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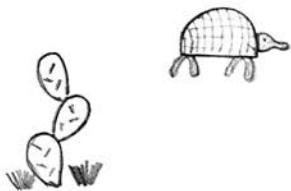
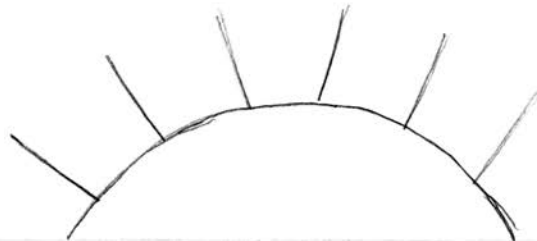
# TEXAS REGISTER

*Volume 40 Number 41*

*October 9, 2015*

*Pages 6977 - 7382*

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

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

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# 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.state.tx.us](mailto:register@sos.state.tx.us)

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://texasattorneygeneral.gov/og/open-government>

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

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

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

# THE GOVERNOR

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

## Appointments

### Appointments for August 17, 2015

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2021, Nelda L. Blair of The Woodlands (replacing Constance "Connie" Ware of Marshall whose term expired).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2021, Scott H. Coleman of Houston (Dr. Coleman is being reappointed).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2021, Alton L. Frailey of Katy (replacing Steven D. McCarty of Alto whose term expired).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2018, Malinda L. Cowen of Beeville (replacing Anne Scofield Raugh Keene of Austin whose term expired).

Appointed to the State Securities Board for a term to expire January 20, 2021, Miguel Romano, Jr. of Austin (replacing Derrick M. Mitchell of Houston whose term expired).

### Appointments for August 18, 2015

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Devon D. Anderson of Bellaire.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Chris B. Bratton of Round Rock.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, James Castro of Bergheim.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Robert A. Ellis of Lockhart.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Billy O. Fletcher of Austin.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Lisa K. Jarrett of San Antonio.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Kameron D. Johnson of Round Rock.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Jennifer F. Lopez of Rosebud.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Paula "Michelle" Moore of Marble Falls.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Allison L. Palmer of San Angelo.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Morton V. "Dean" Rucker of Midland.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Francisco J. "Frank" Salazar of San Antonio.

Pursuant to HB 1144, 84th Legislature, Regular Session, appointed to the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses, for a term to expire September 1, 2017, Donna M. Vandiver of New Braunfels.

### Appointments for August 24, 2015

Appointed as the Border Commerce Coordinator for a term at the pleasure of the Governor, Carlos Cascos of Brownsville (replacing Nandita V. Berry of Houston).

### Appointments for August 26, 2015

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2021, Tommy G. "Tom" Fordyce of Whittsett (replacing Carmen Villanueva-Hiles of Palmhurst whose term expired).

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2021, Derrellynn Perryman Sperberg of Fort Worth (replacing Janice Harris Lord of Arlington whose term expired).

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2021, Jesse W. "Dale" Wainwright of Austin (replacing Oliver J. Bell of Austin whose term expired).

Designating Jess W. "Dale" Wainwright as presiding officer of the Texas Board of Criminal Justice for a term at the pleasure of the Governor. Justice Wainwright is replacing Oliver J. Bell of Austin as presiding officer.

### Appointments for August 31, 2015

Designating Devon D. Anderson as presiding officer of the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses for a term at the pleasure of the Governor.

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2021, David G. Gutierrez of Belton (Sheriff Gutierrez is being reappointed).

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2021, Edward R. "Ed" Robertson of Pflugerville (replacing Rissie Louise Owens of Huntsville whose term expired).

Designating David G. Gutierrez as presiding officer of the Board of Pardons and Paroles for a term at the pleasure of the Governor. Sheriff Gutierrez is replacing Rissie Louise Owens of Huntsville as presiding officer.

#### **Appointments for September 2, 2015**

Appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2021, Laura Ryan Heizer of Cypress (Ms. Ryan Heizer is being reappointed).

Appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2021, Gary M. Swindle of Tyler (replacing Victor Rodriguez of McAllen whose term expired).

Appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2021, Guillermo "Memo" Trevino of Laredo (replacing Joseph Osmond Slovacek of Houston whose term expired).

Designating Laura Ryan Heizer as presiding officer of the Texas Department of Motor Vehicles for a term at the pleasure of the Governor. Ms. Ryan Heizer is replacing John Henry Walker, III of Houston as presiding officer.

Pursuant to SB 200, 84th Legislature, Regular Session, appointed to the Health and Human Services Transition Legislative Oversight Committee, for a term at the pleasure of the Governor, John D. Colyandro of Austin.

Pursuant to SB 200, 84th Legislature, Regular Session, appointed to the Health and Human Services Transition Legislative Oversight Committee, for a term at the pleasure of the Governor, Billy C. Hamilton of Austin.

Pursuant to SB 200, 84th Legislature, Regular Session, appointed to the Health and Human Services Transition Legislative Oversight Committee, for a term at the pleasure of the Governor, Heather Griffith Peterson of Austin.

#### **Appointments for September 3, 2015**

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Jacqueline "Jacquie" Baly of Sugar Land.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Cynthia T. "Cindy" Conroy of El Paso.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Antonio Falcon of Rio Grande City.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, John A. Goodman of Frisco.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Wendy L. Gramm of Helotes.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term

at the pleasure of the Governor, James R. Huffines of Dallas. Mr. Huffines will serve as presiding officer of the commission.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, John "Michael" Lewis of Dallas.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Michael J. "Mike" Plank of Houston.

Pursuant to HB 7, 84th Legislature, Regular Session, appointed to the Governor's University Research Initiative Advisory Board, for a term at the pleasure of the Governor, Sam L. Susser of Corpus Christi.

#### **Appointments for September 9, 2015**

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2021, Donna L. Nelson of Austin (Ms. Nelson is being reappointed).

Appointed as presiding officer of the Grayson County Regional Mobility Authority for a term to expire February 1, 2016, Clyde M. Siebman of Pottsboro (replacing Will Rich "Bill" Hubbard, Jr. of Tioga who resigned).

#### **Appointments for September 10, 2015**

Appointed to the Texas Commission on Environmental Quality for a term to expire August 31, 2021, Jonathan K. "Jon" Niermann of Austin (replacing Zachary N. "Zak" Covar of Round Rock whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Elizabeth M. Dickey of Austin (replacing Joseph E. Bonteke of Houston whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Marilou B. Fowler of Katy (Ms. Fowler is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Archer S. Hadley of Austin (replacing Shawn Patrick Saladin of Edinburg whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Linda Millstone of Austin (Ms. Millstone is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Dylan Rafaty of Dallas (replacing Rames Gonzalez, Jr. of Palmview whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2017, Diane Rose of Bellmead (replacing David Gerald Ondich of Fort Worth whose term expired).

Designating Aaron Bangor as presiding officer of the Governor's Committee on People with Disabilities for a term at the pleasure of the Governor. Dr. Bangor is replacing Joseph E. Bonteke of Houston as presiding officer.

#### **Appointments for September 15, 2015**

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2017, Oliver J. Bell of Houston (replacing Richard Knight, Jr. of Dallas who resigned).

#### **Appointments for September 17, 2015**

Appointed to the Executive Committee of the Texas Office for the Prevention of Developmental Disabilities for a term to expire February 1, 2021, Ashley C. Givens of Dallas (Ms. Givens is being reappointed).



Appointed to the Interstate Commission for Adult Offender Supervision for a term at the pleasure of the Governor, Elizabeth "Libby" Elliott of Austin (replacing Steven M. "Steve" Robinson of Liberty Hill who resigned).

Appointed to the State Soil and Water Conservation Board for a term to expire February 1, 2017, Joe L. Ward of Telephone (Mr. Ward is being reappointed).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2021, Tilman Fertitta of Houston (Mr. Fertitta is being reappointed).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2021, Lorinda "Beth" Madison of Houston (Ms. Madison is being reappointed).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2021, Gerald W. McElvy of Southlake (replacing Jarvis Vincent Hollingsworth of Sugar Land whose term expired).

Appointed to the School Land Board for a term to expire August 29, 2017, Gilbert "Gil" Burciaga of Austin (replacing Thomas V. "Tommy" Orr of Round Top whose term expired).

#### **Appointments for September 29, 2015**

Appointed to the Texas Facilities Commission for a term to expire January 31, 2021, Patti C. Jones of Lubbock (replacing Virginia I. Hermosa of Buda whose term expired).

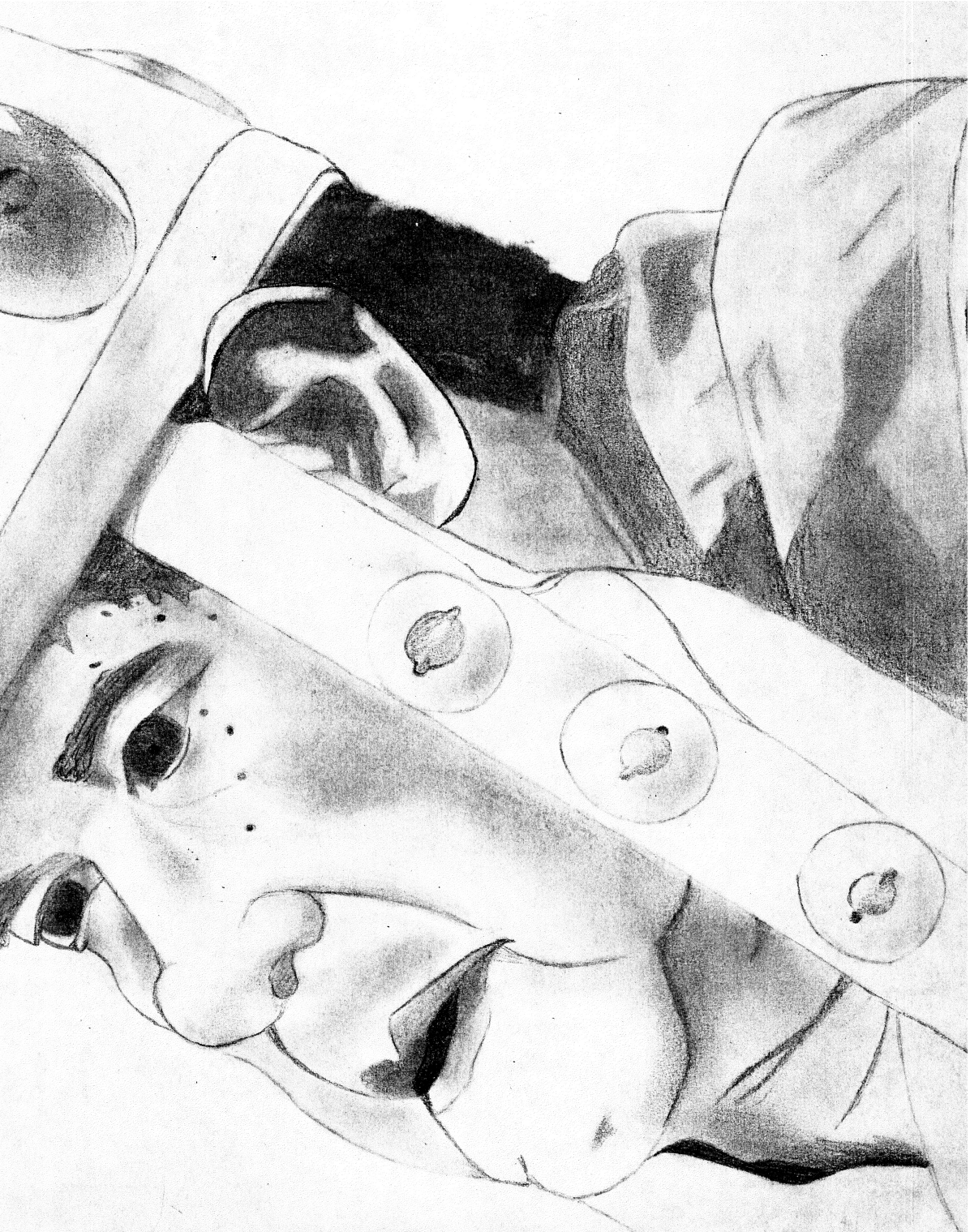
Appointed to the Texas Facilities Commission for a term to expire January 31, 2021, Robert D. Thomas of Austin (replacing Brant C. Ince of Dallas whose term expired).

Designating Robert D. Thomas as presiding officer of the Texas Facilities Commission for a term at the pleasure of the Governor. Mr. Thomas is replacing Betty P. Reinbeck of Sealy as presiding officer.

Greg Abbott, Governor

TRD-201504035





# 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-0054-KP**

**Requestor:**

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Application of Penal Code sections 30.07 and 46.03, relating to the open carry of handguns, to school districts (RQ-0054-KP)

**Briefs requested by October 26, 2015**

**RQ-0055-KP**

**Requestor:**

Lieutenant General J.F. Weber

Executive Director

Texas Department of Transportation

125 East 11th Street

Austin, Texas 78701-2483

Re: Whether Senate Bill 374, requiring state agency participation in the E-verify program, supersedes Executive Order RP-80 (RQ-0055-KP)

**Briefs requested by October 27, 2015**

*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-201504041

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: September 28, 2015



Opinions

**Opinion No. KP-0037**

The Honorable Shane Britton

Brown County Attorney

200 South Broadway

Brownwood, Texas 76801

Re: Authority of a county to reimburse a county commissioner for legal costs related to defending against criminal allegations for which the commissioner was found not guilty (RQ-0018-KP)

## S U M M A R Y

Under the common law, the Brown County Commissioners Court has discretion to reimburse the legal expenses incurred by a county commissioner in the defense of a criminal matter for which he was found not guilty. The County must find that the expenditure is primarily for a county purpose and not merely for the commissioner's personal interest and that the prosecution was for actions taken by the commissioner that were within the scope of his official duties.

**Opinion No. KP-0038**

Ms. Katie Conner

Brazos County Auditor

200 South Texas Avenue, Suite 218

Bryan, Texas 77803

Re: Whether the Open Meetings Act applies to district and county court-at-law judges when they meet to appoint county officials (RQ-0019-KP)

## S U M M A R Y

A group of district judges meeting to appoint the county auditor pursuant to section 84.003 of the Local Government Code is not a "governmental body" under the Open Meetings Act. Consequently, notice of the group's meetings is not required by the Act to be posted.

A court would likely conclude that a group of district and county judges meeting to appoint a community supervision and corrections department director pursuant to chapter 76 of the Government Code as currently written is not a "governmental body" under the Act because of the statutory curtailment of the group's previous managerial role with respect to departments. Consequently, notice of the group's meetings is not required by the Act to be posted.

**Opinion No. KP-0039**

The Honorable René O. Oliveira

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910  
Austin, Texas 78768-2910

Re: Taxing authority of the Port Isabel-San Benito Navigation District  
(RQ-0021-KP)

**S U M M A R Y**

A court would likely conclude that an election creating a navigation district under article III, section 52 of the Texas Constitution pursuant to chapter 61 of the Water Code does not satisfy the election requirements for a maintenance and operation tax under section 63.282 of the Water Code. Section 63.282 of the Water Code authorizes a navigation district to levy a maintenance tax for "the maintenance, operation, and upkeep of the district and its improvements," but does not authorize a levy of a tax for new improvement projects in the first instance. Once the voters

have approved a maintenance and operation tax under section 63.282 of the Water Code, a self-liquidating navigation district need not further obtain approval from the county commissioners court before levying the tax

*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-201504054  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: September 29, 2015



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 5. FUEL QUALITY

##### 4 TAC §5.6

The Texas Department of Agriculture (the Department) proposes amendments to §5.6, concerning testing fees for the fuel quality program. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

Philip Wright, Director for Consumer Product Protection, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$323,573 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs of administering the fuel quality program, thereby allowing the Department to provide increased and more widespread consumer protection of fuel quality programs. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendments would be an increased fuel quality testing fee per entity. Those entities with registered fuel pumps will be subject to an increased fee based on the number and type of measuring devices registered.

Comments on the proposal may be submitted to Philip Wright, Director for Consumer Product Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at [Philip.Wright@TexasAgriculture.gov](mailto:Philip.Wright@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under Agriculture Code §17.072 which designates the Department as the lead agency for fuel quality regulation and §17.104 which authorizes the Department to adopt rules consistent with this chapter for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol, and requires the Department to charge a fee for motor fuel quality testing.

The code affected by the proposal is Chapter 17 of the Agriculture Code.

##### §5.6. Fees.

(a) (No change.)

(b) Motor fuel fee amount.

(1) The fee for a dealer is \$4.00 [~~\$3.30~~] per liquid measuring device used to deliver one gasoline product per nozzle.

(2) The fee for a dealer is \$12.00 [~~\$9.90~~] per liquid measuring device used to deliver multiple gasoline products per nozzle.

(3) The fee for a dealer is \$1.00 [~~\$0.80~~] per liquid measuring device used to deliver one motor fuel product other than gasoline per nozzle.

(4) The fee for a dealer is \$3.00 [~~\$2.40~~] per liquid measuring device used to deliver multiple motor fuel products other than gasoline per nozzle.

(5) The fee for a distributor, jobber, and wholesaler is \$40.00 [~~\$20~~].

(6) (No change.)

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

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

Filed with the Office of the Secretary of State on September 28, 2015.

TRD-201504019

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 8, 2015

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



#### CHAPTER 6. SEED ARBITRATION

##### 4 TAC §6.4

The Texas Department of Agriculture (the Department) proposes amendments to §6.4, concerning seed arbitration. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable cost.

Mike Mann, Director for Agricultural Commodity Programs, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$200.00 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Mann also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be that additional costs of implementing seed arbitration will be recovered. For the first five-year period the amended section is in effect, the anticipated economic cost to individuals, microbusinesses or small businesses who are required to comply with the amended section will be an increased cost for the filing of a seed arbitration complaint.

Comments on the proposal may be submitted to Mike Mann, Director for Agricultural Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at [Mike.Mann@TexasAgriculture.gov](mailto:Mike.Mann@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code §64.006 which provides the Department with the authority to set and collect a filing fee for the filing of a seed arbitration complaint.

The Texas Agriculture Code, Chapter 64, is affected by the proposal.

§6.4. *Cost of Arbitration.*

(a) Arbitration filing fee. A nonrefundable filing fee of \$500 [\$300] shall accompany the sworn complaint and must be sent to the Texas Department of Agriculture, P.O. Box 629, Giddings, Texas 78942. If the board recommends to award damages to the complainant, the filing fee may be included in the arbitration costs assessed to the responsible party.

(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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TRD-201504016

Jessica Escobar

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



## CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (the Department) proposes amendments to §§7.10, 7.20, 7.21, 7.22, 7.24, 7.127, and 7.135, concerning fees for pesticide licensing and registration. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

The proposed amendments to §7.10 will increase pesticide product registration fees. The proposed amendments to §7.20 will increase fees for licensing a person as a pesticide applicator or a pesticide dealer to meet the cost recovery requirement imposed by the Legislature. The proposed amendments to §7.21 will establish a fee associated with administration of the initial certification examination required to qualify for a private pesticide applicator license. The proposed amendments to §7.22 will make consistent the exam administration fee for all pesticide exams for all commercial and noncommercial pesticide license types and removes the exam fee exemption for noncommercial political subdivision pesticide applicator applicants. The proposed amendments to §7.24 will make consistent the exam administration fee for all pesticide exams, including the recertification exam. This change is necessary to meet the cost recovery requirement. The proposed amendments to §7.127 will increase fees associated with structural pest control applicators and technicians, as well as eliminate fees associated with continuing education courses. The proposed amendments to §7.135 ensure consistency with the repeal of the fee for continuing education courses.

David Kostroun, Chief Administrator for Agriculture and Consumer Protection, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$2,992,941 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess fees that recover the full cost of the program. There is a nominal anticipated fiscal impact for local governments as a result of the rule amendment, as proposed, based upon the number of licensees.

Mr. Kostroun has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving effective recovery of the costs of

administering the pesticide program, thereby allowing the Department to provide increased and more widespread consumer protection of pesticide programs. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per pesticide product registered, per pesticide applicator or technician license issued, and exams administered to pesticide applicators and technicians.

Comments on the proposal may be submitted to David Kostroun, Chief Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to [Pesticides@TexasAgriculture.gov](mailto:Pesticides@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER B. REGISTRATION

### 4 TAC §7.10

The proposed amendments are made under Texas Agriculture Code, §76.007 which designates the Department as the lead agency for pesticide regulation and §76.044 which requires the Department to charge a fee for each pesticide to be registered.

The code affected by the proposal is Agriculture Code, Chapter 76.

#### §7.10. *Registration of Pesticides.*

(a) In addition to the requirements contained in the Act, Subchapter C (concerning registration), the application for registration shall include:

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

(4) A fee of \$600 [\$420] per product registered for a two year period. This fee may be prorated in accordance with subsection (f) of this section.

(b) - (i) (No change.)

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

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Jessica Escobar

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Texas Department of Agriculture

Earliest possible date of adoption: November 8, 2015

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



## SUBCHAPTER C. LICENSING

### 4 TAC §§7.20 - 7.22, 7.24

The proposed amendments are in accordance with Texas Agriculture Code §12.0144, which provides that the Department shall set fees in an amount which offsets the direct and indirect state costs of administering its pesticide programs.

The code affected by the proposal is Agriculture Code, Chapter 12.

#### §7.20. *Application.*

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

(d) Except as provided by Chapter 2, Subchapter B of this title, licensing and renewal fees are:

(1) Dealers: \$250 [\$240] for two years;

(2) Applicators:

(A) Commercial: \$200 [\$180] for one year;

(B) Noncommercial: \$140 [\$120] for one year;

(C) Noncommercial applicators employed by a political subdivision of the State of Texas or of a federal agency operating in Texas who utilize the license solely in the course of their employment: \$75 [\$12] for one year;

(D) Private: \$100 [\$60] for five years;

(E) Certified Private: fee exempt. This certificate is no longer issued and was only available to individuals certified prior to January 10, 1989. Existing certificates may be renewed and are fee exempt.

(e) - (g) (No change.)

#### §7.21. *Applicator Certification.*

(a) (No change.)

(b) Private Applicators.

(1) Producers of agricultural commodities who complete a Texas A&M AgriLife [an] Extension or other department approved training program for private applicators and obtain a passing score on the private applicator test may be certified in each of the categories and subcategories listed in subsection (a)(1)(A) - (G), (2), (3), (4), (6) and (10) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will be charged an exam administration [a test] fee of \$64 [\$52] for initial testing or retesting. The fee will not be in excess of expenses directly related to recovery of costs for administration of examinations.

(2) The department may allow an entity other than Texas A&M AgriLife Extension to conduct private applicator certification training if the training program:

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

(3) - (12) (No change.)

#### §7.22. *Licensing of Applicators.*

(a) All pesticide examinations administered [testing con-  
ducted] by the department under the authority of the Act, Subchapter E, shall be designed to cover the information necessary for an applicant to demonstrate competency to use and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in a safe and effective manner.

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

(d) Commercial and noncommercial applicators must meet the following requirements:

(1) Anyone who makes a passing score on the General Standards [general standards] pesticide applicator examination, including laws and regulations, and on one or more category exams [tests] will be eligible to be certified in those categories or subcategories for which a passing score was received and shall be licensed as soon as all other licensing requirements are met.

(2) An exam administration [A] fee of \$64 [\$24] shall be required for administering [testing] each pesticide certification exam including the General Standards exam and [applicant in] each license use category and subcategory, and must be paid at the time the exam

or exams [initial test or tests] are given. [Employees of political subdivisions of the State of Texas or of a federal agency operating in Texas who utilize the license solely in the course of their employment are exempt from fees for initial examinations.] Fees for retakes of the General Standards exam or any pesticide certification category examination or subcategory examination may be charged to recover costs of exam administration.

(3) Individual exam [test] scores are valid for only 12 months.

(e) (No change.)

(f) Private applicators must meet the following requirements:

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

(3) Upon completion of the private applicator training, the trainee has one year [five years] to pass the private applicator examination without having to retrain. Retraining and retesting shall be required of anyone who does not complete requirements for licensing within five years of passing the private applicator exam.

(4) (No change.)

#### §7.24. *Applicator Recertification.*

(a) - (u) (No change.)

(v) Private applicators must recertify as follows:

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

(4) Private applicators have the option of forgoing continuing education requirements for a recertification period by following these procedures:

(A) - (B) (No change.)

(C) Pay a required fee of \$64 [\$50] for the administration of each recertification examination.

(5) (No change.)

(w) - (z) (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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Jessica Escobar

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Texas Department of Agriculture

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



## SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

### DIVISION 2. LICENSES

#### 4 TAC §7.127, §7.135

The amendments are proposed under Occupations Code §1951.201, which designates the Texas Department of Agriculture as the sole authority in the state for licensing persons engaged in the business of structural pest control and to establish fees under this chapter in amounts reasonable and

necessary to cover the costs of administering the Department's programs and activities under this chapter.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

#### §7.127. *Fees.*

Applicants and licensees [and continuing education providers] will be charged the following fees:

(1) \$300 [\$224] for a [an original] business license;

~~{(2) \$224 for renewal of a business license;}~~

(2) ~~{(3) \$125~~ [\$108] for a [an original] certified applicators license;

~~{(4) \$100 for renewal of a certified applicators license;}~~

(3) ~~{(5) \$125~~ [\$81] for a [an original] technician license;

~~{(6) \$76 for an renewal of a technician license;}~~

~~{(7) \$30 for duplicate business license, certified applicator license or technician license when the original has been lost or destroyed;}~~

~~{(8) \$30 for reissuing a business license, certified applicators license or technician license due to a name change in the license;}~~

(4) ~~{(9) \$64~~ for administering exams in each category;

(5) ~~{(10) a renewal fee for applications received 90 days or less after expiration date equal to 1-1/2 times the normally required renewal fee; and}~~

(6) ~~{(11) a renewal fee for applications received greater than 90 days but less than one year [days] after expiration date equal to 2 times the normally required renewal fee.}~~ [; and]

~~{(12) \$48 for continuing education course.}~~

#### §7.135. *Criteria and Evaluation of Continuing Education.*

(a) - (l) (No change.)

~~{(m) A non-refundable annual fee is due for each course taken into consideration for approval. Courses may be considered on a two-year basis if the course presenter submits a fee of \$40.00 for each year at the time of submission. Course will be approved for a maximum of two (2) consecutive years. Governmental agencies are exempt from this fee if the course is presented as a part of the legally mandated function of the agency or the main purpose is education.}~~

(m) ~~{(n)}~~ For purposes of this section, a course is defined as specific instruction in a category presented by any one sponsor, company or organization.

(n) ~~{(o)}~~ "Sponsor" means the person, company or organization that compiles, organizes, writes and/or produces category specific training courses to be given at a training seminar submitted to the department for approval as a continuing education program for recertification units. The sponsor is responsible for establishing procedures for verification of completion and comprehension of its courses, and for awarding course completion certificates. The sponsor is responsible for the qualifications, competence and performance of the authors, speakers, presenters, or instructors who produce or present its courses, and for performance of self-study course examination.

(o) ~~{(p)}~~ Videotapes, slides or other media presentations shall not be approved by the department unless accompanied by a qualified speaker and course outline, as required by subsections [subsection] (a) and (c) of this section or unless approved as a self-study course under subsection (h) of this section.



(p) [(q)] Personnel of the department are exempt from any fee charged for a continuing education program if they are monitoring the program as a part of the duties of their employment.

(q) [(+)] A course may be approved as a self-study or electronic course if it meets the following additional criteria:

(1) attendees must take an examination designed to verify their knowledge of the material provided in the course. The course sponsors must grade the examination and keep records for a minimum of two (2) years.

(2) the attendee's grade on the examination must be at least 70% correct to obtain credit for the course.

(3) the examination for a self-study course must be proctored by the course provider or person responsible to the course provider. The examination location must be made available and accessible to department staff.

(4) a self-study course examination proctor must be a certified applicator licensed by the department. Anyone serving as an examination proctor may not take a verification exam for credit while serving as a monitor. The department must be notified to time, physical address, and city two weeks prior to each self-study course examination. The department may waive this requirement upon written request by the applicant taking the self-study course.

(r) [(+)] A course may be approved as an electronic course if verified by the responsible certified applicator of the pest control company and/or noncommercial entity.

(s) [(+)] A self-study course or electronic course is limited to one continuing education unit in the general training or a specific category.

(t) [(+)] The department may re-evaluate or cancel a currently approved continuing education course during the calendar year for failure to comply with the elements of the course as outlined 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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TRD-201504021

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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



## CHAPTER 9. SEED QUALITY

The Texas Department of Agriculture (the Department) proposes amendments to §§9.2, 9.3, and 9.5 concerning seed quality—namely agriculture seed inspection fees, late fees, permits, vegetable seed license fees and seed testing. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the

best service possible at a reasonable cost to the regulated industry.

The proposed amendments to §9.2 will increase agricultural seed inspection fees. The proposed amendments to §9.3 will increase the vegetable seed license fee. The proposed amendments to §9.5 will increase seed testing fees.

Mike Mann, Director for Agriculture Commodity Programs, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$1,128,896 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Mann has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be enhanced consumer protection related to agriculture and vegetable seed sold in Texas. There will be fiscal implications to an estimated range of 250-750 small and/or large businesses as a result of the proposed amendments. For the first five-year period the rules are in effect, the cost of compliance for both small and large businesses will be a cost increase of the inspection and permit fees, and vegetable seed licenses.

Comments on the proposal may be submitted to Mike Mann, Director for Agriculture Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to [Mike.Mann@TexasAgriculture.gov](mailto:Mike.Mann@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

## SUBCHAPTER B. CLASSIFICATION OF LICENSES

### 4 TAC §9.2, §9.3

The amendments are proposed under the Texas Agriculture Code (the Code), §§61.011 and 61.013, which provide the authority to establish and charge inspection fees, permits and licenses as necessary for the efficient enforcement of inspections, tests and analysis of agriculture and vegetable seed transported, sold, or offered for sale in this state, and §12.016 of the Code, which provides the Department with the authority to adopt rules for administration of the program,

Texas Agriculture Code, Chapter 61, is affected by the proposal.

#### §9.2. *Agricultural Seed.*

(a) (No change.)

(b) Texas Tested Seed Label. When an [a] inspection fee is paid by means of a Texas Tested Seed Label, the person who distributes, sells, offers for sale, or exposes for sale agricultural seed shall:

(1) purchase the Texas Test Seed Labels from the department at a cost of \$0.45 [~~\$0.18~~] for each 100-pound container of seed or fraction thereof; and

(2) (No change.)

(c) Reporting system. When an inspection fee is paid by means of the reporting system, the following shall apply:

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

(3) The permittee shall pay an inspection fee of \$0.45 [~~\$0.18~~] for each 100 pounds of agricultural seed sold or otherwise distributed for sale planting purposes within the state.

(4) - (8) (No change.)

§9.3. *Vegetable Seed.*

(a) (No change.)

(b) A person desiring a Vegetable Seed License shall submit to the department an "Application for Vegetable Seed License" form prescribed by the department accompanied by a license fee in the amount of \$500 [~~\$300~~].

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on September 28, 2015.

TRD-201504027

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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



## SUBCHAPTER C. SEED TESTING

### 4 TAC §9.5

The amendments are proposed under the Texas Agriculture Code (the Code), §§61.011 and 61.013, which provide the authority to establish and charge inspection fees, permits and licenses as necessary for the efficient enforcement of inspections, tests and analysis of agriculture and vegetable seed transported, sold, or offered for sale in this state, and §12.016 of the Code, which provides the Department with the authority to adopt rules for administration of the program,

Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.5. *Seed Testing.*

(a) At the request of a farmer or dealer, the department will provide for the testing of seed for germination and/or vigor. The department will also conduct red rice examination for rice samples submitted to the department as required in §10.15 of this title (relating to Genetic Seed Certification Standards). The following schedule of tests and charges per sample submitted shall be applicable to all service of testing of agricultural seed and vegetable seed conducted by the department.

(1) standard germination only test: \$60 [~~\$50~~] for each component;

(2) standard germination only test on grasses: \$90 [~~\$80~~] for each component;

(3) vigor test: \$45 [~~\$50~~] for each component;

(4) examination 10-pound rice seed sample for presence of red rice: \$45 [~~\$35~~] each;

(5) examination 50-pound rice seed sample for presence of red rice: \$85 [~~\$75~~] each

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

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

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Jessica Escobar

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Texas Department of Agriculture

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



## CHAPTER 10. SEED CERTIFICATION STANDARDS

The Texas Department of Agriculture (the Department) proposes amendments to §§10.2, 10.3, 10.5, 10.10, 10.11, 10.13, 10.21 and 10.22, concerning seed certification standards, namely fees for interagency certification, application for approval of variety, licensing of registered plant breeders and certified seed growers, late and re-inspection fees, label fees, bulk sales fees, inspection fees, hybrid sorghum reconsideration fees, and sunflower reconsideration fees. These amendments are necessary to comply with the Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

The Department is the certifying agency in the administration of the Seed and Plant Certification Act (the "Act") and is charged with administering and enforcing the standards adopted by the State Seed and Plant Board. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess fees that recover the full cost of the program. The proposed amendments to §§10.2, 10.3, 10.5, 10.10, 10.11, 10.13, 10.21 and 10.22 will increase seed certification and inspection fees, cost of certification labels and bulk sales certificates, test sampling and reconsideration fees so that the new leaner and more cost-efficient program may be implemented, under the cost recovery requirement imposed by the Legislature.

The amendments to §10.2 and §10.3 increase the fee for growers who submit an application to the Texas Seed & Plant Board. The amendments to §10.5 and §10.13 increase the fee to growers for applications for field inspections and fees associated by crop for inspection. The amendments to §10.10 and §10.11 increase the fee per requested certified tag of bag and bulk quantities. The amendments to §10.21 and §10.22 increase the fee to growers for samples grown by the Department for reconsideration of varietal purity.

Mike Mann, Director for Agriculture Commodity Programs, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state

government due to the increase in fees collected. There will be an estimated increase in state revenue of \$309,177 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full costs of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Mann has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendments will be to provide increased customer service while efficiently operating the program. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per variety application submitted to the Department for approval, per field inspection application submitted to the Department for seed certification purposes, and per label or certificate issued.

Comments on the proposal may be submitted to Mike Mann, Director for Agriculture Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to [Mike.Mann@TexasAgriculture.gov](mailto:Mike.Mann@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

## SUBCHAPTER A. GENERAL REQUIREMENTS

### 4 TAC §§10.2, 10.3, 10.5, 10.10, 10.11

The amendments are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; and §62.008, which provides the Department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

Texas Agriculture Code, Chapter 62, is affected by the proposal.

#### §10.2. Eligibility of Varieties.

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

(d) An application for approval of variety must be accompanied by a fee of \$100 [~~\$50~~].

#### §10.3. Approval of Applicant under Certification.

(a) An applicant for licensing as a "Registered Plant Breeder" or a "Certified Seed Grower" as provided in the Act, shall be a person, firm, or corporation of good character and have a reputation for honesty, competency and fair dealing. All applicants for a license shall pay a fee of \$250 [~~\$150~~] at the time of application.

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

#### §10.5. Application for Field Inspection.

(a) (No change.)

(b) A late fee of \$100 [~~\$50~~] will be assessed and must be paid for each field on which certification is requested after the deadline date established for each specific crop. Applications will not be accepted if it can be determined by the certifying agency that the crop is too far advanced in development to allow satisfactory inspection.

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

(e) The applicant may request reinspection of a rejected field provided the cause for rejection can be corrected and provided the applicant resubmits [he/she again submits] an inspection fee for the acreage involved. In no case will the reinspection fee be less than \$100 [~~\$50~~]. Request for reinspection of a rejected field will not be accepted if it can be determined that the inspector will not be able to visit the field in sufficient time before harvest to make a satisfactory inspection.

#### §10.10. Labels.

(a) - (h) (No change.)

(i) The cost of certification labels shall be \$0.16 each or \$5.00 per total label order, whichever is greater [~~\$-.12 each~~], or \$0.16 [~~\$.12~~] for each 100 pounds or fraction of 100 pounds of seed, or \$5.00, whichever is greater. The type of labels available are:

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

#### §10.11. Bulk Sales.

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

(d) Selling seed of the Certified class in bulk. A maximum of two sales and two physical seed transfers are allowed. Delivery may be made by the certified seed grower or a retail seed facility, licensed under §9.2 of this title (relating to Agricultural Seed), directly to the consumer. Applications must be made on forms obtained from the department.

(1) The certified grower shall:

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

(D) pay the necessary Bulk Sales Certificate fee (\$0.16 [~~\$.12~~] per one hundred pounds, or fraction of one hundred pounds of seed, or \$5.00, whichever is greater);

(E) - (F) (No change.)

(2) (No change.)

(e) (No change.)

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

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



## SUBCHAPTER C. ACREAGE INSPECTION FEES FOR CERTIFICATION

### 4 TAC §10.13

The amendments are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interests; and §62.008, which provides the Department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

Texas Agriculture Code, Chapter 62, is affected by the proposal.

*§10.13. Inspection Fees for Certification.*

The following chart designates fees per acre for various crop kinds as required for seed certification.

Figure: 4 TAC §10.13  
[Figure: 4 TAC §10.13]

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. ADDITIONAL REQUIREMENTS FOR THE CERTIFICATION OF CERTAIN CROPS

### 4 TAC §10.21, §10.22

The amendments are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interests; and §62.008, which provides the Department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

Texas Agriculture Code, Chapter 62, is affected by the proposal.

*§10.21. Requirements and Standards for Hybrid Sorghum Varietal Purity Grow-outs.*

(a) Test planting requirements.

(1) (No change.)

(2) A sample considered to be on the borderline between acceptance and rejection or a sample rejected by the department may be inspected by a sorghum advisory committee appointed annually by the State Seed and Plant Board. The committee will consist of two approved seed certification inspectors from the department, two Texas certified hybrid sorghum seed growers, and one member of [the] Texas AgriLife Research [Agricultural Experiment Station]. The committee will advise the Seed Quality Program of their recommendations. The seed producer will have the privilege of having at least a one acre plot (of a lot rejected in the grow-out test) of grain and forage hybrids planted for reconsideration by the department and the advisory committee. In the case of male sterile or pollinator lines planted for reconsideration, the test will be at least 2/5 acre. The same controls will apply to the larger plot that are applicable to the 1/10 or 1/20 acre tests.

(3) A fee of \$180 [\$120] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(4) (No change.)

(b) (No change.)

*§10.22. Requirements and Standards for Sunflower Varietal Purity Grow-outs.*

(a) (No change.)

(b) A sample considered to be on the borderline between acceptance and rejection or a sample rejected by the department may be inspected by an advisory committee annually appointed by the State Seed and Plant Board. The committee will consist of two approved seed certification inspectors from the department, two Texas certified seed growers, and one member of [the] Texas AgriLife Research [Agricultural Experiment Station]. The committee will advise the Seed Quality Program of their recommendations. The seed producer will have the privilege of having at least a 2/5 acre plot (of a lot rejected in the grow-out test) planted for reconsideration by the department and the advisory committee. The same controls will apply to larger plots that are applicable to the 1/10 acre tests.

(c) A fee of \$180 [\$120] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(d) - (e) (No change.)

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

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## CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (the Department) proposes amendments to §§12.12, 12.30, 12.43, and 12.73, concerning fees for the weights and measures program and capacity limits for certain devices. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

The amendments to §12.12 increase the fee per device annually and changes capacity limits for bulk meters and scales. The amendments to §12.30 increase the fee per weight adjustment annually. The amendments to §12.43 increase the license fee per device class. The amendments to §12.73 increase the public weigher fee for a two year license.

Philip Wright, Director for Consumer Product Protection, has determined that for the first five-year period the proposed amend-

ment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$5,268,663 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving effective recovery of the costs to administering the weights and measures device program, thereby allowing the Department to provide consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per entity, with increased costs to most entities based on the number and type of weights and measure devices registered.

Comments on the proposal may be submitted to Philip Wright, Director for Consumer Product Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at [Philip.Wright@TexasAgriculture.gov](mailto:Philip.Wright@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

## SUBCHAPTER B. DEVICES

### 4 TAC §12.12

The amendments are proposed under the Texas Agriculture, §13.002 which designates the Department as the agency responsible for weights and measures regulations, and §13.1151 which requires the Department to charge a fee for each weights and measure device to be registered.

The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

*§12.12. Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers.*

(a) Devices. For the following device types, the registration or registration renewal fee for each such device is:

(1) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle: \$12 [~~\$7.20~~].

(2) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle: \$36 [~~\$21.20~~].

(3) Liquid bulk measuring device with a maximum flow rate greater than 20 gallons per minute up to 100 gallons per minute: \$75 [~~\$36~~].

(4) Liquid bulk measuring device with a maximum flow rate greater than 100 gallons per minute: \$250.

(5) [~~(4)~~] LPG meter: \$65 [~~\$32~~].

(6) [~~(5)~~] Scale with a capacity up to and including 2,000 [~~less than 5,000~~] pounds: \$35 [~~\$16~~].

(7) [~~(6)~~] Ranch Scales: \$32 [~~\$16~~].

(8) [~~(7)~~] Non-Ranch, Non-Truck, and Non-Livestock Scales with a capacity greater than 2,000 pounds [~~of 5,000 pounds or greater~~]: \$250 [~~\$120~~].

(9) [~~(8)~~] Truck Scales [~~and Livestock Scales~~] with a capacity of 5,000 pounds or greater: \$400 [~~\$172~~].

(10) Livestock Scales with a capacity of 5,000 pounds or greater: \$350.

(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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## SUBCHAPTER D. METROLOGY

### 4 TAC §12.30

The amendments are proposed under the Texas Agriculture, Code §13.113 which designates the Department as the agency responsible for weights and measures and metrology regulations, and §13.1151 which requires the Department to charge a fee for each weights and measure device to be registered. The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

*§12.30. Metrology Services*

(a) (No change.)

(b) Metrology services are available based on the following fee schedule:

(1) Weights.

(A) - (B) (No change.)

(C) Weight Adjustments. Less than 10 pounds: \$10 [~~\$5~~]; 10 pounds or more but less than 100 pounds: \$10 [~~\$5~~]; 100 pounds up to and including 1,000 pounds: \$20 [~~\$10~~]; greater than 1,000 pounds: \$40 [~~\$20~~].

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

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

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## SUBCHAPTER E. SERVICE COMPANIES

### 4 TAC §12.43

The amendments are proposed under the Texas Agriculture, Code §13.453 which designates the Department as the agency responsible for weights and measures and licensed service company regulations, and §13.457 which requires the Department to charge a fee for each license. The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

#### §12.43. Fees.

The fee for each class of license is \$150 [~~\$100~~].

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

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## SUBCHAPTER H. PUBLIC WEIGHERS

### 4 TAC §12.73

The amendments are proposed under the Texas Agriculture, §13.255 which designates the Department as the agency responsible for weights and measures public weigher regulations and which requires the Department to charge a fee for each weights and measures public weigher to be registered. The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

#### §12.73. Fees.

Public weigher fee is \$500 [~~\$485~~].

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 13. GRAIN WAREHOUSE

### 4 TAC §13.7

The Texas Department of Agriculture (the Department) proposes amendments to §13.7 concerning fees for the grain warehouse

program. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

Mike Mann, Director for Agricultural Commodity Programs, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$335,126 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess fees that recover the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Mann has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving effective recovery of the costs of administering the grain warehouse program, thereby allowing the Department to provide consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per grain warehouse facility licensed.

Comments on the proposal may be submitted to Mike Mann, Director for Agricultural Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or email to [Mike.Mann@TexasAgriculture.gov](mailto:Mike.Mann@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments to §13.7 are proposed under the Texas Agriculture Code, §14.015 which designates the Department as the agency responsible for grain warehouse regulation and which requires the Department to charge a fee for each grain warehouse to be registered.

The code affected by the proposal is the Texas Agriculture Code, Chapter 14.

#### §13.7. Fees.

(a) Single warehouse license. The annual and renewal fee for a single grain warehouse license is \$500.00 [~~\$235.00~~].

(b) Combination warehouse license. The annual and renewal fee for a combination grain warehouse license is \$500.00 [~~\$235.00~~] for the headquarters location and \$300.00 [~~\$160.00~~] for each additional facility location.

(c) Inspection fees. The fee for an annual inspection is \$38.00 [~~\$22.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or \$200.00 [~~\$100.00~~], whichever is greater.

(d) Requested inspections.

(1) The fee for an inspection to increase or decrease licensed storage capacity including temporary storage is \$38.00 [~~\$22.00~~] for each 10,000 bushels or a fraction of 0f [~~0f~~] 10,000 bushels of the in-

crease or decrease in storage capacity, or \$200.00 [~~\$100.00~~], whichever is greater.

(2) The fee for a partial inspection is \$38.00 [~~\$22.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the partial facility that is being inspected, or \$200.00 [~~\$100.00~~], whichever is greater.

(3) A partial inspection that covers issues other than capacity will have a fee of \$150.00 [~~\$100.00~~].

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 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM SUBCHAPTER A. GENERAL PROVISIONS

### 4 TAC §14.3

The Texas Department of Agriculture (the Department) proposes amendments to §14.3 concerning fees for the handling and marketing of perishable commodities program. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has reviewed programs for cost savings and efficiencies, and then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

Mike Mann, Director for Agriculture Commodity Programs, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of \$18,555.00 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Mann has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving effective recovery of the costs to administer the handling and marketing of perishable commodities program, thereby allowing the Department to provide consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per entity required to comply with the

handling and marketing of perishable commodities program requirements.

Comments on the proposal may be submitted to Mike Mann, Director for Agriculture Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or email *Mike.Mann@TexasAgriculture.gov*. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §101.006, which requires the Department to charge a fee for the handling and marketing of perishable commodity licensing and agents to be registered.

The Code affected by the proposal is Texas Agriculture Code, Chapter 101.

#### §14.3. Fees.

(a) License/registration/identification card fees.

(1) A license fee is \$150 [~~\$115~~].

(2) The fee for each identification card is \$30 [~~\$15~~].

(b) (No change.)

(c) Claim filing fee. A fee of \$50 [~~\$20~~] shall accompany the claim.

(d) (No change.)

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

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## CHAPTER 15. EGG LAW

### 4 TAC §15.4, §15.5

The Texas Department of Agriculture (the Department) proposes amendments to §15.4 and §15.5, concerning the egg law program. These amendments are necessary to comply with Legislative cost recovery requirements. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the Department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry.

The amendments to §15.4 increase the egg law fees annually. The amendments to §15.5 increase the egg law special fees monthly.

Philip Wright, Director for Consumer Product Protection, has determined that for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state gov-

ernment due to the increase in fees collected. There will be an estimated increase in state revenue of \$546,664 annually. The charging of fees is necessary to enable the continued operation of a cost-efficient program due to Legislative requirements that this program generate revenue to completely offset its costs. The ability of the Department to enforce statutory requirements will be impacted if the Department does not assess a fee that recovers the full costs of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving effective recovery of the costs of administering the egg law program, thereby allowing the Department to provide increased and broader consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment would be a fee increase per egg dealer, wholesaler, processor and broker and an increase in the fee remitted by those licensed under this chapter who first establish the grade, size, and classification of eggs offered for sale or sold in this state.

