiscal Year 2015  
Amy Young Barrier Removal Program Notice of Funding  
Availability

### I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources include appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

### II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of \$1,626,477 in funding from the Housing Trust Fund (HTF) for the Amy Young Barrier Removal Program (AYBRP) through the Department's first-come, first-served online Reservation System.

The AYBRP provides one-time grants of up to \$20,000 to Persons with Disabilities in a household qualified as earning 80% or less of the applicable Area Median Family Income. Grants are for home modifications that increase accessibility and correct hazardous and unsafe conditions.

The Department is now accepting applications from entities seeking to become AYBRP Administrators. Beginning Thursday, November 6, 2014, Administrators with an executed and valid AYBRP Reservation Agreement may reserve funds for eligible beneficiaries using the Department's online Reservation System.

### III. Application Deadline and Availability.

The HTF Fiscal Year 2015 Amy Young Barrier Removal Program NOFA is posted on the Department's website: <http://www.td-hca.state.tx.us/htf/index.htm>. Subscribers to the Department's LISTSERV have been notified that the NOFA is posted.

Questions regarding the HTF Program NOFA may be addressed to Mark Leonard at (512) 936-7799 or [htf@tdhca.state.tx.us](mailto:htf@tdhca.state.tx.us).

TRD-201404726

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 8, 2014



## Texas Department of Insurance

### Company Licensing

Application to change the name of NAP LIFE INSURANCE COMPANY to SECURICO LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application for admission to the State of Texas by FOUNDATION TITLE INSURANCE COMPANY, a foreign title company. The home office is in Cheyenne, Wyoming.

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-201404712

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 8, 2014



### Notice of Filing



The Texas Automobile Insurance Plan Association (TAIPA) filed three petitions to amend its plan of operation. TAIPA's governing committee approved the amendments.

Petition No. A-0614-04 asks the commissioner of insurance to approve amendments to the introduction and sections 6, 7, 15, 22, 23, and 33 of TAIPA's plan of operation to make the Electronic Application Submission interface (EASi) system mandatory for all applications, and to eliminate paper applications. The Producer Certification Manual will also reflect these amendments.

Petition No. A-0811-06 asks the commissioner to approve amendments to section 50 of TAIPA's plan of operation, which implements the Automobile Burglary and Theft Prevention Authority Pass-Through Fee. The amendments update the language in section 50 to conform to HB 1541, 82nd Legislature, Regular Session, 2011. HB 1541 amended Texas Civil Statutes, Article 4413(37) to increase the fee from \$1 to \$2.

Petition No. A-0412-02 asks the commissioner to approve amendments to section 15 and section 33 of TAIPA's plan of operation, which provide performance standards for producers writing TAIPA private passenger and other than private passenger assignments. A producer that violates a performance standard is subject to enforcement action under TAIPA rules and procedures. The amendments insert subsection A.1.c. in both section 15 and section 33.

Subsection A.1.c. states that a producer may not submit an application for assignment if

\* the applicant or any person who usually drives the motor vehicle does not hold a valid Texas driver's license;

\* the applicant was previously assigned through TAIPA and was terminated or non-renewed for failure to obtain, or make a good-faith effort to obtain, a Texas driver's license; and

\* the producer submitted the application that resulted in the previous assignment.

Insurance Code §2151.151 provides that TAIPA's governing committee may amend the plan of operation, subject to the commissioner's approval.

The Texas Department of Insurance has prepared this description of the proposed amendments. For the full text of the proposed amendments or a copy of the petitions, see TDI's website at <http://www.tdi.texas.gov/rules/2014/exrules.html>.

The commissioner may issue an order approving these amendments without a hearing. If you wish to comment on the amendments or request a hearing, please do so in writing no later than 5 p.m. Central time no later than 20 days after the publication of this notice. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request.

Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). Send the other copy by mail to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [mark.worman@tdi.texas.gov](mailto:mark.worman@tdi.texas.gov).