Comments on the proposal may be submitted to Philip Wright, Director for Consumer Product Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to [Philip.Wright@TexasAgriculture.gov](mailto:Philip.Wright@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed under Texas Agriculture Code, §132.003, which designates the Department as the agency for egg law regulation and §§132.026, 132.027, 132.028, and 132.043 which require the Department to charge fees for each egg law licenses.

The code affected by the proposal is Chapter 132 of the Agriculture Code.

#### §15.4. Fees.

- (a) The fee schedule for dealer/wholesaler is:

Figure: 4 TAC §15.4(a)  
[Figure: 4 TAC §15.4(a)]

- (b) The fee schedule for a processor is:

Figure: 4 TAC §15.4(b)  
[Figure: 4 TAC §15.4(b)]

- (c) The license fee for a broker is \$500 [\$420].

- (d) (No change.)

#### §15.5. Special Fees.

(a) A person licensed under this chapter who first establishes the grade, size, and classification of eggs offered for sale or sold in this state shall collect a fee of \$0.06 [~~\$0.03~~] per case of eggs on the first sale of the eggs.

(b) A processor licensed under this chapter shall pay a fee of \$0.06 [~~\$0.03~~] per case of eggs on the processor's first use or change in form of the eggs processed.

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



## CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the Department) proposes amendments to §§20.12, 20.13 and 20.14, concerning boll weevil suppressed areas, functionally eradicated areas and eradicated areas, respectively, and to §20.31, related to hostable volunteer and other noncommercial cotton in locations other than commercial cotton fields, under the Department's cotton pest control program. Amendments are proposed to reclassify the following boll weevil eradication zones from the list of suppressed areas in §20.12 to the list of functionally eradicated areas in §20.13: Northern Blacklands (NBL), Southern Blacklands (SBL), Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones (Eradication zones).

Amendments are also proposed to classify the West Texas Maintenance Area, as provided in §3.702 (relating to West Texas Maintenance Area), as an eradicated area in §20.14. Since the West Texas Maintenance Area is comprised of the El Paso/Trans Pecos (EP/TP), Northern High Plains (NHP), Northern Rolling Plains (NRP), Northwest Plains (NWP), Panhandle, Permian Basin (PB), Rolling Plains Central (RPC), Southern High Plains/Caprock (SHP/C), Southern Rolling Plains (SRP), St. Lawrence (SL), and Western High Plains (WHP) Boll Weevil Eradication Zones (Eradication zones), these Eradication zones are proposed for removal from the list of functionally eradicated areas in §20.13. Amendments to §20.31 also add functionally eradicated areas to the list of categories of areas subject to requirements to destroy volunteer and other noncommercial cotton.

The boll weevil eradication program in Texas was initiated in 1994 in an effort to rid the state of the boll weevil. Once a zone has achieved suppressed, functionally eradicated or eradicated status, the zone can become re-infested with boll weevils from outside areas. Elimination of boll weevil re-infestations can be expensive. In areas of the southeastern United States, costs associated with re-infestations have ranged from \$20,000 to over one million dollars, with an average cost of \$125,000 per outbreak.

Designation of a zone as functionally eradicated invokes quarantine restrictions on the movement of regulated articles from quarantined areas into restricted areas and invokes quarantine restrictions on the movement of regulated articles from suppressed areas into functionally eradicated areas; these restrictions help protect the areas from boll weevil re-infestation. Designation of a zone as eradicated invokes quarantine restrictions on the movement of regulated articles from quarantined areas into restricted areas and invokes quarantine restrictions on the movement of regulated articles from suppressed areas or functionally eradicated areas into eradicated areas; these restrictions help protect the areas from boll weevil re-infestation. Also, the addition of functionally eradicated areas to the list of categories of ar-



eas subject to requirements to destroy volunteer and other non-commercial cotton will combat re-infestation of functionally eradicated areas.

In accordance with §20.14, the Texas Boll Weevil Eradication Foundation (the Foundation) recommended that the Commissioner of Agriculture (Commissioner) declare the NBL, SB, UCB and STWG Boll Weevil Eradication Zones as functionally eradicated and the EP/TP, NHP, NRP, NWP, Panhandle, PB, RPC, SHP/C, SRP, SL, and WHP Eradication Zones (collectively referred to as the West Texas Maintenance Area), as eradicated. The Foundation provided scientific documentation acceptable to the Department which indicates that movement of regulated articles into these zones presents a threat to the success of boll weevil eradication. Since the suppressed areas listed above have not had a detection of boll weevils since 2012, the suppressed areas are now eligible for functionally eradicated status. Since the West Texas Maintenance Area, as provided in §3.702, has not had a detection of boll weevils since 2010, this area is now eligible for eradicated status.

Consequently, the Commissioner declared the NBL, SB, UCB and STWG Eradication zones as functionally eradicated and the EP/TP, NHP, NRP, NWP, Panhandle, PB, RPC, SHP/C, SRP, SL, and WHP Eradication zones (collectively referred to as the West Texas Maintenance Area), as eradicated on September 22, 2015.

Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for the first five-year period the proposed amendments are in effect, there will be no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule, as proposed.

Mr. Strnad also has determined that for each year of the first five years the proposed amendments are in effect, the amendments will benefit the public by reinforcing efforts to eradicate boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. According to the National Agricultural Statistical Service (NASS), Texas upland cotton yields (1996-2001), before the boll weevil eradication program, averaged 477 pounds per acre; this compares to 643 pounds per acre (a 166 pounds per acre or 35% increase) for 2010-2014 under the eradication program. At an average price of \$0.61 per pound for cotton, that yield increase represents \$101 per acre of increased income. In addition, in areas where five pesticide treatments for boll weevil control per year were the average pre-eradication, boll weevil eradication may save an additional \$50 per acre, for a net increase in profits of \$151 per acre. According to a 2014 economic impact report published by Texas AgriLife Extension Service, through 2013, progress toward boll weevil eradication has resulted in a cumulative net benefit of \$2.9 Billion in Texas. By preventing re-infestation by boll weevils in restricted areas, such increases in profitability may be realized by Texas cotton producers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments; all cotton or other regulated items entering the EP/TP, NHP, NRP, NWP, Panhandle, PB, RPC, SHP/C, SRP, SL, and WHP Eradication zones from quarantined areas either have originated in or have passed through one or more functionally eradicated zones or already were required to meet the restrictions in §20.16 that will apply under the revised regulations.

Comments on the proposal may be submitted in writing to Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to [Stuart.Strnad@TexasAgriculture.gov](mailto:Stuart.Strnad@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

## SUBCHAPTER B. QUARANTINE REQUIREMENTS

### 4 TAC §§20.12 - 20.14

The amendments are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the Department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the Department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74.

#### §20.12. *Suppressed Areas.*

(a) (No change.)

(b) ~~The Northern Blacklands (NBL), Southern Blacklands (SBL), Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021 and Texas Administrative Code §§3.114, 3.116, 3.117 of this title (relating to Creation of Eradication Zones) have been declared as suppressed by the commissioner.~~

(b) [(e)] The department will recognize as suppressed any areas outside of Texas that are declared suppressed by that state's department of agriculture if the Texas Department of Agriculture determines that state's definition of a suppressed area is equivalent to the definition of a suppressed area found in Subchapter A of this chapter (relating to General Provisions).

(c) [(d)] The department has determined that the New Mexico and Oklahoma departments of agriculture's definitions of a suppressed area are equivalent to the definition of a suppressed area in Subchapter A of this chapter.

#### §20.13. *Functionally Eradicated Areas.*

(a) (No change.)

(b) ~~The Northern Blacklands (NBL), Southern Blacklands (SBL), Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) [El Paso/Trans Pecos (EP/TP), Northern High Plains (NHP), Northern Rolling Plains (NRP), Northwest Plains (NWP), Panhandle, Permian Basin (PB), Rolling Plains Central (RPC), Southern High Plains/Caprock (SHP/C), Southern Rolling Plains (SRP), St. Lawrence (SL), and Western High Plains (WHP)] Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021, have been declared as functionally eradicated by the Commissioner.~~

(c) The department will recognize [as] functionally eradicated any areas outside of Texas that are declared functionally eradicated by that state's department of agriculture if [the Texas Department of Agriculture determines] that state's definition of a functionally eradicated

area is equivalent to the definition of a functionally eradicated area in Subchapter A of this chapter (relating to General Provisions).

(d) The department has determined that the definitions of a functionally eradicated area of New Mexico and Oklahoma departments of agriculture [agriculture's definitions of a functionally eradicated area] are equivalent to the definition of a functionally eradicated area in Subchapter A of this chapter.

§20.14. *Eradicated Areas.*

(a) The Commissioner may grant a request for declaration of an area in Texas as eradicated after a written recommendation is submitted to the department by [from] the Foundation, supported by scientific documentation acceptable to the department indicating that movement of regulated articles into the area presents a threat to the success of boll weevil eradication.

(b) The West Texas Maintenance Area, as provided in §3.702 (related to West Texas Maintenance Area), has been declared as eradicated by the Commissioner.

(c) [(b)] The department will recognize as eradicated any areas outside of Texas that are declared eradicated by that state's department of agriculture if [the Texas Department of Agriculture determines] that state's definition of an [a] eradicated area is equivalent to the definition of an eradicated area in Subchapter A of this chapter (relating to General Provisions).

(d) [(e)] The department has determined that the definitions of an eradicated area of the New Mexico and Oklahoma departments of agriculture [agriculture's definitions of an eradicated area] are equivalent to the definition of an eradicated area in Subchapter A 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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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 8, 2015

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



## SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

### 4 TAC §20.31

The amendments are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74.

§20.31. *Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields.*

(a) (No change.)

(b) Except as provided by subsection (a) of this section, volunteer and other noncommercial cotton shall be destroyed by the grower or landowner prior to becoming hostable, if the volunteer or other noncommercial cotton is:

(1) (No change.)

(2) in a boll weevil quarantined, [or] suppressed or functionally eradicated area, as established by §20.11, [and] §20.12 and §20.13 of this chapter in conjunction with [§20.13, and] §20.14 of this chapter (relating to Quarantine Requirements).

(c) - (e) (No change.)

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

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 31. ADMINISTRATION

##### 16 TAC §31.1

The Texas Alcoholic Beverage Commission proposes amendments to §31.1, relating to Separation of Duties Between Commission and Administrator.

Section 31.1 implements Alcoholic Beverage Code §5.12 and §5.34(b) by specifying which duties and authorities the commission retains and which duties and authorities it delegates to the administrator. The proposed amendments would change references to "administrator" in the title and throughout the section to "executive director". Alcoholic Beverage Code §5.11(b) provides that the administrator is also known as the executive director.

Government Code §2261.254 was added by section 18 of Senate Bill No. 20, 84th Regular Session of the Texas Legislature. Government Code §2261.254 provides that a contract for the purchase of goods or services that has a value exceeding \$1 million must be approved by the governing body of the agency and signed by the presiding officer of the governing body, unless the governing body delegates the approval and signature authority to the executive director of the agency.

The proposed amendments would add a new paragraph (c)(11) to this section delegating the authority to the executive director to execute all contracts on behalf of the agency, including contracts for the purchase of goods or services that have a value exceeding \$1 million. The authority regarding contracts for the purchase of goods or services that have a value exceeding \$1 million could not then be delegated by the executive director to anyone else.

Section 31.1 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the roles of the commission and the executive director regarding contracting will be specified.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2261.254(d), which allows a governing body to delegate to the executive director the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million.

The proposed amendments affect Alcoholic Beverage Code §5.31, and Government Code §2001.039 and §2261.254(d).

*§31.1. Separation of Duties Between Commission and Executive Director [Administrator].*

(a) This rule implements §5.12 of the Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the executive director [administrator], and §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff.

(b) The commission retains the duty and authority to:

- (1) Establish agency policies and goals to carry out the duties and authority granted to the commission under the Code;
- (2) Provide leadership and direction to ensure agency laws, rules, policies and goals are implemented in a responsible, effective and cost efficient manner;
- (3) Ensure accountability and transparency within the agency and to the Governor, the Legislature, the public, and persons regulated;

(4) Appoint and remove the executive director [administrator];

(5) Adopt agency rules to implement statutory duties and agency policies;

(6) Employ or appoint and terminate or remove an internal auditor, adopt an audit plan, approve audit findings and ensure agency compliance with audit requirements;

(7) Exercise any authority and carry out any duty of the commission not delegated to the executive director [administrator]; and

(8) Employ and terminate the general counsel, who shall report directly to the commission.

(c) The commission delegates the following duties and authority to the executive director (under Alcoholic Beverage Code §5.11(b), also referred to as the administrator in the Alcoholic Beverage Code and the commission's rules):

(1) Plan and implement an effective and [an] efficient operational and organizational structure;

(2) Act as the agency liaison and resource to the executive and legislative branch;

(3) Prepare and submit the agency budget and appropriations requests;

(4) Employ or appoint an executive management team with the skills, knowledge and commitment necessary to achieve the goals and implement the policies adopted by the commission;

(5) Assign and delegate to each member of the executive management team and the general counsel the responsibility and authority necessary to effectively administer all agency operations, duties and functions, implement policy, and manage staff and resources, including the authority to further delegate and assign the essential duties and responsibilities of the agency to ensure the highest and best use of agency staff and resources;

(6) Develop, monitor and report measures or expectations for the administrative, regulatory and enforcement functions of the agency to ensure that the agency goals are accomplished and policies followed;

(7) Develop and implement comprehensive and agency-wide internal policies and procedures necessary to carry out each essential function, duty, policy or goal of the agency;

(8) Ensure that all agency staff has access to, knowledge of and responsibility for consistently following policies adopted by the commission and agency-wide internal policies and procedures;

(9) Administer the oath of office or commission to agency staff and agents;

(10) Render, or delegate to agency staff, the agency decision or order in any matter over which the agency has final decision-making authority; and[-]

(11) Execute contracts, specifically including but not limited to approving and signing contracts for the purchase of goods or services that have a value exceeding \$1 million. Notwithstanding paragraph (5), the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million shall not be delegated by the executive director to staff.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



### 16 TAC §31.3

The Texas Alcoholic Beverage Commission proposes amendments to §31.3, relating to Petition for the Adoption of a Rule.

Government Code §2001.021 allows an interested person to file a petition requesting that a state agency adopt a rule. Section 31.3 provides procedures for such a petition. House Bill No. 763, 84th Regular Session of the Texas Legislature added subsection (d) to Government Code §2001.021, defining who is an "interested person" and thus who is qualified to file such a petition. The proposed amendments to §31.3 incorporate the statutory definition of "interested person."

In addition, the proposed amendments change references to the "Administrator" throughout the section to the "Executive Director," consistent with Alcoholic Beverage Code §5.11(b).

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. The inability of out-of-state businesses or persons to file a petition for rulemaking is attributable to Government Code §2001.021 and not to the proposed amendments. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because it will be clear who may file a petition for rulemaking with the commission.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 22, 2015, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.021(b), which requires a state agency to prescribe by rule the procedure for submission, consideration and disposition of a petition for rulemaking.

The proposed amendments affect Alcoholic Beverage Code §5.31, and Government Code §2001.021.

#### §31.3. *Petition for the Adoption of a Rule.*

(a) Purpose. This section implements Government Code §2001.021 and provides procedures for any interested person (petitioner) to request the Alcoholic Beverage Commission (commission) to adopt a rule. The petitioner must be:

(1) a resident of this state;

(2) a business entity located in this state;

(3) a governmental subdivision located in this state; or

(4) a public or private organization located in this state that is not a state agency.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided given.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the commission's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule; and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the Executive Director [Administrator]. The petition must be addressed to the Executive Director [Administrator], Texas Alcoholic Beverage Commission, and mailed to P.O. Box 13127, Austin, Texas 78711-3127, or hand delivered to the Executive Director [Administrator] at commission headquarters in Austin, Texas.

(d) Review. The Executive Director [Administrator] will review the petition for compliance with the requirements of this section. If all requirements of this section are met, the Executive Director [Administrator] will bring the petition to the commission, except as provided otherwise in this section.

(e) Decision to Deny or Accept. The commission will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted. If the commission neither denies nor accepts the petition within 60 days from the date it is submitted, agency staff will initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. In such case, agency staff may redraft the proposed text to conform to style and format requirements for the agency's rules.

(1) The Executive Director [Administrator] will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The commission will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The Executive Director [Administrator] may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



## CHAPTER 41. AUDITING

### SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

#### 16 TAC §41.26

*(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 Alcoholic Beverage Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Alcoholic Beverage Commission proposes the repeal of §41.26, relating to Railway Cars--Tax Returns.

Section 41.26 currently requires the operator of railway buffet, club or dining cars to file excise tax reports on wine and beer sold in Texas, and pay the tax due, each month. House Bill No. 1905, 84th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §48.04 to remove the obligation to pay such excise taxes. The proposed repeal of §41.26 is necessary to conform the rule to the Code.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government attributable to the repeal. Any fiscal impact from the loss of excise taxes is attributable to the legislative amendment of Alcoholic Beverage Code §48.04.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will

benefit because the commission's rules will conform with the Alcoholic Beverage Code.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and §48.04.

#### §41.26. Railway Cars--Tax Returns.

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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#### 16 TAC §41.47

*(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 Alcoholic Beverage Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Alcoholic Beverage Commission proposes the repeal of §41.47, relating to Airline Beverage Permits.

Section 41.47 currently requires the holder of an airline beverage permit to file excise tax reports on alcoholic beverages served in Texas, and pay the tax due, each month. House Bill No. 1905, 84th Regular Session of the Texas Legislature amended Alcoholic Beverage Code §34.04 to remove the obligation to pay such excise taxes. The proposed repeal of §41.47 is necessary to conform the rule to the Code.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government attributable to the repeal. Any fiscal impact from the loss of excise taxes is attributable to the legislative amendment of Alcoholic Beverage Code §34.04.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by

the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because the commission's rules will conform with the Alcoholic Beverage Code.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and §34.04.

§41.47. *Airline Beverage Permits.*

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

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



## TITLE 22. EXAMINING BOARDS

### PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

#### CHAPTER 651. FEES

##### 22 TAC §651.1, §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §651.1 and §651.2, regarding fees. The amendments would increase the renewal fees for licensees and facilities by \$5. The new funds will be classified as appropriated receipts. The funds would be earmarked for instituting a program to mass email documents to licensees, facilities, and interested stakeholders, that in the past they could only obtain by visiting the agency web site. Typical items emailed to licensees would include quarterly

board newsletters, license renewal notices, practice act and rule changes, and similar items of interest to the regulated population.

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments. Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be a better informed population licensed by the agency and an improved system of notifying licensees of upcoming renewal. The email notice would supplement and not replace the current mail notifications.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There is a \$2-3/year cost to individuals and facilities that are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [jennifer@ptot.texas.gov](mailto:jennifer@ptot.texas.gov). Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the ECPTOTE Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§651.1. *Occupational Therapy Board Fees.*

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

(f) Renewal.

(1) Active.

(A) Occupational Therapist--~~\$248~~ [\$242].

(B) Occupational Therapy Assistant--~~\$184~~ [\$180].

(2) Inactive.

(A) Occupational Therapist--a fee equal to one-half the renewal fee.

(B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.

(g) - (j) (No change.)

(k) Renewal fees, All Facilities--~~\$220~~ [\$215].

(l) - (m) (No change.)

§651.2. *Physical Therapy Board Fees.*

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

(f) License Renewal.

(1) Active license.

(A) PT--~~\$248~~ [\$242].

(B) PTA--~~\$184~~ [\$180].

- (2) Inactive License.
  - (A) PT--a fee equal to one-half of the renewal fee.
  - (B) PTA--a fee equal to one half of the renewal fee.
- (g) - (k) (No change.)
- (l) Facility Renewal, All Facilities--~~§220~~ [§215].
- (m) - (n) (No change.)

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

Filed with the Office of the Secretary of State on September 28, 2015.

TRD-201504005  
 John P. Maline  
 Executive Director  
 Executive Council of Physical Therapy and Occupational Therapy Examiners  
 Earliest possible date of adoption: November 8, 2015  
 For further information, please call: (512) 305-6900



## PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

### CHAPTER 821. ORTHOTICS AND PROSTHETICS

#### 22 TAC §§821.1 - 821.31

The Texas Board of Orthotics and Prosthetics (board) proposes amendments to §§821.1 - 821.31, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

#### BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 - 821.31 have been reviewed and the board has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

The amendments clarify and update the rules, remove obsolete language, and ensure that the rules are consistent and continue to ensure public health and safety through the effective regulation of the profession.

The proposal is authorized by Occupations Code, Chapter 605, relating to the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

#### SECTION-BY-SECTION SUMMARY

Amendments to §821.1 update and align the description of the rules with the current rule headings.

Amendments to §821.2 renumber the section as necessary; update and clarify definitions; add definitions for education and off-the-shelf; distinguish indirect supervision provided to licensed students in residency from supervision provided to licensed as-

sistants; and remove the requirement that the safety manager of an accredited facility be a licensee of the board.

Amendments to §821.3 revise the section title and remove an obsolete requirement for interim written reports by committees.

Amendments to §821.4 correct a reference for facility from the plural to the singular, and remove an obsolete reference to upgrading temporary licenses.

Amendments to §821.5 specify the World Education Service (WES) as the acceptable source for foreign transcript evaluations; correct an internal reference; and remove obsolete language related to the contents of the initial application form.

The amendment to §821.6 removes obsolete language related to the issuance of student registrations.

Amendments to §821.7 remove obsolete and contradictory language regarding examination approval and align the rules with current utilization of national examinations.

Amendments to §821.8 clarify the title; update and modify the requirements for licensure to provide two clear paths for uniquely qualified applicants; and correct internal references and a typographical error.

Amendments to §821.9 update the rules to reflect the current documentation applicants may submit as proof of completion of clinical residency.

Amendments to §821.10 update the title of the rule section; modify the educational requirements for initial licensure to be congruent with national standards; add a new requirement that prospective assistants apply and receive approval from the board prior to beginning the clinical residency, in order to ensure that the applicant is eligible for licensure and the required 1,000 hours are completed under the supervision of a current licensee as required by board rules; and increase the amount of time allowed for the completion of the residency for assistants from six months to one year.

The amendment to §821.11 clarifies that registration as a technician is voluntary and not required by state law, and does not authorize a registered individual to provide hands-on care to patients.

Amendments to §821.12 remove obsolete language related to examination approval while holding a temporary license.

Amendments to §821.13 reorganize existing language for clarity, remove obsolete references to clinical experience and residency hours, delete a duplicative provision related to the term of the license, which exists in another section, and remove a prohibition on the board issuing more than one student registration in the same specialty.

The amendments to §821.14 remove obsolete wording to align the rules with current utilization of national examinations and reflect the current process for issuing temporary licenses.

The amendments to §821.15 clarify that a facility must apply for accreditation prior to providing orthotic or prosthetic services, correct a grammatical error, and impose a new requirement that accredited facilities post their operating hours, including any temporary periods of closure, along with emergency contact information for patients to reach the facility.

The amendments to §821.16 remove obsolete wording and clarify that a student registration is required in order to complete a clinical residency in orthotics or prosthetics in Texas.

Amendments to §821.17 remove an obsolete requirement for signatures, since licensees may now apply for renewal online, and delete unnecessary wording related to the operation of an accredited facility with an expired accreditation.

Amendments to §821.18 clarify that the board shall provide notice only if the board proposes disciplinary action for failure to complete the required continuing education.

The amendment to §821.19 revises the wording related to the timeline for address changes for clarity.

The amendment to §821.20 deletes an obsolete reference.

Amendments to §821.21 update a statutory reference and correct a grammatical error.

The amendment to §821.22 modifies the wording of the rule for clarity.

The amendment to §821.23 corrects the punctuation of the rule.

Amendments to §821.24 align the rules with §821.2(17) and clarify that a facility accreditation may be surrendered.

The amendment to §821.25 corrects a reference from the singular to the plural.

The amendment to §821.26 corrects a grammatical error.

The amendment to §821.27 removes an obsolete reference to align the rules with current utilization of national examinations.

The amendment to §821.28 clarifies the intent and wording required on the consumer notification sign.

The amendment to §821.29 corrects a typographical error in a statutory reference.

The amendment to §821.30 corrects a typographical error to ensure that internal references are consistent.

The amendment to §821.31 corrects a typographical error where a word should have been capitalized.

#### FISCAL NOTE

Yvonne Feinleib, Executive Director, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

#### PUBLIC BENEFIT

Ms. Feinleib has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of the practice of orthotics and prosthetics in Texas.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Executive Director, Texas Board of Orthotics and Prosthetics, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [op@dshs.state.tx.us](mailto:op@dshs.state.tx.us). When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The amendments affect Occupations Code, Chapter 605. Review of the sections implements Government Code, §2001.039.

#### §821.1. Introduction.

(a) (No change.)

(b) Content. This chapter covers definitions; operation [powers and duties] of the board; organization of the board; [fees; general application procedures; general licensing requirements and procedures; examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; acquiring professional licensure as a uniquely qualified person; [for] licensing by examination [prosthetists and orthotists; application requirements for temporary licensing prosthetists and orthotists]; assistant license [application requirements for licensing orthotist and prosthetist assistants]; technician registration [application requirements for registering orthotist and prosthetist technicians]; student registration [application requirements for registering orthotist and prosthetist students]; temporary license upgrading a student registration [or temporary license]; [application requirements for] accreditation of prosthetic and orthotic facilities; standards, guidelines, and procedures for a professional clinical residency; license renewal; [issuance of licenses; temporary licenses, registrations, and accreditations; exemptions to licensure, registration and accreditation]; continuing education; [for license renewal; display of license, registration or accreditation; renewal of license, registration or accreditation]; change of [changes in] name and [or] address; complaints, professional standard [and ethical standards; violations, complaints] and disciplinary provisions [actions]; licensing [or registration of] persons with criminal backgrounds; default orders; surrender of license; suspension of license under the Family Code; civil penalty; program accessibility; consumer notification; petition for the adoption of a rule



[making], criminal history evaluation letter [evaluations letters], and [alternative] licensing of [requirements for] military service members, military veterans, and military spouses.

§821.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in this chapter:

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

(3) Assistant patient care service--Includes comprehensive orthotic patient care (initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of custom fitted and off-the-shelf orthotic devices) involving pedorthics, compression [breast prostheses; pressure gradient] garments, non-custom fabricated orthoses (except those used to treat scoliosis or an unstable fracture or dislocation), and knee orthoses; and comprehensive prosthetic care involving compression garments when provided under the appropriate supervision of a licensed orthotist, licensed prosthetist, or a licensed orthotist/prosthetist[; or a licensed physieian].

(4) - (7) (No change.)

~~(8) Clinical resident--A person who is completing a clinical residency for a professional or a clinical residency for an assistant.]~~

(8) [(9)] Critical care events--Initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment [critique] of fit and function of the custom-fabricated prosthesis or orthosis.

(9) [(40)] Custom-fabricated--A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.

(10) [(41)] Custom-fitted--A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(11) [(42)] Department--Department of State Health Services.

(12) [(43)] Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervising practitioner must review, and sign-off on patient care notes made by the clinical resident.

(13) Education--Patient education involves information, instructions, training, and review for understanding which are provided to the patient and/or caregiver, including donning, doffing, use, care, sanitation, spinal and cranial orthotic training, upper extremity orthotic and prosthetic training, lower extremity orthotic and prosthetic gait training, normal wear and tear, schedule for continuing care, and indications for return to physician.

(14) Extensive orthotic practice--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthosis including plastic forming, metal contouring, cosmetic covering, ~~upholstering~~ and assembling; the fitting and assessment [critique] of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the training and instruct-

ing of patients in the use and care of the orthosis; the maintaining of current encounter notes and patient records. The practitioner with extensive orthotic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(15) Extensive prosthetic practice--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, ~~upholstering;~~ assembly, and aligning; the fitting and assessment [critique] of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the training and instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with extensive prosthetic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(16) Indirect supervision--Supervision provided to a licensed assistant or a person in clinical residency for a professional [clinical resident] by a practitioner who provides appropriate on-site supervision as approved by the accredited facility's practitioner in charge [or licensed assistant, if the clinical residency is for an assistant who is available to provide on-site supervision within 60 minutes during the fitting and delivery process;] and who will sign-off on all [the resident's] clinical records within ten working days. ~~[Indirect supervision is not appropriate for critical care events.]~~

(17) - (26) (No change.)

(27) Off-The-Shelf--A prescribed, prefabricated orthosis which requires minimal self-adjustment by the patient, or their personal caregiver(s), for appropriate use and does not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(28) [(27)] Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, a truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(29) [(28)] Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(30) [(29)] Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under a documented order from a licensed physician, chiropractor, podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as

provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(31) [(30)] Orthotist in charge--An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(32) [(31)] Person--An individual, corporation, partnership, association, or other organization.

(33) [(32)] Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(34) [(33)] Profession of prosthetics or orthotics--Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(35) [(34)] Prosthesis--A custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(36) [(35)] Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under a documented order from a licensed physician, chiropractor, podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board.

(37) [(36)] Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(38) [(37)] Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(39) [(38)] Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(40) [(39)] Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(41) [(40)] Registered orthotic technician--A person registered under this Act who fabricates, assembles, and services orthoses [orthosis] under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(42) [(41)] Registered prosthetic technician--A person registered under this Act who fabricates, assembles, and services prostheses under the direction of a licensed prosthetist, licensed prosthetist/or-

thotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(43) [(42)] Registered prosthetic/orthotic technician--A person registered under this Act who fabricates, assembles, and services prostheses and orthosis under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, or a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(44) [(43)] Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

(45) [(44)] Safety Manager--An employee of an accredited facility [A licensee or registrant] who is assigned to develop, carry out and monitor an accredited facility's safety program.

(46) [(45)] Voluntary charity care--The practice of a licensed orthotist and/or prosthetist without compensation or expectation of compensation.

§821.3. *[Board's] Operation of the Board.*

(a) - (m) (No change.)

(n) Committees.

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

(3) Committee chairs shall make regular reports to the board [~~in interim written reports and/or~~] at regular meetings, as needed.

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

(o) - (p) (No change.)

§821.4. *Fees.*

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

(d) Schedule of fees. The board has established the schedule of fees as follows:

(1) - (14) (No change.)

(15) upgrade for student registrant [~~and temporary licensees~~] after passing the examination:

(A) - (B) (No change.)

(16) - (27) (No change.)

(e) Returned checks. Returned checks will be subject to the following procedures.

(1) A licensee, registrant, or accredited facility [facilities], whose check is returned due to insufficient funds, account closed, payment stopped, or other reason, shall remit a money order or check for guaranteed funds to the board within 30 days of the date of the board's notice.

(2) - (4) (No change.)

(f) (No change.)

§821.5. *General Application Procedures.*

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

(c) Required application materials.

(1) (No change.)

(2) The board will accept as proof of completion of a degree or course work an official transcript from a regionally accredited college or university. Foreign transcripts must be submitted with an evaluation from World Education Services (WES) showing U.S. equivalency.

(3) - (5) (No change.)

(6) The technician applicant must sign a statement acknowledging that he or she may only practice in accordance with the definition for registered orthotic technician, registered prosthetic technician, or registered prosthetic/orthotic technician, as set out in §821.2(41) - (43) [§821.2(39) - (41)] of this title, under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.20 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

~~{(7) At the time of application, an applicant for a license as a prosthetist, orthotist, or prosthetist/orthotist must submit with the application the names of assistants, technicians and clinical residents who provide prosthetic and/or orthotic services under the applicant's supervision or direction. The licensee shall notify the board, in writing within 30 days of the event, if one or more assistants, technicians or clinical residents are no longer under the licensee's supervision or direction, or if the licensee supervises or directs one or more additional assistants, technicians, or clinical residents.}~~

(d) - (j) (No change.)

#### §821.6. General Licensing Procedures.

(a) (No change.)

(b) Issuance of licenses.

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

(3) A student registration shall be issued or renewed for a two-year period~~;~~ unless issued or renewed under §821.13(e) or (f) of this title (relating to Student Registration).

(c) - (g) (No change.)

#### §821.7. Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

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

(d) Applications for examination.

(1) The board shall notify an applicant whose license application has been approved for the examination. ~~[Approval to take the examination shall be limited to the three-year period after the date of the board's notification to the applicant, unless specifically extended by action of the board.]~~

(2) (No change.)

(e) - (h) (No change.)

(i) Failures.

~~{(1) An applicant who fails the initial examination prescribed by the board may take two subsequent examinations after paying the examination fees.}~~

(1) ~~{(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.}~~

(2) ~~{(3) An applicant who fails to test, or to pass the examination during the period of examination approval [six times] must wait for a period of three years to [before they may] file a new application for licensure by examination. [The three-year period begins when the applicant is notified of the sixth failure.]}~~

(j) Qualifications for initial examination. The applicant must:

(1) (No change.)

(2) approved to take the examination by the Board. Approved applicants shall have no more than two years to pass the required examination(s).

#### §821.8. Acquiring Professional Licensure as a Uniquely Qualified Person.

(a) (No change.)

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic care as those persons who obtain licensure pursuant to the Act, §605.252. All applicants must pass or have already passed the examination required by §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist).

(1) (No change.)

(2) The board presumes a person possessing unique qualifications will have engaged in extensive orthotic and/or prosthetic practice. Applicants must select one of the following two paths or subparagraphs of this paragraph to licensure:

(A) ~~{(3) Applicants with at least [without a degree. A person applying as a uniquely qualified person without a degree from a four year college or university must obtain] fifteen years of extensive [applicable] orthotic and/or prosthetic experience in the discipline for which they have applied. These applicants must show proof of seventy-five [forty five] hours of relevant continuing education credit within the five years before application. [The board will approve the experience and continuing education requirements before an applicant is granted exam eligible status. These applicants must pass the appropriate state exam outlined in §821.9(e) of this title (relating to Licensing by Examination).}~~

(B) ~~{(4) Applicants who meet the academic requirements under §821.9 of this title (relating to Licensing by Examination) who have not completed an NCOPE residency. These applicants shall submit proof of at least two years of applicable orthotic and/or prosthetic experience in the last five years, which was obtained under supervision of a licensed or certified orthotist and/or prosthetist in the discipline for which they have applied. [with application deficiencies. A person applying as a uniquely qualified person, that does not meet the residency criteria outlined in §821.9 of this title, must complete at least one year of board approved orthotic and/or prosthetic work experience under indirect supervision before becoming exam eligible. These applicants must also pass the appropriate state exam outlined in §821.9 of this title.]}~~

~~{(5) Applicants with sufficient education and experience. Applicants with board approved education and experience requirements must complete six months of directly supervised work experience. These applicants must also pass the appropriate state exam outlined in §821.9 of this title.}~~

(c) - (e) (No change.)

#### §821.9. Licensing by Examination.

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

(f) Post-graduate requirements for the orthotist license.

(1) The applicant must submit a certificate from a National Commission on Orthotic and Prosthetic Education (NCOPE) orthotic residency program [an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency as described in §821.16 of this title].

(2) (No change.)

(g) Post-graduate requirements for the prosthetist license.

(1) The applicant must submit a certificate from a NCOPE prosthetic residency program [an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical prosthetic residency as described in §821.16 of this title].

(2) (No change.)

(h) Post-graduate requirements for the prosthetist/orthotist license.

(1) The applicant must submit certificates from NCOPE prosthetic and orthotic residency programs [an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency and of clinical prosthetic residency as described in §821.16 of this title].

(2) (No change.)

(i) Additional post-graduate requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit a certificate from a NCOPE prosthetic residency program [an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical prosthetic residency as described in §821.16 of this title].

(2) (No change.)

(j) Additional post-graduate requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit a certificate from a NCOPE orthotic residency program [an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency as described in §821.16 of this title].

(2) (No change.)

§821.10. [*Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist*] Assistant License.

(a) (No change.)

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services, to include [and] assistant patient care services, under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the direct [immediate] supervision of a licensed orthotist or a licensed prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed orthotist or supervising licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services, to include assistant patient care services, under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed

prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the direct [immediate] supervision of a licensed prosthetist or licensed prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed prosthetist or licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(3) - (4) (No change.)

(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) successful completion of coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools that included at a minimum:

(A) eight [six] credit hours of anatomy and physiology;

(B) three credit hours of medical terminology [algebra or higher mathematics];

(C) three credit hours of physics [or chemistry]; and

(2) a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, completed in a period of not more than one year [six consecutive months], in a facility that is accredited under §821.15 of this title or a facility that is exempt under the Act, §605.260(e). The resident shall practice under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) - (E) (No change.)

(d) Beginning and ending a clinical residency for an assistant. Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the board by filing a completed supervision agreement with the board with the clinical resident's application for licensure as an assistant and required fee. The supervisor shall not allow the clinical residency to begin until approval from the board is received. [on a form prescribed by the board.] The supervisor shall provide the clinical resident and the board with written documentation upon beginning, terminating or completing a clinical residency. If terminating or completing a residency, the written documentation shall indicate the number of hours, which comply with this section, that were completed by the clinical resident.

§821.11. Technician Registration.

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

(d) Registration as a technician is voluntary and does not authorize a registered individual to provide any patient care to orthotic or prosthetic patients, including ancillary or assistant patient care services.

§821.12. Temporary License.

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

{(e) Requirements for continued practice in Texas. To continue practicing prosthetics and/or orthotics the temporary license

holder must meet the requirements of either §821.8 or §821.9 of this title and pass the appropriate board examination as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist). The examination must be passed while the temporary license is current and not expired.]

(c) [(d)] Issuance of a temporary license. A temporary license is valid for one year from the date issued unless the applicant is not approved by the board for licensure by examination or unique qualifications. If the applicant is not approved by the board, the temporary license is no longer valid and must be surrendered to the board within 15 days of the notice of denial.

(d) [(e)] Renewal requirements. A temporary license may be renewed once for one additional one-year period if the applicant:

[(1) has not failed an examination administered by the board; and]

(1) [(2)] applies for renewal on or before the expiration date of the initial temporary license; and [either]

[(3) is registered to take the next scheduled examination; or]

(2) [(4)] presents evidence, satisfactory to the executive director of good cause for renewal. The executive director may consult with a board member in order to determine if sufficient evidence has been presented.

#### §821.13. Student Registration.

(a) (No change.)

(b) Eligibility. The board shall issue or renew a student registration certificate to a person who:

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

(3) either:

(A) has completed the academic requirements for a license as a prosthetist, an orthotist, or prosthetist/orthotist, as described in §821.9 of this title (relating to Licensing by Examination); or

(B) is a student who is currently enrolled in a graduate program in this state in orthotics and prosthetics that is recognized and accredited by the Commission on Accreditation of Allied Health Education Programs and submits to the board a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency; and

(4) is actively engaged in either:

(A) completing a clinical prosthetic, orthotic, or prosthetic/orthotic residency, as described in §821.16 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency); or

[(B) completing the clinical experience described in §821.9(f)(1), (g)(1) or (h)(1) of this title; or]

(B) [(C)] applying for or awaiting the results of the appropriate examination, as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) and has completed the clinical residency. [or clinical experience; or]

[(5) is currently enrolled in a graduate program in this state in orthotics and prosthetics that:]

[(A) is recognized and accredited by the Commission on Accreditation of Allied Health Education Programs;]

[(B) incorporates a professional clinical residency that meets the requirements of rules adopted under §605.252(e) of the Act; and]

[(C) submits to the board a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency.]

(c) The board shall refuse to issue or renew a student registration if the person is not actively engaged in completing the professional clinical residency, [the clinical experience,] or the examination.

(d) Issuance.

(1) An applicant may be issued one initial student registration in each area: prosthetics, orthotics, or both, depending on the type of clinical residency [or clinical experience]. The applicant shall note on the application form if the residency is in prosthetics, orthotics, or both.

[(2) A student registration certificate expires two years from the date issued, unless issued under subsection (f) of this section.]

(2) [(3)] An applicant may only [not] reapply once for a subsequent initial student registration in the same area(s).

(e) (No change.)

(f) Application before residency. The applicant shall apply for a student registration before beginning the clinical residency. [; but not more than 30 days before the beginning date of the clinical residency. A person who is actively engaged in a clinical residency who does not apply for a student registration may not receive credit for the hours completed before application toward qualifying for a license by examination.] The applicant shall provide on the application form the:

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

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

#### §821.14. Upgrading a Student Registration [or Temporary License].

[(a) Application of section: Unless the content clearly indicates otherwise, the term licensee, when used in this section shall include a student registrant and a temporary licensee. The term license shall include a student registration or temporary license.]

[(b)] Requirements. A student registration [license] may be upgraded to the regular renewable practitioner license after the applicant [licensee]:

(1) meets the requirements of §821.9 of this title (relating to Licensing by Examination);

(2) passes the appropriate examination, as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist); and

(3) submits the license upgrade form and fee, as set out in §821.4 of this title (relating to Fees).

[(e) Notice to eligible licensees: The board shall send a notice to a licensee who passes the exam of the procedure and the fee required for upgrading a license.]

#### §821.15. Accreditation of Prosthetic and Orthotic Facilities.

(a) - (d) (No change.)

(e) Requirements for accredited facilities.

(1) (No change.)

(2) Prosthetic and/or orthotic facilities must apply for accreditation with the board and pay an accreditation fee at least [within]

60 days prior to [of] the first patient treatment date[; whichever is later]. A facility may not provide services until the accreditation is issued.

(3) - (11) (No change.)

(12) An accredited facility must display the license certificates of its practitioners in a prominent location in the facility where they are [it is] available for inspection by the public.

(13) An accredited facility must display a visible sign with its hours of operation, including:

(A) hours of normal business operation, and when appropriate;

(B) information regarding temporary closure, including holidays, or for periods during business hours, including:

(i) specific dates and times of the closure; and

(ii) emergency contact information.

(f) - (r) (No change.)

§821.16. *Standards, Guidelines, and Procedures for a Professional Clinical Residency.*

(a) - (f) (No change.)

(g) Responsibilities of the program director.

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

(5) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:

(A) (No change.)

(B) provides to residents a written assessment of their performance quarterly; and

(C) maintains written evaluations on forms prescribed by the board, as part of the performance record for each resident. The performance record of each resident shall be available to that resident.]; and]

[(D) provides documentation to the resident, at least quarterly, and to the board upon request and at the termination or completion of the residency, regarding the number of hours of residency that comply with the requirements established in this section that have been completed by the resident.]

(h) Resident responsibilities and qualifications.

(1) (No change.)

(2) The resident must hold a student registration [meet the qualifications for licensure by examination as described in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) except for having completed the professional clinical residency, as required by NCOPE].

(i) (No change.)

§821.17. *License Renewal.*

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

(c) License renewal requirements.

(1) (No change.)

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment ad-

dress and telephone number, and misdemeanor and felony convictions. [The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant and show on the form whether the supervisor and supervisee have complied with this chapter.]

(3) - (5) (No change.)

(d) (No change.)

(e) Late renewal requirements.

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

(5) After an accreditation is expired and until the facility has renewed the accreditation, the facility may not provide orthotic or prosthetic patient care [in violation of the Act].

(f) - (h) (No change.)

§821.18. *Continuing Education.*

(a) - (k) (No change.)

(l) Failure to complete the continuing education credits after three months.

(1) The board shall notify the licensee if [that] the board proposes [intends] to suspend or revoke the license for failure to complete and report the required continuing education. The licensee shall be offered the opportunity to show compliance with the continuing education requirements.

(2) (No change.)

(m) - (o) (No change.)

§821.19. *Change of Name and Address.*

(a) Notification required. Applicants, licensees, registrants and accredited facilities are responsible for notifying the board of any change(s) of name or preferred mailing address. Accredited facilities are responsible for notifying the board of any change(s) in facility name, preferred mailing address or physical address. Written notification to the board shall be made not more than [within] 30 days after a change occurs [of any change(s)]. All facility changes that involve physical location, name, or ownership will require a new application for accreditation.

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

§821.20. *Complaints.*

(a) - (d) (No change.)

(e) Formal hearings.

(1) If requested in accordance with subsection (c) of this section, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, [25 Texas Administrative Code, Chapter 4 (relating to Texas Board of Health);] and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

(2) (No change.)

§821.21. *Professional Standard and Disciplinary Provisions.*

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

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

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

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Texas Occupations Code, §102.001 [~~Health and Safety Code, §161.091~~];

(9) - (15) (No change.)

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c) of this section. Other action which may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or an administrative or civil penalty to be imposed include, but are not limited to:

(1) - (6) (No change.)

(7) having treated or agreed [~~undertook~~] to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope permitted by law of the issued license, as defined in §821.2 of this title (relating to Definitions);

(8) - (30) (No change.)

(e) - (h) (No change.)

§821.22. *Licensing Persons with Criminal Backgrounds.*

(a) (No change.)

(b) Guidelines. The board may deny an application or revoke, suspend, place on probation, or impose an administrative penalty against an existing license or registration if an applicant, licensee, or registration holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines.

(1) Licensees and registrants are required to conduct the profession of prosthetics and orthotics with honesty, trustworthiness, and integrity. Those criminal convictions that show unwillingness or inability to follow these requirements may be a basis to deny a license or impose [~~begin~~] disciplinary action against an existing license.

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

(c) (No change.)

§821.23. *Default Orders.*

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

(d) Should a licensee not appear for their appeal to the State Office of Administrative Hearings, the Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the board to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the board to remove the case from the contested hearing docket and allow for informal disposition by the board.

§821.24. *Surrender of License.*

(a) Voluntary surrender.

(1) A licensee, [~~or~~] registrant, or accredited facility may voluntarily offer to surrender his or her license any time for any reason, without compulsion.

(2) The license certificate and renewal card [~~or registration~~] must be returned to the board by hand or certified mail.

(3) If a complaint is not pending, the executive director may accept the surrender and void the license [~~or registration~~].

(b) Formal disciplinary action.

(1) When a licensee, [~~or~~] registrant, or accredited facility has offered the surrender of his or her license after a complaint has

been filed, the board shall consider whether to accept the surrender of the license [~~or registration~~].

(2) Surrender of a license [~~or registration~~] without acceptance by the board does not deprive the board of jurisdiction against the licensee, [~~or~~] registrant, or accredited facility to prosecute an alleged violation of the Act or this chapter.

(3) (No change.)

(c) Reinstatement. A license [~~or registration~~] surrendered and accepted may not be reinstated; however, a person may apply for a new license [~~or registration~~] in accordance with the Act and this chapter.

§821.25. *Suspension of License under the Family Code.*

(a) This section carries out the provisions [~~provision~~] of the Family Code, Chapter 232 (Suspension of License).

(b) - (i) (No change.)

§821.26. *Civil Penalty.*

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

(c) A person, who attempts, offers, or contracts to practice the prosthetic or orthotic profession, is subject to a civil penalty for each person to whom prosthetic or orthotic services have been [~~are~~] or would be provided pursuant to the attempt, offer, or contract.

§821.27. *Program Accessibility.*

Board programs will be available in the English language. Any individual may access the board's programs including board meetings [~~and examinations~~] in a language other than English if the individual provides an interpreter or translator at the individual's expense.

§821.28. *Consumer Notification.*

Display of complaint notice [~~of licensure~~] shall be as follows.

(1) All licensees, registrants and accredited facilities shall prominently display a notice which includes the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board in a waiting room or other area where it shall be visible to all patients. This notice shall be posted at all facilities where the licensee(s) practices and all board accredited facilities. This does not include facilities that the licensee visits to treat patients, such as hospitals, nursing homes or patients' homes.

(2) The notice shall be printed on a sign in letters equal to or larger in size or font as the sign provided by the board [~~to each accredited facility~~]. Script or calligraphy prints are not allowed. The notice shall be worded as specified by the board [~~according to specifications~~].

§821.29. *Petition for the Adoption of a Rule.*

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

(c) Denial or acceptance of the petition. The board may deny or accept the petition in whole or in part.

(1) (No change.)

(2) If the board accepts the petition the board will initiate the rule making process within 120 days from the date of submission of the petition under the Administrative Procedure [~~Procedures~~] Act, Government Code, Chapter 2001, Subchapter B.

(d) (No change.)

§821.30. *Criminal History Evaluation Letter.*

(a) - (d) (No change.)

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis

for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the criminal history evaluation letter [Criminal History Evaluation Letter].

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

(a) This section sets out licensing and registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing and Registration [registration] of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

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

(b) - (i) (No change.)

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

Filed with the Office of the Secretary of State on September 28, 2015.

TRD-201504022

Rebecca Brou  
Chair

Texas Board of Orthotics and Prosthetics

Earliest possible date of adoption: November 8, 2015

For further information, please call: (512) 776-6972



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 97. COMMUNICABLE DISEASES

##### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

###### 25 TAC §§97.1 - 97.7, 97.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§97.1 - 97.7 and §97.13, concerning the control of communicable diseases.

###### BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify the conditions and diseases that must be reported; clarify the minimal reportable information requirements for the conditions and diseases; and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions, and allow the department to conduct more relevant and efficient disease surveillance. The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.1 - 97.7 and 97.13 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively. Sections 97.8 - 97.12 have been reviewed and will not be revised.

###### SECTION-BY-SECTION SUMMARY

The amendments update §97.1 to Definitions and Applicability for clarity of scope.

The amendments to §§97.1, 97.3 and 97.4 alphabetize the conditions to improve organization.

The amendments to §§97.1, 97.3 and 97.4 update the definition of Vancomycin-intermediate *Staphylococcus aureus* (VISA) and the nomenclature for Multidrug-resistant *Acinetobacter* (MDR-A) for consistency.

The amendments to §§97.1 - 97.6 replace references to §§97.132 - 97.134 with a reference to Subchapter F for information on reporting and other control requirements applicable to sexually transmitted diseases (including HIV/AIDS).

The amendments to §§97.2, 97.4, 97.5 and 97.6 update language for clarity, consistency to avoid redundancy and correct spelling; update phone numbers and references; and update the reporting period for multidrug-resistant organisms from immediate to one working day.

The amendments to §97.3 group together the hepatitis infections; update the Shiga toxin-producing *E.coli* nomenclature to align with the Centers for Disease Control and Prevention; clarify the culture isolation sites for *Neisseria meningitidis*; and correct the spelling of *meningitidis*.

The amendments to §97.5 allow the submission of isolates referenced in §97.3(a)(4) to other public health laboratories designated by the department to expand testing capacity and improve outbreak detection.

The amendments to §97.3 revise "*Haemophilus influenzae* type b infection, invasive" to "*Haemophilus influenzae*, invasive" to ensure that all *Haemophilus influenzae* in Texas are identified, especially in children under five years of age which is the age group targeted for vaccine and are at most risk from the disease.

The amendments to §97.3 and §97.13 replace Creutzfeldt-Jakob disease (CJD) with "prion diseases, such as Creutzfeldt-Jakob disease (CJD)" to include all types and forms of prion disease occurring in the human population.

The amendments to §§97.3, 97.7 and 97.13 update the language for consistency; clarify the different types of tuberculosis infection; and update the type of Hansen's disease to report.

The amendments to §97.3 and §97.13 update the language for arboviral conditions to allow novel or emerging arboviruses (such as Chikungunya) to be reported, and remove reporting of relapsing fever in humans and Chagas disease and psittacosis in animals to align with national guidelines.

The amendments to §97.7 add typhoid fever to the diseases requiring exclusion from schools, and clarify language for exclusion criteria for Measles and Pertussis.

###### FISCAL NOTE



Ms. Janna Zumbrun, Assistant Commissioner, Disease Control and Prevention Services, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no adverse economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

#### PUBLIC BENEFIT

In addition, Ms. Zumbrun also has determined that for each year of the first five years the sections are in effect, the public will benefit from their adoption. These rules impact the people of Texas by decreasing the risk of illness through early detection and control or prevention of infectious diseases in the community.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Nadia Bekka, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Infectious Disease Prevention Section, Division for Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [Nadia.Bekka@dshs.texas.gov](mailto:Nadia.Bekka@dshs.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 81 and 1001.

#### §97.1. Definitions and Applicability.

This subchapter contains the general reporting and other control requirements related to communicable disease. Specific reporting and other control requirements applicable to sexually transmitted diseases (including AIDS and HIV) are found in Subchapter F of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)). The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

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

(3) Carbapenem resistant *Enterobacteriaceae* (CRE)--CRE-*E. coli* or CRE-*Klebsiella* species as defined in the Centers for Disease Control and Prevention, National Healthcare Safety Network (NHSN) Manual, Patient Safety Component, Protocol for Multidrug-Resistant Organism and *Clostridium difficile* [*Clostridium difficile*] Infection (MDRO/CDI) Module, or its successor.

(4) - (9) (No change.)

(10) Department--Department of State Health Services.

(11) Diarrhea--A watery or loose stool that takes the shape of the container that holds it.

~~[(10) Diarrhea--A watery or loose stool that takes the shape of the container that holds it.]~~

~~[(11) Department--Department of State Health Services].~~

(12) - (16) (No change.)

(17) Hepatitis B, perinatal infection--HBsAg positivity in any infant aged >1 through 24 months.

(18) ~~[(17)]~~ Hospital laboratory--Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

(19) ~~[(18)]~~ Multidrug-resistant *Acinetobacter* (MDR-A) [~~Multi-drug resistant (MDR) *Acinetobacter*~~]-MDR-*Acinetobacter* species as defined by the Centers for Disease Control and Prevention, National Healthcare Safety Network (NHSN) Manual, Patient Safety Component, Protocol for Multidrug-Resistant Organism and *Clostridium difficile* Infection [~~*Clostridium difficile*~~-Infection] (MDRO/CDI) Module, or its successor.

(20) ~~[(19)]~~ Notifiable condition--Any disease or condition that is required to be reported under the Act or by this chapter. See §97.3 of this title (relating to What Condition to Report and What Isolates to Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "notifiable condition." The term "notifiable condition"

is the same as the term "reportable disease" as used in the Health and Safety Code, Chapter 81.

(21) [(20)] Outbreak--See definition of epidemic in this section.

(22) [(21)] Pandemic--A global disease epidemic or an epidemic that crosses international borders and affects an extremely large number of people.

[(22) Perinatal hepatitis B infection--HBsAg positivity in any infant aged >1-24 months.]

(23) - (31) (No change.)

(32) Vancomycin-intermediate [resistant] *Staphylococcus aureus* (VISA)--*Staphylococcus aureus* with a vancomycin minimum inhibitory concentration (MIC) of 4 µg/mL through 8 µg/mL.

(33) - (34) (No change.)

#### §97.2. Who Shall Report.

(a) - (d) (No change.)

(e) Any person having knowledge that a person(s) [person] or animal(s) [animal] is suspected of having a notifiable condition should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person(s) [person] or animal(s) [persons].

(f) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with Subchapter F [§97.132] of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)) [title].

(g) - (h) (No change.)

#### §97.3. What Condition to Report and What Isolates to Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at <http://www.dshs.state.tx.us/idcu/investigation/conditions/> [<http://www.dshs.state.tx.us/ideu/>]. Copies are filed in the Emerging and Acute Infectious Disease Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; amebic meningitis and encephalitis; anaplasmosis; anthrax; arboviral infections including, but not limited to, those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, [Powassan virus,] St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, and West Nile (WN) virus; babesiosis; botulism, adult [botulism-adult] and infant; brucellosis; campylobacteriosis; carbapenem resistant *Enterobacteriaceae* (CRE); Chagas [Chagas'] disease; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; [Creutzfeldt-Jakob disease (CJD)]; cryptosporidiosis; cyclosporiasis; [dengue;] diphtheria; ehrlichiosis; [shiga-toxin producing *Escherichia coli* infection;] gonorrhea; *Haemophilus influenzae*, invasive; Hansen's disease (leprosy);

[*Haemophilus influenzae* type b infection, invasive;] hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally, any hepatitis B infection identified prenatally or at delivery, acute hepatitis C infection, and acute hepatitis E infection [B, C, and E, (acute); hepatitis B; (acute and chronic) identified prenatally or at delivery; perinatal hepatitis B infection]; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningococcal infection, invasive; multidrug-resistant *Acinetobacter* (MDR-A) [multi-drug resistant (MDR) *Acinetobacter*-MDR]; mumps; novel coronavirus causing severe acute respiratory disease; novel influenza; pertussis; plague; poliomyelitis, acute paralytic; poliovirus infection, non-paralytic; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; [relapsing fever;] rubella (including congenital); salmonellosis, including typhoid fever; Shiga toxin-producing *Escherichia coli* infection; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae*; syphilis; *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis; tetanus; trichinosis; tuberculosis (*Mycobacterium tuberculosis* complex); tuberculosis infection; tularemia; typhus; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; and [yellow fever;] yersiniosis; [vancomycin-intermediate resistant *Staphylococcus aureus* (VISA); and vancomycin-resistant *Staphylococcus aureus* (VRSA)].

(B) (No change.)

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F [§§97.132-97.134] of this chapter [title] (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

(B) - (C) (No change.)

(D) for other persons identified with [latent] TB infection - complete name; date of birth; physical address and county of residence; and diagnostic information;

(E) - (F) (No change.)

(G) for hepatitis B, perinatal infection [perinatal hepatitis B] - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) (No change.)

[(I) for VISA; and VRSA - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, anatomic site of culture, and clinical indicators); date of onset, and physician name, address, and telephone number;]

(I) [(J)] for Hansen's disease - name; date of birth; sex; race and ethnicity; [social security number;] disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive

dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; disease type i.e., tubercloid, borderline and lepromatous; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician;

(J) ~~(K)~~ for novel influenza investigations occurring during an influenza pandemic--minimal reportable information on individual cases, a subset of cases or aggregate data will be specified by the department;

(K) ~~(L)~~ for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators), date of onset, and physician name, address, and telephone number; and

(L) ~~(M)~~ other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*); botulism, adult; ~~botulism-adult~~ and infant (*Clostridium botulinum*);<sup>2</sup><sub>;</sub><sup>3</sup> brucellosis (*Brucella* species);<sup>2</sup><sub>;</sub><sup>3</sup> all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites); listeriosis (<sup>1</sup>; *E.coli* O157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated; <sup>2</sup> *Listeria monocytogene*; <sup>3</sup> *monocytogenes*); meningococcal infection, invasive (*Neisseria meningitidis* [*meningitides*] from normally sterile sites or purpuric lesions);<sup>2</sup><sub>;</sub><sup>3</sup> plague (*Yersinia pestis*); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL; tuberculosis (*Mycobacterium tuberculosis* complex); tularemia (*Francisella tularensis*);<sup>2</sup><sub>;</sub><sup>3</sup> tubercu-  
losis (*Mycobacterium tuberculosis* complex); tularemia (*Francisella tularensis*); all *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL;<sup>2</sup><sub>;</sub><sup>3</sup> and vibriosis (*Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.

(5) Laboratory reports. Reports from laboratories shall include patient name, <sup>1</sup>patient identification number, address, telephone number, age, date of birth, sex, race and ethnicity;<sup>2</sup><sub>;</sub><sup>3</sup> specimen submitter name, address, and phone number;<sup>2</sup><sub>;</sub><sup>3</sup> specimen type;<sup>2</sup><sub>;</sub><sup>3</sup> date specimen collected;<sup>2</sup><sub>;</sub><sup>3</sup> disease test and test result;<sup>2</sup><sub>;</sub><sup>3</sup> normal test range;<sup>2</sup><sub>;</sub><sup>3</sup> date of test report;<sup>2</sup><sub>;</sub><sup>3</sup> and physician name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, <sup>1</sup>Chagas' disease;<sup>2</sup><sub>;</sub><sup>3</sup> tuberculosis (*Mycobacterium tuberculosis* complex) [~~infection~~] in animals other than those housed in research facilities, <sup>1</sup>and plague;<sup>2</sup><sub>;</sub><sup>3</sup> and psittacosis]. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) (No change.)

§97.4. When to Report a Condition or Isolate.

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by

phone to the local health authority or the regional director of the Department of State Health Services (department): anthrax; botulism; <sup>1</sup>carbapenem resistant *Enterobacteriaceae* (CRE);<sup>2</sup><sub>;</sub><sup>3</sup> diphtheria; measles (rubeola); meningococcal infection, invasive; <sup>1</sup>multi-drug resistant (MDR) *Acinetobacter*-MDR;<sup>2</sup><sub>;</sub><sup>3</sup> novel coronavirus causing severe acute respiratory disease; novel influenza; poliomyelitis, acute paralytic; plague; <sup>1</sup>novel influenza;<sup>2</sup><sub>;</sub><sup>3</sup> rabies; smallpox; tularemia; viral hemorrhagic fevers; yellow fever; and any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern. Vancomycin-intermediate <sup>1</sup>resistant<sup>2</sup><sub>;</sub><sup>3</sup> *Staphylococcus aureus* (VISA) and vancomycin-resistant *Staphylococcus aureus* (VRSA) shall be reported immediately by phone to the Emerging and Acute Infectious Disease Branch, Department of State Health Services, Austin, Texas at (888) 963-7111 ~~[(800) 252-8239]~~.

(2) The following notifiable conditions shall be reported within one working day of identification as a suspected case: brucellosis; carbapenem resistant *Enterobacteriaceae* (CRE);<sup>2</sup><sub>;</sub><sup>3</sup> hepatitis A, acute; hepatitis B, perinatal infection; <sup>1</sup>(acute);<sup>2</sup><sub>;</sub><sup>3</sup> influenza-associated pediatric mortality; multidrug-resistant *Acinetobacter* (MDR-A) species;<sup>2</sup><sub>;</sub><sup>3</sup> perinatal hepatitis B;<sup>2</sup><sub>;</sub><sup>3</sup> pertussis;<sup>2</sup><sub>;</sub><sup>3</sup> Q fever;<sup>2</sup><sub>;</sub><sup>3</sup> poliovirus infection, non-paralytic;<sup>2</sup><sub>;</sub><sup>3</sup> Q fever;<sup>2</sup><sub>;</sub><sup>3</sup> rubella (including congenital);<sup>2</sup><sub>;</sub><sup>3</sup> tuberculosis (*Mycobacterium tuberculosis* complex); and<sup>2</sup><sub>;</sub><sup>3</sup> *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F <sup>1</sup>[[§§97.132 - 97.134] of this chapter <sup>2</sup>[title] (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(4) (No change.)

(5) For all other notifiable conditions not listed in paragraphs (1) - (3) of this subsection, reports of disease shall be made no later than one week after a case or suspected case is identified <sup>1</sup>including <sup>2</sup>TB infection.

(6) All diseases requiring submission of cultures in §97.3(a)(4) of this title (relating to What Condition to Report and What Isolates to Report or Submit) [<sup>1</sup>anthrax (*Bacillus anthracis*); <sup>2</sup>botulism-adult and infant (*Clostridium botulinum*); <sup>3</sup>brucellosis (*Brucella* species); <sup>4</sup>*E.coli* O157:H7 or other Shiga-toxin producing *E. coli*; <sup>5</sup>isolates or specimens from cases where Shiga-toxin activity is demonstrated; <sup>6</sup>*Listeria monocytogenes*; <sup>7</sup>meningococcal infection; <sup>8</sup>invasive (*Neisseria meningitides*) from normally sterile sites or purpuric lesions; <sup>9</sup>plague (*Yersinia pestis*); <sup>10</sup>tuberculosis (*Mycobacterium tuberculosis* complex); <sup>11</sup>tularemia (*Francisella tularensis*); <sup>12</sup>VISA, VRSA and *Vibrio* species] shall be submitted [as pure cultures to the Department of State Health Services, Laboratory Services Section, 1100 West 49th Street, Austin, Texas 78756-3199] as they become available.

(b) (No change.)

§97.5. Where To Report a Condition or Isolate; Where To Submit an Isolate.

(a) Humans.

(1) (No change.)

(2) The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report a condition or submit an isolate as follows:

(A) - (B) (No change.)

~~[(C) For VISA and VRSA immediately report by phone to the Infectious Disease Surveillance and Epidemiology Branch at 1-800-252-8239.]~~

(C) [(D)] All diseases requiring submission of cultures in §97.3(a)(4) of this title (relating to What Condition to Report and What Isolates to Report or Submit) [anthrax (*Bacillus anthracis*), botulism—adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E. coli* 0157:H7 or other Shiga-toxin producing *E. coli*, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis*) from normally sterile sites or purpuric lesions, plague (*Yersinia pestis*), tuberculosis (*Mycobacterium tuberculosis* complex), tularemia (*Francisella tularensis*), all *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL, and *Vibrio* species] shall be submitted [as pure cultures] to the Department of State Health Services, Laboratory Services Section, 1100 West 49th Street, Austin, Texas 78756-3199 or other public health laboratory as designated by the Department of State Health Services.

(3) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with Subchapter F [§§97.132-97.134] of this chapter [title] (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(b) (No change.)

§97.6. *Reporting and Other Duties of Local Health Authorities and Regional Directors.*

(a) (No change.)

(b) Those notifiable conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report a Condition or Isolate) shall be reported immediately to the department by telephone at (888) 963-7111 [(800) 252-8239].

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection and syphilis shall be reported in accordance with Subchapter F [§§97.132-97.134] of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(d) For notifiable conditions not listed in subsections (b) and (c) of this section, the local health authority or the department's regional director shall collect reports of disease and transmit the [following] information listed in §97.3(a)(3) of this title (relating to What Condition to Report and What Isolates to Report or Submit) at weekly intervals as directed by the department [; name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators), date of onset, and physician name, address, and telephone number].

(e) - (i) (No change.)

§97.7. *Diseases Requiring Exclusion from Schools.*

(a) The school administrator shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

(1) - (13) (No change.)

(14) measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, exclude unimmunized child for at least 21 days after the last date the unimmunized child was exposed [unimmunized children should also be excluded until at least two weeks after the onset of the last rash];

(15) - (18) (No change.)

(19) pertussis (whooping cough)--exclude until completion of five days of appropriate antibiotic therapy, or until 21 days have passed since cough onset, whichever is earlier;

(20) - (24) (No change.)

(25) streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever free for 24 hours without the use of fever suppressing medications; [and]

(26) tuberculosis disease (suspected or confirmed), pulmonary or laryngeal--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained; and[-]

(27) typhoid fever - exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications; and 3 consecutive stool specimens have tested negative for *Salmonella* Typhi.

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

§97.13. *Death of a Person with Certain Communicable Diseases.*

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

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; [avian flu;] brucellosis; cholera; [Creutzfeldt-Jakob disease;] Hantavirus pulmonary syndrome; hepatitis, viral; human immunodeficiency virus (HIV) infection; novel coronavirus causing severe acute respiratory disease; novel influenza; plague; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; [relapsing fever;] Rocky Mountain spotted fever; [severe acute respiratory syndrome (SARS);] smallpox; syphilis; tuberculosis (*Mycobacterium tuberculosis* complex); tularemia; and viral hemorrhagic fevers.

(d) (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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For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190, and repealing and replacing 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145, and proposes repealing 28 TAC §§5.4128 and 5.4146 - 5.4149, and adding new 28 TAC §5.4912. These sections concern funding for losses and operating expenses in excess of

the Texas Windstorm Insurance Association's net premium and other revenue and amounts available in the catastrophe reserve trust fund. These sections also concern procedures for ordering premium surcharges and assessments of association member insurers under Insurance Code Chapter 2210, Subchapters B-1 and M. These amendments, repeals, and new sections are necessary to implement the funding portions of SB 900, 84th Legislature (2015).

**EXPLANATION.** The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

Since 2009, the Insurance Code has provided that the association must pay for losses that exceed its premium and other revenue and amounts available in the catastrophe reserve trust fund with the proceeds of three classes of public securities, issued on the association's behalf by the Texas Public Finance Authority. Statute provided for the payment of the public securities from the association's net premium and other revenue, assessments on association member insurers, premium surcharges on certain property and casualty insurance policies in the catastrophe area, or a combination thereof, depending on the class of public security. TDI adopted rules in 2011 to implement the statutes and adopted new and amended rules in 2014 to implement statutory changes, including changes in the lines of insurance subject to a premium surcharge and the creation of an alternative source of payment for certain public securities.

SB 900 changed the association's funding structure. Instead of being paid from the proceeds of three classes of public securities, losses that are greater than the association's net premium and other revenue and amounts in the catastrophe reserve trust fund must be paid with proceeds of alternating classes of public securities and member insurer assessments, beginning with class 1 public securities and ending with class 3 assessments. All three classes of public securities are to be paid for with the association's net premium and other revenue, and, if that is insufficient, with a premium surcharge on association policies. If issuing class 2 or class 3 public securities payable from these sources is not possible or the commissioner of insurance determines that issuance is financially unreasonable, TPFPA may issue class 2 or class 3 public securities paid for from a contingent source: a premium surcharge on certain property and casualty and all association and Texas FAIR Plan Association policies in the catastrophe area.

The proposed amendments, repeals, and new sections conform TDI rules to current law. TDI proposes repealing sections implementing Insurance Code §2210.6136, which provided for an alternative source of payment for certain class 2 public securities and which SB 900 repealed. TDI proposes amended, replacement, and new sections that establish procedures for the approval and determination of premium surcharges on association policies and procedures for the issuance of class 2 or class 3 public securities paid from the contingent source. The proposed amendments also contain conforming changes for clarity and agency style.

TDI posted to its website a draft of these rules on July 31, 2015, with a comment period that ended on August 14, 2015. Based on comments, TDI revised the draft and makes this proposal. A thorough discussion of the proposed amended, replacement, and new sections follows.

§5.4101. Applicability. Section 5.4101(a) has been amended to reflect the proposed addition or deletion of sections. Sections listed here will be part of the association's plan of operation and will control over any conflicting provision in §5.4001 of Division 3.

§5.4102. Definitions. This section has been amended to delete definitions relating to the implementation of Insurance Code §2210.6136, which SB 900 repealed and to add new definitions related to implementation of the new funding structure under SB 900. Existing definitions have also been changed to conform to the new funding structure and certain definitions have been moved from §5.4172 of Division 3 to this section.

§5.4121. Financing Arrangements. Conforming changes are made to this section to reflect that under SB 900, net premium and other revenue of the association is pledged for the payment of class 1, class 2, and class 3 public securities issued under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively. The section is also changed to reflect that, due to the repeal of Insurance Code §2210.6136, the association will not have premium surcharge or member assessment repayment obligations.

§5.4123. Public Security Request, Approval, and Issuance. This section is amended to delete references to existing §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) of Division 3. Existing §5.4126 implements Insurance Code §2210.6136, which SB 900 repealed. TDI proposes repealing and replacing §5.4126. This section is also amended to remove reinsurance proceeds from the list of information the commissioner may rely on in considering the association's request for the issuance of public securities. Reinsurance proceeds are no longer applicable in this determination because SB 900 amended Insurance Code §2210.453 to require that reinsurance attach at a point that is not less than the aggregate amount of all funding available to the association under Subchapter B-1.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event. Conforming changes are made to this section to reflect that under SB 900, the maximum amount of pre-event class 1 public securities that TPFPA may issue is changed from \$1 billion to \$500 million. The section is also amended to make clear that, for the purposes of determining the amount of pre-event public securities that can be issued, the Series 2014 Pre-Event Class 1 Public Securities that TPFPA issued under the previous law are pre-event class 1 public securities under the new law.

Proposed §5.4124(d) also clarifies what public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under the proposal, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum authorized amount of outstanding class 1 public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event. Conforming changes are made to this section to reflect that under SB 900, the Series 2014 Pre-Event Class 1 Public Securities that TPFPA issued under the previous law are con-

sidered pre-event class 1 public securities when determining the amount of post-event class 1 public securities that may be issued. Conforming changes are also made to reflect the new funding structure under SB 900, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities. The section is also amended to clarify that for the issuance of class 2 or class 3 public securities under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of Division 3.

Proposed §5.4124(d) also clarifies what public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under the proposal, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities.

§5.4126. Determination of the Association Surcharge Percentage. This proposal contemplates the repeal and replacement of existing §5.4126 (Alternative for Issuing Class 2 and Class 3 Public Securities). This section implements Insurance Code §2210.6136, which SB 900 repealed.

The proposed replacement section implements provisions in Insurance Code §§2210.612, 2210.613, and 2210.6131, which provide that class 1, class 2, and class 3 public securities may be payable from premium surcharges on association policies ("association surcharges"). While public securities are outstanding, the association is required to quarterly determine if its net premium and other revenue are sufficient for payment of its payment obligations for any outstanding class 1, class 2, and class 3 public securities. If the association determines its net premium and other revenue are not sufficient, it must promptly request the commissioner to approve association surcharges. The proposed section also requires the association to request an association surcharge any time, including before the public securities have been issued, if it determines its premium and revenue is not sufficient.

The proposed replacement §5.4126 specifies the information that the association must provide to the commissioner in a request to implement an association surcharge and allows the commissioner to independently determine that an association surcharge is necessary. The commissioner must make a surcharge determination within 10 business days. The proposed section contemplates that the association will surcharge all association policies effective on a specified surcharge date, and not monthly as the policies renew.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities. This proposal contemplates the repeal and replacement of existing §5.4127 (Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharge and Member Assessments). This section implements Insurance Code §2210.6136, which SB 900 repealed.

The proposed replacement section implements new Insurance Code §2210.6132, which was added by SB 900. Insurance Code

§2210.6132 provides that if the commissioner, after consultation with the TPFA, determines that class 2 or class 3 public securities payable from the association's premium and association surcharges cannot be issued or it is "financially unreasonable to do so," then the commissioner must order that class 2 and class 3 public securities are payable from premium surcharges on coastal property and automobile policies ("contingent surcharges"). The replacement §5.4127 specifies the information the association must provide to the commissioner in order to obtain approval for the repayment of public securities from contingent surcharges.

§5.4134. Excess Public Security Proceeds. This section is amended with minor conforming changes and stylistic changes.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. The section is amended to add the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, which SB 900 added, to the list of items the association must consider when determining the amount of class 1 public securities that cannot be issued. The section is also amended to reflect TDI's current writing style guidelines and to delete references to the association's premium surcharge and member assessment repayment obligations because these relate to the implementation of Insurance Code §2210.6136, which SB 900 repealed. The section also deletes references to reinsurance or alternative risk financing as alternatives to funding through public securities because SB 900 requires that reinsurance and alternative risk financing be used to provide funding only after all funding provided for under Subchapter B-1 of Chapter 2210 has been accessed.

§5.4136. Association Rate Filing. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. Under the new funding structure class 1, class 2, or class 3 public securities may be paid from the association's net premium and other revenue. Under the pre-SB 900 funding structure, only class 1 public securities could be paid from the association's net premium and other revenue. The section is also amended to make clear that the section's requirements apply to the Series 2014 Pre-Event Class 1 Public Securities issued before the enactment of SB 900.

§5.4141. Class 1 Public Security Trust Fund. This section is amended to conform it to changes made by SB 900 regarding the fund where TWIA deposits revenues pledged for payment of class 1 public securities. SB 900 eliminated the "Obligation Revenue Fund" where the association deposited net premium and other revenue for the payment of class 1 public securities, and created the "Class 1 Public Security Trust Fund" where the association must deposit new premium, other revenue, and association surcharges for the payment of class 1 public securities. The section is also amended to state that the association may not use or encumber association surcharges used to pay for class 1 public securities.

§5.4142. Class 2 and Class 3 Public Security Trust Funds. This proposal contemplates the repeal and replacement of §5.4142 (Excess Obligation Revenue Fund Amounts). Excess funds are addressed in amended §5.4144 and proposed replacement §5.4145 ("Excess Premium Surcharge Revenue," and "Excess Net Premium and Other Revenue," respectively). The proposed replacement §5.4142 implements SB 900's amendments to Insurance Code §2210.609, which create the class 2 and class 3 public security trust funds for the deposit of the association's net premium, other revenue, and association surcharges.

§5.4143. Premium Surcharge Trust Fund. This proposal contemplates the repeal and replacement of existing §5.4143 (Trust Fund for the Payment of Class 2 Public Securities). Existing §5.4143 addresses the deposit of premium surcharges collected under Insurance Code §2210.613, which SB 900 amended. The proposed replacement section provides for the trust fund, or funds, where the association and other insurers must deposit contingent surcharges, which may be required to pay for class 2 or class 3 public securities. This replacement section incorporates large sections of existing §5.4143, as both address the deposit of surcharges on non-association, coastal policies by insurers.

§5.4144. Excess Premium Surcharge Revenue. Conforming changes are made to this section to reflect that under SB 900, the association may impose association surcharges to help pay for class 1, class 2, or class 3 public securities, and the commissioner may order contingent surcharges to pay for class 2 or class 3 public securities.

§5.4145. Excess Net Premium and Other Revenue. This proposal contemplates the repeal and replacement of existing §5.4145 (Excess Class 2 Member Assessment Revenue). Existing §5.4145 is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities. Proposed replacement §5.4145 addresses what may be done with excess net premium and other revenue because the statute does not address this directly. The proposed section largely follows existing §5.4142 (Excess Obligation Revenue Fund Amounts), which addresses what happens to excess net premium and other revenue used to pay for class 1 public securities under pre-SB 900 law.

§5.4146. Member Assessment Trust Fund for the Repayment of Class 3 Public Securities. This proposal contemplates the repeal, without replacement, of existing §5.4146. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4147. Excess Class 3 Member Assessment Revenue. This proposal contemplates the repeal, without replacement, of existing §5.4147. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127. This proposal contemplates the repeal, without replacement, of existing §5.4148. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4149. Excess Repayment Obligation Trust Fund Amounts. This proposal contemplates the repeal, without replacement, of existing §5.4149. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4161. Member Assessments. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. SB 900 amended the association's funding provisions to provide loss funding through six alternating layers of public securities and assessments on as-

sociation member insurers. The proposed amendments specify the information the association must provide when requesting the commissioner approve a member insurer assessment.

Proposed §5.4161(c) provides that if TPFA cannot issue all or any portion of the authorized amount of class 1 public securities, the association may request and the commissioner may approve the imposition of a class 1 assessment on the association's member insurance companies under §2210.0725. This addresses what happens if, for a catastrophe year, TPFA cannot issue all of the class 1 public securities authorized by Insurance Code §2210.072. The amendments also make clear that if the commissioner approves a class 1 assessment under subsection (c), subsequent layers of public securities and assessments must be issued and ordered as provided for in statute.

§5.4171. Premium Surcharge Requirements. Conforming changes are made to this section to reflect the fact that SB 900 created two distinct types of premium surcharges. One type, association surcharges, may be assessed on association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131. The other type, contingent surcharges, may be assessed under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in the catastrophe area, including automobiles principally garaged in the catastrophe area. The proposed amendments distinguish between the two types of premium surcharges.

§5.4172. Premium Surcharge Definitions. Proposed amendments to this section include new definitions to distinguish between the two distinct types of premium surcharge created by SB 900. Some definitions for terms that are used in §§5.4121 - 5.4167 of Division 3 are also moved from §5.4172 to §5.4102.

§5.4173. Determination of the Contingent Surcharge Percentage. This proposal amends this section to address the determination of only the contingent surcharge percentage, which may be required under Insurance Code §2210.6132. Proposed replacement §5.4126 addresses the determination of the association surcharge percentage.

§5.4181. Premiums to be Surcharged. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4182. Method for Determining the Premium Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4184. Application of the Premium Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments also describe how association surcharges must be applied to association policies depending on whether the policies have been updated as required by proposed new 28 TAC §5.4912. Association surcharges must apply to all association policies meeting the requirements of 28 TAC §5.4912 and that are in effect on the surcharge date identified in proposed replacement §5.4126. Association surcharges must apply to association policies not meeting the requirements of §5.4912 on the surcharge date and that are issued or renewed with effective dates in the surcharge period determined under proposed replacement §5.4126. The section is also amended to state that only contingent surcharges are refundable; association surcharges are nonrefundable.

§5.4185. Mandatory Premium Surcharge Collection. Conforming changes are made to this section to reflect that SB 900 cre-

ated two distinct types of premium surcharges and to remove references to existing §5.4127 which TDI proposes repealing and replacing. Proposed amendments also describe how the association must collect association surcharges depending on whether association policies have been updated as required by proposed new 28 TAC §5.4912. The association must collect association surcharges in full when due for policies compliant with 28 TAC §5.4912. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

The section is also amended to state that failure to pay an association surcharge constitutes failure to pay premium for purposes of policy cancellation. Insurers must apply all policyholder payments to contingent surcharges before applying the payments to premium.

§5.4186. Remittance of Contingent Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges and to remove the title of existing §5.4143, which TDI proposes repealing, and replace it with the title of the proposed replacement section.

§5.4187. Offsets. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments state that the association may not increase association surcharges to pay for premium taxes or agent commissions, but that insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments require the association to provide a notice to policyholders receiving an association surcharge. The notice is similar to the one insurers must provide to policyholders receiving a contingent surcharge, but states that an association surcharge will not be refunded in the event of policy cancellation.

§5.4190. Annual Premium Surcharge Report. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. A proposed amendment requires the association to provide TDI with an annual premium surcharge report following the end of a calendar year in which an association surcharge was in effect. This requirement is the same as the existing requirement for other insurers.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131. This proposed new section would appear in Division 10 of Subchapter E of Chapter 5, Title 28, Texas Administrative Code. The section requires the association to file new policy forms that provide that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 of Division 3 and the deadline by which policyholders must pay the surcharge. The declarations page must notify the policyholder of the possibility of surcharge and that failure to pay any surcharge will result in policy cancellation.

FISCAL NOTE AND LOCAL EMPLOYMENTS IMPACT STATEMENT. Brian Ryder, actuary, Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed amendments and new and replacement sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. If adopted, the proposal would impose no additional requirements that affect state and local governments. This proposal implements changes based on the passage of SB 900, which altered the association's funding structure and created six layers of alternating public securities and assessments on association members. Premium surcharges on association policyholders only apply if TPFA has issued class 1, class 2, or class 3 public securities under Insurance Code §§2210.612, 2210.613, or 2210.6131, respectively, and the association's net premium and other revenue are not sufficient to pay the securities. Premium surcharges on coastal property and automobile policies only apply if TPFA has issued class 2 or class 3 public securities under Insurance Code §2210.6132. Mr. Ryder does not anticipate any measurable effect on local employment or the local economy as a result of the proposal. Under this proposal, premium surcharges on association policies (association surcharges) under Insurance Code §§2210.612, 2210.613, and 2210.6131 are nonrefundable. Under the proposal, the association must file with TDI new policies that may be subject to immediate surcharges. Once approved, the new policies will be issued to new association policyholders and to existing ones at renewal. During the period in which not all issued policies provide for immediate surcharges, the association must collect any surcharges assessed on policies which do not provide for immediate surcharges in full no later than the effective date of the policy. One year after the first new policy is issued, all policies will be subject to immediate surcharge. Immediate surcharges, in contrast to surcharges collected over a surcharge period, are easy to implement and allow for quick collection of surcharges. However, immediate surcharges, based on the premium in effect on a particular date, make refunds for canceled policies and adjustments for mid-term policy changes that occur after the surcharge date much more difficult to administer. For this reason, refunds that would be available if TDI proposed a surcharge period for association surcharges are not available under this proposal. No measurable effect on local employment or the local economy is anticipated, however, because surcharges or portions of surcharges that would otherwise have been refunded will go into the catastrophe reserve trust fund. After a catastrophic event, the surcharges will eventually return to the local economy from the CRTF.

PUBLIC BENEFIT AND COST NOTE. Mr. Ryder has also determined that for each year of the first five years the proposed amendments and new and replacement sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

Anticipated public benefits. TDI anticipates that a primary public benefit resulting from the proposal will be the implementation of SB 900. The proposal conforms TDI rules to the new funding structure, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities.

The proposal provides procedures for the approval and determination of the two types of premium surcharges established in SB 900, premium surcharges on policyholders of association policies (association surcharges) and premium surcharges on policyholders of policies that cover insured property that is lo-



cated in a catastrophe area (contingent surcharges). Both or either of these premium surcharges may be necessary to fund the debt obligation associated with the issuance of public securities. The proposal sets out the information the association must provide to the commissioner along with a request for an approval of an association surcharge and permits the commissioner to independently determine the necessity of an association surcharge. The proposal also sets out the information the association must provide to the commissioner along with a request for the issuance of class 2 or class 3 public securities paid from contingent surcharges. The anticipated public benefit will be an orderly process of determining the necessity and amount of premium surcharges, which will facilitate the issuance of public securities, the proceeds of which the association will use to pay insured losses should losses reach the relevant funding layers.

The proposal provides a "drop-down" procedure whereby the association may request approval to implement a class 1 assessment on member insurers when the statutorily authorized principal amount of class 1 public securities cannot be issued. Under SB 900, class 1 public securities may be paid only from the association's net premium and other revenue, and, if that is insufficient, association surcharges. The anticipated public benefit of this is the ability of the association to pay insured losses even when public securities paid from these sources cannot be issued, while still maintaining the requirement that any subsequent class 2 or class 3 public securities must still be issued as provided by Chapter 2210.

Another anticipated public benefit of the proposal is its clarification of a question regarding the existing Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. If class 1 public security proceeds that have been used to pay issuance costs and put in a reserve account are considered depleted, then under Insurance Code §2210.072(f), the amounts of those proceeds must be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities. Public securities in the amounts used to pay issuance costs and to use as reserve funds, and any others needed to reach the maximum would need to be issued before class 1 assessments could be ordered in the same catastrophe year. Under the proposal, class 1 public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities. The public benefit is that the association will be able to avoid the delay and expense of having to issue small amounts of public securities before being able to access the next layer of funding during the same catastrophe year.

A final public benefit of the proposal is that it provides for immediate surcharges for association policies. Although there are costs to this arrangement, as described below, immediate surcharges, in contrast to surcharges collected from policies with an effective date during a surcharge period, are easy to implement and allow for quick collection of surcharges. Once all association policies in effect are written on new policy forms that provide for immediate association surcharges, any surcharge will be based on the premium in force at the date the surcharge is due. Be-

cause the premium in force at that date is known, the amount of surcharge required may be determined more accurately than a surcharge based on policies that become effective during a surcharge period, during which the number and size of policies that will become effective will need to be estimated.

Estimated costs for persons required to comply with the proposal. The association and member insurers will incur costs to comply with the proposal.

The association.

§5.4126. Under proposed §5.4126, while class 1, 2, or 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, are outstanding, the association must, at least quarterly, determine if its net premium and other revenue is sufficient to pay the securities. If the association determines its net premium and other revenue is insufficient, the association must request that the commissioner approve an association surcharge and provide the commissioner the information in proposed §5.4126(b). The association estimates that the vast majority of the work necessary to make the quarterly sufficiency determination and to provide the information required in a surcharge request would be done by existing staff at an approximate cost of \$3,000 per quarter.

§5.4127. Under proposed new §5.4127, the association must provide information to the commissioner in a request for approval of the issuance of class 2 or class 3 public securities paid from contingent surcharges under Insurance Code §2210.6132. The association must provide its estimated net revenues and its best estimate of the terms and conditions necessary to issue marketable class 2 or class 3 public securities paid from association surcharges under Insurance Code §2210.613 or §2210.6131. The association must also provide its best estimate of the association surcharges needed to pay the debt service required to issue marketable public securities paid under Insurance Code §2210.613 and §2210.6131. The association estimates that it would cost approximately \$50,000 to comply with proposed §5.4127, with the majority of the costs incurred being necessary to pay for TPFA's advisors. The association would need to work closely with TPFA and its advisors should the association ever need to request for approval of the issuance of class 2 or class 3 public securities paid from contingent surcharges.

§5.4161. Under the proposed amendments to §5.4161(b), the association must request that the commissioner approve a class 1, class 2, or class 3 assessment. The association must provide information in §5.4161(b) in aggregate for the catastrophe year to the commissioner. The association estimates that the vast majority of the work necessary to gather this information would be done by current staff at an approximate cost of \$2,000.

Under the proposed amendments to §5.4161(c), the association may request that the commissioner approve the imposition of a class 1 assessment in situations where all or any portion of the authorized amount of class 1 public securities cannot be issued. The association would need to include in its request the information in §5.4161(d) and estimates that it would cost approximately \$20,000 to comply with §5.4161(d), with the majority of the costs incurred being necessary to pay for TPFA's advisors. The association would need to work closely with TPFA and its advisors should the association ever need to request a drop-down of class 1 assessments.

§5.4173. If the commissioner orders issuance of public securities to be paid under Insurance Code §2210.6132, the associ-

ation must submit a request for the commissioner to approve a contingent surcharge, with the information listed §5.4173(a), on an annual basis. The association estimates that it would cost approximately \$20,000 to comply with §5.4173(a), with the majority of the costs incurred being necessary to pay for TPFA's advisors.

§5.4189. Under the proposed amendments to §5.4189, the association must send policyholders notice of association surcharges. The association estimates that current staff would accomplish this at a cost of approximately \$15,000.

§5.4190. Under proposed amendments to §5.4190, if an association must give TDI an annual premium surcharge report for that year. The association estimates that most of the work necessary to provide the annual premium surcharge report would be done by current staff at a cost of approximately \$25,000 the first year and \$10,000 in subsequent years.

§5.4912. Under proposed new §5.4912, the association will have to file new policy forms, which inform policyholders that the policy may be subject to immediate surcharges. The association estimates that this requirement will cost approximately \$5,000. Under the same section, the association must also provide a simple but conspicuous notice that provides the same information on each policy declarations page. The association estimates that this requirement will cost approximately \$10,000.

#### Non-association insurers.

Under proposed §5.4185(e), insurers must apply all policyholder payments received to contingent surcharges before applying the payment to premium. This requires insurers to program their accounting systems to apply funds from partial payments first to the contingent surcharges that are due, and then remaining funds to premiums that are due. In the absence of this requirement, insurers will still have to program their accounting systems to apportion payments that are less than the required payment ("short payments") between surcharges and premiums. For example, in the absence of this requirement, insurers may decide to program their accounting systems to apply funds from "short payments" first to premium, and then to surcharges; or apportion "short payments" pro-rata to surcharges and premiums. In the absence of the rule, insurers will have to program *some methodology* to address this. However, the proposed rule requires that insurers use the particular methodology of first apportioning funds from "short payments" to contingent surcharges, and then to premium. TDI estimates that the expected additional cost of programming this particular methodology will require between 1,500 and 2,000 hours of additional programming time, depending on the complexity of the company's accounting systems. The median and average hourly wage for a computer programmer in Texas are \$36.32 and \$38.85, respectively. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics, May 2014 State Occupational and Wage Estimates Texas*, accessed September 16, 2015. [http://www.bls.gov/oes/current/oes\\_tx.htm#15-0000](http://www.bls.gov/oes/current/oes_tx.htm#15-0000). Nationwide, the median and average hourly wage for a computer programmer in the insurance industry are \$38.36 and \$38.49, respectively. Nationwide, also in the insurance industry, the tenth and ninetieth hourly percentile ranges are \$24.15 and \$46.32, respectively. Using the nationwide percentile ranges, the additional programming time could result in an additional cost of \$36,225 to \$92,640. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics Query System*, accessed September 4, 2015. <http://data.bls.gov/oes/>.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

As specified in the Public Benefit and Cost Note section of this proposal, the proposal has an economic impact on the association and insurers that write lines of insurance that are subject to the premium surcharge.

The association. The association does not meet the definition of a small business under Government Code §2006.001(2). The association is a statutorily created association of property insurers, not a corporation, partnership, nor sole proprietorship. It is not formed for the purpose of making a profit. The association is not independently owned and operated. Further, the association has approximately 150 employees (including employees who are providing services by contract to the Texas Fair Access to Insurance Requirements Plan Association (FAIR Plan)) and net receipts well over \$6 million. Based on these factors, the association does not meet the definition of a small or micro business under Government Code §2006.001(1) and (2), and an analysis of the economic impact of this proposal on the association under Government Code §2006.002(c) is not required.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, it is anticipated that insurers subject to proposed amended §5.4185 will also be subject to additional costs from the adoption and enforcement of those proposed amendments. The costs will arise from the requirement that insurers apply all policyholder payments received to contingent surcharges before applying the payment to premiums.

The term "insurer" has the same meaning as defined in §5.4172 of this title. Insurer refers to each property and casualty insurer authorized to engage in the business of property and casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. This includes a maximum of 26 insurers that qualify as small and micro businesses.

The department has determined that the proposed amendments to §5.4185 may have an adverse economic effect on insurers operating as small or micro businesses. The department, in compliance with Government Code §2006.002(c-1), considered the following alternative method of achieving the purpose of the proposed rule, while reducing costs to insurers operating as small and micro businesses: exempting such insurers from §5.4185(e). However, this is not feasible, as the absence of this requirement would provide policyholders of small and micro businesses with little or no incentive to pay contingent

surcharges. This would undermine the purpose of Insurance Code §2210.6132, which is to provide a contingent source for the payment of class 2 and class 3 public securities.

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

**REQUEST FOR PUBLIC COMMENT.** If you wish to comment on this proposal you must do so in writing no later than 5 p.m. on November 9, 2015, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Brian Ryder, Actuary, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or at [Brian.Ryder@tdi.texas.gov](mailto:Brian.Ryder@tdi.texas.gov).

The commissioner will consider the adoption of the proposed amendments, repeals and new sections in a public hearing under Docket No. 2781 scheduled for October 28, 2015, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

### **DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES**

**28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4127, 5.4134 - 5.4136, 5.4141 - 5.4145, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190**

**STATUTORY AUTHORITY.** TDI proposes amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190 and replacement of 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145. The amended and replacement sections are proposed under Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608, 2210.609, 2210.610, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes allowable uses for the association's assets.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1. Section 2210.0715(a) requires the association to pay losses in excess of premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 2210.0715(b) provides that the proceeds of class 1 public securities issued before the

date of any occurrence or series of occurrences resulting in insured losses may not be included in available reserves for the purposes of §2210.0715.

Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes \$500 million as the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.0715. Section 2210.072 requires that the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, shall be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used, and that those proceeds shall count against the limit on class 1 public securities in the catastrophe year in which the proceeds must be depleted. Section 2210.0725 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §2210.0715 and §2210.072 from class 1 member assessments, establishes \$500 million as the maximum amount of class 1 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, and 2210.0725, and establishes \$250 million as the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, and 2210.073 from class 2 member assessments, establishes \$250 million as the maximum amount of class 2 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.0741 authorizes the association to use the proceeds of class 3 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074, and establishes \$250 million as the maximum principal amount of class 3 public securities. Section 2210.0742 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 from class 3 member assessments, establishes \$250 million as the maximum amount of class 3 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation by rule to provide windstorm and hail insurance coverage in the catastrophe area. Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that TDI considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.602 provides the TPIFA board shall establish, with the Texas Treasury Safekeeping Trust Company, dedicated public security trust funds into which premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively, shall be deposited.