TRD-201404680

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 7, 2014

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## Texas Lottery Commission

### Instant Game Number 1657 "Red Chili Tripler"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1657 is "RED CHILI TRIPLER". The play style is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1657 shall be \$2.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1657.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$25,000. The possible red Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and CHILI PEPPER SYMBOL.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1657 - 1.2D

PLAY SYMBOL	CAPTION
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 (BLACK)	FIV
6 (BLACK)	SIX
7 (BLACK)	SVN
8 (BLACK)	EGT
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV
12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
15 (BLACK)	FFN
16 (BLACK)	SXN
17 (BLACK)	SVT
18 (BLACK)	ETN
19 (BLACK)	NTN
20 (BLACK)	TWY
21 (BLACK)	TWON
22 (BLACK)	TWTO
23 (BLACK)	TWTH
24 (BLACK)	TWFR
25 (BLACK)	TWV
26 (BLACK)	TWSX
27 (BLACK)	TWSV
28 (BLACK)	TWET
29 (BLACK)	TWNI
30 (BLACK)	TRTY
\$2.00 (BLACK)	TWO\$
\$4.00 (BLACK)	FOUR\$
\$5.00 (BLACK)	FIVE\$
\$10.00 (BLACK)	TEN\$
\$20.00 (BLACK)	TWENTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$1,000 (BLACK)	ONE THOU
\$25,000 (BLACK)	25 THOU
1 (RED)	ONE
2 (RED)	TWO
3 (RED)	THR
4 (RED)	FOR
5 (RED)	FIV
6 (RED)	SIX
7 (RED)	SVN

8 (RED)	EGT
9 (RED)	NIN
10 (RED)	TEN
11 (RED)	ELV
12 (RED)	TLV
13 (RED)	TRN
14 (RED)	FTN
15 (RED)	FFN
16 (RED)	SXN
17 (RED)	SVT
18 (RED)	ETN
19 (RED)	NTN
20 (RED)	TWY
21 (RED)	TWON
22 (RED)	TWTO
23 (RED)	TWTH
24 (RED)	TWFR
25 (RED)	TWV
26 (RED)	TWSX
27 (RED)	TWSV
28 (RED)	TWET
29 (RED)	TWNI
30 (RED)	TRTY
CHILI PEPPER SYMBOL (RED)	TRIPLER

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$25,000.

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 (1657), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1657-0000001-001.

K. Pack - A Pack of "RED CHILI TRIPLER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "RED CHILI TRIPLER" Instant Game No. 1657 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 "RED CHILI TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the CHILI NUMBERS Play Symbols, the player wins the PRIZE for that symbol. If a player's matching number is RED, the player wins DOUBLE the PRIZE for that number. If a player reveals a RED "CHILI PEPPER" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "CHILI NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different regardless of color.

F. The "RED" (doubler) "YOUR NUMBERS" Play Symbols will never appear in the "CHILI NUMBERS" Play Symbol spots.

G. The "CHILI PEPPER" (tripler) Play Symbol will never appear in the "CHILI NUMBERS" Play Symbol spots.

H. The "RED" (doubler) "YOUR NUMBERS" Play Symbols will only match the "CHILI NUMBERS" Play Symbols as dictated by the prize structure.

I. The "CHILI PEPPER" (tripler) Play Symbol will only appear as dictated by the prize structure.

J. There will be at least four (4) but no more than six (6) "RED" (doubler) "YOUR NUMBERS" Play Symbols unless restricted by other parameters, play action or prize structure.

K. Non-winning Prize Symbols will never appear more than two (2) times.

L. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

M. No prize amount in a non-winning spot will match its corresponding "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "RED CHILI TRIPLER" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, 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 or \$100 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 "RED CHILI TRIPLER" Instant Game prize of \$1,000 or \$25,000, 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 "RED CHILI TRIPLER" 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 "RED CHILI

TRIPLER" 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 "RED CHILI TRIPLER" 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 7,200,000 Tickets in the Instant Game No. 1657. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1657 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	748,800	9.62
\$4	691,200	10.42
\$5	115,200	62.50
\$10	86,400	83.33
\$20	57,600	125.00
\$50	38,820	185.47
\$100	3,000	2,400.00
\$1,000	90	80,000.00
\$25,000	7	1,028,571.43

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.14. 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. 1657 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. 1657, 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-201404724  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 8, 2014



Instant Game Number 1703 "Golden Ticket"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1703 is "GOLDEN TICKET". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1703 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1703.

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, \$200, \$250, \$1,000, \$100,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and GOLD BAR 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. 1703 - 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
\$1,000	ONE THOU
\$100,000	100 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FIFTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRT0
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
<b>GOLD BAR SYMBOL</b>	<b>WINALL</b>

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, \$200, \$250, \$300, \$400 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 (1703), 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: 1703-0000001-001.

K. Pack - A Pack of "GOLDEN TICKET" 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 "GOLDEN TICKET" Instant Game No. 1703 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 "GOLDEN TICKET" Instant Game is determined once the latex on the Ticket is scratched off to expose 46 (forty-six) Play Symbols. The player must scratch the entire play area to reveal 6 GOLDEN NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the GOLDEN NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GOLD BAR" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! 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 46 (forty-six) 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 46 (forty-six) 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 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) 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 or on "GOLD BAR" (win all) wins.