Section 2210.604 requires commissioner approval of the association's request to TPFAs to issue class 1, class 2, or class 3 public securities prior to issuance. The association must submit a cost-benefit analysis of various financing methods and funding structures with its request.

Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds.

Section 2210.609 provides that the association must pay all public security obligations from available funds and, if the association determines the funds are insufficient, it must pay these obligations and expenses in accordance with Insurance Code §§2210.612, 2210.613, and 2210.6131, as applicable. Section 2210.609 further provides that the association must deposit all premium surcharge revenues collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities, into the respective public security trust funds dedicated for this purpose. Section 2210.609 requires the association to provide for payment of public security obligations and public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the dedicated public security trust funds and any public security reserve funds.

Section 2210.610 provides that revenues received by the association from premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 may be applied only as provided by Insurance Code Chapter 2210, Subchapter M.

Section 2210.611 authorizes the association to use premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively. Section 2210.611 provides that if, in any calendar year, the premium surcharge revenue collected for class 1, class 2, or class 3 public securities exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on those funds for each respective class, the association may use the excess to: (i) pay the applicable public security obligations for the class payable in the subsequent year; (ii) redeem or purchase outstanding public securities of the class; or (iii) make a deposit in the CRTF.

Section 2210.612 provides that the association shall pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association shall pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFAs, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities is financially unreasonable. Following either determination, the commissioner shall order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and FAIR Plan policies in the catastrophe area.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

**CROSS REFERENCE TO STATUTE.** The proposal affects the following statutes: Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608, 2210.609, 2210.610, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

*§5.4101. Applicability.*

(a) This section and [~~Sections 5.4101,~~] §§5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4127 [~~5.4128~~], 5.4133 - 5.4136, and 5.4141 - 5.4145 (relating to Definitions, Operation of the Catastrophe Reserve Trust Fund, Termination of the Catastrophe Reserve Trust Fund, Investments of Catastrophe Reserve Trust Fund, Duties and Responsibilities, Financing Arrangements, Public Securities Request, Approval, and Issuance, Issuance of Class 1 Public Securities before a Catastrophic Event, Issuance of Public Securities after a Catastrophic Event, Contingent Sources of Payment for Class 2 and Class 3 Public Securities, Excess Public Security Proceeds, Marketable Public Securities, Amount of Class 1 Public Securities that Cannot be Issued, Market Conditions and Requirements and Cost-Benefit Analysis, Association Rate Filings, Class 1 Public Securities Trust Fund, Class 2 and Class 3 Public Securities Trust Funds, Premium Surcharge Trust Fund, Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue) [~~5.4149~~] of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department regulatory oversight of the association.

*§5.4102. Definitions.*

The following words and terms when used in this division will have the following meanings unless the context clearly indicates otherwise:

- (1) Association--Texas Windstorm Insurance Association.
- (2) Association program--The funding of any or all of the purposes authorized to be funded with the Public Securities under Insurance Code Chapter 2210, Subchapter M.
- (3) Association surcharge--Premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.

(4) Association surcharge percentage--The percentage amount determined by the commissioner under §5.4127(c) or (d) of this division (relating to Determination of the Association Surcharge Percentage).

(5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.

(6) [(4)] Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.

(7) [(5)] Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.

(8) [(6)] Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.

(9) [(7)] CRTF--Catastrophe Reserve Trust Fund. A statutorily created [statutorily-created] trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

(10) [(8)] Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(11) [(9)] Catastrophic losses--Losses resulting from a catastrophic event.

(12) [(40)] Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund [obligation revenue fund] at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or, in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.

(14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public security trust fund, or, in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.

(15) [(44)] Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) [(42)] Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) [(43)] Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 [§2210.074] and Insurance Code Chapter 2210, Subchapter M.

(18) [(44)] Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) [(45)] Commissioner--The Commissioner of Insurance of the State of Texas.

(20) [(46)] Comptroller--The Comptroller of the State of Texas.

(21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.

(22) [(47)] Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust [obligation revenue] fund or [s] premium surcharge trust fund, [or member assessment trust fund] as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(23) [(48)] Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) [(49)] Department--The Texas Department of Insurance.

(25) [(20)] Earned premium--That portion of gross premium that the association has earned because of the [expired] portion of [the] time during which [for which] the insurance policy has been in effect.

(26) [(24)] Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) [(22)] Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(29) [(23)] Investment income--Income from the investment of funds.

(30) [(24)] Letter of instruction--The commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(31) [(25)] Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

[(26)] Member assessment trust fund--A dedicated trust fund established by TPFA and held by the trust company in which

the association or assessed insurers must deposit member assessments collected under Insurance Code §§2210.613 and §2210.6135. The member assessment trust fund may be segregated into separate funds, accounts, or subaccounts, including for the purpose of segregating class 2 and class 3 public security member assessments.]

(32) [(27)] Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue [revenues] from the class 1, class 2, and class 3 public security trust funds [obligation revenue fund and the repayment obligation trust fund] that are in excess of: incurred losses;[-] operating expenses;[-] reinsurance premium;[-] current year financial arrangement obligations;[-] current year net premium [class 1] payment obligations; and[-] current year public security administrative expenses[-] and premium surcharge and member assessment repayment obligations].

(33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.

(34) [(28)] Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium may be [is] pledged for the payment of class 1, class 2, and class 3 payment obligations [obligation].

(35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations, or the portion of public security obligations that are paid from association surcharges.

(36) [(29)] Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium [class 1] payment obligations [obligation] for that calendar year, [less premium surcharge and member assessment repayment obligation for that calendar year, and] less amounts necessary to fund or replenish any [operating] reserve fund required by a public security agreement.

[(30) Obligation revenue fund--The dedicated trust fund established by TPFA and held by the trust company in which the association must deposit net premium and other revenue for the payment of class 1 payment obligation.]

(37) [(31)] Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(38) [(32)] Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment income on association assets. Other revenue does not include premium surcharges [and member assessments] collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742 [2210.6135 and 2210.6136], and interest income on those amounts.

(39) [(33)] Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §§2210.151 and §2210.152.

(40) [(34)] Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, and 2210.6132 [2210.6136].

[(35) Premium surcharge and member assessment repayment obligation--The amount of premium surcharge and member assessment that the commissioner has ordered the association to repay over a specified number of years under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). This may involve varying periodic payments equaling the total required repayment amount.]

(41) [(36)] Premium surcharge trust fund(s) [fund]--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent [premium] surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges. [collected under Insurance Code §2210.613.]

(42) [(37)] Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(43) [(38)] Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(44) [(39)] Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

[(40) Repayment obligation trust fund--The dedicated trust fund into which the association deposits, in amounts necessary to comply with the commissioner's order under §5.4126 of this division for payment of the premium surcharge and member assessment repayment obligation, net premium and other revenue that is not contractually required for the class 1 payment obligation.]

(45) [(41)] Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(46) [(42)] Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(47) [(43)] Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(48) [(44)] TPFA--The Texas Public Finance Authority.

(49) [(45)] Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4121. *Financing Arrangements.*

(a) The association may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under Insurance Code §2210.072, or

(B) obtain public securities under Insurance Code §2210.072; and

(2) be approved by the association's board of directors before the association enters into the financing arrangement.

(b) The association may pay a financing arrangement with any or all:

(1) net premium and other revenue of the association that is not required for payment of class 1, class 2, or class 3 payment obligations [~~or premium surcharge and member assessment repayment obligations~~];

(2) reinsurance proceeds;

(3) the proceeds of any financing arrangement;

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or

(5) any other association asset.

(c) As collateral security for such financial arrangements, including interest-bearing [~~interest bearing~~] loans or other financial instruments, the association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the association's assets, including without limitation, all or any portion of the association's right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210.

*§5.4123. Public Securities Request, Approval, and Issuance.*

(a) The association's board of directors must request the issuance of public securities as prescribed in §5.4124 and §5.4125 [~~§§5.4124 - 5.4126~~] of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event ~~and~~[;] Issuance of Public Securities after a Catastrophic Event[;] ~~and Alternative for Issuing Class 2 and Class 3 Public Securities~~).

(1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §5.4124 and §5.4125 [~~§§5.4124 - 5.4126~~] of this division.

(2) The association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The association's board of directors may at any time submit a request for issuance of public securities to be issued after a catastrophic event [~~at any time~~]. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.

(b) The commissioner must approve the request before TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.

(2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, [~~reinsurance proceeds~~], and any other related or supporting information from any source, including from the general manager of the association and from TPFA and its consultants and legal counsel.

(3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.

(4) The department must provide the commissioner's written approval of the request to the association and TPFA.

(c) Following the commissioner's written approval of the request, TPFA may issue public securities and credit agreements on behalf of the association, as authorized in Insurance Code Chapter 2210 and §5.4124 and §5.4125 [~~§§5.4124 - 5.4126~~] of this division, for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

(d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the association.

(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

*§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.*

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flows, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed \$500 million [~~\$1 billion~~] outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been depleted [~~used~~] to pay for the association program [~~insured losses or expenses~~] will not continue to count against the combined \$500 million [~~\$1 billion~~] aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

(e) For the purposes of determining the authorized amount of class 1 public securities, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

*§5.4125. Issuance of Public Securities after a Catastrophic Event.*

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed currently available net premium, other revenue, and money in the CRTF [~~and available reinsurance proceeds, and that the public security proceeds are necessary to fund the catastrophic losses~~]; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF; and

(C) amounts available from other financing arrangements and the association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means; [~~and~~]

~~[(d) available reinsurance proceeds;]~~

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the commissioner.

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were not depleted to pay for the association program as of [~~available for a catastrophic event at~~] the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) For the purposes of determining the amount of proceeds of class 1 public securities that were not depleted as described in subsection (c)(1) of this section, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

(e) [~~(d)~~] The association must [~~request~~], in aggregate for each catastrophe year:

(1) impose an assessment of the statutorily authorized [~~principal~~] amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) [~~public securities~~] before class 2 public securities may be issued [~~requested~~]; and

(2) impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public securities may be issued [~~the statutorily authorized principal amount of class 2 public securities before class 3 public securities may be requested~~].

(f) [~~(e)~~] The association:

(1) may make one or more requests under this section;



(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively [public security proceeds].

(g) For the issuance of class 2 or class 3 public securities payable under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of this division.

§5.4126. Determination of the Association Surcharge Percentage.

(a) If, at any time, the association, after consultation with TPFA, determines that net premium and other revenue are not sufficient to pay class 1, class 2, or class 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, the association must promptly submit a request to the commissioner to approve an association surcharge. While the public securities are outstanding, at least quarterly, the association must determine if its net premium and other revenue is sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131.

(b) A request described by subsection (a) of this section must include the following information for each class of public securities for which an association surcharge is required:

(1) the proposed association surcharge percentage;

(2) the amount the association has determined, after consultation with TPFA, is the debt service and all related expenses on the public securities for the applicable period;

(3) the amount that the association has determined is the debt service not already covered by available funds and all related expenses on the public securities for the applicable period;

(4) for policies that comply with the requirements of §5.4912 of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), the association's best estimate of its anticipated gross premium for policies in effect on the date described by paragraph (8) of this subsection;

(5) for policies that do not yet comply with the requirements of §5.4912 of Division 10 of this subchapter, the association's best estimate of its anticipated gross premium for the period described by paragraphs (9) and (10) of this subsection;

(6) all relevant data the association relied upon when determining the amounts in paragraphs (2) - (5) of this subsection;

(7) an explanation of the methodology, including all material assumptions, the association used to determine the amounts in paragraphs (2) - (5) of this subsection;

(8) the date, which must be no more than 90 days after the date the request is received by the commissioner, on which the association surcharge applies to policies that are in force and compliant with §5.4912 of Division 10 of this subchapter;

(9) the date on which the association surcharge begins to apply to policies not compliant with §5.4912 of Division 10 of this

subchapter, which must be the same date as the date in paragraph (8) of this subsection; and

(10) the date on which the association surcharge ceases to apply to policies not compliant with §5.4912 of Division 10 of this subchapter, which must be the day after the date the last noncompliant policy expires.

(c) The commissioner will, within 10 business days of receipt of the request in subsection (b), notify the association and TPFA of the commissioner's determination on the sufficiency of the association surcharge percentage requested. The association must implement the surcharge percentage the commissioner determines is sufficient.

(d) If the commissioner independently determines that net premium and other revenue are not sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, the commissioner may order the association to assess an association surcharge. The order must specify the date on which the surcharge applies. The surcharge may not apply earlier than the 20th day following the date of the order.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities.

(a) To obtain approval for the issuance of class 2 or class 3 public securities paid from contingent surcharges, the association must first submit a written request to the commissioner.

(b) In its request to the commissioner under subsection (a) of this section, the association must include:

(1) a determination from TPFA that TPFA is unable to issue class 2 or class 3 public securities paid as provided by Insurance Code §2210.613 or §2210.6131, as applicable; or

(2) the following information:

(A) the association's estimated net premium and other revenues;

(B) the association's best estimate of the terms and conditions necessary to issue marketable class 2 or class 3 public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, including:

(i) the estimated annual payments for principal and interest;

(ii) the estimated contractual coverage amount;

(iii) estimated reserve requirements;

(iv) the estimated amount of any other required payments for debt service;

(v) the estimated public security administrative expenses; and

(vi) any other conditions likely necessary to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, that the association determines will impact its operations; and

(C) the association's best estimate of the association surcharges needed to pay the debt service required to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131.

(c) When providing information required under When providing information required under subsection (b)(2) of this section, the association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose., the association may rely on information and

advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(d) The commissioner, after consultation with TPFA, may order that class 2 or class 3 public securities be paid as provided by Insurance Code §2210.6132 if either:

(1) TPFA is unable to issue public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable; or

(2) the issuance of public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, is financially unreasonable for the association.

§5.4134. *Excess Public Security Proceeds.*

(a) The association [Association] may use any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied in accordance with Insurance Code §2210.608.

(b) As specified in [the] Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a) [2210.074(a)] public securities may be repaid before their full term if the association's [Association's] board of directors elects to do so and the commissioner approves.

§5.4135. *Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.*

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O on anticipated net premium and other revenue and anticipated revenue from association surcharges;

(3) [(2)] the estimated amount of debt service for the public securities, including any contractual coverage amount;

(4) [(3)] the association's obligations for outstanding [class 1] public securities, including contractual coverage requirements and public security administrative expenses;

[(4) the estimated premium surcharge and member assessment repayment obligations;]

[(5) the association's outstanding premium surcharge and member assessment repayment obligations;]

(5) [(6)] the association's obligations for other financing arrangements;

(6) [(7)] any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(7) [(8)] TPFA administrative rules;

(8) [(9)] applicable State of Texas debt issuance policies;

(9) [(10)] administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(10) [(11)] market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe-related [catastrophe related] public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally recognized [nationally-recognized] investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The [A] cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as[=]

[(i) purchasing additional reinsurance for similar funding at a similar level;]

[(ii) providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; [or]

[(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;]

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

*§5.4136. Association Rate Filings.*

While there are outstanding [class 1] public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, or outstanding class 1 public securities issued before June 1, 2015[; or there are repayment obligations under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments)], the association:

(1) must consider its obligations for the payment of [class 1] public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [and the repayment of class 2 public securities], including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:

(A) the expected operating costs of the association, including expected nonhurricane wind and hail losses and loss adjustment expenses; and

(B) the expected payment of [class 1] public security obligations payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [and the expected repayment of class 2 public securities], including any contractual coverage amount the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

(3) must include a cost component in the rates sufficient to at least provide for the expected payment of public security [class 1 payment] obligations for public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, [and the expected repayment of premium surcharge and member assessment repayment obligations] during the period in which the rates will be in effect.

*§5.4141. Class 1 Public Security Trust Fund [Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund].*

(a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the class 1 public security trust [obligation revenue] fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.612 in the class 1 public security trust fund.

(b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public security trust [securities obligation revenue] fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held [association held] funds to the class 1 public security trust [obligation revenue] fund to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of class 1 public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the class 1 public security trust fund while these amounts are on deposit.

*§5.4142. Class 2 and Class 3 Public Security Trust Funds.*

(a) While class 2 or class 3 public securities payable under Insurance Code §2210.613 and §2210.6131, respectively, are outstanding, the association must deposit net premium and other revenue in the class 2 public security trust fund and the class 3 public security trust fund, respectively, at periods and in amounts as required by the class 2 and class 3 public security agreements to fund the class 2 and class 3 payment obligations. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.613 and §2210.6131 in the class 2 public security trust fund and the class 3 public security trust fund, respectively.

(b) Without limiting other options, for public securities payable under Insurance Code §2210.613 and §2210.6131, the class 2 and class 3 public security agreements may include an operating reserve fund. If the class 2 or class 3 public security trust funds do not contain sufficient money to pay debt service on the class 2 or class 3 public securities, administrative expenses on the class 2 or class 3 public securities, or other class 2 or class 3 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 2 or class 3 public security trust fund, as applicable, to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of the applicable public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the appropriate trust fund accounts while these amounts are on deposit.

*§5.4143. Premium Surcharge Trust Fund.*

(a) As required by any agreements between the association, TPFA, and the trust company, if public securities payable under Insurance Code §2210.6132 are outstanding, insurers may be required to deposit contingent surcharges directly into the premium surcharge trust fund or funds.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice to the commissioner and insurers no later than 60 days before the insurers must implement the contingent surcharge.

(c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.

(d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the association under §5.4186 of this division (relating to Remittance of Contingent Surcharges).

(e) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected contingent surcharges on receipt into the premium surcharge trust fund or funds.

(f) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber contingent surcharges collected or to be collected, by the association except for the payment of the applicable public security obligations and as otherwise authorized in this title.

(g) The trust company must deposit any net investment income earned on the contingent surcharges into the appropriate trust fund accounts while these amounts are on deposit.

§5.4144. Excess [Class 2] Premium Surcharge Revenue.

[(a)] Revenue collected in any calendar year from premium surcharges under Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132 [§2210.613] that exceeds the amount of class 1, class 2, or class 3 public security obligations and class 1, class 2, or class 3 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the premium surcharge trust fund deposits may, at the discretion of the association, be:

(1) used to pay class 1, class 2, or class 3 public security obligations payable in the following calendar year, respectively, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 1, class 2, or class 3 public securities, respectively; or

(3) deposited in the CRTF.

[(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.]

§5.4145. Excess Net Premium and Other Revenue.

Excess net premium and other revenue collected in the class 1, class 2, and class 3 public security trust funds that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, or deposited in the CRTF.

§5.4161. Member Assessments.

(a) The association, with the approval of the commissioner, must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, and 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the catastrophe reserve trust fund;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

(7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;

(8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;

(9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.

(c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event or Issuance of Public Securities after a Catastrophic Event, respectively) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the commissioner may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the commissioner to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:

(1) the information required by subsection (b) of this section;

(2) information based on the analyses described in §5.4135 of this division;

(3) the amount of class 1 public securities that can be issued;

(4) the amount of class 1 public securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(f) The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the commissioner approve a class 1 assessment under Insurance Code §2210.0725.

(g) The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the commissioner approve a class 2 assessment under Insurance Code §2210.074.

(h) The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the commissioner approve a class 3 assessment under Insurance Code §2210.0742.

(i) If the commissioner approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by Chapter 2210 and these rules.

[(a) The Association shall determine if a member assessment is necessary to fund the Association's outstanding class 2 and class 3 public security obligations, including any required contractual coverage amount (required obligations) based upon the evaluation of information that is provided to the Association by the Texas Public Finance Authority.]

[(b) Pursuant to Insurance Code Chapter 2210 and the Association's plan of operation, if the Association determines that a member assessment is required to fulfill the Association's required obligations the Association shall assess the members of the Association in an amount the Association determines to be reasonable and necessary to fully provide for the Association's required obligations.]

(j) [(e)] This section and §§5.4162 - 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's [Texas Windstorm Insurance Association's] plan of operation and will [shall] control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4171. *Premium Surcharge Requirements [Requirement].*

(a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) [(a)] Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 [~~§2210.613(b) and (e)~~] on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a), this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.

(d) [(b)] For contingent surcharges described in subsection (b), this [~~This~~] section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division [(relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, Surcharges Not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively)] only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.

(e) [(e)] This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title

78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

[(d)] For all lines of insurance subject to this division, this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division are effective June 1, 2011.]

§5.4172. *Premium Surcharge Definitions.*

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirements [Requirement], Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium [the] Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent [Premium] Surcharges, Offsets, Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) Association-insured property--Real property, or tangible or intangible personal property covered under an insurance policy issued by the Texas Windstorm Insurance Association.

(4) Contingent surcharge percentage--The percentage amount set by the commissioner under §5.4173(c) of this division.

(5) [(3)] Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

[(4)] Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motoreycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.]

(6) [(5)] Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

[(6)] Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division.]

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. *Determination of the Contingent Surcharge Percentage.*

{(a) The association must review information provided by TPFA concerning the amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, to determine whether the association has sufficient available funds to pay the public security obligations and public security administrative expenses, if any, including any contractual coverage amount, or whether a premium surcharge under Insurance Code §2210.613 is required. The association may consider all of the association's outstanding obligations and sources of funds to pay those obligations.}

(a) [(b)] If the commissioner orders public securities to be paid under Insurance Code §2210.6132 [association determines that it is unable to satisfy the estimated amount of class 2 public security obligations and administrative expenses with available funds], the association must submit a written request to the commissioner to approve a contingent [premium] surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132 [§2210.613]. The association's request must specify, for each applicable class of public securities:

(1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice; and

[(2) the amount to be collected from insurers through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;]

[(3) the amount to be collected from catastrophe area policyholders through premium surcharges, which may not exceed 70 percent of] the amount specified in the TPFA notice; and]

(2) [(4)] the date on which the contingent [premium] surcharge is to commence and the date the contingent [premium] surcharge for the noticed amount is to end.

(b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.

(c) On approval by the commissioner, each insurer must assess a contingent [premium] surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent [premium] surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent [premium] surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium [the] Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent [Premium] Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes, and Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commis-

sioner issues the order under Insurance Code §2210.6132(b) [notice of approval of the public securities].

(d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4181. *Premiums to be Surcharged.*

(a) The association [premium] surcharge percentage and the contingent surcharge must be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas;

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by insurers that are subject to premium taxation by the comptroller, including policy fees not reported as premium; and

(3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

§5.4182. *Method for Determining the Premium Surcharges [Surecharge].*

(a) The methods addressed in this section relating to contingent surcharges will apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners; homeowners; commercial multiple peril (nonliability portion); private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP), other commercial auto liability, and commercial auto physical damage; and

(2) personal and commercial risks assigned by TAIPA under Insurance Code Chapter 2151.

(b) The methods addressed in this section relating to association surcharges will apply to all association policies.

(c) [(b)] The association [premium] surcharge will be determined by applying the association [premium] surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to association-insured property located in the catastrophe area.

(d) The contingent surcharge will be determined by applying the contingent surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area.

(e) [(e)] In cases where the policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot be reasonably determined, the insurer must determine the contingent [premium] surcharge based on the insured address. If the insured address is within a designated catastrophe area, then the insurer must determine the contingent [premium] surcharge by applying the contingent [premium] surcharge percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated catastrophe area, then no premium surcharge applies to the policy.

§5.4184. *Application of Premium [the] Surcharges.*

(a) When assessed under Insurance Code §2210.6132 [§2210.613], the contingent [premium] surcharges must apply to all policies with insured property in the catastrophe area that are issued or renewed with effective dates in the surcharge [assessment] period specified in the commissioner's order.

(b) For association policies that meet the requirements of §5.4912 of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), association surcharges must apply to all association policies that are in effect on the surcharge date. For association policies that do not yet meet the requirements of §5.4912 of Division 10 of this subchapter, association surcharges must apply to all association policies that are issued or renewed with effective dates in the surcharge period determined under §5.4126 of this division (relating to Determination of the Association Surcharge Percentage).

(c) There are~~;~~ with two exceptions to the requirements of subsections (a) and (b) of this section:

(1) insurers must not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were canceled as of the inception date of the policy; and

(2) for multiyear policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, must be applied to the 12-month premium for the applicable policy period.

(d) [~~(b)~~] Premium surcharges collected [~~are refundable~~] under Insurance Code §2210.6132 are refundable [§2210.613].

(1) If the policy is canceled, an amount of the contingent surcharge that is proportionate to the returned premium must be refunded to the policyholder; however,

(2) instead of a refund of the contingent [premium] surcharge, the insurer may credit the return contingent [premium] surcharge against amounts due the insurer but unpaid by the policyholder; and

(3) an additional contingent surcharge will not apply to a policy that was canceled after the effective date of the policy, and is later reinstated, if the contingent [premium] surcharge was paid in full. If the policyholder did not pay the contingent [premium] surcharge in full, the policyholder must pay the contingent [premium] surcharge that is due but unpaid before the insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in Insurance Code §551.106.

(e) [(e)] If a midterm policy change increases the premium on the policy, the policyholder must pay an additional contingent surcharge for the increased premium attributable to insured property located in the catastrophe area, which will be determined by applying the applicable contingent [premium] surcharge percentage to that portion of the additional premium attributable to insured property located in the catastrophe area.

(f) [(d)] If a midterm policy change decreases the premium, the policyholder is due a refund of the contingent surcharge for the decreased premium attributable to insured property located in the catastrophe area, which must be determined by applying the applicable contingent [premium] surcharge percentage to that portion of the return premium attributable to insured property located in the catastrophe area. The insurer must credit or refund the excess contingent surcharge to the policyholder within 20 days of the date of the transaction, except

as provided by subsection (g) of this section. The insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid or credited to the policyholder to the association through the offset process described in §5.4187 of this division (relating to Offsets).

(g) [(e)] Surcharges or refunds must apply to all premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy, the contingent [premium] surcharge must be collected on the deposit premium paid. If, after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional contingent surcharge must be paid. If, after exposure or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess contingent surcharge must be refunded to the policyholder, and the insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid to the association through the offset process described in §5.4187 of this division. Additional contingent surcharges and refunds must be determined by applying the contingent [premium] surcharge percentage in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear policies, to the additional premium (or return premium) attributable to insured property located in the catastrophe area.

(h) [(f)] Even if a contingent surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multi-year policies, no additional contingent [premium] surcharges or refunds will apply to premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no contingent [premium] surcharge in effect.

(i) [(g)] An affiliated surplus lines insurer may allow a surplus lines agent to credit or refund contingent [premium] surcharges on its behalf. An affiliated surplus lines insurer, or surplus lines agent allowed to credit or refund contingent [premium] surcharges on its behalf, must credit or refund the excess surcharge to the policyholder under subsections (f) [(d)] and (g) [(e)] of this section not later than the last day of the month following the month in which the corresponding transaction was effective.

(j) [(h)] An affiliated surplus lines insurer that allows an agent to credit or refund contingent [premium] surcharges on its behalf under subsection (g) of this section may be held liable by the department for the failure of its agent to comply with this section.

#### §5.4185. *Mandatory Premium Surcharge Collection.*

(a) Insurers [~~Except as provided in §5.4127(h) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments); insurers~~] may not pay the surcharges instead of surcharging their policyholders. However, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the contingent [premium] surcharges proportionately as the insurer collects the premium.

(c) The association must collect the association surcharge in full when due for policies compliant with §5.4912 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 10 of this subchapter. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

(d) [(e)] Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d) [~~§2210.613(d)~~], the failure of a policyholder to pay the association [~~premium~~] surcharge constitutes failure to pay premium for the purposes of policy cancellation.

(e) Insurers must apply all policyholder payments received to contingent surcharges before applying payments to premium.

§5.4186. *Remittance of Contingent [~~Premium~~] Surcharges.*

(a) Except as provided in §5.4143 of this division (relating to Premium Surcharge Trust Fund [~~Trust Funds for the Payment of Class 2 Public Securities~~]), insurers must remit to the association the aggregate amount of contingent surcharges as provided by this section. An affiliated surplus lines insurer may allow a surplus lines agent to remit contingent [~~premium~~] surcharges to the association on its behalf in compliance with any procedures established by the association relating to contingent [~~premium~~] surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit contingent surcharges under subsection (a) of this section, must remit all surcharges not later than the last day of the month following the month in which the corresponding written premium transaction was effective.

(c) Insurers and agents may not allow or require policyholders to make separate payments for the surcharge amounts that are payable to the association or the premium surcharge trust fund or funds.

(d) Subsection (b) of this section applies to all insurers regardless of whether the policyholder paid the contingent [~~premium~~] surcharge through an agent of the insurer or the policyholder paid the contingent [~~premium~~] surcharge directly to the insurer.

(e) An affiliated surplus lines insurer that allows an agent to remit contingent [~~premium~~] surcharges to the association under subsection (a) of this section may be held liable by the department for the failure of its agent to remit the contingent [~~premium~~] surcharges or timely remit the contingent [~~premium~~] surcharges, under subsection (b) of this section.

§5.4187. *Offsets.*

(a) An insurer may credit a contingent [~~premium~~] surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium [~~the~~] Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.

(b) An agent may not offset payment of a contingent [~~premium~~] surcharge or an association surcharge to the insurer for any reason. However, a surplus lines agent allowed by an affiliated surplus lines insurer to remit contingent surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Contingent [~~Premium~~] Surcharges), may offset as provided in this section.

§5.4188. *Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions.*

(a) As provided by [~~the~~] Insurance Code §§2210.612(d), 2210.613(d) and 2210.6131(d), association [~~§2210.613(d)~~, premium] surcharges are not subject to either premium taxes or agents' commissions.

(b) The association may not increase association surcharges for premium taxes or commissions, and agents may not collect or charge commissions for association surcharges.

(c) [~~(b)~~] Insurers may not increase contingent [~~the premium~~] surcharges for [~~premium taxes or~~] commissions, and agents, including a surplus lines agent, may not collect or charge commissions for contingent [~~the premium~~] surcharges.

(d) Insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. *Notification Requirements.*

(a) Insurers must provide written notice to policyholders receiving a contingent [~~premium~~] surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Section 2210.6132 authorizes [~~Sections 2210.073 and 2210.613 require~~] a premium surcharge to be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophic event. A premium surcharge {in the amount of \$ \_\_\_\_\_} has been added to your premium. Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will be refunded to you. [~~Failure to pay the surcharge is grounds for cancellation of your policy.~~]"

(b) The association must provide written notice to policyholders receiving an association surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Sections 2210.612, 2210.613, and 2210.6131 require a premium surcharge be added to Texas Windstorm Insurance Association policies to pay the debt service on public securities issued to pay association claims resulting from a catastrophic event. A premium surcharge {in the amount of \$ \_\_\_\_\_} has been added to your premium. Should your policy be canceled by you or the association prior to its expiration date, the premium surcharge will not be refunded to you. Failure to pay the surcharge is grounds for cancellation of your policy." [~~Insurers must provide written notice to policyholders of the dollar amount of the premium surcharge.~~]

(c) Except as provided in subsection (e) [~~(d)~~] of this section, notices required under subsection [~~subsections~~] (a) [~~and (b)~~] of this section must:

(1) be provided at the time the policy is issued, in the case of new business;

(2) be provided with the renewal notice, in the case of renewal business;

(3) be provided within 20 days of the date of the transaction for any midterm change in the premium surcharge; and

(4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

(d) Notices required under subsection (b) of this section must:

(1) no later than 14 days after the date described in §5.4126(b)(8) of this division (relating to Determination of the Association Surcharge Percentage), be provided to policyholders whose policies comply, as of the date described in §5.4126(b)(8),



with §5.4912(a) of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131);

(2) be provided with the renewal notice to policyholders whose policies will renew during the period described by paragraphs (8) and (9) of §5.4126(b);

(3) be provided at the time a new policy is issued, for new policies that go into effect during the period described by paragraphs (8) and (9) of §5.4126(b); and

(4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

(e) [(d)] An affiliated surplus lines insurer, or surplus lines agent allowed to provide notices on its behalf, must provide the notice required under subsection (c)(3) of this section to the policyholder not later than the last day of the month following the month in which the transaction for any midterm change in the premium surcharge became effective.

(f) [(e)] An affiliated surplus lines insurer that allows an agent to provide notices required under this section may be held liable by the department for the failure of its agent to comply with this section.

*§5.4190. Annual Premium Surcharge Report.*

(a) This section applies to an insurer that, during the calendar year, wrote any of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, or commercial automobile physical damage.

(b) No later than 90 days following the end of a calendar year in which an association surcharge was in effect, the association must provide the department with an annual premium surcharge report for the calendar year.

(c) [(b)] No later than 90 days following the end of a calendar year in which a contingent [premium] surcharge was in effect, each insurer must provide the association with an annual premium surcharge report for the calendar year unless contingent [premium] surcharges were in effect for less than 45 days within the calendar year.

(d) [(e)] Annual premium surcharge reports must provide information for each insurance company writing property or casualty insurance in the State of Texas, including affiliated surplus lines insurers, and affiliated insurers not authorized to engage in the business of insurance that issued independently procured insurance policies covering insured property in the State of Texas.

(e) [(d)] Annual premium surcharge reports must provide information for the following annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage for which the insurer reported premium for the applicable calendar year.

(f) [(e)] Annual premium surcharge reports must provide the following information:

(1) the name and contact information of the individual responsible for submitting the report;

(2) the five-digit NAIC number of the insurance company;

(3) the name of the insurance company;

(4) for policies with effective dates, or multiyear policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year for all applicable lines of business:

(A) for all policies subject to a premium surcharge:

(i) the total written premium attributable to insured property located in the catastrophe area; and

(ii) the total written premium attributable to insured property located outside the catastrophe area; and

(B) the total written premium for policies not subject to a premium surcharge because the policyholder had no insured property located in the catastrophe area;

(5) for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multiyear policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium;

(6) the total amount of premium surcharges collected during the applicable calendar year; and

(7) the total amount of premium surcharges remitted to the association during the applicable calendar year.

(g) [(f)] The association must:

(1) review the reports submitted to it under this section as necessary to determine:

(A) the consistency of contingent [premium] surcharges actually remitted to the association or deposited directly into the premium surcharge trust fund or funds, with contingent [premium] surcharges shown in the reports as collected and the contingent [premium] surcharges shown in the reports as remitted to the association or deposited directly into the premium surcharge trust fund or funds; and

(B) the consistency of premiums shown in the reports as attributable to the catastrophe area with contingent [premium] surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of contingent [premium] surcharges in this division;

(2) inform the department of any insurer the association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the association, provide an aggregate summary of the reports to the department.

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

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## 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, 5.4145 - 5.4149

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

TDI proposes repealing 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149. The repeals are proposed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001. The sections proposed for repeal were previously adopted to implement HB 3, 82nd Legislature, 2011, 1st Called Session. Under HB 3 and its predecessor, HB 4409, 81st Legislature, 2009, Regular Session, losses in excess of the association's net premium and other revenue were paid from the proceeds of three classes of public securities. HB 3 amended Insurance Code Chapter 2210 to include §2210.6136, which allowed the commissioner to authorize the issuance of certain class 2 public securities in the event the association's class 1 public securities were not marketable.

TDI adopted §§5.4126 - 5.4128, 5.4148, and 5.4149 to establish processes for the issuance and repayment of class 2 public securities under Insurance Code §2210.6136. Because SB 900, in addition to changing the association's funding structure, repealed Insurance Code §2210.6136, §§5.4126 - 5.4128, 5.4148, and 5.4149 are obsolete. SB 900 amended Insurance Code §2210.613 to change the payment source for class 2 public securities paid under that section from a combination of premium surcharges on certain property and casualty policies in the catastrophe area and member assessments to premium surcharges on association policies. TDI adopted §5.4143 and §§5.4145 - 5.4147 to address the deposit of amounts collected from member assessments and the handling of excess member assessment revenue. Because member assessments are no longer used to pay for public securities, these sections are obsolete. TDI proposes the repeal of §5.4142, which addressed excess obligation revenue fund amounts, because SB 900 amended Insurance Code §2210.609 to remove the obligation revenue fund. Excess funds are addressed in amended §5.4144 and proposed replacement §5.4145.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608, 2210.609, 2210.610, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

- §5.4126. *Alternative for Issuing Class 2 and Class 3 Public Securities.*
- §5.4127. *Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.*
- §5.4128. *Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.*
- §5.4142. *Excess Obligation Revenue Fund Amounts.*
- §5.4143. *Trust Funds for the Payment of Class 2 Public Securities.*
- §5.4145. *Excess Class 2 Member Assessment Revenue.*

§5.4146. *Member Assessment Trust Fund for the Payment of Class 3 Public Securities.*

§5.4147. *Excess Class 3 Member Assessment Revenue.*

§5.4148. *Repayment Obligation Trust Fund for the Payment of Amounts Owed under §5.4127.*

§5.4149. *Excess Repayment Obligation Trust Fund Amounts.*

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

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## DIVISION 10. ELIGIBILITY AND FORMS

### 28 TAC §5.4912

STATUTORY AUTHORITY. TDI proposes new 28 TAC §5.4912 under Insurance Code §§2210.003, 2210.008 and 36.001. Section 2210.003(13) defines association policies and forms as being approved by TDI. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608, 2210.609, 2210.610, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

§5.4912. *Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131.*

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

(1) the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 3 of this subchapter;

(2) the policyholder has 120 days from the date the policyholder receives the notice described in §5.4189(b) (relating to Notification Requirements) of Division 3 of this subchapter to pay the surcharge; and

(3) on the declarations page, a conspicuous notice in at least 12-point bolded font that the policy may be subject to an immediate premium surcharge, and that failure to pay will result in cancellation.

(b) The association must issue only policies that comply with subsection (a) not later than 60 days after the department approves the policy forms filed under subsection (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.

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

### CHAPTER 129. INCOME BENEFITS-- TEMPORARY INCOME BENEFITS

#### 28 TAC §129.3, §129.11

The Texas Department of Insurance, Division of Workers' Compensation (division) proposes amendments to 28 TAC §129.3 and §129.11, concerning temporary income benefits (TIBs). Amended §129.3 and §129.11 implement Senate Bill (SB) 901, 84th Legislature, Regular Session (2015), which amends Labor Code §408.103. Labor Code §408.103 provides the method for calculating the amount of TIBs an injured employee is entitled to receive. SB 901 increased the hourly wage that qualifies an injured employee to be paid TIBs at 75% of the employee's pre-injury average weekly wage for the first 26 weeks of the injured employee's disability. SB 901 increased the qualifying wage from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015 under Labor Code §408.103(a)(2). Before SB 901, in order to be eligible for the higher TIBs rate of 75% of the average weekly wage for the first 26 weeks of disability, an injured employee had to earn less than \$8.50 an hour. Under SB 901, an injured employee has to earn less than \$10.00 an hour in order to qualify for the higher TIBs rate of 75% of the average weekly wage for the first 26 weeks of the injured employee's disability. Amended §129.3 and §129.11 only reflect the amount of statutory TIBs provided by the SB 901 amendments to Labor Code §408.103(a) and do not add any new requirements. An informal working draft of the rule text was published on the division's website on June 8, 2015, and the division received no comments.

Necessary amendments proposed throughout the rule text also make non-substantive changes to delete the term "Commission" and add the word "division," add the word "insurance" before the word "carrier(s)," and reletter and renumber rule text.

Amended §129.3 and §129.11 Amended §§129.3(b), 129.3(f), and 129.11(b) increase the hourly wage that qualifies an injured employee to be paid at the higher TIBs rate of 75% of the employee's pre-injury average weekly wage for the first 26 weeks

of disability. The qualifying wage increased from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015. The amendments align the division's rules regarding the calculation and payment of TIBs with statutory changes provided by Labor Code §408.103(a).

Amended §§129.3(b), 129.3(f)(1), and 129.11(b)(1) clarify that the \$8.50 an hour wage rate still applies to workers' compensation claims with a date of injury before September 1, 2015. The amendments reflect the effective date of changes made to Labor Code §408.103(a) by SB 901 and are necessary for ease of stakeholder compliance for claims that have not been brought or are already receiving TIBs before the effective date.

Mr. Kerry Sullivan, Deputy Commissioner for Hearings, has determined that for each year of the first five years the amended rules will be in effect, there will be no fiscal impact to state and local governments as a result of enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy because of the proposal. The amendments to §129.3 and §129.11 only reflect the amounts of statutory TIBs provided by Labor Code §408.103(a) and do not impose any additional requirements that would cause a fiscal impact as a result of the rule.

Mr. Sullivan has determined that for each year of the first five years the sections are in effect, there are public benefits anticipated as a result of the enforcement and administration of the proposal.

Anticipated Public Benefits. Mr. Sullivan has determined that, for each year of the first five years amended §129.3 and §129.11 are in effect, the public benefits anticipated because of the proposed amendments include: (1) aligning the division's rules regarding the calculation and payment of TIBs with the statutory changes made by SB 901; and (2) providing injured employees appropriate income benefits under the goals of Labor Code §402.021.

Anticipated Costs to Comply with the Proposal. Mr. Sullivan has determined that there will be no costs to persons required to comply with amended §129.3 and §129.11 because the proposal only aligns the division's rules with the amendments to Labor Code §408.103 found in SB 901, 84th Legislature, Regular Session (2015). SB 901 increased the hourly wage that qualifies an injured employee to be paid TIBs at 75% of the employee's pre-injury average weekly wage for the first 26 weeks of disability. SB 901 increased the qualifying wage from less than \$8.50 an hour to less than \$10 an hour for workers' compensation claims with a date of injury on or after September 1, 2015 under Labor Code §408.103(a). Thus, injured employees will be eligible for increased temporary income benefits if they earn less than \$10.00 an hour, instead of \$8.50 an hour, for new work-related injuries occurring on or after September 1, 2015. While the group of injured employees eligible for increased TIBs may have increased, the increase is a direct result of SB 901. Amended §129.3 and §129.11 only reflect the amounts of statutory TIBs provided by Labor Code §408.103(a) and do not add any new requirements as a result of the rule. Therefore, any costs associated with compliance result from Labor Code §408.103(a), as amended by SB 901, and not from amended §129.3 and §129.11.

Government Code §2006.002(c) requires that, if a proposed rule may have an adverse economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential im-

part of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

In accordance with Government Code §2006.002(c), the division has determined that the proposed amendments will not have an adverse effect on small or micro businesses because the proposed rules are necessary to implement statutory requirements. While the group of injured employees eligible for increased TIBs has increased, the increase is a direct result of SB 901. Therefore, in accordance with Government Code §2006.002(c), a regulatory flexibility analysis is not required.

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

If you want to comment on the proposal, submit your written comments by 5:00 p.m. central time on Monday, November 9, 2015. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov) or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and oral testimony presented at the hearing.

The amendments are proposed under the Labor Code §§402.00128, 402.021, 402.061, and 408.103. Section 402.00128 lists the general powers of the commissioner, including the power to hold hearings. Section 402.021 establishes the basic goals and legislative intent of the workers' compensation system, including the goal that the system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. Section 402.061 requires the division to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Section 408.103 provides that the amount of a temporary income benefit is equal to: (1) 70% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or (2) for the first 26 weeks, 75% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than \$10 an hour.

### §129.3. Amount of Temporary Income Benefits.

(a) The insurance carrier (carrier) shall pay an injured employee (employee) the temporary income benefits (TIBs) the employee is entitled to in accordance with this chapter.

(b) The carrier shall determine whether the employee earns less than \$8.50 per hour for a workers' compensation claim with a date of injury before September 1, 2015, or less than \$10 per hour for a workers' compensation claim with a date of injury on or after September 1, 2015, as follows:

(1) Once the carrier has received the Wage Statement required by this title, the carrier shall divide the average weekly wage

(AWW) calculated from the Wage Statement by the average number of hours worked. The average hours worked is the total gross hours reported worked on the Wage Statement divided by the period in which the hours were worked;

(2) If the carrier has not received the Wage Statement, but has received the Employer's First Report of Injury, the carrier shall use the wage information provided by the employer through the first report; or

(3) If the carrier has not received the information necessary to perform the calculations required by subsection (b)(1) or (2) of this section, the carrier shall use wage information provided by the employee until the necessary information is obtained from the employer.

(c) The carrier shall calculate the AWW in accordance with Chapter 128 of this title (relating to Calculation of Average Weekly Wage) and shall calculate the Post-Injury Earnings (PIE) in accordance with §129.2 of this title (relating to Entitlement to Temporary Income Benefits). In determining the PIE, the carrier shall base its calculations on specific wage information reported by the employer and/or the employee. A generic statement by the employer indicating the employer is "continuing full salary" or "the employee is earning full salary" is not adequate documentation to be considered PIE.

(d) The carrier shall calculate the employee's lost wages by subtracting the PIE from the AWW (or AWW - PIE).

(e) The amount of TIBs an employee is entitled to is based on the lost wages. If the employee's PIE equals or exceeds the employee's AWW, the employee has no lost wages and the carrier shall not pay TIBs.

(f) Subject to the minimum and maximum TIBs rates as provided in subsection (g) of this section, an employee is entitled to TIBs as follows:

(1) for a workers' compensation claim with a date of injury before September 1, 2015,

(A) an employee who earns \$8.50 or more per hour is entitled to TIBs in the amount of 70% of the lost wages; or

(B) ~~[(2)]~~ an employee who earns less than \$8.50 per hour is entitled to TIBs as follows:

(i) ~~[(A)]~~ 75% of the lost wages for the first 26 weeks of TIBs due; and

(ii) ~~[(B)]~~ 70% of the lost wages for all TIBs payments thereafter; ~~and[-]~~

(2) for a workers' compensation claim with a date of injury on or after September 1, 2015,

(A) an employee who earns \$10 or more per hour is entitled to TIBs in the amount of 70% of the lost wages; or

(B) an employee who earns less than \$10 per hour is entitled to TIBs as follows:

(i) 75% of the lost wages for the first 26 weeks of TIBs due; and

(ii) 70% of the lost wages for all TIBs payments thereafter.

(g) The carrier shall pay the TIBs in the amount calculated in subsection (f) of this section, unless:

(1) this amount is greater than the maximum weekly TIBs rate computed in accordance with Texas Labor Code, §408.061, in which case the carrier shall pay the maximum weekly TIBs rate; or

(2) this amount, when added to the employee's PIE, is less than the minimum weekly TIBs rate computed in accordance with Texas Labor Code, §408.062, in which case the carrier shall pay the minimum weekly TIBs rate.

*§129.11. Agreement for Monthly Payment of Temporary Income Benefits.*

(a) Upon the request of an injured employee, the insurance carrier and an injured employee entitled to temporary income benefits (TIBs) may agree to change the frequency of TIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the division [Commission] if the division [Commission] requests a copy. To relieve the insurance carrier of the responsibility to pay TIBs weekly, a valid written agreement must include the following terms and conditions:

(1) the agreement for the monthly payment of TIBs shall be effective the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

(2) monthly TIBs payment shall be issued on or before the seventh day of the month following the month for which benefits are due;

(3) weekly TIBs payments shall continue through the end of the month in which the agreement was signed;

(4) payment of the last week of TIBs to transition from weekly payment of TIBs to monthly payments shall be prorated to the end of the month to ensure the injured employee receives TIBs through the last day of the month; and

(5) if less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement.

(b) To calculate the amount of monthly TIBs to pay, the carrier shall determine the average monthly wage by multiplying the average weekly wage by 4.34821 and subtracting any Post-Injury Earnings the employee earned during the month for which the employee was entitled to TIBs to determine the lost wages. The carrier shall then pay the employee in monthly TIBs as follows:

(1) for a workers' compensation claim with a date of injury before September 1, 2015,

(A) if the employee earns \$8.50 per hour or more, the carrier shall pay 70% of the lost wages; or

(B) ~~[(2)]~~ if the employee earns less than \$8.50 per hour, the carrier shall pay:

(i) ~~[(A)]~~ 75% of the lost wages for the first 26 weeks of TIBs due; and

(ii) ~~[(B)]~~ 70% of the lost wages for all TIBs payments thereafter; and~~[-]~~

(2) for a workers' compensation claim with a date of injury on or after September 1, 2015,

(A) if the employee earns \$10 per hour or more, the carrier shall pay 70% of the lost wages; or

(B) if the employee earns less than \$10 per hour, the carrier shall pay:

(i) 75% of the lost wages for the first 26 weeks of TIBs due; and

(ii) 70% of the lost wages for all TIBs payments thereafter.

(c) Entering into an agreement under this section does not prohibit any party to the claim from raising disputes over periods, amounts of, or entitlement to TIBs. Disputes must be raised as and when they arise.

(d) The agreement for the monthly payment of TIBs shall expire upon the suspension or termination of TIBs in accordance with the Act and division [Commission] rules. The last monthly payment shall be prorated to ensure the insurance carrier pays the appropriate amount of TIBs.

(e) At any time after signing the agreement for the monthly payment of TIBs, the injured employee or the insurance carrier may notify the other party in writing that it no longer agrees to the monthly payment of TIBs. In this case, the insurance carrier shall pay all accrued but unpaid TIBs at the end of the current monthly cycle and shall continue to pay TIBs weekly as and when they accrue and are due.

~~[(f) This section applies only to agreements entered into on or after January 1, 2000, for payment of TIBs under the provisions of the Act.]~~

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 22, 2015.

TRD-201503944

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: November 8, 2015

For further information, please call: (512) 804-4703

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES**

**SUBCHAPTER D. COMMERCIAL VEHICLE WEIGHT, LENGTH, AND SIZE ENFORCEMENT**

**37 TAC §4.56**

The Texas Department of Public Safety (the department) proposes new §4.56, concerning Uniform Weighing Procedures for Weight Enforcement Officers. The proposed new rule is necessary to ensure this section is consistent with Texas Transportation Code, §621.401 and §621.402 which establish which peace officers are eligible to enforce Chapter 621 of the Texas Transportation Code and is necessary to comply with the provisions of HB 1252, 84th Legislature.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will

be a fiscal implication for local economies. The State is not in a position to know what fiscal implications this rule will have on local law enforcement agencies as it does not know what type of scales the agencies are using, their condition, or what their training needs will be upon effect. Scales can cost between \$200 and \$4400 depending on where they are purchased and from whom. The scales must also be calibrated annually at a cost ranging from \$25 to \$150 per wheel weigher.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule is maximum efficiency weight enforcement in Texas.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 621, will hold a public hearing on Tuesday, October 20, 2015 at 9:00 a.m. at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.56 regarding Uniform Weighing Procedures for Weight Enforcement Officers, proposed for adoption under the authority of Texas Transportation Code, Chapter 621, which provides that the director shall, after notice and a public hearing, adopt rules regulating the uniform weighing procedures and certification of weight enforcement officers.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Transportation Code, §621.402, which authorizes the director to adopt rules regulating uniform weighing procedures by weight enforcement officers, by reference.

Texas Transportation Code, §601.401 and §621.402 are affected by this proposal.

§4.56. Uniform Weighing Procedures for Weight Enforcement Officers.

(a) A "weight enforcement officer" has the meaning as defined in Texas Transportation Code, §621.401.

(b) Law enforcement agencies employing weight enforcement officers must enter into a memorandum of understanding with the department prior to conducting any weight enforcement. All weight enforcement officers must have attended and successfully completed weight enforcement training provided by the department prior to certification. In order to maintain certification, a weight enforcement officer must fulfill all the continuing education requirements as detailed in the memorandum of understanding between the department and the agency.

(c) Weight enforcement officers must utilize scales of a type approved by the department. The department will furnish upon request a list of approved makes and models of scales as outlined in §4.54 of this title (relating to Minimum Standards for Scales not Furnished by the Texas Department of Public Safety).

(d) Scales utilized must be calibrated yearly by a certified scale technician or certified vendor. Agencies must utilize the certification form provided by the department and keep certification records for three years from the date of certification.

(e) An annual report will be compiled by each jurisdiction utilizing weight enforcement officers and submitted to the department by January 31st each year.

(f) The department may revoke or rescind the authority of:

(1) a weight enforcement officer who fails to comply with this section; or

(2) a weight enforcement officer of a municipal police department, sheriff's department, or constable's office who fails to comply with this section.

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

Filed with the Office of the Secretary of State on September 23, 2015.

TRD-201503968

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 8, 2015

For further information, please call: (512) 424-5848



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 4. EMPLOYMENT PRACTICES

##### SUBCHAPTER E. SICK LEAVE POOL PROGRAM

###### 43 TAC §§4.51, 4.54 - 4.56

The Texas Department of Transportation (department) proposes amendments to §§4.51, 4.54, 4.55, and 4.56, concerning the Sick Leave Pool Program.

#### EXPLANATION OF PROPOSED AMENDMENTS

Currently, the Sick Leave Pool Program does not allow employees to donate sick leave to other individuals, but only to a sick leave pool. As a result of H.B. No. 1771, 84th Texas Legislature, Regular Session, Government Code, Chapter 661 was amended to add Section 661.207 to allow employees to donate sick leave to another individual from the same agency.

Amendments to §4.51, Definitions, clarify the definitions of "Contribute" and "Request" to add that sick leave can be given to a specific employee and to update terminology associated with the program.

Amendments to §4.54, Contributions, allow an employee to contribute sick leave to a specific employee and describes the processes for doing so.

Amendments to §4.55, Contribution Returns, provide that sick leave contributed to a specific employee cannot be returned to the donor because, unlike the statutes relating to the sick leave pool, Government Code, §661.207, does not provide authority for an agency to return donated sick leave to the donating employee.

Amendments to §4.56, Withdrawals, update terminology associated with the program.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. David McMillan, Director, Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. McMillan has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be better protection of department assets, more effective use of employee time and better use of the hours donated to the sick leave pool. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§4.51, 4.54, 4.55, and 4.56 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to [RuleComments@txdot.gov](mailto:RuleComments@txdot.gov) with the subject line "Chapter 4 Rules." The deadline for receipt of comments is 5:00 p.m. on November 9, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

Government Code, §661.207.

#### §4.51. Definitions.

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

(1) Catastrophic illness or injury--A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all paid leave earned by that employee.

(2) Contribute--To give sick leave from an employee's personal sick leave account to the agency [department] sick leave pool or to a specific employee.

(3) Different but related condition--A secondary catastrophic condition that occurs at a later date and is caused by a primary catastrophic condition such as cancer, which spreads from one part of the body to another.

(4) Discipline--Written reprimand, probation, suspension without pay, involuntary demotion, involuntary transfer (lateral), or disciplinary reduction in pay.

(5) Employee--A person, other than the executive director, who is employed by the department.

(6) Health care provider--A medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

(7) Human resources officer--An employee with a human resources business job title and who is responsible for verifying the accuracy of all employee paid leave records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(8) Immediate family--Individuals related by kinship, adoption, or marriage who are living in the same household, foster children living in the same household and certified by the Texas Department of Family and Protective Services, or a spouse, child, or parent of the employee who does not live in the same household and who needs care and assistance as a direct result of a documented medical condition.

(9) Incapacitated--Unable to perform the individual's normal daily activities, including working and activities that are fundamental for self care such as dressing, eating, ambulating, toileting, and hygiene, due to the catastrophic medical condition.

(10) Licensed psychiatrist--A psychiatrist licensed by a state medical licensing board.

(11) Paid Leave--Accrued sick leave, annual [~~vacation~~] leave, and regular or Fair Labor Standards Act compensatory time earned by an employee.

(12) Pool administrator--The Director of the Human Resources Division or designee who administers the department's sick leave pool program.

(13) Request--A Sick Leave Pool Contribution/Withdrawal of Contribution form prescribed by the pool administrator and used to contribute sick leave, request leave [~~An initial application for~~]

~~withdrawal~~] from the sick leave pool or request [an application for] an extension of a withdrawal due to a catastrophic illness or injury.

(14) Severe physical condition--A physical illness or injury that will likely result in death or causes the patient to be incapacitated for 12 continuous weeks or more for the current episode.

(15) Severe psychological condition--A psychological illness that results in:

(A) a patient being suicidal or capable of harming themselves or others and requires five days or more inpatient hospitalization; or

(B) electroshock treatment.

(16) Sick leave--Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his or her immediate family who is actually ill.

(17) Sick leave pool--A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(18) Withdrawal--An approved transfer of sick leave hours from the department sick leave pool.

#### §4.54. Contributions.

(a) ~~[Restrictions.]~~

~~[(+)]~~ An employee may voluntarily contribute any amount of sick leave hours allowed by Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool ~~to:[:]~~

~~(1) the sick leave pool; or~~

~~(2) a department employee who has exhausted the employee's sick leave, including any time the employee may be eligible to withdraw from the sick leave pool.~~

~~[(2) Contributions may not be specified for use by a certain individual or within a specific office or work unit.]~~

(b) ~~[Procedures.]~~

~~[(+)]~~ The department will encourage all employees, including an employee who is planning to retire, terminate employment, or resign, to contribute sick leave hours.

~~(c) [(2)]~~ An employee who wishes to contribute sick leave to the pool or to a specific employee shall submit a request ~~[contribution form prescribed by the pool administrator]~~ to his or her human resources officer.

~~(d) [(3)]~~ After verifying the accuracy of information on the request ~~[application]~~, the human resources officer shall sign the request ~~[application]~~ and submit it to the pool administrator.

~~(e) [(4)]~~ Once the request ~~[application]~~ is approved by the pool administrator, the pool administrator shall transfer hours from the employee's account to the sick leave pool account or to the specified employee.

#### §4.55. Contribution Returns.

(a) Scope of Section. Sick leave contributed to a specific employee will not be returned to the employee who contributed the leave. This section provides the restrictions and procedures for the return of sick leave contributed to the sick leave pool.

(b) [(a)] Restrictions.

(1) An employee or employee's immediate family member must suffer an illness or injury, not necessarily catastrophic, to have the employee's sick leave pool contribution returned.

(2) Regardless of the number of requests, the number of hours that may be returned to an employee shall not exceed the total number of hours he or she has contributed since the beginning of the program, June 1, 1990.

(3) All accrued sick leave must be exhausted by the employee before hours will be returned from a previous contribution.

(4) The maximum number of hours that may be returned per request shall not exceed the amount needed. The amount needed is determined from the information provided by the health care provider.

(5) If the pool balance cannot accommodate the amount needed, the employee shall be refunded one-third the balance of the pool.

(6) An employee who is planning to retire and who has contributed sick leave to the pool may not have his or her contributions refunded [returned] in order to receive a retirement credit.

(c) [(b)] Procedures.

(1) The employee shall complete a request for the return of sick leave [withdrawal of contribution form prescribed by the pool administrator].

(2) The human resources officer shall verify all sick leave balances and the date and time all accrued sick leave was or will be exhausted.

(3) The pool administrator shall review the request [withdrawal of contribution form] and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

#### §4.56. Withdrawals.

(a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic and that the catastrophic illness is the reason the employee needs to be out of work.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. Requests related to severe psychological conditions must be certified by a licensed psychiatrist. The certification:

(A) shall include:

(i) the diagnosis and prognosis of the condition or combination of conditions;

(ii) the date the employee or employee's immediate family member will be able to return to activities of daily living;

(iii) the amount of time the employee will be needed to provide primary care if the certification is for the employee's immediate family member; and

(iv) if the certification is for the employee's immediate family member, the specific type of care the employee needs to provide;

(B) shall be in a form prescribed by the pool administrator; and



(C) is confidential, unless otherwise required by law, and may only be released to the human resources officer.

(3) With the request for withdrawal, an employee who has been formally disciplined for abuse of leave in the 12 months preceding the date on which the leave from the pool will be needed must provide, at his or her expense, a second health care provider certification from a different doctor chosen by the department. The pool administrator will deny the request if the second health care provider does not certify that a catastrophic condition exists.

(4) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists, and that it is necessary for the employee to be off work to recover or assist in the recovery from the catastrophic illness or injury before an extension may be approved.

(5) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(6) The maximum number of hours that may be granted per catastrophic condition per employee is 720 hours (90 work days) or one third of the pool balance, whichever is less at the time a request is received. If there is a different but related physical catastrophic condition, an employee may receive a second grant of up to 720 hours (90 work days) or one-third of the pool balance, whichever is less at the time the request is received.

(7) When the pool balance is below 7200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(8) The time transferred will begin on the date and time the employee exhausted all paid leave or, in cases that are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(9) An employee who uses pool sick leave in accordance with this subchapter is not required to pay back that leave.

(10) An employee must exhaust all paid leave before using hours approved from the sick leave pool.

(11) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(12) An employee who is in need of additional sick leave after exhausting all paid leave shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(13) An employee who is injured on the job, who is entitled to receive workers' compensation payments, and who chooses to integrate his or her sick leave, and vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter.

(14) Hours from the sick leave pool may be granted in a block of time and used on an as needed basis. The pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists.

(15) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis. If the employee is determined to be able to return to work sooner than

indicated on a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require the unused portion of a withdrawal be returned to the sick leave pool.

(16) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(17) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(b) Procedures.

(1) The employee shall complete a request form [~~the application for withdrawal~~]. The human resources officer shall assist the employee by verifying all paid leave balances and the date and time all paid leave was or will be exhausted.

(2) The employee shall submit the request [~~application~~] and the health care provider's certification form and a copy of the employee's functional job description to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification form and mail it, with the completed request [~~application~~], directly to the employee's human resources officer.

(3) The pool administrator will consider requests [~~applications for withdrawal~~] in the order in which they are received and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the request may be denied. If necessary, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request.

(5) The pool administrator may require that the unused portion of the withdrawal be returned to the sick leave pool if the employee:

- (A) fails to cooperate with a medical records review;
- (B) submits false information;
- (C) remains off work because the employee is not following the doctor's prescribed treatment; or
- (D) is abusing sick leave pool hours.

(6) The pool administrator will determine the amount of sick leave transferred for each request based on:

- (A) the number of hours requested by the employee;
- (B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all paid leave was or will be exhausted; and

(D) the balance of the pool.

(7) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

(8) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if the employee has returned to work, the total number of hours used and how many hours are being returned.

(9) The pool administrator shall return all unused hours to the 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.

Filed with the Office of the Secretary of State on September 24, 2015.

TRD-201503977

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 8, 2015

For further information, please call: (512) 463-8630



## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

### SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

#### 43 TAC §§28.100, 28.102, 28.104, 28.106

The Texas Department of Transportation (department) proposes amendments to §§28.100, 28.102, 28.104 and 28.106, concerning Hidalgo County Regional Mobility Authority Permits.

#### EXPLANATION OF PROPOSED AMENDMENTS

To eliminate the problem of having two statutes designated as Transportation Code, Chapter 623, Subchapter Q, Senate Bill 1296, 84th Legislature, Regular Session, 2015, redesignated Subchapter Q, as added by House Bill 474, Acts of the 83rd Legislature, Regular Session, 2013, relating to the Hidalgo County Regional Mobility Authority (HCRMA), as Subchapter S of that chapter and renumbered the sections in that subchapter accordingly. House Bill 1969, 84th Legislature, Regular Session, 2015, amended the section redesignated as §623.363 to designate additional possible routes in Hidalgo County for which HCRMA could issue permits for the operation of oversize/overweight vehicles. House Bill 1969 also added Transportation Code §623.370, which authorizes the Texas Transportation Commission (commission) to require that a bond be filed by HCRMA for any repair costs to the designated highways not covered by the permit fees collected by HCRMA.

Amendments to §28.100 change the reference of Transportation Code, Subchapter Q to Subchapter S and of §623.322 to §623.363 in accordance with the redesignation of that subchapter and section made by Senate Bill 1296.

Amendments to §28.102 add language to include the bond requirement provided in Transportation Code, §623.370. The changes to subsection (b) require that HCRMA obtain a bond, and provides that the department will set an annual bond amount based on the estimated annual cost of repairs for the affected roadways. The required bond amount will vary depending on the estimated costs for one year. The estimate of the cost of repairs is based on the amortization costs for the roadway, the projected maintenance costs, and the bridge consumption costs associated with the movement of vehicles operating under a permit issued by HCRMA. These changes will allow the department to ensure that the bond amount will be sufficient to cover the annual costs.

Amendments to subsections (a)(1) and (h) update Transportation Code citations, as changed by Senate Bill 1296. No changes are necessary to §28.102 to include the additional roadways added by House Bill 1969 because subsection (a)(1) already refers to roads designated by that section of the Transportation Code. Other nonsubstantive changes correct format and grammar issues.

Amendments to §28.104(b) update Transportation Code citations, as changed by Senate Bill 1296.

Amendments to §28.106(f) renumber Transportation Code citations, as changed by Senate Bill 1296. Changes also include adding an end destination to the permit application to improve the information gathered on the issuance of permits. Currently, the permit only requires the location the cargo is loaded. The department feels that including the end destination will aid in enforcement and road use calculations.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The cost of processing the permits and maintaining the affected roads will be offset by the permit fees collected by the district.

C. Michael Lee, P.E., Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Lee has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be transportation efficiency and improved public safety. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed §§28.100, 28.102, 28.104, and 28.106 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to [RuleComments@tx-dot.gov](mailto:RuleComments@tx-dot.gov) with the subject line "Hidalgo County RMA." The deadline for receipt of comments is 5:00 p.m. on November 9, 2015. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with

the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369, which provides the commission with the authority to establish rules necessary to implement Transportation Code, Chapter 623, Subchapter S.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter S.

##### §28.100. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter S [Q, as added by House Bill 474, Acts of the 83rd Legislature, Regular Session, 2013], the commission may authorize Hidalgo County Regional Mobility Authority to issue permits for the movement of oversize or overweight vehicles carrying cargo on roads designated by Transportation Code, §623.363 [§623.322] and as designated by the Commission under this subchapter. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by Hidalgo County Regional Mobility Authority for the movement of oversize and overweight vehicles.

##### §28.102. Authority's Powers and Duties.

(a) Authority authorized to issue permits. The authority may issue a permit and collect a fee for the movement within the territory of the authority of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:

- (1) the roads designated by Transportation Code, §623.363 [§623.322];
- (2) US 281/Military Highway from Spur 29 to FM 1015;
- (3) FM 1015 from US 281/Military Highway, south to the Progreso [Progresso] International Bridge;
- (4) FM 2557 from US 281/Military Highway to Interstate 2;
- (5) FM 3072 from Veterans [Veteran] Boulevard ("I" Road) to Cesar Chavez Road; and
- (6) [(S)] US 281 (Cage Boulevard) from Spur 600 to Anaya Road.

(b) Surety bond. The [department may require the] authority shall obtain [to post] a surety bond in the amount set by the department to cover the estimated annual [of \$500,000 for the reimbursement of the department for actual] maintenance costs of roads identified in subsection (a) of this section. The department will draw on the bond only if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the authority.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's

property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.364 [§623.323]. The authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

##### §28.104. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter must be in a form approved by the department and at a minimum must include:

- (1) the name of the applicant;
- (2) a description of the kind of cargo to be transported;
- (3) the kind and weight of each commodity to be transported;
- (4) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size

for each axle, distance between each axle measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

- (5) the locations [~~location~~] where the cargo will be loaded and delivered; and
- (6) the date or dates on which movement is requested.

(b) Permit form and contents. A permit issued under this subchapter must be in a form approved by the department and at a minimum must include all information required under Transportation Code, §623.365(a) and §623.366. [~~§623.324(a) and §623.325.~~]

§28.106. *Movement Requirements and Restrictions.*

(a) Carrying of permit. The original permit issued by the authority must be carried in the permitted vehicle.

(b) Prohibition on movement with void permit. A permittee is prohibited from transporting an oversize or overweight load with a void permit. A permit is void if the applicant gives false or incorrect information. A permit becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit.

(c) Weather conditions or road work. Movement of a permitted vehicle is prohibited when:

- (1) visibility is reduced to less than 2/10 of one mile;
- (2) the road surface is hazardous due to weather conditions, such as rain, ice, sleet, or snow; or
- (3) highway maintenance or construction work is being performed.

(d) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours. A permitted vehicle that is overweight but not oversize may be moved at any time.

(e) Weight ticket requirement. Any vehicle issued a permit by the authority must be weighed on scales that are capable of determining gross vehicle weights and individual axle loads and are certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(f) Speed. The maximum speed for a permitted vehicle is set by Transportation Code, §623.367 [~~§623.326~~].

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 24, 2015.

TRD-201503978  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Earliest possible date of adoption: November 8, 2015  
For further information, please call: (512) 463-8630



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

##### SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

##### DIVISION 2. LICENSES

##### 4 TAC §7.127

The Texas Department of Agriculture withdraws the proposed amendments to §7.127 which appeared in the September 18, 2015, issue of the *Texas Register* (40 TexReg 6231).

Filed with the Office of the Secretary of State on September 25, 2015.

TRD-201503991

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: September 25, 2015

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

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

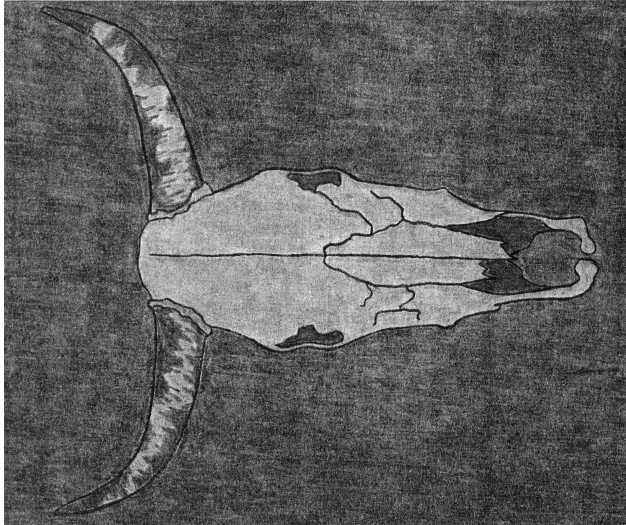
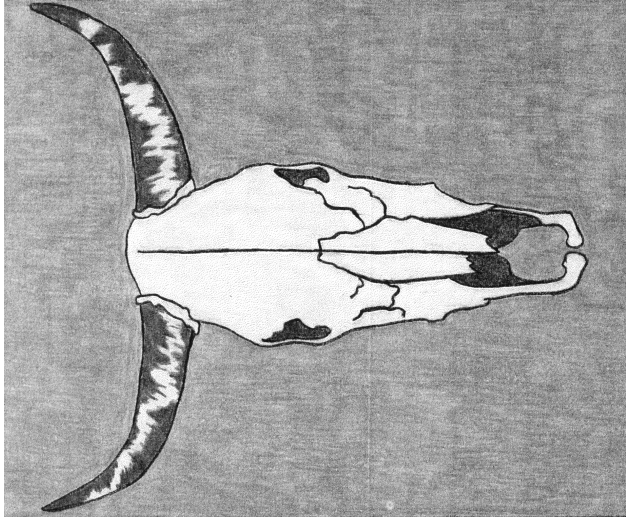
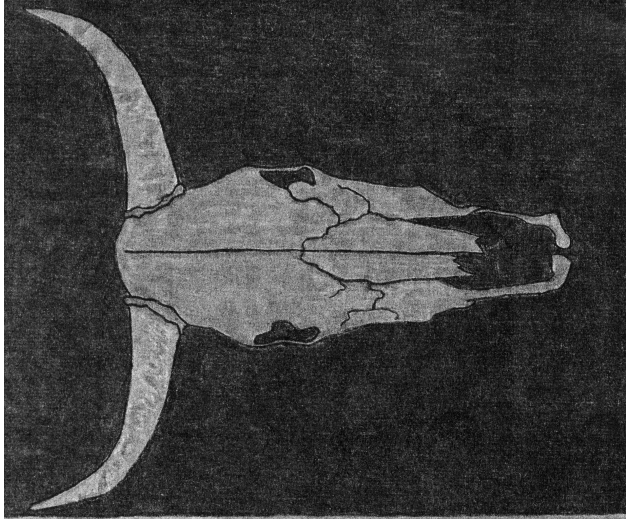
#### CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER F. CONTRACTUAL AGREEMENTS

##### 22 TAC §108.74

Proposed new §108.74, published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1626), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 23, 2015.

TRD-201503959



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

##### DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

###### 1 TAC §354.1062

The Texas Health and Human Service Commission (HHSC) adopts amended §354.1062, concerning Authorized Physician Services, without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2345) and will not be republished.

###### Background and Justification

The amended rule adds services provided by an anesthesiologist assistant to the rule regarding the conditions under which a physician may bill Texas Medicaid and aligns the rule with other program rules (§354.1064 and §354.1065) relating to anesthesiologist assistant services. The Texas Medicaid Program reimburses for services provided by an anesthesiologist assistant under the supervision of a licensed anesthesiologist.

###### Comments

The 30-day comment period ended June 1, 2015. During this period, HHSC received comments regarding the amended rule from the Texas Association of Nurse Anesthetists (TANA). TANA opposed the adoption of the proposed rule. A summary of comments relating to the rule and HHSC's responses follows.

**Comment:** The commenter objected to the reimbursement of Medicaid services provided by anesthesiologist assistants because anesthesiologist assistants are not licensed by the state of Texas, noting that the Texas Legislature once again failed to authorize the licensure of anesthesiologist assistants.

**Response:** HHSC acknowledges that anesthesiologist assistants are not licensed by the state of Texas, but notes that licensure is not required for reimbursement of Medicaid services because an anesthesiologist may delegate a medical act to an anesthesiologist assistant acting under his or her supervision, as permitted by Texas Occupations Code §157.001 and the rules of the Texas Medical Board. HHSC sought guidance from the Centers for Medicare & Medicaid Services (CMS) related to enrolling anesthesiologist assistants as Medicaid providers

in Texas. CMS clarified that anesthesiologist assistants do not have to be licensed in order to participate in the Medicaid program, but can be reimbursed under the physician services benefit in Social Security Act §1905(a)(5). CMS approved a state plan amendment adding anesthesiologist assistants to the fee schedule as a Medicaid provider effective June 1, 2013. HHSC also declines to draw any conclusion from the Texas Legislature's failure to adopt a certain law. See *Garcia v. State*, 829 S.W.2d 796, 799 (Tex. Crim. App. 1992) (en banc); Tex. Att'y Gen. Op. No. JC-0228 (2000).

**Comment:** The commenter noted that amendments to 1 TAC §354.1062 adopted in the fall of 2014 to clarify reimbursement for physician assistants and advanced practice registered nurses did not address the rates to be paid to anesthesiologist assistants.

**Response:** This comment is beyond the scope of the current rulemaking.

**Comment:** The commenter noted inability to determine the rate methodology under which HHSC reimburses anesthesiologist assistants in the absence of a reimbursement rule for anesthesiologist assistants in Title 1 of the Texas Administrative Code, Part 15, Chapter 355, similar to rules for physician assistants and advanced practice registered nurses.

**Response:** HHSC disagrees with the commenter's assertion that the rate methodology for anesthesiologist assistants cannot be determined. The rate methodology for anesthesiologist assistants is established in the Texas Medicaid State Plan and the Texas Medicaid Fee Schedule, which were adopted following public notice and opportunity for comment. See Tex. State Plan att. 4.19-B, p. 34 ("Payment for covered anesthesia services provided by...[an] Anesthesiologist Assistant...is limited to the lesser of the provider's billed charges or 92 percent of the rate reimbursed to a physician anesthesiologist...."); 38 TexReg 3382 (May 24, 2013) (announcing intent to amend state plan to add anesthesiologist assistants to fee schedule). The Texas Medicaid State Plan and the Texas Medicaid Fee Schedule are available for review on HHSC's website.

**Comment:** The commenter noted that the application of the language in 1 TAC §354.1062(d)(1) to anesthesiologist assistants appears to create a situation in which anesthesiologist assistants could always be reimbursed at 100 percent of the supervising anesthesiologist's rate.

**Response:** HHSC disagrees with this comment. Subsection (d)(1) does not refer to anesthesiologist assistants. Only 1 TAC §354.1062(d)(3) refers to anesthesiologist assistants.

**Comment:** The commenter objected to a "piecemeal approach to rulemaking with regard to" anesthesiologist assistants.

Response: This comment is beyond the scope of the current rulemaking.

Comment: The commenter compared anesthesiologist assistant services to services performed by a "surgical nurse or surgical tech," which are included in the "hospital's surgical fee."

Response: HHSC disagrees with this comment. Medically directed anesthesia services are a benefit of the Texas Medicaid Program, and HHSC implements this benefit by reimbursing anesthesiology assistants, certified registered nurse anesthetists, and anesthesiologists for the services they perform.

Comment: The commenter objected to the reimbursement rates for anesthesiologist assistants exceeding the rate for physician assistants, advanced practice registered nurses, and certified registered nurse anesthetists.

Response: HHSC disagrees with this comment. Anesthesiologist assistants are reimbursed at the same rate as physician assistants, advanced practice registered nurses, and certified registered nurse anesthetists - 92 percent of the physician rate. Reimbursement rates for anesthesiologist assistants are established in the Texas Medicaid State Plan and the Texas Medicaid Fee Schedule, which were adopted following public notice and opportunity for comment. See Tex. State Plan att. 4.19-B, p. 34; 38 TexReg 3382 (May 24, 2013). The Texas Medicaid State Plan and the Texas Medicaid Fee Schedule are available for review on HHSC's website.

Comment: The commenter requested that the rule be withdrawn until HHSC promulgates rules setting the reimbursement methodology for anesthesiologist assistants that do not exceed the reimbursement rates for anesthesia services paid to certified registered nurse anesthetists.

Response: HHSC declines to withdraw the rule as the commenter requests. Currently, anesthesiologist assistants and certified registered nurse anesthetists are reimbursed at the same rate - 92 percent of the physician rate. Reimbursement rates for anesthesiologist assistants are established in the Texas Medicaid State Plan and the Texas Medicaid Fee Schedule, which were adopted following public notice and opportunity for comment. See Tex. State Plan att. 4.19-B, p. 34; 38 TexReg 3382 (May 24, 2013). The Texas Medicaid State Plan and the Texas Medicaid Fee Schedule are available for review on HHSC's website.

Comment: The commenter requested a public hearing pursuant to §32.0282 of the Texas Human Resources Code if the rule was not withdrawn as requested.

Response: Because the commenter subsequently decided not to request a public hearing, HHSC need not respond to this comment.

#### Statutory Authority

The amendment is adopted 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 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 25, 2015.

TRD-201503984

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: October 15, 2015

Proposal publication date: May 1, 2015

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

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## CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER C. PRIVATE DUTY NURSING SERVICES

The Texas Health and Human Services Commission (HHSC) adopts repeals to §§363.301, 363.303, 363.305, 363.307, 363.309, 363.311, 363.313, 363.315, and 363.317, concerning Private Duty Nursing Services; and adopts new §§363.301, 363.303, 363.305, 363.307, 363.309, 363.311, and 363.313, concerning Private Duty Nursing Services (PDN). The repeals and new 363.301, 363.307 and 363.311 are adopted without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2348) and will not be republished. New §§363.303, 363.305, 363.309 and 363.313 are adopted with changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2348). The text of the rules will be republished.

#### Background and Justification

The changes to 1 TAC Chapter 363, Subchapter C, address requirements in the Second Partial Settlement Agreement in *Alberto N. v. Traylor*, Section 8.4, under which HHSC must conform its Private Duty Nursing (PDN) rules to the terms of the settlement agreement. HHSC, the Office of the Texas Attorney General, and the *Alberto N.* Plaintiffs' counsel negotiated the specific wording of the rules. The adopted rules are the product of that negotiation process and represent HHSC's effort to conform its PDN rules to the terms and conditions of the settlement agreement.

#### Comments

The 30-day comment period ended on May 31, 2015. On May 26, 2015, HHSC held a public hearing to receive comments on the proposed rules. HHSC received comments at the public hearing from the Texas Association for Home Care and Hospice (TAHC&H). During the 30-day comment period, HHSC received written comments from TAHC&H, the Texas Board of Nursing, the Texas Association of Health Plans, and the HHSC Office of Inspector General.

Summaries of each comment and HHSC's responses follow:

Comment: A commenter noted that the preamble indicates that there is no cost impact to the rule change. However, the detailed provisions within the proposed rules suggest that there could be greater utilization of PDN. If utilization increases, the commenter asserted, associated cost will increase.

Response: HHSC disagrees with the comment. HHSC has already implemented the policy changes described in the proposed rules in order to comply with the *Alberto N. v. Janek*



settlement agreements. The proposed rules simply align the agency's administrative rules with its existing policies and procedures. Therefore, there will be no additional cost impact due to the implementation of these adopted rules.

Comment: One commenter requested that, to avoid confusing RNs, HSHC revise the definitions in §363.303 for activities of daily living (ADLs) and instrumental activities of daily living (IADLs) to be consistent with the Board of Nursing.

Response: HHSC agrees and has revised §363.303 accordingly. Because the terms ADL and IADL are used only in a context that already references Board of Nursing rules, HHSC has removed the definitions of these terms, as well as the definition for "health maintenance activities," from §363.303.

Comment: One commenter noted that the definition for physician specifies that the individual must be recognized by the Texas Medical Board to practice medicine. The commenter asked if this is true in instances when the recipient crosses into bordering states for care, especially when that provider is the most convenient for the recipient.

Response: HHSC agrees with the comment and has revised §363.303's definition of the term "physician" to indicate that the physician must be licensed in the state in which he or she practices.

Comment: One commenter noted that the term "responsible adult" is defined as a single individual and does not allow for situations in which two adults share responsibility equally.

Response: HHSC did not revise §363.303's definition of the term "responsible adult" in response to this comment. HHSC acknowledges that a child may have more than one responsible adult, but HHSC asserts that the definition, as written, does not exclude such situations. In construing a statute, the singular includes the plural and the plural includes the singular. Texas Government Code §311.012(b). HHSC believes the same principle applies in the regulatory context.

Comment: One commenter noted that §363.305 currently requires both an independently enrolled PDN services provider and a home and community support services agency to comply with statutory requirements related to the mandatory reporting of abuse and neglect of children and adults with a disability and to maintain written policies and procedures for obtaining a recipient's consent for medical treatment when there is no responsible adult. As proposed, however, §363.305 applies only to home and community support services agencies. The commenter asks whether HHSC intends to except independent private duty nurses from these two requirements.

Response: HHSC agrees with the comment and has corrected the error in §363.305 of the adopted rules. Independent private duty nurses must comply with these provisions.

Comment: One commenter expressed a general concern that §363.309 confers greater authority on the PDN provider to determine medical necessity. The commenter requested clarification in the rules that the determination of medical necessity is a function of the state or managed care organization medical director.

Response: HHSC disagrees that the rules, as written, confer greater authority on the PDN provider to determine medical necessity and declines to alter the rule language. It is the role of the recipient's physician to document in a request for private duty nursing why services are medically necessary based on the recipient's medical condition. It is the role of HHSC or its contractor

to review such requests and determine whether the documentation submitted by the recipient's physician meets the medical necessity criteria established in medical policy.

Comment: One commenter noted that the requirement in §363.309(f)(2)(C) that a recipient be examined by his or her treating physician within 30 days of the start of care can be problematic in cases of hospital stays and discharges and home health agency transfers. The commenter suggested adding language to provide flexibility to waive this 30-day requirement when the physician certifies that the additional evaluation visit is not medically necessary.

Response: HHSC agrees and made this change to §363.309(f)(2)(C) of the adopted rules.

Comment: A commenter requested that HHSC clarify §363.309(g) to state the conditions under which the parents or caregiver may be asked to assume some responsibilities for care of the child.

Response: HHSC declines to revise the rules in response to this comment. As the rule language states, a responsible adult may not be required to provide private duty nursing services; namely, skilled nursing services. This does not, of course, preclude the responsible adult from voluntarily providing skilled or unskilled nursing tasks for the child.

Comment: One commenter requested that HHSC clarify the use of the word "capped" in §363.309(i).

Response: HHSC declines to revise the rules in response to this comment. In this context, the statement that PDN services will not be capped refers to the fact that HHSC, its designee, or its MCO may not establish an arbitrary ceiling for the amount of PDN services that are available. HHSC, its designee, or its MCO may not, for instance, establish an absolute limit of 18 hours of PDN per day. HHSC, its designee, or its MCO must consider and approve all requested medically necessary PDN services.

Comment: A commenter expressed concern that the list of allowable places of service for PDN found in §363.309(j) is more restrictive than that found in the current rules, which include the recipient's school or day care facility.

Response: HHSC agrees with the comment and has revised the list of allowable places of service for PDN to be consistent with federal regulations at 42 CFR 440.80(c). It is not HHSC's intent to restrict or alter the places of service that are currently allowable under PDN policy. Federal guidance found in Section 4310 of the State Medicaid Manual clarifies that individuals who require and are authorized to receive PDN services in a home, hospital, or nursing facility setting may receive PDN services outside of those settings during those hours when the recipient's normal life activities take him or her outside of those settings. Thus, "home," as referenced in §363.309(j), is meant to follow the federal interpretation and include these other community settings. The rule language is therefore also consistent with HHSC private duty nursing policy as reflected in the Texas Medicaid Provider Procedures Manual, which allows the service to be rendered in other community settings, such as schools and day care facilities.

Comment: One commenter expressed concern that the stipulation in §363.309(n)(1) that PDN is considered only when services are consistent with the definition of "nursing" as described in the Texas Nursing Practice Act or its implementing regulations seems to further limit the tasks that can be provided by the family or by non-nurses.

Response: HHSC disagrees with this interpretation. The language is not intended to limit tasks that may be performed by non-nurses, but rather to state that PDN services include only tasks that are consistent with the definition of nursing. This does not preclude the family from performing the tasks cited, nor does it preclude a nurse from delegating or assigning the tasks cited to a non-nurse.

Comment: One commenter noted the need for enforceable timeframes and requested that HHSC revise §363.311(f)(5), regarding prior authorization requirements, to specify that a provider be contacted within three business days of the submission.

Response: HHSC declines to make this change. HHSC addresses specific prior authorization timeframes in medical policy.

Comment: A commenter expressed concern that the requirement that prior authorization for PDN services may not be denied or reduced solely because the recipient's condition or health status is stable or has not changed prevents the state or an MCO from ever reducing PDN services.

Response: HHSC disagrees and declines to revise the rules in response to this comment. Section 363.311(f)(7) is meant to indicate that each subsequent request for PDN must be reviewed for medical necessity on its own merit. A reduction in services must be based on the medical necessity review; services cannot be reduced simply because the recipient's condition is stable.

Comment: One commenter asked whether, under §363.311(i), a medical director may discontinue services if the recipient's treating physician cannot be contacted despite repeated efforts. The commenter requested HHSC to add a provision that allows for the recipient to be reevaluated if the treating/ordering physician cannot be contacted within a specified period of time.

Response: HHSC declines to revise the rules in response to this comment. The rules, as proposed and adopted, do not prevent a medical director from taking action on a request for private duty nursing services if the recipient's treating physician cannot be contacted. In such cases, the medical director would act upon the information available as part of the prior authorization request and other documentation.

Comment: One commenter asked whether the requirement to include the nursing addendum should be added to §363.313.

Response: HHSC declines to make this change. This rule applies to private duty nursing services authorized in both the fee-for-service and managed care delivery systems, and managed care organizations may use different forms for prior authorization requests and documents. Regardless of the required format, however, documentation must include sufficient information to support medical necessity.

Comment: One commenter suggested that HHSC revise §363.313 to reference Board of Nursing rules regarding nurse delegation.

Response: HHSC agrees and has revised §363.313 accordingly.

Comment: One commenter recommended stating that the plan of care must be signed and dated by the treating physician no more than 30 days "before," rather than "from."

Response: HHSC agrees with the comment and has revised §363.313(c)(2) of the adopted rules accordingly.

Comment: One commenter finds that the requirement in §363.313(c)(2) that a plan of care be "recommended, signed,

and dated by the treating physician no more than 30 days from the start of care or 30 days from the end of the prior authorization period" is problematic. When a recipient's condition changes in the middle of an authorization period, this would require that the physician sign a whole new plan of care when they have a valid plan of care already in place.

Response: HHSC declines to revise the rule as suggested. A recipient's physician should review and sign any new plan of care, including a plan of care that is revised to include additional hours or treatments.

Comment: One commenter noted that health maintenance activities (HMAs) require a registered nurse (RN) assessment to determine whether the activities are exempt from delegation. The commenter noted that RNs often need to be reminded that an HMA is the result of an RN assessment.

Response: HHSC acknowledges this comment but does not believe it requires a revision to the rules.

Comment: One commenter suggested that HHSC revise §363.313 to clarify that the plan of care is developed by a registered nurse.

Response: HHSC agrees and has revised §363.313 accordingly.

Comment: One commenter noted that Texas Government Code §§531.02417, 531.024171 and 531.024172 allow HHSC to implement a process to obtain an independent assessment of a Medicaid recipient's need for private duty nursing services. The commenter asked whether HHSC plans to implement this independent assessment.

Response: HHSC intends to implement an independent assessment for private duty nursing services as part of the planned STAR Kids Screening and Assessment Instrument that is being developed as part of the STAR Kids managed care model. Therefore, implementation of the cited provision will coincide with the implementation of STAR Kids.

Comment: A commenter asked how the proposed rules impact requirements associated with the new STAR Kids program and its associated assessment requirements. The commenter noted that the rules do not reference the yet-to-be-developed STAR Kids assessment instrument(s).

Response: The STAR Kids Screening and Assessment Instrument, which is proposed to serve as the assessment instrument for private duty nursing services in the STAR Kids managed care model, is still under development at the time of publication of these rules. Moreover, the instrument is proposed for use in the STAR Kids managed care model only and will therefore not apply to all Medicaid private duty nursing services delivered through fee-for-service or other managed care models. Therefore, HHSC contends that policies and procedures related to the STAR Kids Screening and Assessment Instrument are inappropriate for these rules.

### **1 TAC §§363.301, 363.303, 363.305, 363.307, 363.309, 363.311, 363.313, 363.315, 363.317**

#### **Statutory Authority**

The repeals are adopted 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 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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Chief Counsel

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



### **1 TAC §§363.301, 363.303, 363.305, 363.307, 363.309, 363.311, 363.313**

#### **Statutory Authority**

The new rules are adopted 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.

#### *§363.303. Definitions.*

The following words and terms apply only to this subchapter and have the following meanings, unless the context clearly indicates otherwise.

(1) **Contractor**--The entity with which HHSC contracts, pursuant to the requirements of the Code of Federal Regulations, Title 42, Part 434.

(2) **Correct or ameliorate**--To improve, maintain, or slow the deterioration of the recipient's health status.

(3) **Day**--A calendar day.

(4) **Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)**--The child and adolescent health component of the Medicaid program for recipients under 21 years of age, defined in the United States Code, Title 42, §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b). EPSDT means screening, vision, dental, hearing, laboratory, health care, treatment, diagnostic services, and other measures necessary to correct or ameliorate defects and physical and mental illnesses and conditions.

(5) **Federal financial participation (FFP)**--The federal government's share of a Medicaid expenditure made by a state agency, as defined in the Code of Federal Regulations, Title 45, §95.4.

(6) **HHSC**--The Texas Health and Human Services Commission or its designee, including a contractor or MCO.

(7) **Home and Community Support Services Agency (HCSSA)**--A public or private agency or organization licensed by the Texas Department of Aging and Disability Services under 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies).

(8) **Identified contingency plan**--A structured process, developed by the recipient or the responsible adult and the Medicaid-enrolled provider, by which a recipient will receive care when a sched-

uled health care provider is unexpectedly unavailable, as required by 40 TAC §97.290 (relating to Backup Services and After Hours Care).

(9) **Licensed Vocational Nurse (LVN)**--An individual who is recognized by the Texas Board of Nursing to practice vocational nursing in Texas at the time and place the service is provided, pursuant to Texas Occupations Code §301.002(5) and 22 TAC, Part 11 (relating to Texas Board of Nursing).

(10) **Medicaid**--The Texas Medical Assistance Program, a joint federal and state program provided for in Chapter 32, Texas Human Resources Code, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(11) **Medicaid managed care organization (MCO)**--Any entity with which HHSC contracts to provide Medicaid managed care services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(12) **Medical Director**--HHSC's, its contractor's, or MCO's medical director or associate medical director.

(13) **Notice**--A letter provided by HHSC, its contractor, or MCO to a recipient informing the recipient of any reduction, denial, or termination of a requested service, as described in the Code of Federal Regulations, Title 42, §431.206 and §431.210.

(14) **Physician**--A doctor of medicine (MD) or osteopathy (DO) who is licensed in the state in which they practice.

(15) **Private duty nursing (PDN) Services**--Nursing, described by the Texas Occupations Code Chapter 301, and its implementing regulations at 22 TAC, Part 11 (relating to Texas Board of Nursing), when the recipient requires more individual and continuous care than is available from a visiting nurse or than is routinely provided by the nursing staff of a hospital or skilled nursing facility. PDN services include observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a recipient who has a disability or chronic health condition or who is experiencing a change in normal health processes.

(16) **Private duty nursing services provider**--An independently practicing registered nurse, a licensed vocational nurse (LVN) under the supervision of a registered nurse, or a home and community support services agency (HCSSA) enrolled in the Texas Medicaid Program to provide private duty nursing services.

(17) **Qualified Aide**--An aide providing services consistent with the requirements of:

(A) 40 TAC Chapter 94 (relating to Nurse Aides);

(B) 40 TAC Chapter 95 (relating to Medication Aides--Program Requirements); or

(C) home health aide outlined in 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies).

(18) **Recipient**--An individual who is eligible to receive services through the Texas Medicaid Program.

(19) **Registered Nurse (RN)**--An individual who is recognized by the Texas Board of Nursing to practice professional nursing in Texas at the time and place the service is provided, pursuant to the Texas Occupations Code §301.002.

(20) **Responsible adult**--An individual who is an adult, as defined by the Texas Family Code, who has agreed to accept the responsibility for providing food, shelter, clothing, education, nurturing, and supervision for a recipient who is a minor under the age of 18; or is over 18 years of age and the responsible adult is the managing conser-

vator or legal guardian. Responsible adults include biological parents, adoptive parents, foster parents, guardians, court-appointed managing conservators, and other family members by birth or marriage.