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 GOLDEN NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching GOLDEN NUMBERS Play Symbols will appear on a Ticket.

I. 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).

J. 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.

K. On Non-Winning Tickets, a GOLDEN NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "GOLD BAR" (win all) Play Symbol will never appear as a GOLDEN NUMBERS Play Symbol.

M. The "GOLD BAR" (win all) Play Symbol will instantly win all twenty (20) prizes and will win only as per the prize structure.

N. The "GOLD BAR" (win all) Play Symbol will never appear more than once on a Ticket.

O. The "GOLD BAR" (win all) Play Symbol will never appear on a Non-Winning Ticket.

P. On Tickets winning with the "GOLD BAR" (win all) Play Symbol, no YOUR NUMBERS Play Symbols will match any of the GOLDEN NUMBERS Play Symbols.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN TICKET" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$250, \$300, \$400 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, \$200, \$250, \$300, \$400 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 "GOLDEN TICKET" 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 "GOLDEN TICKET" 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 "GOLDEN TICKET" 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 "GOLDEN TICKET" 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. 1703. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1703 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	1,067,200	7.76
\$10	754,400	10.98
\$15	220,800	37.50
\$20	73,600	112.50
\$50	74,290	111.46
\$100	40,503	204.43
\$200	1,035	8,000.00
\$250	1,817	4,556.96
\$300	851	9,729.73
\$400	368	22,500.00
\$500	1,311	6,315.79
\$1,000	204	40,588.24
\$100,000	8	1,035,000.00

\*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 3.70. 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. 1703 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. 1703, 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-201404725  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 8, 2014

◆ ◆ ◆

**Texas Low-Level Radioactive Waste Disposal Compact Commission**

**Notice of Receipt of Application for Importation of Waste and Import Agreement**

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Pacific Gas and Electric-Diablo Canyon Power Plant (TLLRWDC #1-0078-00)

P.O. Box 56/MC 104/5/13  
 Avila Beach, California 93424

The application will be placed on the Compact Commission web site, [www.tllrwdec.org](http://www.tllrwdec.org), where it will be available for inspection and copying.

Comments on the application are due to be received by October 30, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
 Attn: Leigh Ing, Executive Director  
 333 Guadalupe St., #3-240  
 Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdec.org](mailto:administration@tllrwdec.org).

TRD-201404610  
 Audrey Ferrell  
 Administrator  
 Texas Low-Level Radioactive Waste Disposal Compact Commission  
 Filed: October 1, 2014

◆ ◆ ◆

**Notice of Receipt of Application for Importation of Waste and Import Agreement**

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the

Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, Ltd. (TLLRWDC #1-0079-00)

201 Renovare Boulevard

Oak Ridge, Tennessee 37830

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by October 30, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201404609

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: October 1, 2014



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Tennessee Valley Authority (TLLRWDC #1-0080-00)

1101 Market Street

Chattanooga, Tennessee 37402

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by October 30, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201404608

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: October 1, 2014



**North Central Texas Council of Governments**

#### Request for Proposals for Bus Route Planning Services

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is seeking a qualified consultant to conduct bus route planning for two small public transportation providers in the North Central Texas region. The selected consultant will prepare detailed plans to implement efficient bus routes in several communities and will guide transportation providers through the process of implementing selected routes. The consultant will identify areas where bus routes are feasible and desirable, based on currently operating demand-response and bus route services, and input from transit providers. The consultant will identify ways to implement bus routes that are efficient, effective, and customer friendly.

The purpose of Bus Route Planning Services is to improve the efficiency of public transportation operations in communities in the Dallas-Fort Worth region. The small public transportation provider serving Kaufman County, Rockwall County, and eastern and southern Dallas County outside of Dallas Area Rapid Transit's service area and the small provider serving Parker County, Palo Pinto County and western Tarrant County outside of the Fort Worth Transportation Authority's service area need assistance in implementing bus route services that address the travel needs of the general public and especially low-income workers, individuals with disabilities, and older adults as appropriate.

#### Due Date

Proposals must be received no later than 5:00 pm, on Friday, November 14, 2014, to Sarah Chadderdon, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, October 17, 2014. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201404703

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: October 7, 2014



## Public Utility Commission of Texas

### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 6, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Talk America Services, LLC for a Service Provider Certificate of Operating Authority, Docket Number 43469.

Applicant intends to provide resale-only telecommunications services.