(21) Texas Health Steps - Comprehensive Care Program-- Medical, dental, and treatment services available as a federally mandated service for eligible EPSDT Medicaid recipients in Texas under the age of 21 years, pursuant to the EPSDT provision of Title XIX of the Social Security Act, 42 U.S.C. §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b).

(22) Treating physician--A physician who provides ongoing medical care of the recipient and ongoing medical supervision of the recipient's plan of care.

§363.305. *Provider Participation Requirements.*

(a) PDN services providers must be independently enrolled in the Texas Medicaid Program to be eligible to receive reimbursement for providing private duty nursing services through the Texas Health Steps Comprehensive Care Program.

(b) A PDN services provider must:

(1) be an RN, an LVN under the supervision of an RN, or a licensed HCSSA;

(2) be enrolled in the Texas Medicaid Program;

(3) comply with the terms of the Texas Medical Assistance Provider Agreement;

(4) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including the Texas Nursing Practice Act;

(5) comply with all applicable state and federal laws and regulations relating to the Texas Medicaid Program;

(6) comply with the requirements of the *Texas Medicaid Provider Procedures Manual*, including all updates and revisions published bimonthly in the *Texas Medicaid Bulletin*, and all handbooks, standards, and guidelines published by HHSC;

(7) comply with accepted professional standards and principles of nursing practice;

(8) comply with Texas Family Code Chapter 261 and Texas Human Resources Code Chapter 48, concerning mandatory reporting of suspected abuse and neglect of children and adults with disabilities; and

(9) maintain written policies and procedures for obtaining consent for medical treatment for clients in the absence of the responsible adult that meet the standards of Texas Family Code §32.001, relating to Consent by Non-Parent.

(c) Provider Notification of Termination of Services.

(1) Independently enrolled RNs must provide a recipient at least 30 days written notice of the intent to voluntarily terminate services, except in situations of a potential threat to the nurse's personal safety.

(2) An HCSSA must provide a recipient at least five days written notice of its intent to voluntarily terminate services, except as allowed by 40 TAC §97.295 (relating to Client Transfer or Discharge Notification Requirements).

§363.309. *Benefits and Limitations.*

(a) PDN services are a benefit of the Texas Medicaid Program in accordance with the Code of Federal Regulations, Title 42, §440.80, relating to PDN services, and §440.40(b), relating to EPSDT services.

(b) EPSDT recipients are eligible for all PDN services that are medically necessary to correct or ameliorate the recipient's disability and physical and mental illnesses and conditions.

(c) The provider requesting PDN services must supply documentation to support the medical need for a private duty nurse. The documentation must also support the number of PDN hours that are medically necessary to correct or ameliorate the recipient's disability and physical and mental illnesses and conditions.

(d) EPSDT recipients are eligible for all medically necessary PDN services that are required to meet the recipient's documented PDN needs over the span of time the needs arise, as the needs occur over the course of a 24-hour day.

(e) PDN services must be:

(1) prescribed by and provided under the direction of a treating physician;

(2) included in a plan of care, as described in §363.313 of this subchapter (relating to Plan of Care);

(3) delivered by a Texas Medicaid Program-enrolled PDN services provider; and

(4) provided in compliance with all applicable state and federal laws and regulations.

(f) PDN services are available when an individual:

(1) is eligible for EPSDT services;

(2) has a treating physician who:

(A) issues a prescription or physician's order for PDN services;

(B) reviews and approves an established and maintained plan of care in accordance with §363.313 of this subchapter; and

(C) provides continuing care and medical supervision, including examination or treatment, within 30 days prior to the start of PDN services. This physician visit may be waived when a diagnosis has already been established by the physician, and the client is under the continuing care and medical supervision of the physician. The waiver must be based on the physician's written statement that an additional evaluation visit is not medically necessary. This documentation must be maintained by the physician and the provider in the client's medical record; and

(3) has a responsible adult who resides in the recipient's residence when the recipient is a minor under the age of 18 years or when the recipient is 18 years of age or older with a managing conservator or legal guardian.

(g) HHSC may not:

(1) require a recipient's responsible adult(s) to provide PDN services to the recipient;

(2) require a recipient or a recipient's responsible adult(s) to designate an alternate caregiver to provide PDN services; or

(3) deny or reduce the amount of requested PDN services because the recipient's responsible adult(s) is trained and capable of performing such services, but chooses not to do so.

(h) HHSC may require providers to instruct and train responsible adults to perform PDN services should an emergency arise, or if the responsible adults voluntarily choose to provide part of the recipient's PDN themselves.

(i) The amount of medically necessary PDN services available to recipients will not be capped.

(j) PDN services must be provided in a place of service consistent with the requirements in the Code of Federal Regulations, Title 42, §440.80, relating to PDN.

(k) PDN services may be provided only by an RN or by an LVN who is under the supervision of an RN.

(l) PDN services must be prior authorized by HHSC. PDN may be authorized for a period of up to six months.

(m) The PDN services provider is notified in writing by HHSC of the approval, reduction, or denial of requested PDN services.

(n) PDN services limitations.

(1) PDN is considered only when the services are consistent with the definition of "nursing" as described in the Texas Nursing Practice Act or its implementing regulations. PDN services will not be considered for reimbursement if the services are intended solely to provide respite care or child care, or do not directly relate to the recipient's nursing needs.

(2) A responsible adult is not eligible for reimbursement for delivering PDN services through the Texas Medicaid Program if he or she is the parent of a recipient who is under the age of 18 or the spouse of the recipient. A responsible adult who is the managing conservator or legal guardian of a recipient over 18 years of age is not eligible for reimbursement.

(o) HHSC may deny or reduce PDN hours if the recipient's PDN needs decrease.

(p) HHSC may not deny or reduce PDN when the recipient's nursing needs have not decreased.

#### §363.313. *Plan of Care.*

(a) A plan of care is developed by an RN and represents the treating physician's orders.

(b) The plan of care must be established and periodically reviewed by the treating physician in consultation with the provider and the recipient or responsible adult.

(c) The plan of care developed by the RN must be:

(1) submitted with a request for prior authorization of PDN services;

(2) recommended, signed, and dated by the treating physician no more than 30 days before the start of care or 30 days before the end of the prior authorization period; and

(3) reviewed and revised by the treating physician with each prior authorization, or more frequently as the treating physician or the PDN services provider deems necessary.

(d) A plan of care developed by the RN must include the following elements:

(1) a clinical summary that documents active diagnoses and current clinical condition;

(2) the recipient's mental or cognitive status;

(3) the types of treatments and services, including amount, duration, and frequency;

(4) a description of any required equipment and/or supplies;

(5) the recipient's prognosis;

(6) the recipient's rehabilitation potential;

(7) the recipient's current functional limitations;

(8) the activities permitted;

(9) the recipient's nutritional requirements;

(10) the recipient's medications, including dose, route, and frequency;

(11) the safety measures to protect against injury;

(12) instructions for timely discharge or referral;

(13) the date the recipient was last seen by the treating physician;

(14) identification of activities of daily living and health maintenance activities with which the recipient needs assistance, consistent and in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions). The plan of care must indicate whether the tasks must be performed by a licensed nurse or a qualified aide, or may be performed by a personal care attendant as described in Subchapter F of this chapter (relating to Personal Care Services);

(15) a certification statement that an identified contingency plan exists; and

(16) all other medical orders.

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 25, 2015.

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Karen Ray  
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Texas Health and Human Services Commission

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## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 37. LEGAL

##### SUBCHAPTER B. PENALTIES

###### 16 TAC §37.61

The Texas Alcoholic Beverage Commission adopts amendments to §37.61, relating to Suspensions, without changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5133).

The amendments add a new subsection (a) referencing Alcoholic Beverage Code §11.64(a), which is the Code provision that

is implemented by the rule, and renumber subsequent subsections appropriately.

New subsection (b) includes all of the violations for which Alcoholic Beverage Code §11.64(a) allows the administrator to exercise discretion in deciding whether to allow a civil penalty as the sanction in lieu of suspension. New subsection (b) includes solicitation of drinks in paragraph (13), in accordance with House Bill 3982 from the 2015 legislative session.

New subsection (c) clarifies that the administrator has discretion to allow a civil penalty in lieu of suspension for the violations listed in subsection (b) after considering certain circumstances, but is not required to allow a civil penalty. New subsection (d) lists specific circumstances that the administrator must consider in determining whether to allow a civil penalty for these violations, while new subsection (e) provides a non-exclusive list of some additional circumstances the administrator may consider.

Section 37.61 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules.

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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER A. GRANTS

###### 19 TAC §102.1

The State Board of Education (SBOE) adopts the repeal of §102.1, concerning the State Engineering and Science Recruitment Fund (SENSR) grant program. The repeal is adopted without changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4996) and will not be republished. The adopted repeal removes language related to the SENSR grant program adopted to be effective in 2006. The rule's authorizing statute was repealed by Senate Bill (SB) 215, 83rd Texas Legislature, Regular Session, 2013.

REASONED JUSTIFICATION. The SENSR fund was created by the 70th Texas Legislature, 1987, through the Texas Education Code, Chapter 51, Provisions Generally Applicable to Higher Education, Subchapter M, Engineering and Science Recruitment Fund. The SENSR grant was administered by the Texas Education Agency in collaboration with the Texas Higher Education Coordinating Board through a request for applications for several years. Statute required the SBOE to adopt rules for administration of the grant. In 2013, SB 215, 83rd Texas Legislature, repealed the statute authorizing the SENSR grant program. As a result, the adopted repeal removes the rule related to the eliminated program.

The repeal of 19 TAC §102.1 was approved by the SBOE for first reading and filing authorization at its July 17, 2015 meeting and for second reading and final adoption at its September 11, 2015 meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date will immediately repeal a rule that no longer has statutory authority to avoid confusion.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §51.603, as repealed by Senate Bill (SB) 215, 83rd Texas Legislature, Regular Session, 2013, which authorized the SBOE to adopt rules for the administration of the engineering and science recruitment fund; and §51.605, as repealed by SB 215, 83rd Texas Legislature, Regular Session, 2013, which authorized the SBOE to adopt rules establishing procedures by which an entity must apply for funding and account for any funds received.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §51.603 and §51.605, as repealed by Senate Bill 215, 83rd Texas Legislature, Regular Session, 2013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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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) adopts the repeal of §§111.31-111.37 and 111.52, concerning Texas essential knowledge and skills (TEKS) for mathematics. The repeal is adopted without changes to the proposed text as published in

the August 7, 2015 issue of the *Texas Register* (40 TexReg 4996) and will not be republished. The adopted repeal removes the TEKS for high school mathematics courses and related implementation language, which have been superseded by 19 TAC §§111.38-111.45.

REASONED JUSTIFICATION. The SBOE adopted revisions to the mathematics TEKS for high school in April 2012 for implementation in the 2015-2016 school year. With the implementation of the new mathematics TEKS for high school in 19 TAC §§111.39-111.45, the current TEKS in 19 TAC §§111.32-111.37 and 111.52 are no longer needed and may now be repealed.

The repeal of 19 TAC §§111.31-111.37 and 111.52 was approved by the SBOE for first reading and filing authorization at its July 17, 2015, meeting and for second reading and final adoption at its September 11, 2015, meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date will immediately repeal rules that have been superseded to avoid confusion.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §§111.31 - 111.37

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

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 25, 2015.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



### SUBCHAPTER D. OTHER HIGH SCHOOL MATHEMATICS COURSES

#### 19 TAC §111.52

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

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



### CHAPTER 117. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR FINE ARTS

The State Board of Education (SBOE) adopts the repeal of §§117.1-117.19, 117.31-117.40, and 117.51-117.67, concerning Texas essential knowledge and skills (TEKS) for fine arts. The repeal is adopted without changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4997) and will not be republished. The adopted repeal removes the TEKS adopted effective in 1998 for Kindergarten-Grade 8 and high school fine arts and related implementation language, which have been superseded by 19 TAC Chapter 117, Subchapters D-F.

REASONED JUSTIFICATION. The SBOE adopted revisions to the fine arts TEKS for Kindergarten-Grade 12 in April 2013 for implementation in the 2015-2016 school year. With the implementation of the new fine arts TEKS in 19 TAC Chapter 117, Subchapters D-F, the current TEKS in 19 TAC Chapter 117, Subchapters A-C, are no longer needed and may now be repealed.

The repeal of 19 TAC §§117.1-117.19, 117.31-117.40, and 117.51-117.67 was approved by the SBOE for first reading and filing authorization at its July 17, 2015 meeting and for second reading and final adoption at its September 11, 2015 meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date will immediately repeal rules that have been superseded to avoid confusion.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

### SUBCHAPTER A. ELEMENTARY

**19 TAC §§117.1 - 117.19**

STATUTORY AUTHORITY. The repeal is adopted 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.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §7.102(c)(4) and §28.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency  
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**SUBCHAPTER B. MIDDLE SCHOOL**

**19 TAC §§117.31 - 117.40**

STATUTORY AUTHORITY. The repeal is adopted 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.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §7.102(c)(4) and §28.002.

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  
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Texas Education Agency  
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**SUBCHAPTER C. HIGH SCHOOL**

**19 TAC §§117.51 - 117.67**

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the

SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

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



**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**

The Texas Funeral Service Commission (Commission) adopts the repeal of Chapter 201, §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, and 201.19, concerning Licensing and Enforcement--Practice and Procedure, without changes to the proposal as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4141). The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

This repeal is adopted simultaneously with new Chapter 201 (§§201.1 - 201.17) in a separate submission. The rewritten and readopted Chapter 201 in the separate submission will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

No comments were received regarding the repeal of Chapter 201 and subsequent adoption of a new Chapter 201.

The chapter is repealed under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Janice McCoy

Executive Director

Texas Funeral Service Commission

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For further information, please call: (512) 936-2469



## 22 TAC §§201.1 - 201.17

The Texas Funeral Service Commission (Commission) adopts new Chapter 201, §§201.1 - 201.17, concerning Licensing and Enforcement--Practice and Procedure, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4142). The new chapter is adopted simultaneously with the repeal of the current Chapter 201. The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

The rewritten and readopted Chapter 201 will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

No comments were received regarding the repeal of Chapter 201 and the subsequent adoption of a new Chapter 201.

The chapter is adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section. The rules reflect provisions to comply with statutory provisions under Government Code Chapters 2001 and 2008.

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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Janice McCoy

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Texas Funeral Service Commission

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## 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

The Texas Funeral Service Commission (Commission) adopts the repeal of Chapter 203, §§203.1 - 203.14, 203.16, 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, without changes to the proposal as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4148). The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

The repeal is adopted simultaneously with the adoption of a new Chapter 203 in three separate submissions for each of the new subchapters. The rewritten and readopted Chapter 203 in the separate submissions will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

No comments were received regarding the repeal of Chapter 203.

The chapter is repealed under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-2469



## SUBCHAPTER A. LICENSING

### 22 TAC §§203.1 - 203.18

The Texas Funeral Service Commission adopts new Chapter 203, Subchapter A, §§203.1 - 203.18, concerning Licensing. The Commission adopts new §§203.1, 203.5, 203.7, 203.14, and 203.16 with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4149). The Commission adopts §§203.2 - 203.4, 203.6, 203.8 - 203.13, 203.15, 203.17, and 203.18 without changes to the proposal.

The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

The rewritten and readopted Chapter 203, Subchapter A will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

Chapter 203, Subchapter A is adopted simultaneously with the repeal of the current Chapter 203 and the adoption of Chapter 203, Subchapter B and Chapter 203, Subchapter C in three separate submissions.

One comment regarding the adoption of Chapter 203, Subchapter A was received from SCI Texas Funeral Services, Inc. The Commission did not interpret the comment received as being against the adoption of the rules.

**Comment Summary:** The commenter asked the agency to clarify in Rule §203.16(b) which specific criminal offenses could lead to license action being taken against a licensee.

**Comment Response:** The Commission does not object to the clarification and has included the clarification in its revision to §203.16(b).

The adopted rules contain the following changes from the rules as published in the June 26, 2105, issue of the *Texas Register*:

Section 203.1(f)(6) is renumbered as §203.1(g) as a result of a drafting error. The text of the proposed rule is not changed.

Section 203.5(h) is changed because of a drafting error found by agency staff. The reference in the subsection is currently subsection (f) however the reference should be to subsection (g) as this subsection relates to the term of a provisional license.

Section 203.7(b) is changed because of a drafting error found by agency staff. The word "proscribed" is changed to "prescribed" in the first sentence of the subsection.

Section 203.14 is changed because of a drafting error found by agency staff. The proposed rule gives the Commission the authority to take action against a license, but only allows for revocation or denial of renewal. The rule also should allow for suspension of the license as a possible action as allowed by the current rule.

Section 203.16(b) is changed to clarify license sanction is applicable only for offenses related to duties and responsibilities of funeral service providers and as outlined in the rule. This change is the result of the one comment received.

Chapter 203, Subchapter A is adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section. Subchapter A provisions also are adopted under Texas Occupations Code Chapter 53 and 55.

#### *§203.1. Funeral Director and Embalmer 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 shall 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 licensee's birth month. The initial licensing 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) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full licensure. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and pass the State Mortuary Law Examination, and submit to a criminal background check.

#### (f) 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 §203.8 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 §203.8 of this title and paying a renewal fee that is 1 and 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 §203.8 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 §203.8 of this title.

(5) Notwithstanding paragraph (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.

(g) A licensee serving as an active military service member as defined by Occupations Code, Chapter 55, is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

#### *§203.5. Provisional License.*

(a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code §651.302(a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified.

(b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c)

must have the college forward a letter of enrollment prior to a provisional license being renewed.

(c) 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.

(d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.

(e) The provisional funeral director program may not be served in a commercial embalming establishment.

(f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period. A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.

(g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

(h) Notwithstanding subsection (g), if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months up to two times, for a maximum term of 36 months.

(i) Fees will not be refunded to a provisional license holder who fails to complete the program.

(j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code §651.253.

(k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.

(l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.

(m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (l) of this section and the fees required for regular licensure.

(n) Examination Requirements

(1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code §651.255.

(2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code §§651.255 - 651.256.

(3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection.

§203.7. *Provisional License Reinstatement and Reapplication.*

(a) A person whose provisional license is cancelled for failure to timely renew the license as described in Occupations Code, §651.305 may apply for reinstatement no later than the date the license would have expired if the license had been timely renewed. The applicant must pay the renewal fee and penalty upon application. The reinstated provisional license has the same expiration date as if the license had been timely renewed.

(b) A person whose provisional license is cancelled for failure to complete the program within the prescribed time may apply for a new provisional license. Casework completed under a previous license may not be counted toward the requirements of the new license unless the applicant petitions the Executive Director for a hardship exemption. The petition must demonstrate the personal situation and reasons why the casework should count. If the Executive Director determines that the previously completed casework should not be counted under the new license, the Executive Director's decision may be appealed, in writing, and the appeal will be considered at the Commission's next regularly scheduled meeting.

§203.14. *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 suspension, 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.

§203.16. *Consequences of Criminal Conviction.*

(a) The Commission may suspend or revoke a license or deny a person from receiving a license 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 as outlined in subsection (h) 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 suspend or 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 crimes 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.

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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Janice McCoy  
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Texas Funeral Service Commission  
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For further information, please call: (512) 936-2469



## SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

### 22 TAC §§203.21 - 203.35

The Texas Funeral Service Commission adopts new Chapter 203, Subchapter B, §§203.21 - 201.35, concerning Duties a Funeral Establishment/Licensee. The Commission adopts new §§203.27, 203.29, and 203.30 with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4158). The Commission adopts §§203.21 - 203.26, 203.28, and 203.31 - 203.35 without changes to the proposal.

The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

The rewritten and readopted Chapter 203, Subchapter B will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

Chapter 203, Subchapter B is adopted simultaneously with the repeal of the current Chapter 203 and the adoption of Chapter 203, Subchapter A and Chapter 203, Subchapter C in three separate submissions.

Four comments regarding the adoption of Chapter 203, Subchapter B were received from SCI Texas Funeral Services, Inc. The Commission did not interpret any of the comments received as being against the adoption of the rules.

**Comment Summary:** The commenter stated §203.23(h) is a new provision to require the Embalmer in Charge to file an affidavit within 15 days of a provisional licensee's termination. The commenter stated the strict timeframe would be unduly burdensome and asked the Commission to remove it or expand it to 30 days.

**Commission Response:** This provision is not a new requirement on an Embalmer in Charge. It is found in the current §203.6(k), relating to Provisional Licensees. The agency moved the requirement to proposed §203.23, relating to Embalmer in Charge, so that all duties of the Embalmer in Charge were found in the same rule. The Commission declines to make changes based on this comment.

**Comment Summary:** The commenter stated opposition to §203.27 because the law does not require affirmative conduct by a funeral provider to identify the authorized individual to make arrangements for final disposition prior to discussing funeral arrangements. The commenter stated that if the provision is maintained in the rule, indemnification language should be included.

**Commission Response:** The intent of the rule was to provide a reminder to the funeral director of the duty to adhere to the provisions of Health and Safety Code §711.002. The Commission fully believes many complaints could be avoided if funeral establishments asked the simple question of who else may have the right to control disposition. The Commission has reworded the rule to provide more clarity to the duty of the funeral director and has included indemnification language, which is provided by Health and Safety Code §711.002 to satisfy the concerns of the commenter.

**Comment Summary:** The commenter states under proposed §203.29(c), the Commission would require the licensed practitioner to obtain written approval from the family to place identification on the body if a casket is not used for interment. The com-

menter stated the new requirement regarding written approval could adversely impact chain of custody preservation. They suggested rewriting the comment to require placement unless the family objects.

**Commission Response:** The Commission agrees the language, as proposed, could have unintended consequences. As such, the Commission is deleting §203.29(c) from the rule submission. The Commission intends to further investigate on-body identification and possibly bring forward a proposal for an amendment to this rule at a later date.

**Comment Summary:** The commenter is concerned new rule §203.30(a) requiring a funeral director to be present during the "public portion" of the graveside services is vague and may exceed the Commission's statutory authority. They recommend defining "public portion" in §203.30(a) as outlined in §203.30(b).

**Commission Response:** The intent of the rule was to ensure funeral directors complied with the definition of funeral directing which means "acts associated with or arranging for the disposition of dead human body. . .from the time of first call until inurnment, interment, or entombment services are complete or the body is permanently transported out of this state." The Commission has reworded the rule to remove the vague language relating to "public portion" and instead require a licensed funeral director to be present for "graveside services included in the purchase agreement." The intent is to ensure if the funeral home charges a consumer for a graveside service a licensed funeral director must be present at those services. But if the family chooses to have a graveside service not provided for in the purchase agreement, a licensed funeral director would not be required to be present.

The rules to be finally adopted contain the following changes from the rules as published in the June 26, 2105, issue of the *Texas Register*:

Section 203.27 was changed to provide more clarity to the duty of the funeral director by specifically stating what the funeral director's duty is under Health and Safety Code §711.002 and to include the indemnification language, which is provided by Health and Safety Code §711.002. The change is the result of a comment received.

Section 203.29 was changed by removing subsection (c) in its entirety. The change is the result of a comment received.

Section 203.30 was reworded to provide for a licensed funeral director to be present for "contracted" graveside services instead of the more vague term "public portion." It maintains the statutory language which allows an agent of the funeral home to be present when a casket containing a human body is placed in a grave, crypt or burial vault unless the interment or entombment takes place outside Texas. The change is the result of a comment received.

Chapter 203, Subchapter B is adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section. Subchapter B also is adopted under Texas Health and Safety Code Chapter 711.

§203.27. *Identification of Person Responsible for Making Arrangements.*

Prior to discussing funeral arrangements, a funeral director should ask the person his/her relationship to the decedent to ensure the right to control disposition priority as outlined by Health and Safety Code, §711.002(a) is followed. A funeral director or establishment may not be held liable if the person falsely represents he/she is the person entitled to control the disposition of the decedent.

§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 complying with 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.

§203.30. *Interment or Entombment.*

(a) A funeral director contracted to perform funeral directing services shall be present for graveside services included in the purchase agreement unless the graveside services take place outside Texas.

(b) After the contracted graveside services end or if no graveside services take place, either a funeral director or an agent of the funeral establishment contracted to perform funeral directing services shall 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.

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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Janice McCoy

Executive Director

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## SUBCHAPTER C. ENFORCEMENT

### 22 TAC §§203.40 - 203.52

The Texas Funeral Service Commission adopts Chapter 203, Subchapter C, §§203.40 - 203.52, concerning Enforcement. The Commission adopts §§203.41 - 203.45 and 203.49 with changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4163). The Commission adopts §§203.40, 203.46 - 203.48, and 203.50 - 203.52 without changes to the proposal.

The Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist, but it should be readopted with extensive revisions.

The rewritten and readopted Chapter 203, Subchapter C will improve ease of use for both consumers and industry and will improve efficiencies for agency staff.

Chapter 203, Subchapter C is adopted simultaneously with the repeal of the current Chapter 203 and the adoption of Chapter 203, Subchapter A and Chapter 203, Subchapter B in three separate submissions.

Five comments regarding the adoption of Chapter 203, Subchapter C were received from SCI Texas Funeral Services, Inc. The Commission did not interpret the any of the comments received as being against the adoption of the rules.

**Comment Summary:** The commenter stated proposed §203.41(c) does not track the language found in current §201.3(5) that provides for when the 15 day response period is triggered. Commenter asks Commission to add language so that the receipt of the letter triggers the response period.

**Commission Response:** The Commission does not object to the clarification and has included the clarification in the change to §203.41(c).

**Comment Summary:** The commenter stated proposed §203.42(b) does not provide a guideline for when the 30 day response to a notice of penalty is triggered. Commenter asks Commission to add language that receipt of notice triggers the response period.

**Commission Response:** The Commission does not object to the clarification and has included the clarification in the change to §203.42(b).

**Comment Summary:** The commenter had no problem with proposed §203.43 as drafted, but did provide feedback on the Administrative Penalties and Sanctions Schedule attached to the rule as Figure: 22 TAC §203.43(c)(4). The comments centered on the unlicensed activity violations listed as Class D offenses and how unintentional errors and late license renewals could lead to a finding of unlicensed activity and maximum penalties. The commenter suggested those violations of unlicensed activity be moved to a lower class.

The commenter also expressed concerns that violations of Chapter 193, Health and Safety Code, would be considered Class D offenses and asked the violation be lowered to a Class C offense.

**Commission Response:** The Commission's intent is not to penalize licensees for unintentional failure to renew a license which could result in unlicensed activity but to ensure the industry and public know unlicensed activity is egregious and could result in the highest fines and sanctions. Proposed §203.43 does allow the Commission to reduce the penalty assessed for "unintentional" actions on the part of the licensee. Additionally, in most late renewal situations, the entity pays the late penalty license fee and no complaint is generated. As such, the Commission declines to lower unlicensed activity violations from a Class D offense.

The Commission agrees violations of Chapter 193, Health and Safety Code, should be in a lower class and has included the violation as a Class C offense in the schedule.

**Comment Summary:** The commenter is concerned proposed §203.44(a)(5) is overly broad regarding when a funeral establishment must be open for inspection and suggests it be limited to require the establishment be open for business during "regular business hours."

**Commission Response:** The Commission does not object to the clarification and has included the clarification in the change to §203.44(a)(5).

Comment Summary: The commenter is concerned proposed §203.45(b)(14) is a catchall provision that is open to subjective application in defining "a lack of trustworthiness and integrity." The commenter asks the comment be struck from the rules as the Commission has other tools at its disposal to take action against a licensee that violate the elements of §203.45(b)(14).

Commission Response: The Commission does not object to the comment and has deleted subsection (b)(14) from §203.45 in its entirety.

The rules to be finally adopted contain the following changes from the rules as published in the June 26, 2105, issue of the *Texas Register*:

Section 203.41(c) is changed to clarify the receipt of the letter (notice of complaint) triggers the 15 day response period. The change is the result of a comment received.

Section 203.42(b) is changed to clarify the receipt of the letter (notice of violation) triggers the 15 day response period. The change is the result of a comment received.

Section 203.43 is not changed. However, the Administrative Penalties & Sanctions Schedule attached to the rule as Figure: 22 TAC §203.43(c)(4) is changed and republished (two changes total).

1. The schedule reduces a violation of Tex. Occ. Code §651.460(b)(2) (relating to filing of death certificates) from a Class D to a Class C offense. The reclassification is the result of a comment received.

2. The Commission adds Tex. Occ. Code §651.503 (relating to timely filing of reports related to a Letter of Warning finding) as a Class A offense. This violation was unintentionally left out of the original submission.

Section 203.44(a)(5) is changed to clarify an establishment only has to be open for inspection during regular business hours and a violation can only be triggered if the inspector attempts to inspect during normal business hours. The change is the result of a comment received.

Section 203.45 is changed to remove proposed paragraph (b)(14). The change is the result of a comment received.

Section 203.49(b)(2) is changed to ensure the rule exactly mirrors the current §203.9. When the rules proposal was submitted to the Texas Register in June, minor numbering changes were made to the proposal by the Texas Register. After publication, the Commission determined the renumbering altered the application of the final section. The reworded section adds a title to §203.49(b)(2) in order to allow the remaining language to be numbered correctly and keep text as found in current rule.

Chapter 203, Subchapter C is adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, 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 rule under this section.

*§203.41. Investigations.*

(a) Upon receiving a written 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.

(b) 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.

(c) 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 from receipt of the letter to respond.

(d) In the course of the investigation or upon request of the Staff Attorney, the Investigator may request additional information from the Complainant, the Respondent(s), or any witnesses.

(e) 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 §203.43 of this title.

*§203.42. Notice and Hearings.*

(a) Upon Staff Attorney approval of an Investigative Report (Report) finding 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 Respondent's license(s).

(b) The Respondent(s) has 30 days from receipt of the letter to respond to this correspondence. The Respondent(s) can accept the Commission's determination or can request to settle the case by formal or informal methods. Failure to respond within 30 days waives the right to a hearing and requires payment of the assessed penalty and/or enforcement of the license sanction.

(c) If the Respondent accepts the Commission's determination to assess an administrative penalty and/or license sanction or if a settlement is reached, the Respondent shall pay the penalty or shall enter into an Agreed Order with the Commission which is signed by the Executive Director. Once an Agreed Order is signed or the penalty is paid, the case is closed.

(d) If no resolution is reached as outlined by subsection (c) of this section, 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).

(e) Once the ALJ renders a Proposal for Decision (PFD), the PFD is presented to the Commissioners at the Commission's next regularly scheduled meeting.

(f) The Commissioners accept or modify the PFD by Commission Order.

(g) 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.

(h) 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.

(i) The Commission will notify the Complainant of the final disposition of the complaint.

(j) Government Code §§2001.051 - 2001.103; Occupations Code §651.506; and SOAH's Rules of Practice and Procedure (Tex. Admin. Code, Title 1, §155) govern hearings held at SOAH.

(k) 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, Tex. Admin. Code, Title 1, §155.351, govern ADR with Commission staff and mediation at SOAH.

§203.43. *Administrative Penalties and Sanctions.*

(a) If a person violates any provision of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, 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) The Administrative Penalties and Sanctions Schedule published following this section 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;
  - (3) Whether the act was unintentional; and
  - (4) Other mitigating factors that could warrant a lower penalty.
- Figure: 22 TAC §203.43(c)(4)

§203.44. *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 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 establishment is not open for business during regular business hours and an inspector is unable to contact any employee or owner to open the establishment to conduct the inspection, the inspector shall notify the establishment by mail of the attempted inspection. If an establishment is unavailable for inspection during regular business hours 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 complaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

§203.45. *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 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; or

(13) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead.

*§203.49. 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 §203.46(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 §203.48(d)(2) of this title.

(2) Preventative Requirements

(A) To prevent these unfair or deceptive acts or practices, funeral providers must:

(i) Place the following disclosure in the general price list, immediately above the prices required by §203.46(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;

(ii) Place the following disclosure in the Purchase Agreement, required by §203.47 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."

(B) 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.

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 28, 2015.

TRD-201504004

Janice McCoy

Executive Director

Texas Funeral Service Commission

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Proposal publication date: June 26, 2015

For further information, please call: (512) 936-2469



## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §§601.2, 601.4, 601.6, 601.8

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2, 601.4, 601.6 and 601.8 concerning informed consent. Amendments to §601.2 are adopted with changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2388). Amendments to §§601.4, 601.6 and 601.8 are adopted without changes and, therefore, the sections will not be republished.

##### BACKGROUND AND PURPOSE

These amendments are adopted in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring full disclosure of specific risks and hazards to patients before being undertaken; §601.4 contains the disclosure and consent form for medical and surgical procedures; §601.6 contains historical information; and §601.8 contains the disclosure and consent form for hysterectomy.

## SECTION-BY-SECTION SUMMARY

The amendments to §601.2(g), female genital system treatments and procedures, adds the risks of injury related to the use of a power morcellator in paragraphs (1)(F) and (2)(G); retitles subsection (s), from "endoscopic surgery" to "laparoscopic/thoracoscopic surgery," adds the risks and hazards related to the use of a power morcellator; and adds a new subsection (v), plastic surgery, to the List A procedures included in this rule which require full disclosure to patients of specific risks and hazards associated with the procedure.

The amendments to §601.4 revise the English and Spanish versions of the Disclosure and Consent Form for Medical and Surgical Procedures to add a reference to other health care providers, and add risks and hazards related to the use of blood and blood products. Also, two paragraphs were deleted which reference anesthesia, and a reference to anesthesia was deleted in a third paragraph.

The amendment to §601.6 adds historical information from rules adopted in December 2012 and January 2015.

The amendments to §601.8 revise the English and Spanish versions of the Disclosure and Consent Form for Hysterectomy to add risks and hazards related to the use of blood and blood products, and risks and hazards related to the use of a power morcellator in laparoscopic surgery. Also, two paragraphs were deleted which reference anesthesia, and a reference to anesthesia was deleted in a third paragraph.

The panel has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period. The commenter was the Texas Society of Plastic Surgeons. The commenter was not against the rules in their entirety; however, the commenter made recommendations for changes as discussed in the summary of comments.

Comment: Concerning §601.2(v)(10)(D), the commenter requested that the phrase "inability to carry pregnancy" be changed to "increased risk of abdominal wall complications with pregnancy" as there is no evidence that the "inability to carry pregnancy" is a risk associated with "breast reconstruction with flaps."

Response: The panel agrees with the commenter and has changed the wording to "increased risk of abdominal wall complications with pregnancy."

### STATUTORY AUTHORITY

The amendments are authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

*§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

- (a) Anesthesia.
  - (1) Epidural.
    - (A) Nerve damage.
    - (B) Persistent back pain.
    - (C) Headache.
    - (D) Bleeding/epidural hematoma.

- (E) Infection.
- (F) Medical necessity to convert to general anesthesia.
- (G) Brain damage.
- (H) Chronic pain.
- (2) General.
  - (A) Permanent organ damage.
  - (B) Memory dysfunction/memory loss.
  - (C) Injury to vocal cords, teeth, lips, eyes.
  - (D) Awareness during the procedure.
  - (E) Brain damage.
- (3) Spinal.
  - (A) Nerve damage.
  - (B) Persistent back pain.
  - (C) Bleeding/epidural hematoma.
  - (D) Infection.
  - (E) Medical necessity to convert to general anesthesia.
  - (F) Brain damage.
  - (G) Headache.
  - (H) Chronic pain.
- (4) Regional block.
  - (A) Nerve damage.
  - (B) Persistent pain.
  - (C) Bleeding/hematoma.
  - (D) Infection.
  - (E) Medical necessity to convert to general anesthesia.
  - (F) Brain damage.
- (5) Monitored Anesthesia Care (MAC) (conscious sedation).
  - (A) Permanent organ damage.
  - (B) Memory dysfunction/memory loss.
  - (C) Medical necessity to convert to general anesthesia.
  - (D) Brain damage.
- (b) Cardiovascular system.
  - (1) Cardiac.
    - (A) Surgical.
      - (i) Coronary artery bypass, valve replacement.
        - (I) Acute myocardial infarction.
        - (II) Hemorrhage.
        - (III) Kidney failure.
        - (IV) Stroke.
        - (V) Sudden death.
        - (VI) Infection of chest wall/chest cavity.
        - (VII) Valve related delayed onset infection.

(ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Acute myocardial infarction (heart attack).

(iii) Rupture of myocardium (hole in wall of heart).

(iv) Life threatening arrhythmias (irregular heart rhythm).

(v) Need for emergency open heart surgery.

(vi) Sudden death.

(vii) Device related delayed onset infection (infection related to the device that happens sometime after surgery).

(C) Diagnostic.

(i) Cardiac catheterization.

(I) All associated risks as listed under paragraph (2)(B) of this subsection.

(II) Acute myocardial infarction (heart attack).

(III) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure).

(IV) Heart arrhythmias (irregular heart rhythm), possibly life threatening.

(V) Need for emergency open heart surgery.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.

(i) Hemorrhage.

(ii) Paraplegia.

(iii) Kidney damage.

(iv) Stroke.

(v) Acute myocardial infarction.

(vi) Infection of graft.

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(C) Angioplasty (intravascular dilatation technique).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Change in procedure to open surgical procedure.

(iii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(iv) Stent migration (stent moves from location in which it was placed).

(v) Vessel occlusion (blocking).

(vi) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (mechanical or chemical).

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(iii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(iv) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(v) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(vi) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations.

(I) Angiography risks (inclusive of aortography, arteriography, venography) - injection of contrast material into blood vessels.

(-a-) Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(-b-) Hemorrhage (severe bleeding).

(-c-) Damage to parts of the body supplied by the artery with resulting loss of use or amputation (removal of body part).

(-d-) Worsening of the condition for which the procedure is being done.

(-e-) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(-f-) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(II) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(III) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IV) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves.

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph.

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph.

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure.

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(iii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Injury to the inferior vena cava (main vein in the abdomen).

(iii) Filter migration or fracture (filter could break and/or move from where it was placed).

(iv) Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs).

(v) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in the lungs despite filter).

(vi) Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) All associated risks as listed under paragraph (2)(B) of this subsection.

(ii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

- (iii) Cardiac injury/perforation (heart injury).
  - (iv) Death.
- (J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection versus compression).
- (i) Thrombosis (clotting) of supplying vessel or branches in its territory.
  - (ii) Allergic reaction to thrombin (agent used for direct injection).
- (K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.
- (i) Pneumothorax (collapsed lung).
  - (ii) Injury to blood vessel.
  - (iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).
  - (iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).
  - (v) Vessel thrombosis (clotting of blood vessel).
- (L) Varicose vein treatment (percutaneous via laser, RFA, chemical or other method) without angiography.
- (i) Burns.
  - (ii) Deep vein thrombosis (blood clots in deep veins).
  - (iii) Hyperpigmentation (darkening of skin).
  - (iv) Skin wound (ulcer).
  - (v) Telangiectatic matting (appearance of tiny blood vessels in treated area).
  - (vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).
  - (vii) Injury to blood vessel requiring additional procedure to treat.
- (c) Digestive system treatments and procedures.
- (1) Cholecystectomy with or without common bile duct exploration.
- (A) Pancreatitis.
  - (B) Injury to the tube between the liver and the bowel.
  - (C) Retained stones in the tube between the liver and the bowel.
  - (D) Narrowing or obstruction of the tube between the liver and the bowel.
  - (E) Injury to the bowel and/or intestinal obstruction.
- (2) Bariatric surgery.
- (A) Laparoscopic.
    - (i) Conversion to open procedure.
    - (ii) Injury to organs.
    - (iii) Failure of device requiring additional surgical procedure.
    - (iv) Obstructive symptoms requiring additional surgical procedure.
  - (v) Development of gallstones (Roux-En-Y).
  - (vi) Development of metabolic and vitamin disorders (Roux-En-Y).
  - (vii) Suture line leak with abscess or fistula formation.
- (B) Open.
  - (i) Failure of wound to heal or wound dehiscence (separation of wound).
  - (ii) Injury to organs.
  - (iii) Failure of device requiring additional surgical procedure.
  - (iv) Obstructive symptoms requiring additional surgical procedure.
  - (v) Development of gallstones (Roux-En-Y).
  - (vi) Development of metabolic and vitamin disorders (Roux-En-Y).
- (3) Pancreatectomy (subtotal or total).
- (A) Pancreatitis (subtotal).
  - (B) Diabetes (total).
  - (C) Lifelong requirement of enzyme and digestive medication.
  - (D) Anastamotic leaks.
- (4) Total colectomy.
- (A) Permanent ileostomy.
  - (B) Injury to organs.
  - (C) Infection.
- (5) Subtotal colectomy.
- (A) Anastomotic leaks.
  - (B) Temporary colostomy.
  - (C) Infection.
  - (D) Second surgery.
  - (E) Injury to organs.
- (6) Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy.
- (A) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).
  - (B) Pancreatitis (inflammation of the pancreas).
  - (C) Hemobilia (bleeding into the bile ducts).
  - (D) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).
  - (E) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).
- (7) Gastrointestinal tract stenting.
- (A) Stent migration (stent moves from location in which it was placed).

(B) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

(C) Tumor ingrowth or other obstruction of stent.

(D) For stent placement in the esophagus (tube from the throat to the stomach).

(i) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(ii) Reflux (stomach contents passing up into esophagus or higher).

(iii) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(iv) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(d) Ear treatments and procedures.

(1) Stapedectomy.

(A) Diminished or bad taste.

(B) Total or partial loss of hearing in the operated ear.

(C) Brief or long-standing dizziness.

(D) Eardrum hole requiring more surgery.

(E) Ringing in the ear.

(2) Reconstruction of auricle of ear for congenital deformity or trauma.

(A) Less satisfactory appearance compared to possible alternative artificial ear.

(B) Exposure of implanted material.

(3) Tympanoplasty with mastoidectomy.

(A) Facial nerve paralysis.

(B) Altered or loss of taste.

(C) Recurrence of original disease process.

(D) Total loss of hearing in operated ear.

(E) Dizziness.

(F) Ringing in the ear.

(e) Endocrine system treatments and procedures.

(1) Thyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.

(D) Lifelong requirement of thyroid medication.

(2) Parathyroidectomy.

(A) Acute airway obstruction requiring temporary tracheostomy.

(B) Injury to nerves resulting in hoarseness or impairment of speech.

(C) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.

(3) Adrenalectomy.

(A) Loss of endocrine functions.

(B) Lifelong requirement for hormone replacement therapy and steroid medication.

(C) Damage to kidneys.

(4) Other procedures.

(5) See also Pancreatectomy under subsection (c)(3) of this section (relating to digestive system treatments and procedures).

(f) Eye treatments and procedures.

(1) Eye muscle surgery.

(A) Additional treatment and/or surgery.

(B) Double vision.

(C) Partial or total blindness.

(2) Surgery for cataract with or without implantation of intraocular lens.

(A) Complications requiring additional treatment and/or surgery.

(B) Need for glasses or contact lenses.

(C) Complications requiring the removal of implanted lens.

(D) Partial or total blindness.

(3) Retinal or vitreous surgery.

(A) Complications requiring additional treatment and/or surgery.

(B) Recurrence or spread of disease.

(C) Partial or total blindness.

(4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.

(A) Worsening or unsatisfactory appearance.

(B) Creation of additional problems.

(i) Poor healing or skin loss.

(ii) Nerve damage with loss of use and/or feeling.

(iii) Painful or unattractive scarring.

(iv) Impairment of regional organs (inability or decreased ability of regional organs to work), such as eye or lip function.

(C) Recurrence of the original condition.

(5) Photocoagulation and/or cryotherapy.

(A) Complications requiring additional treatment and/or surgery.

(B) Pain.

(C) Partial or total blindness.

(6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.

- (A) Complications requiring additional treatment and/or surgery.
- (B) Pain.
- (C) Need for glasses or contact lenses.
- (D) Partial or total blindness.
- (7) Glaucoma surgery by any method.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Worsening of the glaucoma.
  - (C) Pain.
  - (D) Partial or total blindness.
- (8) Removal of the eye or its contents (enucleation or evisceration).
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Worsening or unsatisfactory appearance.
  - (C) Recurrence or spread of disease.
- (9) Surgery for penetrating ocular injury, including intraocular foreign body.
  - (A) Complications requiring additional treatment and/or surgery.
  - (B) Possible removal of eye.
  - (C) Pain.
  - (D) Partial or total blindness.
- (g) Female genital system treatments and procedures.
  - (1) Abdominal hysterectomy (total).
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Sterility.
    - (D) Injury to the tube (ureter) between the kidney and the bladder.
    - (E) Injury to the bowel and/or intestinal obstruction.
    - (F) Injury resulting from use of a power morcellator in laparoscopic surgery (see subsection (s)(2) of this section).
  - (2) Vaginal hysterectomy.
    - (A) Uncontrollable leakage of urine.
    - (B) Injury to bladder.
    - (C) Sterility.
    - (D) Injury to the tube (ureter) between the kidney and the bladder.
    - (E) Injury to the bowel and/or intestinal obstruction.
    - (F) Completion of operation by abdominal incision.
    - (G) Injury resulting from use of a power morcellator in laparoscopic surgery (see subsection (s)(2) of this section).
  - (3) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.
    - (A) Injury to the bowel and/or bladder.
- (B) Sterility.
- (C) Failure to obtain fertility (if applicable).
- (D) Failure to obtain sterility (if applicable).
- (E) Loss of ovarian functions or hormone production from ovary(ies).
- (4) Reserved.
- (5) Removing fibroids (uterine myomectomy).
  - (A) Uncontrollable leakage of urine.
  - (B) Injury to bladder.
  - (C) Sterility.
  - (D) Injury to the tube (ureter) between the kidney and the bladder.
  - (E) Injury to the bowel and/or intestinal obstruction.
- (6) Uterine suspension.
  - (A) Uncontrollable leakage of urine.
  - (B) Injury to bladder.
  - (C) Sterility.
  - (D) Injury to the tube (ureter) between the kidney and the bladder.
  - (E) Injury to the bowel and/or intestinal obstruction.
- (7) Removal of the nerves to the uterus (presacral neurectomy).
  - (A) Uncontrollable leakage of urine.
  - (B) Injury to bladder.
  - (C) Sterility.
  - (D) Injury to the tube (ureter) between the kidney and the bladder.
  - (E) Injury to the bowel and/or intestinal obstruction.
  - (F) Hemorrhage, complications of hemorrhage, with additional operation.
- (8) Removal of the cervix.
  - (A) Uncontrollable leakage of urine.
  - (B) Injury to bladder.
  - (C) Sterility.
  - (D) Injury to the tube (ureter) between the kidney and the bladder.
  - (E) Injury to the bowel and/or intestinal obstruction.
  - (F) Completion of operation by abdominal incision.
- (9) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).
  - (A) Uncontrollable leakage of urine.
  - (B) Injury to bladder.
  - (C) Sterility.
  - (D) Injury to the tube (ureter) between the kidney and the bladder.
  - (E) Injury to the bowel and/or intestinal obstruction.

(10) Abdominal suspension of the bladder (retropubic urethropexy).

- (A) Uncontrollable leakage of urine.
- (B) Injury to bladder.
- (C) Injury to the tube (ureter) between the kidney and the bladder.
- (D) Injury to the bowel and/or intestinal obstruction.

(11) Conization of cervix.

- (A) Hemorrhage with possible hysterectomy to control.
- (B) Sterility.
- (C) Injury to bladder.
- (D) Injury to rectum.
- (E) Failure of procedure to remove all of cervical abnormality.

(12) Dilation and curettage of uterus (diagnostic/therapeutic).

- (A) Hemorrhage with possible hysterectomy.
- (B) Perforation of the uterus.
- (C) Sterility.
- (D) Injury to bowel and/or bladder.
- (E) Abdominal incision and operation to correct injury.

(13) Surgical abortion/dilation and curettage/dilation and evacuation.

- (A) Hemorrhage with possible hysterectomy to control.
- (B) Perforation of the uterus.
- (C) Sterility.
- (D) Injury to the bowel and/or bladder.
- (E) Abdominal incision and operation to correct injury.
- (F) Failure to remove all products of conception.

(14) Medical abortion/non-surgical.

- (A) Hemorrhage with possible need for surgical intervention.
- (B) Failure to remove all products of conception.
- (C) Sterility.

(15) Selective salpingography and Fallopian tube recanalization.

- (A) Perforation (hole) created in the uterus or Fallopian tube.
- (B) Ectopic pregnancy (pregnancy outside of the uterus).
- (C) Pelvic infection.

(16) Fallopian tube occlusion (for sterilization).

- (A) Risks listed in selective salpingography and Fallopian tube recanalization.
- (B) Failure to provide sterilization.
- (C) Coil expulsion (coil falls out of Fallopian tube).

(h) Hematic and lymphatic system.

(1) Transfusion of blood and blood components.

(A) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.

(B) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.

(C) Severe allergic reaction, potentially fatal.

(2) Splenectomy.

(A) Susceptibility to infections and increased severity of infections.

(B) Increased immunization requirements.

(i) Integumentary system treatments and procedures.

(1) Radical or modified radical mastectomy. (Simple mastectomy excluded).

(A) Limitation of movement of shoulder and arm.

(B) Swelling of the arm.

(C) Loss of the skin of the chest requiring skin graft.

(D) Recurrence of malignancy, if present.

(E) Decreased sensation or numbness of the inner aspect of the arm and chest wall.

(2) Reconstruction and/or plastic surgical operations of the face and neck.

(A) Worsening or unsatisfactory appearance.

(B) Creation of several additional problems.

(i) Poor healing or skin loss.

(ii) Nerve damage.

(iii) Painful or unattractive scarring.

(iv) Impairment of regional organs, such as eye or lip function.

(C) Recurrence of the original condition.

(j) Male genital system.

(1) Orchidopexy (reposition of testis(es)).

(A) Removal of testicle.

(B) Atrophy (shriveling) of the testicle with loss of function.

(2) Orchiectomy (removal of the testis(es)).

(A) Decreased sexual desire.

(B) Difficulties with penile erection.

(C) Permanent sterility (inability to father children) if both testes are removed.

(3) Vasectomy.

(A) Loss of testicle.

(B) Failure to produce permanent sterility (inability to father children).

(k) Maternity and related cases.

(1) Delivery (vaginal).



(A) Injury to bladder and/or rectum, including a fistula (hole) between bladder and vagina and/or rectum and vagina.

(B) Hemorrhage (severe bleeding) possibly requiring blood administration and/or hysterectomy (removal of uterus) and/or artery ligation (tying off) to control.

(C) Sterility (inability to get pregnant).

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or vaginal delivery whether or not the cause is known.

(2) Delivery (cesarean section).

(A) Injury to bowel and/or bladder.

(B) Sterility (inability to get pregnant).

(C) Injury to ureter (tube between kidney and bladder).

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known.

(E) Uterine disease or injury requiring hysterectomy (removal of uterus).

(3) Cerclage.

(A) Premature labor.

(B) Injury to bowel and/or bladder.

(l) Musculoskeletal system treatments and procedures.

(1) Arthroplasty of any joints with mechanical device.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) Various functional or cosmetic growth deformities requiring additional surgery.

(I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(2) Arthroscopy of any joint.

(A) Blood vessel or nerve injury.

(B) Continued pain.

(C) Stiffness of joint.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Joint infection.

(F) Various functional or cosmetic growth deformities requiring additional surgery.

(G) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(3) Open reduction with internal fixation.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) Problems with appearance, use, or growth requiring additional surgery.

(4) Osteotomy.

(A) Impaired function such as shortening or deformity.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(5) Ligamentous reconstruction of joints.

(A) Failure of reconstruction to work.

(B) Continued instability of the joint.

(C) Degenerative arthritis.

(D) Continued pain.

(E) Stiffness of joint.

(F) Blood vessel or nerve injury.

(G) Impaired function and/or scarring.

(H) Blood clot in blood vessels which can block flow of blood to lungs or limbs and/or cause swelling in limbs.

(I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(6) Vertebroplasty/kyphoplasty.

(A) Nerve/spinal cord injury.

(B) Need for emergency surgery.

(C) Embolization of cement (cement used passes into blood vessels and possibly all the way to the blood vessels in the lungs).

(D) Fracture of adjacent vertebrae (bones in spine).

(E) Leak of cerebrospinal fluid (fluid around the brain and spinal cord).

(F) Pneumothorax (collapsed lung).

- (G) Worsening of pain.
- (H) Rib or vertebral (spine) fracture.

(7) If the following procedures are performed on a child age 12 or under, problems with appearance, use, or growth requiring additional surgery should be disclosed.

- (A) Arthrotomy, arthrocentesis, or joint injection.
- (B) Closed reduction without internal fixation.
- (C) Wound debridement.
- (D) Needle biopsy or aspiration, bone marrow.
- (E) Partial excision of bone.
- (F) Removal of external fixation device.
- (G) Traction or fixation without manipulation for reduction.

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty.

- (A) Additional loss of brain function including memory.
- (B) Recurrence, continuation or worsening of the condition that required this operation.
- (C) Stroke.
- (D) Blindness, deafness, inability to smell, double vision, coordination loss, seizures, pain, numbness and paralysis.
- (E) Cerebral spinal fluid leak with potential for meningitis and severe headaches.

- (F) Meningitis.
- (G) Brain abscess.
- (H) Persistent vegetative state.
- (I) Heart attack.

(2) Cranial nerve operations.

- (A) Numbness, impaired muscle function or paralysis.
- (B) Recurrence, continuation or worsening of the condition that required this operation.
- (C) Seizures.
- (D) New or different pain.

(3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability; injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).

- (A) Pain, numbness or clumsiness.
- (B) Impaired muscle function or paralysis.
- (C) Incontinence, impotence or impaired bowel function.
- (D) Unstable spine.
- (E) Recurrence, continuation or worsening of the condition that required the operation.
- (F) Injury to major blood vessels.
- (G) Hemorrhage.

(4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neurorrhaphy, neurectomy or neurolysis.

- (A) Numbness.
- (B) Impaired muscle function.
- (C) Recurrence, continuation or worsening of the condition that required the operation.
- (D) Continued, increased or different pain.

(5) Transphenoidal hypophysectomy or other pituitary gland operation.

- (A) Spinal fluid leak.
- (B) Necessity for hormone replacement.
- (C) Recurrence or continuation of the condition that required this operation.
- (D) Nasal septal deformity or perforation.
- (E) Facial numbness and disfigurement.
- (F) Blindness.
- (6) Cerebral spinal fluid shunting procedure or revision.
  - (A) Shunt obstruction, migration or infection.
  - (B) Seizure disorder.
  - (C) Recurrence or continuation of brain dysfunction.
  - (D) Injury to internal organs.
  - (E) Possible brain injury or hemorrhage.

(n) Radiology.

(1) Splenoportography (needle injection of contrast media into the spleen).

- (A) All associated risks as listed under subsection (b)(2)(B) of this section.
- (B) Injury to the spleen requiring blood transfusion and/or removal of the spleen.

(2) Chemoembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Risks of the chemotherapeutic agent(s) utilized.

(E) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(F) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(G) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(3) Radioembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(4) Thermal and other ablative techniques for treatment of tumors (for curative intent or palliation) including radiofrequency ablation, microwave ablation, cryoablation, and high intensity focused ultrasound (HIFU).

(A) Injury to tumor-containing organ or adjacent organs/structures.

(B) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(C) Failure to completely treat tumor.

(5) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt).

(A) All associated risks as listed under subsection (b)(2)(B) - (D) of this section.

(B) Hepatic encephalopathy (confusion/decreased ability to think).

(C) Liver failure or injury.

(D) Gallbladder injury.

(E) Hemorrhage (severe bleeding).

(F) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(G) Kidney failure.

(H) Heart failure.

(I) Death.

(6) Myelography.

(A) Chronic (continuing) pain.

(B) Nerve injury with loss of use and/or feeling.

(C) Transient (temporary) headache, nausea, and/or vomiting.

(D) Numbness.

(E) Seizure.

(7) Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous, transgluteal, transrectal and transvaginal routes)).

(A) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(B) Injury to nearby organs.

(C) Hemorrhage (severe bleeding).

(D) Infection of collection which was not previously infected, or additional infection of abscess.

(8) Procedures utilizing prolonged fluoroscopy.

(A) Skin injury (such as epilation (hair loss), burns, or ulcers).

(B) Cataracts (for procedures in the region of the head).

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision of lesion of larynx, vocal cords, trachea.

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty or nasal reconstruction with or without septoplasty.

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty.

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in wall between the right and left halves of the nose) with dryness and crusting.

(C) External deformity of the nose.

(4) Lung biopsy.

(A) Pneumothorax (collapsed lung).

(B) Hemothorax (blood in the chest around the lung).

(5) Segmental resection of lung.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Insertion of tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(6) Thoracotomy.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(7) Thoracotomy with drainage.

(A) Hemothorax (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Pneumothorax (collapsed lung).

(D) Need for additional surgery.

(8) Open tracheostomy.

(A) Loss of voice.

(B) Breathing difficulties.

(C) Pneumothorax (collapsed lung).

(D) Hemothorax (blood in the chest around the lung).

(E) Scarring in trachea (windpipe).

(F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

(9) Respiratory tract/tracheobronchial balloon dilation/stenting.

(A) Stent migration (stent moves from position in which it was placed).

(B) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(C) Mucosal injury (injury to lining of airways).

(p) Urinary system.

(1) Partial nephrectomy (removal of part of the kidney).

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury to or loss of the kidney.

(E) Damage to organs next to kidney.

(2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).

(A) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).

(B) Incomplete removal of tumor.

(C) Damage to organs next to kidney.

(3) Nephrectomy (removal of kidney).

(A) Incomplete removal of tumor if present.

(B) Damage to organs next to kidney.

(C) Injury to or loss of the kidney.

(4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).

(A) Incomplete removal of stone(s).

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury or loss of the kidney.

(E) Damage to organs next to kidney.

(5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).

(A) Blockage of urine.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(6) Exploration of kidney or perinephric mass.

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of the stone or tumor (when applicable).

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of the ureter.

(8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of ureter.

(9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Damage to organs next to ureter.

(D) Damage to or loss of ureter.

(11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Damage to or loss of ureter.

(D) Backward flow of urine from bladder into ureter.

(E) Damage to organs next to ureter.

(12) Prostatectomy (partial or total removal of prostate).

(A) Leakage of urine at surgical site.

(B) Blockage of urine.

(C) Incontinence (difficulty with control of urine flow).

(D) Semen passing backward into bladder.

(E) Difficulty with penile erection (possible with partial and probable with total prostatectomy).

(13) Total cystectomy (removal of bladder).

(A) Probable loss of penile erection and ejaculation in the male.

(B) Damage to organs next to bladder.

(C) This procedure will require an alternate method of urinary drainage.

(14) Radical cystectomy.

- (A) Probable loss of penile erection and ejaculation in the male.
- (B) Damage to organs next to bladder.
- (C) This procedure will require an alternate method of urinary drainage.
- (D) Chronic (continuing) swelling of thighs, legs and feet.
- (E) Recurrence or spread of cancer if present.
- (15) Partial cystectomy (partial removal of bladder).
  - (A) Leakage of urine at surgical site.
  - (B) Incontinence (difficulty with control of urine flow).
  - (C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).
  - (D) Blockage of urine.
  - (E) Damage to organs next to bladder.
- (16) Urinary diversion (ileal conduit, colon conduit).
  - (A) Blood chemistry abnormalities requiring medication.
  - (B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
  - (C) Leakage of urine at surgical site.
  - (D) This procedure will require an alternate method of urinary drainage.
- (17) Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel (intestine)).
  - (A) Blood chemistry abnormalities requiring medication.
  - (B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
  - (C) Leakage of urine at surgical site.
  - (D) Difficulty in holding urine in the rectum.
- (18) Urethroplasty (construction/reconstruction of drainage tube from bladder).
  - (A) Leakage of urine at surgical site.
  - (B) Stricture formation (narrowing of urethra (tube from bladder to outside)).
  - (C) Need for additional surgery.
- (19) Percutaneous nephrostomy/stenting/stone removal.
  - (A) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).
  - (B) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.
  - (C) Bowel (intestinal) injury.
  - (D) Blood vessel injury with or without significant bleeding.
- (20) Dialysis (technique to replace functions of kidney and clean blood of toxins).
  - (A) Hemodialysis.

- (i) Hypotension (low blood pressure).
- (ii) Hypertension (high blood pressure).
- (iii) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.
- (iv) Cardiac arrhythmias (irregular heart rhythms).
- (v) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).
- (vi) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).
- (vii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.
- (viii) Allergic reactions.
- (ix) Chemical imbalances and metabolic disorders (unintended change in blood minerals).
- (x) Pyrogenic reactions (fever).
- (xi) Hemolysis (rupture of red blood cells).
- (xii) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.
- (B) Peritoneal dialysis.
  - (i) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.
  - (ii) Development of hernias of umbilicus (weakening of abdominal wall or muscle).
  - (iii) Hypertension (high blood pressure).
  - (iv) Hypotension (low blood pressure).
  - (v) Hydrothorax (fluid in chest cavity).
  - (vi) Arrhythmia (irregular heart rhythm).
  - (vii) Perforation of the bowel.
  - (viii) Sclerosis or scarring of the peritoneum.
  - (ix) Weight gain leading to obesity.
  - (x) Abdominal discomfort/distension.
  - (xi) Heartburn or reflux.
  - (xii) Increase in need for anti-diabetic medication.
  - (xiii) Muscle weakness.
  - (xiv) Dehydration (extreme loss of body fluid).
  - (xv) Chemical imbalances and metabolic disorders (unintended change in blood minerals).
  - (xvi) Allergic reactions.
  - (xvii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.
- (q) Psychiatric procedures.
  - (1) Electroconvulsive therapy with modification by intravenous muscle relaxants and sedatives.
    - (A) Memory changes of events prior to, during, and immediately following the treatment.
    - (B) Fractures or dislocations of bones.

(C) Significant temporary confusion requiring special care.

(2) Other Procedures. No other procedures are assigned at this time.

(r) Radiation therapy. A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.

(1) Head and neck.

(A) Early reactions.

(i) Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.

(ii) Sore throat, difficulty swallowing, weight loss, fatigue.

(iii) Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.

(iv) Hoarseness, cough, loss of voice, and swelling of airway.

(v) Blockage and crusting of nasal passages.

(vi) Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.

(vii) Dry and irritable eye(s).

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Dry mouth and altered sense, or loss, of taste.

(ii) Tooth decay and gum changes.

(iii) Bone damage, especially in jaws.

(iv) Stiffness and limitation of jaw movement.

(v) Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.

(vi) Swelling of tissues, particularly under the chin.

(vii) Throat damage causing hoarseness, pain or difficulty breathing or swallowing.

(viii) Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).

(ix) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(x) Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and/or loss of strength, feeling or coordination in any part of the body.

(xi) Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.

(xii) In children, there may be additional late reactions.

(I) Disturbance of bone and tissue growth.

(II) Bone damage to face causing abnormal development.

(III) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(IV) Second cancers developing in the irradiated area.

(2) Central nervous system.

(A) Early reactions.

(i) Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.

(ii) Nausea, vomiting, headaches.

(iii) Fatigue, drowsiness.

(iv) Altered sense of taste or smell.

(v) Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.

(vi) Depression of blood count leading to increased risk of infection and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.

(ii) Persistent drowsiness and tiredness.

(iii) Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.

(iv) Scarring of skin.

(v) Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.

(vi) Damage to eye(s), or optic nerve(s) causing loss of vision.

(vii) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(viii) Pituitary gland damage requiring long-term hormone replacement therapy.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.

(IV) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(V) Second cancers developing in the irradiated area.

(3) Thorax.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.

(ii) Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.

(iii) Loss of appetite, nausea, vomiting.

(iv) Weight loss, weakness, vomiting.

(v) Inflammation of the lung with pain, fever and cough.

(vi) Inflammation of the heart sac with chest pain and palpitations.

(vii) Bleeding or creation of a fistula resulting from tumor destruction.

(viii) Depression of blood count leading to increased risk of infection and/or bleeding.

(ix) Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.

(x) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(xi) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.

(ii) Lung scarring or shrinkage causing shortness of breath.

(iii) Narrowing of esophagus causing swallowing problems.

(iv) Constriction of heart sac which may require surgical correction.

(v) Damage to heart muscle or arteries leading to heart failure.

(vi) Fracture of ribs.

(vii) Nerve damage causing pain, loss of strength or feeling in arms.

(viii) Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Underdevelopment or absence of development of female breast.

(IV) Second cancers developing in the irradiated area.

(4) Breast.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.

(ii) Breast changes including swelling, tightness, or tenderness.

(iii) Inflammation of the esophagus causing pain or swallowing, heartburn, or sense of obstruction.

(iv) Lung inflammation with cough.

(v) Inflammation of heart sac with chest pain and palpitations.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Breast changes including thickening, firmness, tenderness, shrinkage.

(iii) Swelling of arm.

(iv) Stiffness and discomfort in shoulder joint.

(v) Rib or lung damage causing pain, fracture, cough, shortness of breath.

(vi) Nerve damage causing pain, loss of strength or feeling in arm.

(vii) Damage to heart muscle or arteries or heart sac leading to heart failure.

(5) Abdomen.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Loss of appetite, nausea, vomiting.

(iii) Weight loss, weakness, fatigue.

(iv) Inflammation of stomach causing indigestion, heartburn, and ulcers.

(v) Inflammation of bowel causing cramping and diarrhea.

(vi) Depression of blood count leading to increased risk of infections and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Stomach damage causing persistent indigestion, pain, and bleeding.

(iii) Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.

(iv) Kidney damage leading to kidney failure and/or high blood pressure.

(v) Liver damage leading to liver failure.

(vi) Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to pelvis causing stunting of bone growth and/or abnormal development.

(IV) Second cancers developing in the irradiated area.

(6) Female pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Disturbance of menstrual cycle.

(vi) Vaginal discharge, pain, irritation, bleeding.

(vii) Depression of blood count leading to increased risk of infection and/or bleeding.

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during, or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Ovarian damage causing infertility, sterility, or premature menopause.

(vi) Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bladder and/or bowel and/or vagina.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(7) Male pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Depression of blood count leading to increased risk of infection and/or bleeding.

(vi) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(vii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.

(vi) Impotence (loss of erection) or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bowel and other organs.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(8) Skin.

(A) Early reactions.

(i) Redness, irritation, or soreness.



(ii) Scaliness, ulceration, crusting, oozing, discharge.

(iii) Hair loss.

(iv) These reactions are likely to be intensified by chemotherapy.

(B) Late reactions.

(i) Changes in skin texture causing scaly or shiny smooth skin, thickening with contracture, puckering, scarring of skin.

(ii) Changes in skin color.

(iii) Prominent dilated small blood vessels.

(iv) Permanent hair loss.

(v) Chronic or recurrent ulcerations.

(vi) Damage to adjacent tissues including underlying bone or cartilage.

(vii) In children, second cancers may develop in the irradiated area.

(9) Extremities.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Inflammation of soft tissues causing tenderness, swelling, and interference with movement.

(iii) Inflammation of joints causing pain, swelling and limitation of joint motion.

(iv) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(v) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.

(ii) Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb

or coordination.

(iii) Nerve damage causing loss of strength, feeling

and arthritis.

(iv) Bone damage causing fracture.

(v) Joint damage causing permanent stiffness, pains

and arthritis.

(vi) Swelling of limb below the area treated.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to limbs causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(10) Total body irradiation.

(A) Early reactions.

(i) Loss of appetite, nausea, vomiting.

(ii) Diarrhea.

(iii) Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.

(iv) Hair loss.

(v) Sore mouth and throat, difficulty swallowing.

(vi) Permanent destruction of bone marrow leading to infection, bleeding, and possible death.

(vii) Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

(viii) Damage to liver with possible fatal liver failure.

(ix) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(x) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Lung scarring causing shortness of breath, infection, and fatal lung failure.

(ii) Cataract formation in the eyes, possible loss of vision.

(iii) Testicular damage in males causing sterility.

(iv) Ovarian damage in females causing premature menopause and sterility.

(v) Increased risk of second cancer.

(s) Laparoscopic/Thoracoscopic surgery.

(1) Laparoscopic/Thoracoscopic risks. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Damage to adjacent structures.

(B) Abscess and infectious complications.

(C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(D) Cardiac dysfunction.

(E) Postoperative pneumothorax.

(F) Subcutaneous emphysema.

(G) Conversion of the procedure to an open procedure.

(2) Use of a power morcellator in laparoscopic surgery.

(A) If cancer is present, may increase the risk of the spread of cancer.

(B) Increased risk of damage to adjacent structures.

(t) Pain management procedures.

(1) Neuroaxial procedures (injections into or around spine).

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

- (D) Infection.
- (E) Seizure.
- (F) Persistent leak of spinal fluid which may require surgery.

(G) Breathing and/or heart problems including cardiac arrest (heart stops beating).

(2) Peripheral and visceral nerve blocks and/or ablations.

- (A) Failure to reduce pain or worsening of pain.
- (B) Bleeding.
- (C) Nerve damage including paralysis (inability to move).
- (D) Infection.
- (E) Damage to nearby organ or structure.
- (F) Seizure.

(3) Implantation of pain control devices.

- (A) Failure to reduce pain or worsening of pain.
- (B) Nerve damage including paralysis (inability to move).
- (C) Epidural hematoma (bleeding in or around spinal canal).
- (D) Infection.
- (E) Persistent leak of spinal fluid which may require surgery.

(u) Dental Surgery Procedures.

(1) Oral surgery.

- (A) Extraction (removing teeth).
  - (i) Dry socket (inflammation in the socket of a tooth).
  - (ii) Permanent or temporary numbness or altered sensation.
  - (iii) Sinus communication (opening from tooth socket into the sinus cavity).
  - (iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).
- (B) Surgical exposure of tooth in order to facilitate orthodontics.

- (i) Injury to tooth or to adjacent teeth and structures.
- (ii) Failure to get proper attachment to tooth requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

- (A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).
  - (i) Shrinkage of the gums and crown margin exposure.
  - (ii) Sinus communication (opening from tooth socket into the sinus cavity).
  - (iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

- (i) Shrinkage of the gums and crown margin exposure.
- (ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

- (i) Instrument separation (tiny files which break within the tooth canal system).
- (ii) Fenestration (penetration of walls of tooth into adjacent tissue).
- (iii) Failure to find and/or adequately fill all canals.
- (iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).
- (v) Damage to adjacent tissues from irrigants or clamps.

(vi) Fracture or loss of tooth.

(3) Periodontal surgery (surgery of the gums).

- (A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).
  - (i) Tooth sensitivity to hot, cold, sweet, or acid foods.
  - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

- (i) Tooth sensitivity to hot, cold, sweet, or acid foods.
- (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

- (i) Permanent or temporary numbness or altered sensation.
- (ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

- (i) Permanent or temporary numbness or altered sensation.
- (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(F) Osseous surgery-including flap entry and closure (modification of the bony support of the teeth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Loss of tooth.

(iv) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(G) Guided tissue regeneration-resorbable barrier.

(i) Permanent or temporary numbness or altered sensation.

(ii) Accidental aspiration (into the lungs) of foreign matter.

(iii) Rejection of donor materials.

(H) Guided tissue regeneration-nonresorbable barrier (includes membrane removal).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Accidental aspiration (into the lungs) of foreign matter.

(iv) Rejection of donor materials.

(I) Pedicle soft tissue graft procedure.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of donor materials.

(J) Free soft tissue graft protection-including donor site surgery.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(K) Sub epithelial connective tissue graft procedures.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Implant procedures.

(A) Bone grafting (replacing missing bone).

(i) Permanent or temporary numbness or altered sensation.

(ii) Rejection of bone particles or graft from donor or recipient sites.

(iii) Damage to adjacent teeth or bone.

(B) Surgical placement of implant body.

(i) Blood vessel or nerve injury.

(ii) Damage to adjacent teeth or bone fracture.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Failure of implant requiring corrective surgery.

(v) Cyst formation, bone loss, or gum disease around the implant.

(v) Plastic surgery.

(1) Augmentation mammoplasty (breast enlargement with implant).

(A) Bleeding around implant.

(B) Sensory changes or loss of nipple sensitivity.

(C) Failure, deflation, or leaking of implant requiring replacement.

(D) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).

(E) Problems with or the inability to breastfeed.

(F) Capsular contracture (hardening of breast).

(2) Bilateral breast reduction.

(A) Skin flap or fat necrosis (injury or death of skin and fat).

(B) Loss of nipple or areola.

(C) Sensory changes or loss of nipple sensitivity.

(D) Problems with or the inability to breastfeed.

(E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape or not desired size).

(3) Rhinoplasty or nasal reconstruction with or without septoplasty (repairing the middle wall of the nose).

- (A) Development of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.
- (B) Spinal fluid leak.
- (C) Worsening or unsatisfactory appearance.
- (4) Reconstruction and/or plastic surgery operations of the face and neck.
  - (A) Impairment of regional organs, such as eye or lip function.
  - (B) Recurrence of the original condition.
  - (C) Worsening or unsatisfactory appearance.
- (5) Liposuction (removal of fat by suction).
  - (A) Shock.
  - (B) Pulmonary fat embolism (fat escaping with possible damage to vital organs).
  - (C) Damage to skin with possible skin loss.
  - (D) Loose skin.
  - (E) Worsening or unsatisfactory appearance.
- (6) Breast reconstruction with other flaps and/or implants.
  - (A) Bleeding around implant.
  - (B) Sensory changes or loss of nipple sensitivity.
  - (C) Failure, deflation, or leaking of implant requiring replacement.
  - (D) Damage to internal organs.
  - (E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (7) Nipple Areolar Reconstruction.
  - (A) Loss of graft.
  - (B) Unsatisfactory appearance.
- (8) Panniclectomy (removal of skin and fat).
  - (A) Persistent swelling in the legs.
  - (B) Nerve damage.
  - (C) Worsening or unsatisfactory appearance.
- (9) Tendonitis, tendon release, and trigger releases.
  - (A) Recurrence of symptoms.
  - (B) Damage to blood vessels, nerves, tendons, or muscles.
  - (C) Worsening function.
- (10) Breast reconstruction with flaps.
  - (A) Damage to blood vessels, nerves, or muscles.
  - (B) Loss of flap possibly requiring additional surgery.
  - (C) Damage to internal organs.
  - (D) Increased risk of abdominal wall complications with pregnancy.
  - (E) Abdominal hernias with abdominal flaps.
  - (F) Chronic abdominal pain with abdominal flaps.

- (G) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (11) Flap or graft surgery.
  - (A) Damage to blood vessels, nerves, or muscles.
  - (B) Deep vein thrombosis (blood clot in legs or arms).
  - (C) Loss of flap possibly requiring additional surgery.
  - (D) Worsening or unsatisfactory appearance.
- (12) Tendons, nerves, or blood vessel repair.
  - (A) Damage to nerves.
  - (B) Deep vein thrombosis (blood clot in legs or arms).
  - (C) Rupture of repair.
  - (D) Worsening of function.
- (13) Reconstruction and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.
  - (A) Blindness.
  - (B) Nerve damage with loss of use and/or feeling.
  - (C) Painful or unattractive scarring.
  - (D) Worsening or unsatisfactory appearance.
  - (E) Dry eye.

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-201503969  
 Noah Appel, M.D.  
 Chairman  
 Texas Medical Disclosure Panel  
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 For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 1, Subchapter AA, concerning Employee Training and the reenactment of the subject matter as new Subchapter DD, concerning Employee Training and Education. TDI adopts the repeal and new sections without changes to the proposal published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5134).

The adoption will conform TDI's education and training programs with the State Employees Training Act, Government Code §§656.041 - 656.104, including amendments made by HB 3337, 84th Legislature, Regular Session (2015).

REASONED JUSTIFICATION. Programs for the training and education of state administrators and employees materially aid effective state administration. A state agency's training and educational program may include preparing for technological and legal developments, increasing work capabilities, increasing the number of qualified employees, and increasing employee competence.

TDI repeals Subchapter AA and reenacts its subject matter as Subchapter DD to facilitate a separate reorganization of Chapter 1. The adopted new sections allow more flexibility in TDI's employee education programs and education policy. The new sections add that TDI may require an employee to remain employed at TDI for a specific length of time or repay the reimbursement.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. There were no comments.

## SUBCHAPTER AA. EMPLOYEE TRAINING

### 28 TAC §§1.2701 - 1.2703

STATUTORY AUTHORITY. TDI adopts the repeal of Chapter 1, Subchapter AA, under Government Code §656.048 and Insurance Code §36.001. Government Code §656.048 requires TDI to adopt rules relating to the eligibility of employees for training and education supported by the agency, and the obligations assumed by the employees on receiving the training and education. Insurance Code §36.001 provides that the commissioner may adopt rules and regulations to execute the duties and functions of TDI only as authorized by statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



## SUBCHAPTER DD. EMPLOYEE TRAINING AND EDUCATION

### 28 TAC §§1.3101 - 1.3105

STATUTORY AUTHORITY. TDI adopts new Chapter 1, Subchapter DD under Government Code §656.048 and Insurance Code §36.001. Government Code §656.048 requires TDI to adopt rules relating to the eligibility of employees for training and education supported by the agency, and the obligations assumed by the employees on receiving the training and education. Insurance Code §36.001 provides that the commissioner may adopt rules and regulations to execute the duties and functions of TDI only as authorized by statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 676-6584



## CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

### SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

#### 28 TAC §26.30

The Texas Department of Insurance adopts new 28 TAC §26.30, concerning composite premiums that may be offered by small employer carriers. The new section is adopted without changes to the proposed text published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5042).

REASONED JUSTIFICATION. The new section is necessary to establish a four-tier composite premium method as the allowed composite premium method in the small group market, instead of the federal default method. This will alleviate potential confusion resulting from the federal default method and provide a consistent method for determining composite premiums across the entire group market.

The use of composite premiums is a standard practice in the health insurance market that reduces administrative burdens and makes it easier for group members to make enrollment decisions. For the small group market, 45 Code of Federal Regulations (CFR) §147.102(c)(3) requires the use of a two-tier composite premium method based on age (21 and older, and under 21) unless a state establishes and Centers for Medicare and Medicaid Services (CMS) approves an alternative. The federal default method is unconventional and potentially confusing to the many groups accustomed to composite premiums based on four tiers: 1) employee only, 2) employee and spouse, 3) employee and child or children, and 4) employee and family. The four-tier method is common practice in the large group market. By allowing a similar approach in the small group market, Texas would have more consistent composite premium methods across the entire group market and alleviate potential confusion resulting from the two-tier method.

In response to requests from industry, TDI submitted a proposal to CMS on November 6, 2014, to offer carriers a choice between the two-tier federal default and the more familiar four-tier alternative. CMS responded that only a single composite method may be used—either the federal default or an approved alternative. So, on January 21, 2015, TDI proposed the four-tier alternative method for use by carriers in the small group market in Texas. TDI's full request letter can be viewed on TDI's website. In its response email, CMS approved the proposal and added reminders that "[i]ssuers in your state need to use this method when they offer the composite premium option to small groups;" "[s]mall group issuers must first rate all the individuals in a group

on a per-member basis following the Market Reform Premium Rules (e.g., standard age factors that reflect the 3:1 limit and state specific geographic rating areas);" and "[t]he FF SHOP will not use composite premium methods for the 2015 plan year. The FF SHOP plans to use the federal default composite premium method for the 2016 plan year."

Adopted new §26.30 is necessary to establish the four-tier method as the required method in the small group market instead of the federal default method, to alleviate potential confusion resulting from the federal default method, and to provide a consistent method for determining composite premiums across the entire group market. Adopted new §26.30(a) provides definitions for "composite premium," "per-member premium," "tier," and "tier factor." Adopted new §26.30(b) provides that a small employer carrier may offer composite premiums to small groups in addition to, but not instead of, per-member premiums. Adopted new §26.30(c) requires that small employer carriers choosing to offer composite premiums in the small group market must use the tiers and tier factors described in subsection (d) to determine composite premiums as provided in 45 CFR §147.102(c)(3) and other applicable law. Adopted new §26.30(d) lists the tiers and tier factors: (1) employee only, with a tier factor of 1.0; (2) employee and spouse, with a tier factor of 2.0; (3) employee and child or children, with a tier factor of 2.0; and (4) employee and family, with a tier factor of 3.0. Adopted new §26.30(e) states that the new section applies to health benefit plans issued or renewed on or after November 1, 2015.

**SUMMARY OF COMMENTS.** TDI received three written comments, all in support of the proposal. The commenters were: BlueCross and BlueShield of Texas and two individuals.

**STATUTORY AUTHORITY.** The new section is adopted under Insurance Code §§1501.010, 1501.211, 1501.355, and 36.001. Section 1501.010 authorizes the commissioner to adopt rules necessary to implement Chapter 1501 (the Health Insurance Portability and Availability Act) and meet the minimum requirements of federal law, including regulations. Section 1501.211 provides that rules adopted under §1501.010 may ensure that rating practices used by small employer health benefit plan issuers are consistent with the purposes of the chapter and that differences in premium rates charged for each small employer health benefit plan are reasonable and reflect objective differences in plan design. Section 1501.355 permits rules adopted under §1501.010 to establish additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers. Section 36.001 provides the commissioner's general rulemaking authority to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 28, 2015.

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Sara Waitt

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For further information, please call: (512) 676-6584

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 51. EXECUTIVE

#### SUBCHAPTER H. GENERAL PLAN FOR PRESCRIBED BURNING ON TPWD LANDS

##### 31 TAC §51.170

The Texas Parks and Wildlife Commission (commission), in a duly noticed meeting on August 20, 2015, adopted new §51.170, concerning General Plan for Prescribed Burning on TPWD Lands, without changes to the proposed text as published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4528). However, it should be noted that the General Plan referred to in the rule has been revised to further define "neighboring landowner" and to address distinctions between "wildland fire" and "wildfire." The complete plan may be viewed/downloaded on the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The new rule implements the provisions of House Bill (H.B.) 801, enacted by the 84th Texas Legislature, which added new Subchapter M to Chapter 11 of the Parks and Wildlife Code. Section 11.353, as added by H.B. 801, requires the Parks and Wildlife Commission to adopt by rule and implement a general plan for the use of beneficial prescribed burns in the management of department land.

Various management practices can be applied to any tract of land to improve its ecological health. An excellent tool for ecological management is prescribed fire. The department employs prescribed burning as a management tool on many state parks, natural areas, and wildlife management areas to improve wildlife habitat and species diversity. Disturbances such as fire are normal events in nature that interrupt plant growth patterns to create plant diversity and varying stages of plant growth. Such a variety is vital to many wild animals, providing food and cover components necessary for their continued existence. Fire disturbance plays a major role in the ecology of most wildlife species and ecological communities. Because fire is otherwise controlled in today's landscape, fire for ecological management must be prescribed. A good prescribed burn creates a mosaic of burned and unburned vegetation that stimulates new growth for the future while retaining adequate cover for the present. The patchy result of such a burn intersperses a variety of plant species and cover types, increasing floristic diversity and meeting the needs of wildlife. The ideal approach to prescribed burning for habitat improvement is to divide an area into burn units and burn a certain amount each year, using fire at different seasons, primarily from late summer through early spring. Most, if not all, prescribed burning on department lands occurs on either state park land (under the purview of the department's State Parks Division) or on wildlife management areas (under the purview of the department's Wildlife Division).

Under the provisions of H.B. 801, prescribed burns conducted by the department on state land managed by the department must be conducted according to a general prescribed burn plan that meets or exceeds the standards for prescribed burns established in Natural Resources Code, §153.047. The provisions of

H.B. 801 also establish additional site-specific burn plan and notification requirements.

The department has maintained a written Prescribed Fire Policy since 2002. The department has amended the current Prescribed Fire Policy to comply with the requirements of H.B. 801. The resulting document is now designated as the department's General Prescribed Burn Plan (Plan), to meet the requirements of H.B. 801 and the standards for a prescribed burn set out in Natural Resources Code, §153.047. The new rule adopts the new General Prescribed Burn Plan by reference.

The Plan sets forth the primary purpose of prescribed burning on department lands, which is to reintroduce fire as an ecological process and simulate the effects of natural fire events. The application of fire fulfills numerous management objectives, including reduction of excessive fuel loads, encouragement of herbaceous species, increase of available browse, control of invasive species, improved species diversity and richness, and facilitation of the long-term objectives for natural habitat and community restoration and maintenance. Prescribed burns on TPWD lands will be conducted in association with these management objectives and/or other research endeavors in order to document the long-term effects of this practice on habitat quality or habitat restoration.

The Plan also adopts the Incident Command System (ICS) and firefighting standards set forth by the National Wildfire Coordinating Group (NWCG) as the standard operating procedure for all fire management activities on department lands (with exceptions) and establishes training and fitness requirements for department staff who participate in fire activities. All department personnel participating in fire activities are required to have completed the minimum training requirements for a Fire Fighter Type Two as described in the National Incident Management System (NIMS) Wildland Fire Qualifications System Guide, PMS 310-1. Department staff leading a burn must meet or exceed the training and experience requirements of the Texas Prescribed Burning Board. Additionally, all personnel participating in wildland fire operations must be screened annually for physical fitness according to the Wildland Firefighter Medical Standards Program adopted by the NWCG.

The Plan sets forth the planning and notification requirements to be followed by the department for all prescribed burning activities on state-owned lands. House Bill 801 added new §11.353, which requires a site-specific burn plan to be prepared and approved by a person designated by the department's Executive Director to review prescribed burn plans. Therefore, the Plan requires a site-specific prescribed burn plan to be completed and approved by staff as designated by the Executive Director (to be established in the operating plan of the responsible division) prior to implementing a prescribed burn.

Section 11.353 also requires each site-specific plan to include the planned start and end dates of the prescribed burn; a map of the designated burn area (including the location of any utility infrastructure within the designated burn area); the names and contact numbers for the prescribed burn manager, the nearest fire departments or emergency service providers, and all landowners whose property neighbors the designated burn area; and written documentation that applicable prescribed burn notification and approval requirements of the Texas Commission on Environmental Quality (TCEQ) have been met.

In addition, §11.354 requires the department to provide adequate advance notice of the department's intent to conduct a

prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area, including water utility officials with water facilities within two miles of the prescribed burn. The landowner's notice must include the planned start and end dates of the prescribed burn; any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn; a map of the prescribed burn area, including the location of any utility infrastructure within the designated burn area; the methods proposed for use in conducting the burn; and contact information for the prescribed burn manager and the department. Section §11.354 also requires the department to publish advance notice of a planned prescribed burn in a newspaper of general circulation in the county or counties in which the burn will be conducted.

The Plan's notification provisions specifically mandate that the department provide notice of the intent to conduct a prescribed burn to neighboring landowners, local and state officials, and the community at large. The notice to neighboring landowners must include the planned start and end dates of the prescribed burn; any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn; a map of the prescribed burn area, including the location of any utility infrastructure within prescribed burn area; the methods proposed for use in conducting the burn; and contact information for the prescribed burn manager or site manager. The Plan also requires the required notification of state officials to include city or county emergency services dispatch centers; local fire departments; water utility officials with water facilities within a two mile radius of the prescribed burn area, owners of any utility infrastructure within the prescribed burn area; and other parties identified in the division's operating procedures or the site-specific prescribed burn plan. In addition, the Plan requires the department to notify the Texas Commission on Environmental Quality (TCEQ) and obtain applicable approval documentation in writing as required by 30 TAC §§111.201 - 111.221. The Plan further stipulates that the public notification to the community at large shall be published or broadcast in a newspaper of general circulation in the county or counties in the burn will be conducted. Additional public outreach and notification may be defined in the division's operating procedures or in the site-specific prescribed burn.

The provisions of H.B. 801 require the Plan to include site-specific prescribed burn plans containing a description of the project area (including fuels and any potential hazards); the purpose and objective of burn; pre-burn notifications, burn prescription parameters, and expected fire behavior; pre-burn considerations and preparation requirements; ignition and holding strategies; required staffing, equipment, and contingency resources; smoke management, contingency plan for escapes; mop up plan; and maps including individual burn units, pre-burn actions, and access routes for contingency actions. The Plan also stipulates that prescribed burns shall be implemented only when there is an approved prescribed burn plan, the necessary personnel and equipment resources identified in the approved plan are available on the burn site, and the prescription conditions can be met.

The Plan prescribes the process for implementing a prescribed burn, requiring each burn manager to be responsible for ensuring that all required notifications have been completed; all pre-burn and contingency measures outlined in the prescribed burn plan are complete; that adequate equipment is present and that personal protective gear is utilized; that qualified personnel on site for the burn are trained to levels commensurate with their level of responsibility on the burn crew and for that specific

operation; and that the burn crew has been briefed on objectives, fuels, expected weather and fire behavior, and appropriate safety precautions. The Plan further requires that burning be conducted only when observed or forecasted environmental conditions are within the parameters specified in the site-specific plan and that all infrastructure and utilities are protected (i.e., electrical transformers, electrical conduit, phone and fiber optic lines, oil and gas wells, barns and buildings, etc.).

The Plan also stipulates the limitation of prescribed burning to those periods when atmospheric and wind conditions are within acceptable guidelines (and may be locally specific), which shall be identified in the plan in order to minimize risks associated with the potential effects of smoke on the local population and resources and the development of a smoke management plan (including plotting the expected direction of the smoke plume, identifying all smoke sensitive areas in the vicinity and their distances from the burn unit), identifying critical smoke-sensitive areas (public roads and airports must be considered at risk for smoke, and appropriate precautions must be taken to minimize risks to traffic), and minimizing the risk to adjacent properties and populations). Burn managers will coordinate with county officials in determining the appropriateness of burning during county burn bans and the approval of the appropriate division director must be obtained to conduct a prescribed burn during a burn ban. No fires will be ignited if the Texas Interagency Coordination Center (TICC) has rated the "TFS Regional Fire Risk Level" at a "5 - extreme."

Finally, the Plan describes the emergency response preparedness measures that department staff are expected to employ and follow and the parameters for burning brush piles or debris on agency lands.

The department received no comments opposing adoption of the proposed rule.

The department received seven comments supporting adoption of the proposed rule.

No groups or associations commented on the proposed rule.

The new rule is adopted under the authority of House Bill 801, 84th Texas Legislature (Regular Session), which requires the commission to adopt by rule and implement a general plan for the use of beneficial prescribed burns in the management of department land.

*§51.170. General Plan for Prescribed Burning on TPWD Lands.*

(a) It is the intent of the department that the department's General Plan for Prescribed Burning on TPWD Lands comply with the requirements of the prescribed burn plan required by Parks and Wildlife Code, §11.351.

(b) The department's General Plan for Prescribed Burning on TPWD Lands is adopted by reference.

(c) The department will maintain the current version of the General Plan for Prescribed Burning on TPWD Lands on the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov) along with the contact information of appropriate department staff for the benefit of interested parties.

(d) The department will publish notice in the *Texas Register* and seek input from interested parties when major modifications to the General Plan for Prescribed Burning on TPWD Lands (such as changes in procedures or notification processes) are contemplated. Public notice of an opportunity to comment will be provided at least 30 days prior to the effective date of any changes to the policy. The public notice will describe the proposed modifications and the reasons for the

modifications, and how comments on the proposed modifications may be submitted to the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright

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Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4395



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

###### 34 TAC §3.299

The Comptroller of Public Accounts adopts amendments to §3.299, concerning newspapers, magazines, publishers, exempt writings, without changes to the proposed text as published in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5136). The title of this section is amended to delete references to specific statutes in the Tax Code that relate to the section, according to current agency practice regarding section titles.

Subsection (a)(1) is amended to implement House Bill 3169, 83rd Legislature, 2013, effective September 1, 2013, changing the definition of a "newspaper". To qualify for tax exemption, a newspaper must now have an average sales price over a 30-day period of \$3.00 or less. Previously, the average sales price was \$1.50.

Subsection (a)(1) is also amended to reflect the comptroller's policy that a newspaper's average sales price per copy is presumed to be its masthead price unless the taxpayer provides contemporaneous documentary evidence satisfactory to the comptroller that adequately demonstrates the actual average sales price. This policy provides taxpayers with an alternative consistent means for determining the average sales price per copy in light of the fact that it may be difficult to compile sales prices charged by all vendors of each newspaper in Texas.

Subsection (c) is amended to add a new paragraph (3) to memorialize the comptroller's policy that publishers of magazines given away for free do not qualify as manufacturers and they owe tax on their purchases of equipment and materials used to produce the free magazine. See, for example, STAR Accession No. 201002441L and §151.318 (Property Used in Manufacturing) which limits the manufacturing exemption to tangible personal property used to manufacture goods for ultimate sale. See also Tax Code, §151.318(o) exempting tangible personal property used in the production of news publications printed on newsprint



and distributed to the general public free of charge. Magazines are typically not printed on newsprint, so they are excluded from the exemption available under §151.318(o). Non-substantive changes are also made to paragraph (2).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §§151.005 ("Sale" or "Purchase"), 151.319 (Newspapers and Property Used in Newspaper Publication), and 151.320 (Magazines).

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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Lita Gonzalez

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Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## SUBCHAPTER FF. SPECIAL FEE ON CERTAIN CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

### 34 TAC §3.751

The Comptroller of Public Accounts adopts new §3.751, concerning special fee on certain cigarettes and cigarette tobacco products; definitions, imposition of fee, and reports, with changes to the proposed text as published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1940). The new section is in new Subchapter FF, Special Fee on Certain Cigarettes and Cigarette Tobacco Products. The new section implements House Bill 3536, 83rd Legislature, 2013, concerning implementation of a new fee, annual fee increases, definitions, reports, and modifying the cigarette stamping allowance in the administration and enforcement of Health and Safety Code, Chapter 161, Subchapter V. Please note that on August 15, 2014, the Third Court of Appeals affirmed the District Court's judgment that Subchapter V of the Texas Health and Safety Code violates the Texas Constitution's Equal and Uniform Clause. The state has filed a petition for review with the Texas Supreme Court seeking review of this determination. See *Glenn Hegar, in his official capacity as Texas Comptroller, and Ken Paxton, in his official capacity as Texas Attorney General v. Texas Small Tobacco Coalition*, Case No. 14-0747 in the Texas Supreme Court; Case No. 03-13-00753-CV in the Third Court of Appeals; Cause No. D-1-GN-13-002414 in the 98th Judicial District of Travis County, Texas. Despite the lower court actions on the validity of Subchapter V, this rule is being adopted to

provide guidance on fee implementation because the state's appeal has stayed the effect of any of the lower court rulings. If Subchapter V is ultimately held to be unconstitutional by a final determination of a Court, then the comptroller will not enforce the rule when the Court determination becomes final and will initiate an action to repeal the rule.