Applicant seeks to provide service comprising the exchanges currently being served by Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest, Inc. d/b/a Verizon Southwest, and Windstream Communications Kerrville, LP, Windstream Communications Southwest, Windstream Corporation, and Windstream Sugar Land, Inc. (collectively, Windstreams) throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1 (888) 782-8477 no later than October 24, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43469.

TRD-201404699

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On October 3, 2014, GC Pivotal, LLC (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60880. Applicant seeks approval for a change in (1) provider type from data-only resale telecommunications services to data, facilities-based, and resale telecommunications services; (2) name to GC Pivotal, LLC d/b/a Global Capacity; and (3) service area from all of the exchanges of all ILECs throughout the state of Texas.

The Application: Application of GC Pivotal, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 43462.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than October 24, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43462.

TRD-201404700

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Notice of Application for Approval of Revised Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 6, 2014, for approval of revised depreciation rate pursuant to, of the Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 2007 & Supp. 2014) §52.252 and §53.056.

Docket Title and Number: Application of Coleman County Telephone Cooperative, Inc. for Approval of Revised Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 43464.

The Application: Coleman County Telephone Cooperative, Inc. (Coleman County) filed an application to revise the depreciation rate for Account 2112.000 - Motor Vehicles. Coleman County proposed an increase in the depreciation rate for this account from 17% to 25%. The revision reflects Coleman County's remaining economic life of the equipment as well as the estimated economic life for the existing motor vehicles and any that may be acquired in the future. Coleman County proposed an effective date of October 1, 2014.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43464.

TRD-201404717

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 8, 2014



### Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on October 6, 2014 with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(A).

Docket Style and Number: Application of Bordercomm Partners, L.P. for Permanent Waiver from Requirements of P.U.C. Substantive Rule §26.420(f)(3)(A). Docket Number 43466.

The Application: Bordercomm Partners, L.P. (applicant) provides commercial Voice over Internet Protocol services (VoIP). Applicant has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Applicant indicated it has no method to determine assessable TUSF intrastate receipts other than by the use of the safe harbor percentage. Applicant requests that the commission grant it a permanent waiver under the P.U.C. Substantive Rule §26.420(f)(3)(B)(ii) from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow applicant to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 27, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43466.

TRD-201404702

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 3, 2014, Credit Loans, Inc. d/b/a Lone Star Communications (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60038. Applicant seeks to relinquish the certificate. Applicant stated a decision to dissolve Lone Star Communications due to a decreasing customer base.

The Application: Application of Credit Loans, Inc. d/b/a Lone Star Communications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 43459.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, by phone at (512) 936-7120, or toll-free at 1-888-782-8477 no later than October 24, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43459.

TRD-201404696  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 1, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Alenco Communications, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43447.

The Application: Alenco Communications, Inc. (Alenco) filed an application with the commission for revisions to its Local Exchange Tariff. Alenco proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Alenco is \$41,754 in gross annual intrastate revenues. Alenco has 1,831 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by October 27, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 27, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commis-

sion through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43447.

TRD-201404611  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 2, 2014



### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Central Texas Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA §53, Subchapter G, Tariff Control Number 43461.

The Application: Central Texas Telephone Cooperative, Inc. (CTTC) filed an application with the commission for revisions to its Local Exchange Access Tariff. CTTC proposed an effective date of November 1, 2014. The estimated revenue increase to be recognized by the Applicant is \$128,335.68 in gross annual intrastate revenues. The Applicant has 5,718 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by October 31, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 31, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43461.

TRD-201404697  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 6, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of West Texas Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43480.

The Application: West Texas Rural Cooperative, Inc. (West Texas) filed an application with the commission for revisions to its Local Exchange Tariff. West Texas proposed an effective date of December 1,

2014. The estimated revenue increase to be recognized by the Applicant is \$28,314 in gross annual intrastate revenues. West Texas has 1,573 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by November 3, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by November 3, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43480.

TRD-201404735  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 8, 2014



#### Notice of Request for Cease and Desist Order

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on October 3, 2014, a request for a cease and desist order against the City of Heath in portions of Rockwall County, Texas.

Docket Style and Number: Forney Lake Water Supply Corporation's Request for Cease and Desist Order Against the City of Heath, Docket Number 43463.

The Application: Forney Lake Water Supply Corporation (Forney Lake) requests a cease and desist order against the City of Heath in portions of Rockwall County, Texas. Forney Lake alleges that the City of Heath has knowingly provided service and continues to provide retail water utility service within Forney Lake's certificated water service area without prior authorization from Forney Lake. Further, Forney Lake stated that the City of Heath is knowingly laying water lines and constructing water facilities within Forney Lake's certificated area for the purpose of providing retail water service. Forney Lake seeks an order prohibiting the City of Heath from locating facilities or lines, constructing facilities or lines, or extending or providing service to anyone within Forney Lake's certificated water service area.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43463.

TRD-201404698  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 7, 2014



### Texas Department of Transportation

#### Notice of Intent to Prepare an Environmental Impact Statement - Lone Star Regional Rail Project

The Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), and the Lone Star Rail District (LSRD) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) to disclose the impacts of construction and operation of a proposed regional passenger rail service system along the IH-35 corridor connecting the greater Austin and San Antonio metropolitan areas (the Project). The proposed project would provide for implementation of passenger rail service within the existing Union Pacific Railroad (UPRR) corridor that extends from Williamson County to Bexar County, Texas. The EIS may include a potential alternative that would include development and operation of a new freight bypass to carry some of the existing freight rail traffic between Taylor and San Antonio to allow the addition of passenger service along the existing UPRR line.

FHWA, TxDOT, and the LSRD invite the public, governmental agencies, and all other interested parties to comment on the scope of the EIS. All such comments should be provided in writing, within ninety (90) days of the publication of this notice, at the address listed below. Comments may also be provided orally or in writing at the scoping meetings. Scoping meeting dates, times and locations, can be found online at <http://www.fra.dot.gov/Page/P0715>. The site also contains information about the Project.

Submit comments to Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701 or [salvador.deocampo@dot.gov](mailto:salvador.deocampo@dot.gov).

For further information, please contact Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, telephone (512) 536-5950, email [salvador.deocampo@dot.gov](mailto:salvador.deocampo@dot.gov); or Melissa Neeley, Director of Project Delivery Management, Environmental Affairs Division of the Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704, telephone (512) 416-3014, email [Melissa.neeley@txdot.gov](mailto:Melissa.neeley@txdot.gov).

TRD-201404682  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: October 7, 2014



#### Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, November 6, 2014, at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2015 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2015 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas,

or (512) 486-5038, and on the department's website at: [http://www.tx-dot.gov/public\\_involvement/utp.htm](http://www.tx-dot.gov/public_involvement/utp.htm).

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 not later than Wednesday, November 5, 2014, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2015 UTP to James W. Koch, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2015 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, November 17, 2014.

TRD-201404681

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 7, 2014

◆ ◆ ◆  
**The Texas A&M University System**

**Notice of Sale of Oil and Gas Lease**

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all policies and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 743, The Texas A&M University System, Moore-Connally Building, 301 Tarrow, College Station, Texas, at 10:00 a.m., Wednesday, November 19, 2014, an oil and gas lease on the following described land in Brazos County, Texas.

The property offered for lease consists of approximately 4,716 gross acres, more or less, insofar as such acreage covers depths not currently held by production, and is more particularly described on the following website: <http://www.tamus.edu/offices/realestate/forlease/>.

The auctioned acreage will be divided into two (2) tracts, and the successful bidder will be required to execute a separate lease for each tract.

Each lease will obligate lessee to drill and complete a well every 18 months during the primary term (total: two (2) wells during primary term of each lease).

The minimum lease terms, which apply to this acreage, are as follows:

- (1) Bonus: No less than \$5,000 per net mineral acre
- (2) Royalty: 25%
- (3) Primary Term: Three (3) years
- (4) Delay Rental: \$50 per acre
- (5) Net Mineral Acres  
(including executive rights): 4,667 (More or Less)
- (6) Well Commitment One (1) well completed every 18 months for each lease

**The lease will be without warranty of any kind.**

Each bidder will be required to conduct its own due diligence to confirm title to, and availability of, the mineral interests being leased.

Prior to bidding at the auction, each bidder will be required to register and sign a Certification Statement agreeing to be bound by the terms thereof.

The successful bidder shall pay 25% of the bonus amount by 5:00 p.m. the day of the auction.

The balance shall be paid within 24 hours after notification that the bid has been accepted.

All payments shall be by certified check, cashier's check or wire transfer.

Failure to pay the balance of the amount bid will result in forfeiture of the 25% paid.

The Texas A&M University System **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.**

Should TAMUS reject all bids, the bid bonus will be returned to you if you are the successful bidder.

Visit <http://www.tamus.edu/offices/realestate/forlease/> for additional details and requirements.

Further inquiries concerning oil and gas leases on A&M System land should be directed to:

Melody Meyer

System Real Estate

The Texas A&M University System

301 Tarrow, 6th Floor

College Station, Texas 77840-7896

(979) 458-6350

TRD-201404710

Gina Joseph

Assistant General Counsel III

The Texas A&M University System

Filed: October 8, 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).

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### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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