Subsection (a) contains definitions from Health and Safety Code, Chapter 161, Subchapter V except for the added statement of fact in paragraph (8).

Subsection (b) explains how the fee is to be imposed and on which products imposition of the fee is required.

Subsection (c) describes circumstances where fee cannot be imposed pursuant to Health and Safety Code, §161.603(b) and (c).

Subsection (d) formalizes the procedure by which the fee is annually increased and provides the effective date of the annual increase as well as the duration of the fee increase. The section differs from statute due to the release date of the December Consumer Price Index in mid-January. To allow reasonable implementation and fee payer notification of the fee increase and prevent the imposition of a retroactive fee increase on affected fee payers, the new computed rate will take effect February 1st of each year.

Subsection (e) clarifies the process by which a distributor can take a fee credit.

Written comments on this section were received from David Cowling of Jones Day on behalf of several tobacco industry companies. Mr. Cowling requested that the comptroller revise subsection (a)(4), defining the term "credit amendment," to more closely follow the language of the statute. The comptroller agrees and has revised subsection (a)(4) to make the requested change. Mr. Cowling also requested that subsection (a)(13) be revised to clarify that the term "subsequent participating manufacturer" includes manufacturers who signed on to the master settlement agreement on or after November 23, 1998. The comptroller agrees and has revised subsection (a)(13) to make the requested change.

In his written comments, Mr. Cowling expressed concern that subsection (b) could create ambiguity because it does not use the exact language adopted in House Bill 3536. Mr. Cowling suggested that subsection (b) be revised as follows:

"The Legislature has imposed on the sale, use, consumption, or distribution in this state of non-settling manufacturer cigarettes and cigarette tobacco products a fee as specified in Health and Safety Code, Chapter 161, Subchapter V. The fee is in addition to any other privilege, license, fee, or tax required or imposed by state law. The fee shall be collected only once on each cigarette or cigarette tobacco product on which it is due." The comptroller agrees in part but declines to make all of the requested revisions. For example, the comptroller declines to use the terminology, "The Legislature has imposed..." because it would be inconsistent with other sections of this title which use the terminology "A fee is imposed..." See, for example, §3.1201 (concerning Fee for Outdoor Advertising of Cigarettes or Tobacco Products) and §3.1251 (concerning School Fund Benefit Fee). The comptroller agrees to delete the proposed references to Tax Code, §154.041 and §155.0211. In addition, in order to eliminate any inconsistency between this subsection and Health and Safety Code, §161.603(e), the last sentence of subsection (b) is amended to include the phrase, "Except as otherwise provided in this section..."

Finally, Mr. Cowling requested that subsection (c) be deleted, recommending instead that the section "remain silent on exemptions." The comptroller appreciates the concerns Mr. Cowling has identified, but has determined that guidance on exemptions should be provided in this section as well as in the statute. The section is therefore revised to restate Health and Safety Code, §161.603(b) and (c) as paragraphs (1) and (2).

The new subchapter and section are adopted under Health and Safety Code, §161.614, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Health and Safety Code, Chapter 161, Subchapter V.

The new section implements Health and Safety Code, Chapter 161, Subchapter V (Fee on Cigarettes and Cigarette Tobacco Products Manufactured by Certain Companies).

§3.751. *Special Fee on Certain Cigarettes and Cigarette Tobacco Products; Definitions, Imposition of Fee, and Reports.*

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

(1) Brand family--Each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) Cigarette--A roll for smoking that is made of tobacco or tobacco mixed with another ingredient, wrapped or covered with a material other than tobacco, and is not a cigar.

(3) Cigarette tobacco product--Roll-your-own (RYO) tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) Credit amendment--An amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this section with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049%; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5%. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) Distributor--This term has the meaning assigned by Tax Code, §154.001 or §155.001.

(6) Fee or monthly fee--The fee imposed under Health and Safety Code, §161.603.

(7) Manufacturer--A person who manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or

cigarette tobacco products, for sale or distribution. The term also includes a person who is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) Master settlement agreement--The settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013. Texas is not a party to the master settlement agreement.

(9) Non-settling manufacturer--A manufacturer of cigarettes or cigarette tobacco products that did not sign a Texas tobacco settlement agreement.

(10) Non-settling manufacturer cigarettes--Cigarettes manufactured, fabricated, assembled, or imported into the United States by a non-settling manufacturer.

(11) Non-settling manufacturer cigarette tobacco products--Cigarette tobacco products manufactured, fabricated, assembled, or imported into the United States by a non-settling manufacturer.

(12) Settling manufacturer--A manufacturer of cigarettes or cigarette tobacco products that signed a Texas tobacco settlement agreement.

(13) Subsequent participating manufacturer--Tobacco manufacturers that signed on to the master settlement agreement on or after November 23, 1998, and that have not signed a Texas tobacco settlement agreement. For purposes of this section, a subsequent participating manufacturer is also a non-settling manufacturer. A manufacturer may not be treated as a subsequent participating manufacturer for purposes of this section unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(14) Texas tobacco settlement agreement--This term means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in subparagraph (A) of this paragraph, but only as to companies that signed that agreement on that date.

(b) Fee imposed. A fee is imposed on the sale, use, consumption, or distribution in this state of non-settling manufacturer cigarettes and non-settling manufacturer cigarette tobacco products. The fee is in addition to any other privilege, license, fee, or tax required or imposed by state law. The fee shall be collected only once on each cigarette or cigarette tobacco product on which it is due. Except as otherwise provided by this section, Tax Code, Chapter 154 or 155 governs the imposition, collection, payment, administration, and enforcement of the fee in the same manner as the taxes imposed by those chapters, as appropriate.

(c) Fee exempt. The fee does not apply to cigarettes or cigarette tobacco products:

(1) that a settling manufacturer claims as its own and that are included in computing payments to be made by that settling manufacturer under a Texas tobacco settlement agreement; or

(2) that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) Fee rate increases. Beginning in January 2014, and in January of each following year, the comptroller shall compute the rate of the fee applicable during that calendar year by increasing the rate for the preceding calendar year by the greater of three percent or the actual total annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for December, as published by the Bureau of Labor Statistics of the United States Department of Labor. The new computed rate will take effect February 1st of each year and be valid for 12 consecutive months.

(e) Allowance of credit for fee. A distributor claiming, under Tax Code Chapters 154 and 155, an authorized cigarette or tobacco tax credit for products subject to the fee may take a fee credit in the same reporting period.

(f) Distributor's report, payment of monthly fee, and cigarette stamping allowance.

(1) On or before the last day of each month on the comptroller's website, the comptroller shall publish and maintain a list of the names and brand families of settling manufacturers, non-settling manufacturers, subsequent participating manufacturers, and the effective date of any credit amendment, if any has been adopted.

(2) A distributor filing a required report under Tax Code, §154.210 or §155.111, shall, in addition to the information required by those sections, include summary data in the required reports and remit the fee. Distributors shall electronically, in the prescribed comptroller format, provide the detailed information required by Health and Safety Code, §161.605. With the exception of reports of sales to retailers required by the comptroller under Tax Code, §154.212, all cigarette distributor and manufacturer reports and payments must be filed on or before the last day of each month following the month in which the transactions take place.

(3) A distributor is entitled to an additional stamping allowance of 0.5% of the face value of all stamps purchased under Tax Code, §154.041, for providing the service of affixing stamps to cigarette packages; remitting the fee; and filing required reports. The maximum cigarette stamping allowance is 3.0% of the face value of all stamps purchased.

(g) Report to attorney general. Non-settling manufacturers offering or planning to offer cigarettes or cigarette tobacco products for sale or distribution in Texas must report, on form prescribed by the attorney general, to the attorney general. Reported information will be made available to the comptroller.

(h) Penalties for noncompliance. Tax Code, Chapter 154 or 155, as appropriate, will be the basis for penalties in administering violations of Health and Safety Code, Chapter 161, Subchapter V.

(i) Audit or inspection. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance.

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 28, 2015.

TRD-201503998

Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387

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**PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM**

**CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM**

**34 TAC §§302.2, 302.4 - 302.6**

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to the following sections in Chapter 302 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4442): §302.2, Benefit Distributions; §302.4, Reduction or Revocation of Benefits; §302.5, Correction of Errors; and §302.6, Charge for Certain Contributions Past Due.

*Correction of Errors, Background and Summary of the Factual Basis for the Adopted Rule Amendments*

As part of a rule review process, each section of Chapter 302 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in compliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA").

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

Finally, in compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465).

*Discussion and Purpose of the Adopted Amendments*

Adopted amendments include minor clarification, grammatical corrections, and terminology updates, in addition to more substantive changes as discussed in the following summary by section.

The amendment to §302.2, Benefit Distributions, is a minor clarification that substitutes the word "Section" in §302.2(a)(2) with the Section symbol.

Amendments to §302.4, Reduction or Revocation of Benefits, require in §302.4(a) that any elective reduction or revocation of benefits by a married member or retiree be authorized by the spouse in writing. This change is intended to document agreement on this election, since plan rules provide for the financial security of member and retiree spouses in the event of untimely or

natural death under the authority of Government Code §864.006, concerning Member Service Death Benefits and §864.009, concerning Retiree Death Benefit Annuity. The change in §302.4(b) substitutes the word "waiver" with the words "reduction or revocation" for consistency with language throughout §302.4. The change to the sentence in §302.4(c) is being made as a necessary terminology update, since the term "Commissioner" is no longer applicable to the System, per action taken by the 83rd Legislature in S.B. 220, which abolished the Office of the Firefighters' Pension Commissioner.

Amendments to §302.5, Correction of Errors, include substantive changes by placing a time limit of five years on requests for error corrections in §302.5(a) and by clarifying the authority to apply an interest charge associated such corrections in §302.5(a)(2). The authority for the Board of Trustees to establish an interest charge for unpaid contributions is granted in Government Code §863.005, concerning Charge for Certain Past Due Contributions, which is established by rule in 34 TAC §302.6, concerning Charge for Certain Contributions Past Due. The change in §302.5(b) gives the Executive Director of the System latitude to consider corrections that fall outside of the discussed five-year window, with sole discretion to allow or deny those error corrections based on the merit and specific circumstances of such cases. The changes in this section are necessary to protect the System against material unforeseen liabilities, while preserving the ability of local pension boards in making necessary error corrections.

Based on the authority granted in Government Code, §865.014, concerning Local Contributions, the governing bodies of member departments are responsible for making contributions to the System. Amendments to §302.6, Charge for Certain Contributions Past Due, include a change to §302.6(a) to clarify that the governing body of a participating department is liable for interest charges that may accrue as a result of record corrections authorized by 34 TAC §302.5, by adding the words, "The governing body of a participating department is liable for the payment". The change in §302.6(c) provides clarification that interest which may become payable as a result of error corrections is due in total, by adding the words "in full". The authority to charge interest is granted in Government Code, §863.005.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rules are in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the amended rules.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These rule changes are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§863.005, 864.006, 864.009, and 865.014.

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 28, 2015.

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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3474



### **34 TAC §§302.7 - 302.11**

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts the following new rules in Chapter 302 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4442), including: §302.7, Auxiliary Employee; §302.8, Qualified Service; §302.9, Certification of Physical Fitness; §302.10, Nonforfeitable Benefits; and §302.11, Procedures for Plan Qualification.

#### *Correction of Errors, Background, and Summary of the Factual Basis for the Adopted Rules*

As part of a rule review process, each section of Chapter 302 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in compliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA"). As part of this review, a need was identified for additional rules in Chapter 302, as discussed below.

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

In compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465).

#### *Discussion and Purpose of the Adopted Rules*

The State Board of Trustees of the System adopts the following new rules in Chapter 302:

§302.7, Auxiliary Employee, under authority granted in Government Code, §861.001, in order to clarify the designation for departments and guidelines for compensation requirements.

§302.8, Qualified Service, under authority granted in Government Code, §861.001 and §864.001, in order to clarify the ability of member departments to interpret emergencies and support services, for the purpose of compliance with those sections.

§302.9, Certification of Physical Fitness, under authority granted in Government Code, §862.003(a) and §864.001, in order to en-

sure that returning volunteers meet the necessary physical fitness requirements for active membership.

§302.10, Nonforfeitable Benefits, under authority granted in Government Code, §863.001, in order to ensure that earned benefits are non-forfeitable.

§302.11, Procedures for Plan Qualification, under authority granted in Government Code, §861.006, to clarify the ability of the Board of Trustees to develop whatever procedures may be necessary to ensure the System's plan continues to qualify under the IRS Code.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the new rules are in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the new rules.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These new rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§861.001, 861.006, 862.003, 863.001, and 864.001.

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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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3474



## CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §304.1

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to the following section in Chapter 304 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4445): §304.1, Participation by a Department.

### *Correction of Errors, Background and Summary of the Factual Basis for the Adopted Rule Amendments*

As part of a rule review process, each section of Chapter 304 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in compliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA").

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

Finally, in compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465).

#### *Discussion and Purpose of the Adopted Amendments*

Adopted amendments include minor clarification, grammatical corrections, and terminology updates, in addition to more substantive changes as discussed in the following summary by section.

The amendment to §304.1(a) clarifies that any election made by a governing body to participate in the System, must be provided in writing, by adding the words "in writing". An amendment to §304.1(a) requires new member departments have at least seven active volunteers or seven auxiliary employees in order to join the System. The addition of this language ensures a participating department has enough active members to satisfy Local Board composition requirements under Government Code, §865.012.

An amendment to §304.1(b) includes minor changes intended to increase the readability of the section, but more substantively, eliminates the ability to predate an agreement to join the System. This change provides for a more straightforward dating of contracts and resulting billings, in addition to providing for consistency with standard business practices.

An amendment to §304.1(c) includes clarifying language through the addition of the word "effective date" and other minor changes intended to increase readability of the section.

A clarifying amendment to §304.1(d) adds language that disqualifies for-profit departments as being eligible for membership in the System. The System does not currently have member departments that are for-profit entities and Government Code, §862.001, requires membership of a department be accomplished via a governing body, which has been interpreted by the System as a political subdivision. This rule provides clarifying language for reference purposes.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rule is in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to

state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the amended rule.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These rule amendments are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.004.

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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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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## CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §306.1, §306.2

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to the following sections in Chapter 306 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4446): §306.1, Prior Service Credit for Members of Participating Departments, and §306.2, Merger of Existing Pension Plan into Pension System.

#### *Correction of Errors, Background and Summary of the Factual Basis for the Adopted Rule Amendments*

As part of a rule review process, each section of Chapter 306 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in compliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA").

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

Finally, in compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465).

#### *Discussion and Purpose of the Adopted Amendments*

Adopted amendments include minor clarification, grammatical corrections, and terminology updates, in addition to more substantive changes as discussed in the following summary by section.

The amendment to §306.1, Prior Service Credit for Members of Participating Departments, includes minor changes in §306.1(c) and (d) intended to increase the readability of the section. Also included in §306.1(d) is clarifying language that requires costs for prior service be calculated by the System's actuary, in order to ensure that the System collects sufficient payment from departments, according to actuarial standards and on an actuarially sound basis, prior to granting such prior service credit.

Statutory authority for rulemaking related to prior service credit exists in Government Code, §863.004, which requires that the costs of granting prior service credit be determined on a basis that maintains the pension system as actuarially sound.

The System is authorized in Government Code, §862.004, to adopt rules for the merger of existing pension plans into the System. Amendments to §306.2, Merger of Existing Pension Plans into the Pension System, are made according to this authority and are summarized below by subsection.

Changes to §306.2(b) require that if the assets of a merging department are not sufficient to cover computed costs for active members, a department may finance those costs over a ten-year period, subject to interest. The amendment is substantive because the language change implies that the opportunity to finance prior service costs is available only to those merging departments that do not have sufficient assets to pay for the computed cost of the merge in total. Other changes that apply the clarifying language of "active members" is for consistency with that terminology used elsewhere in §306.2(b). Amendments to §306.2(c) include changes for the same reasons, except that subsection (c) concerns annuitants, where subsection (b) relates to active members.

In general, changes to §306.2(d), (e), and (g) update those subsections to more accurately refer to active members and language in subsection (b), in addition to existing language that references inactive members and language in subsection (c). As part of any new member department with an existing pension system to merge, there will be active members, in addition to annuitants and inactive members (referred to collectively as inactive members throughout the section), that should be referenced in any requirements for accomplishing a merge.

Changes in §306.2(d) include changes intended to increase the readability of the section and also clarifying changes that include prior service costs for active members and a reference to the related subsection (b), in the context that merge activities must be determined as actuarially sound.

Changes in §306.2(e) include clarifying language to add active members within the context of the subsection, which states that after a merge is completed, prior service granted to members is treated from a benefits perspective, as though those members earned that service as members of the System.

Changes in §306.2(g) include clarifying language to more accurately state that payment terms associated with the costs for the

merging of active members described in subsection (b) and inactive members described in subsection (c), and any future contributions, if applicable, should be described in the agreement between the merging department and the System.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rules are in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the amended rules.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These rule amendments are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.004 and §863.004.

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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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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## CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §§308.1 - 308.4

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to the following sections in Chapter 308 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4448): §308.1, Eligibility for Retirement Annuity; §308.2, Service Retirement Annuity; §308.3, Disability Retirement Benefits; and §308.4, Death Benefits.

#### *Correction of Errors, Background and Summary of the Factual Basis for the Adopted Rule Amendments*

As part of a rule review process, each section of Chapter 308 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in com-

pliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA").

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

Finally, in compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465).

#### *Discussion and Purpose of the Adopted Amendments*

Adopted amendments include minor clarification, grammatical corrections, and terminology updates, in addition to more substantive changes as discussed in the following summary by section.

The amendment to §308.1(a) provides clarifying language to emphasize that the subsection is related to full benefits and retirement, in contrast with §308.1(b), which relates to partial benefits and partial retirement. Changes in §308.1(b) and (c) are non-substantive clarifying changes intended to increase the readability of the subsection.

Changes to §308.2(a) remove language that specifies early retirement is the age of 55 years, which is incorrect terminology, according to language used throughout Chapter 308 which specifies the target age necessary to retire is 55 years, assuming service requirements are met. While there are provisions for partial retirement with a lesser number of qualifying service years than fifteen, under the System's plan there is no option for retirement before the age of 55 years.

Changes to §308.2(b) clarify in more specific detail how the retirement date is calculated within existing System procedures, since the effective date of a retirement application and the date annuity payments will be calculated is dependent on 1) a member being terminated as an active volunteer in the pension system, 2) a member having attained the age of 55 years, and 3) the date a retirement application is received at the System's office.

Changes to §308.2(c) are non-substantive and clarify in more specific detail existing procedures used by the System to ensure that eligible retirement applications are processed in a timely manner.

Changes to §308.2(d) are non-substantive and clarify that if a retirement application is not processed in a timely manner for whatever reason, the retiree will receive with their first annuity payment a lump sum payment for any past due payments.

The amendment to §308.2(e) removes superfluous language in order to enhance readability of the subsection.

Changes to §308.2(f) add language to accurately portray calculation of the retirement annuity, relative to §310.6. A previous amendment to §310.6 added a second component to local contributions, or the "Part Two" contribution, that according to language in the section does not impact the retiree annuity. This amendment updates language in §308.2(f) for consistency and is not substantive.

Changes to §308.2(g) are substantive in that they amend the calculation of the compounded annuity due a retiree, by elimi-

nating days, as part of the service time calculated at the rate of 6.2 percent for qualified service over 15 years. Including days in this calculation causes an administrative burden due to the ambiguity inherent in defining "days" and rounding issues.

Authority to establish and change the rate of disability pay is granted to the Board of Trustees in Government Code, §864.004. Changes to subsection (a) in §308.3, concerning Disability Retirement Benefits, update the minimum monthly disability pay to \$400 and also update the language that refers to the current minimum monthly contribution rate to the amount of \$36/month. In addition, a clarification is made to the contribution rate, in order to make it clear that in the context of this section, contribution means the "Part One" contribution, per §310.6 as amended.

Changes to §308.3(e) add clarifying and instructive language to acknowledge that approval of disability on a temporary basis and up to one year does not predict whether or not a disability will continue beyond one year or become permanent.

An amendment to §308.3 is made to add subsection (f), which allows the Board of Trustees to establish procedures to administer disability benefits.

The Board of Trustees is authorized in Government Code, §§864.006, 864.007, and 864.009, to establish rules concerning on-duty and off-duty death benefits for active members and death benefits for retirees. Amendments to §308.4, concerning Death Benefits, are made according to this authorization and the details on changes by subsection follow.

A clarifying amendment to §308.4(a) is made to make clear the delineation of benefits between the spouse/dependents and beneficiary(s), benefits authorized for the spouse/dependents in §864.006.

Changes to §308.4(b), (c), and (d) are made necessary by the incorrect assumption across these subsections that persons in the roles of "beneficiary" and "spouse" are one and the same. Changes to these subsections modify existing language by the phrase, "if the surviving spouse is the designated beneficiary". The addition of subsection (f) to §308.4 provides a mechanism for any existing spouse of a new active member to approve the designation of a beneficiary other than that spouse, to properly inform the spouse and protect the system against future claims.

Changes were made to §308.4(b) to clarify that the subsection applies "active" members and remove superfluous language, in order to enhance readability of the subsection.

An amendment was made to §308.4(c) to clarify that the subsection applies to both fully vested and partially vested service, as applicable.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rules are in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the amended rules.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These rule changes are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§864.004, 864.006, 864.007, and §864.009.

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 28, 2015.

TRD-201504013

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Effective date: October 18, 2015

Proposal publication date: July 10, 2015

For further information, please call: (512) 936-3474



## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### **34 TAC §§310.2, 310.5, 310.6, 310.8, 310.10**

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to the following sections in Chapter 310 of Title 34, Part 11, Texas Administrative Code, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4451), including: §310.2, Additional Duties of the State Board; §310.5, Local Board of Trustees; §310.6, Local Contributions; §310.8, Billings; and §310.10, Volunteer Payments by Departments.

#### *Correction of Errors, Background and Summary of the Factual Basis for the Adopted Rule Amendments*

As part of a rule review process, each section of Chapter 310 was reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and whether it is in compliance with Texas Government Code, Chapter 2001, Administrative Procedure Act ("APA").

The System encouraged stakeholder participation in the process by notifying member departments of the review via letter in an email on October 14, 2014, and through an article placed in the October 2014 edition of *Texas Firemen*, the magazine published by the State Firefighters' and Fire Marshals' Association. Notification of the process was placed on the agency website and in social media, with notice of an agency email address established especially for that purpose, [rulereview@tesrs.texas.gov](mailto:rulereview@tesrs.texas.gov).

Finally, in compliance with Texas Government Code §2001.039, notice of the review was placed in the July 10, 2015 issue of the *Texas Register* (40 TexReg 4465).

#### *Discussion and Purpose of the Adopted Amendments*



Adopted amendments include minor clarification, grammatical corrections, and terminology updates, in addition to more substantive changes as discussed in the following summary by section.

Amendments to §310.2. Additional Duties of the State Board, include minor changes to enhance readability of the section.

An amendment to subsection (a) of §310.5, Local Board of Trustees, is substantive in that it sets a deadline for the annual election of officers, required in the existing section. The purpose of this deadline is to coordinate election of officers with submission of the Annual Report, which is also due on January 31st of each year, and requires that the current Local Board certify the report as accurate. Authority for rulemaking regarding periodic reports is authorized in Government Code, §865.011(b).

A minor amendment is made to subsection (a) of §310.6, Local Contributions, to specify that contribution increases initiated by departments, must be requested in writing. This change provides for consistency with standard business practices.

An amendment is made to §310.8(b)(1), concerning billings, to clarify that quarterly billings of member departments will include Part Two contributions, if applicable. This change is necessary to incorporate the applicability of §310.6 as amended, which established the Part Two contribution.

Minor changes are made to §310.10, Voluntary Payments by Departments, for clarification purposes. However, a substantive change is adopted in §310.10(b)(1), which modifies the existing increase limitation on the amount of a supplemental payment made by a department. On the occasion where the added language of the amount of \$50 is greater than 100% of the total monthly annuity for a retiree, this amendment expands the supplemental increase limitation for those annuitants that retired under rules that supplied monthly benefit smaller than \$50. The Board of Trustees is authorized to make rules concerning supplemental payments in §864.0135.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rules are in effect will be to improve the effectiveness of the System due to consistency between rules and the System's statutory authority. Ms. Jordan also has determined that for the first five years the rules will be in effect it is estimated that there will be neither additional cost nor a reduction in cost to state government for enforcing or administering the rules; that for the first five years the rules are in effect there will be no loss or gain in revenue to state or local governments; and that for the first five years the rules are in effect it will not result in a cost to state government.

Small businesses or individuals will not be affected adversely by the adoption of the amended rules.

#### *Public Comment*

No comments were received during the public comment period.

#### *Statutory Authority*

These rule changes are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §864.0135 and §865.011.

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 28, 2015.

TRD-201504014

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Effective date: October 18, 2015

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For further information, please call: (512) 936-3474

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

#### **CHAPTER 700. CHILD PROTECTIVE SERVICES**

##### **SUBCHAPTER W. SERVICE LEVEL SYSTEM**

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.2301, 700.2303, 700.2321, 700.2323, 700.2341, 700.2343, 700.2361, and 700.2363, without changes to the proposed text published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4681).

The justification for the amendments is to remove the term "developmental delays;" change the previously used terminology of "mental retardation" to describe children with disabilities, and replace it with "intellectual or developmental disability;" remove the word "habilitative" from all sections and replace it with the definition of habilitative, "services that help a person keep, learn or improve skills and functioning for daily living;" add the term "sibling" to the group of people with whom a child should generally have contact; and change the name of Subchapter W from Level-of-Care Service System to Service Level System. Also the amendments update the affected sections of the Texas Administrative Code with person-first language for children with disabilities as encouraged by Chapter 392 of the Texas Government Code and required by Government Code §531.0227, remove the language no longer used by Residential Child Care Licensing to designate a foster home type, and promote consistency between the rules and residential child-care contract. A summary of the changes follows:

The amendment to §700.2301 revises the description of the Basic Service Level to: (1) specifically enumerate a child's sibling as a person with whom a child should generally have contact. While a child's sibling is currently within the concept of "family members" described in the rule, CPS has determined that the particular role and importance of sibling relationships should be emphasized. This change is made throughout the subchapter but not discussed in detail in the remainder of this preamble; (2) remove the term "habilitative" from the list of the types of services that may be provided to a child at the Basic Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative."

The amendment to §700.2303 revises the description of a child who needs the Basic Service Level to remove "developmental delays," remove "mental retardation," and add "intellectual or de-

velopmental disabilities" whose characteristics include minor to moderate difficulties with conceptual, social, and practical adaptive skills.

The amendment to §700.2321 revises the description of Moderate Service Level to: (1) add "siblings" to the group of people for a child to generally have contact with; (2) remove the term "habilitative" from the list of the types of services that may be provided to a child at the Moderate Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative"; and (3) remove the term "habilitative" and replace it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2323 revises the description of characteristics of a child who needs the Moderate Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2341 revises the description of the Specialized Service Level to: (1) add siblings to the group of people for a child to have contact with; and (2) remove the term "habilitative" from the list of the types of services that may be provided to a child at the Specialized Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative."

The amendment to §700.2343 revises the description of the characteristics of a child who needs Specialized Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2361 revises the description of the Intense Service Level to: (1) remove the term "habilitative" and replace it with a description of the types of services that would previously have been referred to as "habilitative;" (2) add siblings to the group of people for a child to have contact with; and (3) remove "developmental delays," remove "mental retardation," and add "intellectual or developmental disabilities."

The amendment to §700.2363 revises the characteristics of a child that needs Intense Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs of a child who requires assistance in daily function may have."

The amendments will function by ensuring that agency rules are clearer to the public and they will promote the aims of inclusion of and respect toward individuals with intellectual or developmental disabilities.

No comments were received regarding adoption of the amendments.

## DIVISION 1. BASIC SERVICE LEVEL

### 40 TAC §700.2301, §700.2303

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

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 21, 2015.

TRD-201503934

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: October 15, 2015

Proposal publication date: July 17, 2015

For further information, please call: (512) 438-3657



## DIVISION 2. MODERATE SERVICE LEVEL

### 40 TAC §700.2321, §700.2323

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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Proposal publication date: July 17, 2015

For further information, please call: (512) 438-3657



## DIVISION 3. SPECIALIZED SERVICE LEVEL

### 40 TAC §700.2341, §700.2343

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

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-201503936  
Trevor Woodruff  
General Counsel  
Department of Family and Protective Services  
Effective date: October 15, 2015  
Proposal publication date: July 17, 2015  
For further information, please call: (512) 438-3657



#### **DIVISION 4. INTENSE SERVICE LEVEL**

**40 TAC §700.2361, §700.2363**

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

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 21, 2015.

TRD-201503937  
Trevor Woodruff  
General Counsel  
Department of Family and Protective Services  
Effective date: October 15, 2015  
Proposal publication date: July 17, 2015  
For further information, please call: (512) 438-3657





# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

## Texas Department of Public Safety

### Rule Transfer

Effective September 1, 2015, Senate Bill 1287 transferred jurisdiction over the Texas Crime Laboratories Accreditation Program from the Texas Department of Public Safety to the Texas Forensic Science Commission (commission). The bill also granted rulemaking authority to the commission. In accordance with the law, 37 TAC §§28.161 - 28.165, concerning complaints, special review, and administrative action, is transferred from Title 37, Part 1 to Title 37, Part 15 and renumbered as 37 TAC §§651.101 - 651.105.

Please refer to Figure: 37 TAC Chapter 28 to see the complete conversion chart.

TRD-201504078

## Texas Forensic Science Commission

### Rule Transfer

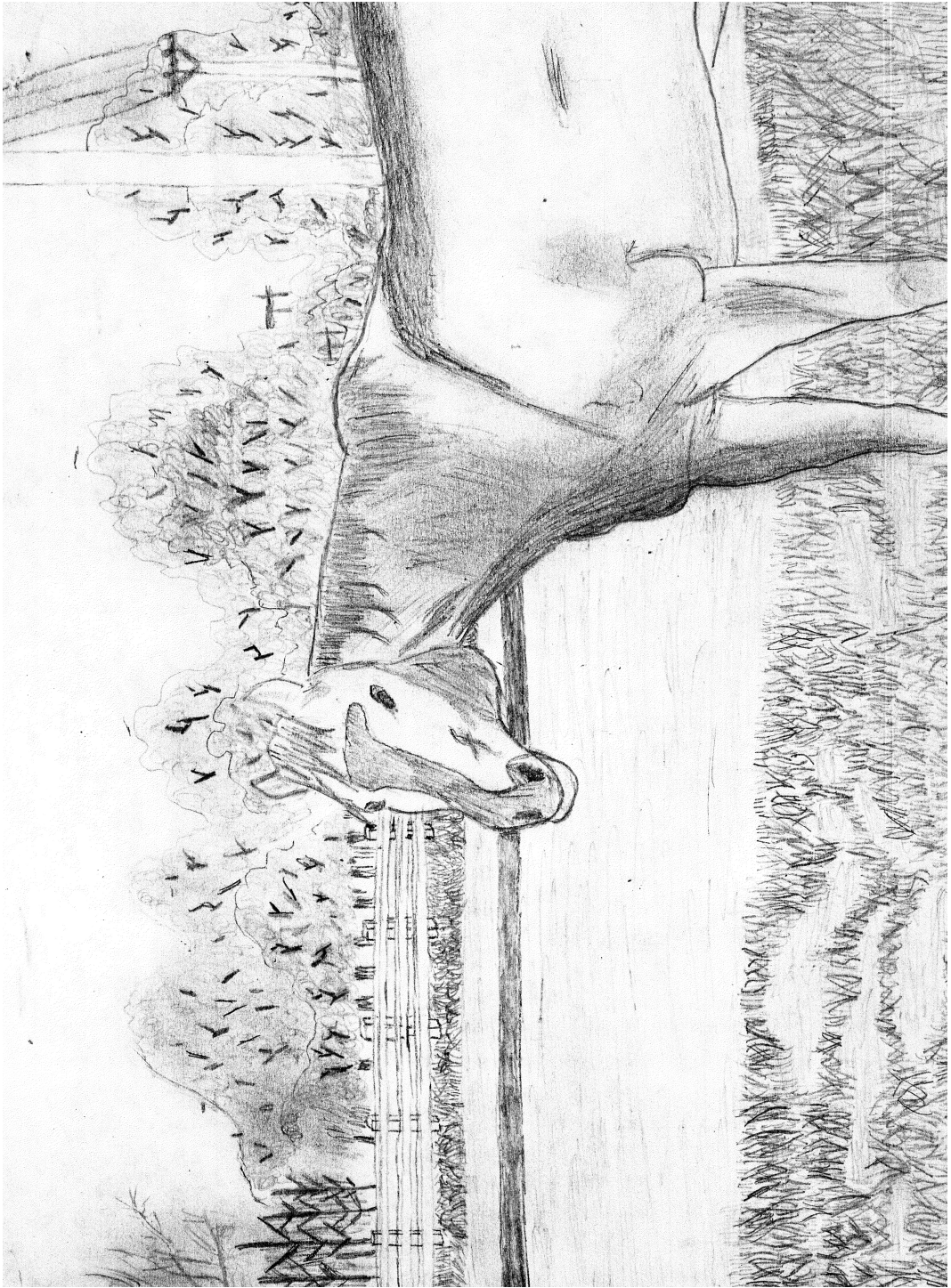
Effective September 1, 2015, Senate Bill 1287 transferred jurisdiction over the Texas Crime Laboratories Accreditation Program from the Texas Department of Public Safety to the Texas Forensic Science Commission (commission). The bill also granted rulemaking authority to the commission. In accordance with the law, 37 TAC §§28.161 - 28.165, concerning complaints, special review, and administrative action, is transferred from Title 37, Part 1 to Title 37, Part 15 and renumbered as 37 TAC §§651.101 - 651.105.

Please refer to Figure: 37 TAC Chapter 28 to see the complete conversion chart.

TRD-201504077

Figure: 37 TAC Chapter 28

<b>Current Rules from:</b> <b>Title 37, Part 1</b> <b>Texas Department of Public Safety</b> <b>Chapter 28. DNA, CODIS, Forensic</b> <b>Analysis and Crime Laboratories</b> <b>Subchapter J. Complaints, Special</b> <b>Review, and Administrative Action</b>		<b>Transferred to:</b> <b>Title 37, Part 15</b> <b>Texas Forensic Science Commission</b> <b>Chapter 651. DNA, CODIS, Forensic</b> <b>Analysis and Crime Laboratories</b> <b>Subchapter B. Complaints, Special</b> <b>Review, and Administrative Action</b>	
<b>Section</b>	<b>Heading</b>	<b>Section</b>	<b>Heading</b>
§28.161	Complaint Process	§651.101	Complaint Process
§28.162	Unscheduled Audit	§651.102	Unscheduled Audit
§28.163	Corrective Action Plan	§651.103	Corrective Action Plan
§28.164	Withdrawal of DPS Accreditation	§651.104	Withdrawal of DPS Accreditation
§28.165	Review by Director	§651.105	Review by Director



# REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (division) will review all sections within the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with §2001.039 of the Texas Government Code:

Chapter 102 - Practices and Procedures - General Provisions

Chapter 104 - General Provisions - Rule Making

Chapter 108 - Fees

Chapter 109 - Workers' Compensation Coverage for State Employees

Chapter 127 - Designated Doctor Procedures and Requirements

Chapter 134 - Benefits--Guidelines for Medical Services, Charges, and Payments

Chapter 142 - Dispute Resolution--Benefit Contested Case Hearing

Chapter 147 - Dispute Resolution--Agreements, Settlements, Commutations

Chapter 148 - Hearings Conducted by the State Office of Administrative Hearings

Chapter 150 - Representation of Parties before the Agency--Qualifications for Representatives

Chapter 152 - Attorneys' Fees

Chapter 165 - Rejected Risk: Injury Prevention Services

The division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

If you wish to comment on whether these rules should be repealed, readopted, or readopted with amendments, you must do so in writing no later than November 5, 2015. Comments received after that date will not be considered.

Comments may be submitted by email at [RuleReviewComments@tdi.texas.gov](mailto:RuleReviewComments@tdi.texas.gov) or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201504068

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 29, 2015

## Adopted Rule Reviews

Texas Emergency Services Retirement System

### Title 34, Part 11

In accordance with Texas Government Code §2001.039, the Board of Trustees of the Texas Emergency Services Retirement System ("Board") has completed review of Chapters 302, 304, 306, 308, and 310 in Part 11, Title 34, Texas Administrative Code.

Notice of the review was placed in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4465). No comments were received in response to the notice. Details on the outcome of this review follow by chapter.

Chapter 302 (General provisions relating to the Texas Emergency Services Retirement System)

The Texas Emergency Services Retirement System (the System) readopts without change the following rules contained in Title 34, Part 11, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist: §302.1, Definitions, and §302.3, Trustee-to-Trustee Transfer.

In the course of the review of Chapter 302, amendments to existing rules were identified as necessary: §302.2, Benefit Distributions; §302.4, Reduction or Revocation of Benefits; §302.5, Correction of Errors; and §302.6, Charge for Certain Contributions Past Due.

The following new rules were identified as necessary: §302.7, Auxiliary Employee; §302.8, Qualified Service; §302.9, Certification of Physical Fitness; §302.10, Nonforfeitable Benefits; and §302.11, Procedures for Plan Qualification.

Chapter 304 (Membership in the Texas Emergency Services Retirement System)

In the course of the review of Chapter 304 in Title 34, Part 11, amendments to existing rules were identified as necessary: §304.1, Participation by a Department.

Chapter 306 (Creditable Service for Members of the Texas Emergency Services Retirement System)

In the course of the review of Chapter 306 in Title 34, Part 11, amendments to existing rules were identified as necessary: §306.1, Prior Service Credit for Members of Participating Departments, and §306.2, Merger of Existing Pension Plan into Pension System.

Chapter 308 (Benefits from the Texas Emergency Services Retirement System)

In the course of the review of Chapter 308 in Title 34, Part 11, amendments to existing rules were identified as necessary: §308.1, Eligibility for Retirement Annuity; §308.2, Service Retirement Annuity; §308.3, Disability Retirement Benefits; and §308.4, Death Benefits.

Chapter 310 (Administration of the Texas Emergency Services Retirement System)

The Texas Emergency Services Retirement System (TESRS) readopts without change the following rules contained in Title 34, Chapter 11, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist: §310.1, Officers of State Board; §310.4, Standard of Conduct for Financial Advisors and Service Providers; §310.9, Periodic Reports; Administrative Penalties; and 310.11, Payments by Pension System.

In the course of the review of Chapter 310 in Title 34, Part 11, amendments to existing rules were identified as necessary: §310.2, Additional

Duties of State Board; §310.5, Local Board of Trustees; §310.6, Local Contributions; §310.8, Billings; and §310.10, Voluntary Payments by Departments.

The Board finds that the reasons for initially adopting each of its rules continues to exist.

All proposed amendments and proposed new rules identified above were published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4442).

TRD-201504015

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Filed: September 28, 2015





# TABLES & GRAPHICS

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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.

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Figure: 4 TAC §10.13

**Acreage Inspection Fees for Certification  
Table 1**

**All Classes**

Agrotricum.....	\$ <u>1.35</u> [.70]
Alfalfa.....	<u>2.40</u> [1.40]
Buckwheat .....	<u>1.35</u> [.70]
Cantaloupe.....	<u>10.65</u> [6.90]
Clover (all kinds) .....	<u>2.40</u> [1.40]
Corn.....	<u>6.75</u> [4.30]
Cotton .....	<u>1.80</u> [1.00]
Cowpea, field bean, flat pea, and partridge pea.....	<u>2.40</u> [1.40]
Flax and rape.....	<u>2.40</u> [1.75]
Forest tree seed.....	<u>10.65</u> [6.90]
Forest tree seedlings.....	<u>82.80</u> [55.00]
Grass (seeded) .....	<u>8.55</u> [5.50]
Grass (vegetatively propagated) .....	<u>20.20</u> [13.25]
(preplant is same)	
Guar .....	<u>1.15</u> [55]
Illinois bundleflower, and englemann daisy .....	<u>6.75</u> [4.30]
Millet (foxtail and pearl).....	<u>2.40</u> [1.40]
Millet (gahi and hybrids).....	<u>5.95</u> [3.75]
Okra and pepper.....	<u>6.75</u> [4.30]
Peanut.....	<u>1.80</u> [1.00]
Rice (Other than hybrids) .....	<u>6.30</u> [4.00]

Rice (hybrids).....	<u>7.80</u> [5.00]
Small grain.....	<u>1.35</u> [0.70]
Sorghum (open-pollinated) .....	<u>2.10</u> [1.20]
Sorghum (commercial hybrids) .....	<u>5.70</u> [3.60]
Sorghum (A, B, & R Lines) .....	<u>16.05</u> [10.50]
Soybean and mungbean .....	<u>1.50</u> [0.80]
Sugarcane .....	<u>10.80</u> [7.00]
Sunflower (commercial hybrids) .....	<u>5.55</u> [3.50]
Sunflower (A & R Lines) .....	<u>15.75</u> [10.30]
Sunflower (open-pollinated), bushsunflower, maximilian.....	<u>5.55</u> [3.50]
Watermelon .....	<u>11.55</u> [7.50]
Other kinds not listed .....	<u>10.80</u> [7.00]

\$100.00 [\$30] application fee for EACH production field applied on for certification and preplant inspection

[Late fee: \$50 per field]

Re-inspection fee: Number of Applications for Pre-Plant: Not less than \$100 [\$50] per field

Figure: 4 TAC §15.4(a)

**Dealer/Wholesalers**

Class	Average Weekly Volume Per Plant	Fee
1	One case or more, but less than 10 cases	<u>\$100</u> [20]
2	10 cases or more, but less than 50 cases	<u>\$100</u> [40]
3	50 cases or more, but less than 100 cases	<u>\$100</u> [60]
4	100 cases or more, but less than 200 cases	<u>\$300</u> [100]
5	200 cases or more, but less than 500 cases	<u>\$300</u> [180]
6	500 cases or more, but less than 1,000 cases	<u>\$500</u> [270]
7	1,000 cases or more, but less than 1,500 cases	<u>\$500</u> [360]
8	1,500 cases or more, but less than 3,000 cases	<u>\$1000</u> [720]
9	3,000 cases or more, but less than 4,500 cases	<u>\$1200</u> [900]
10	4,500 cases or more, but less than 7,000 cases	<u>\$1500</u> [1200]
11	7,000 cases or more, but less than 10,000 cases	<u>\$2100</u> [1800]
12	10,000 cases or more	<u>\$2700</u> [2400]

Figure: 4 TAC §15.4(b)

**Processors**

Class	Average Weekly Volume Per Plant	Fee
1	Less than 250 cases per week	<u>\$100</u> [60]
2	250 cases or more, but less than 600 cases	<u>\$175</u> [120]
3	600 cases or more, but less than 1,500 cases	<u>\$250</u> [210]
4	1,500 cases or more	<u>\$450</u> [420]

Figure: 22 TAC §203.43(c)(4)

**Class A:**

**1<sup>st</sup> Violation: \$250**

**2<sup>nd</sup> Violation: \$750**

**3<sup>rd</sup> Violation: \$1,000 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

1. 651.157 - Failure to have premises open at all times to inspection
2. 651.261 - Failure to conspicuously display holder's license in each location
3. 651.304(a) - Failure by provisional licensee to timely notify Commission of employment
4. 651.304(d) - Failure by FD/Embalmer to prepare affidavit of completed cases if provisional leaves employment
5. 651.351(d)(1) – Failure by Funeral Establishment to meet building, health & safety codes
6. 651.351(d)(3) - Failure by Funeral Establishment to include facilities in which funeral services may be conducted
7. 651.351(d)(4) - Failure by Funeral Establishment to have access to rolling stock
8. 651.351(d)(5) - Failure to maintain preparation room (i.e. have necessary equipment/supplies)
9. 651.351(d)(6) - Failure by Funeral Establishment to include facilities to comply with sanitary codes
10. 651.351(d)(7) / 651.351(f) - Failure by Funeral Establishment to include required casket display
11. 651.403 - Failure to promptly notify Commission of FDIC change
12. 651.404 / 651.454(a)(1) - Failure to provide consumer brochure
13. 651.407 - Failure to retain written consent for two years
14. 651.454(a)(4) - Failure to provide general price information by telephone within reasonable time
15. 651.454(b)(1) - Restrict, hinder, or attempted to restrict or hinder advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers
16. 651.457(a)(3) - Allowed the presence/participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with 651.407
17. 651.503 – Failure to file written report in 15 days as required for “Letter of Warning” finding

**Class B Offenses**

**1<sup>st</sup> Violation: \$500**

**2<sup>nd</sup> Violation: \$1,000**

**3<sup>rd</sup> Violation: Up to \$3,500 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

1. 651.405 - Failure of Funeral Establishment to include all provisions/notifications on GPL
2. 651.4055 - Failure of Cemetery/Crematory to include all provisions/notifications on GPL
3. 651.406 - Failure of Funeral Establishment to include all provisions/notifications on Purchase Agreement

4. 651.4065 - Failure of Cemetery/Crematory to include all provisions/notifications on Purchase Agreement
5. 651.4085 - Failure of FD or agent to be present when casket is interred or entombed unless out of state
6. 651.454(a)(2) - Failure to provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep
7. 651.454(a)(3) - Failure to explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer
8. 651.454(b)(2) - Restricted, hindered, or attempted to restrict or hinder: an agreement for funeral services between a consumer and a funeral director or embalmer
9. 651.454(c) - Solicited business or offered an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation was made under a permit issued under Chapter 154, Finance Code
10. 651.455(a)(1) - Used false statement to mislead or deceive the public regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services
11. 651.455(a)(2) - Used false statement to mislead or deceive the public regarding the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains --
12. 651.455(a)(3) - Used false statement to mislead or deceive the public regarding the airtight or watertight properties of a casket or outer enclosure
13. 651.455(a)(4) - Used false statement to mislead or deceive the public regarding the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment
14. 651.455(a)(5) - Used false statement to mislead or deceive the public regarding an activity regulated under this chapter, including the sale of funeral-related goods or services
15. 651.456(3) - Violated state law regarding transportation, storage, refrigeration, inurnment, interment, or disinterment of dead human body
16. 651.459(a)(3) - Engaged in negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
17. 651.459(a)(5) - Directly or indirectly employed a person to solicit individuals or institutions by whose influence dead human bodies are turned over to a particular funeral director, embalmer, or funeral establishment
18. 651.459(b) - Stated or implied that a customer's concern with the cost of any funeral service or funeral merchandise was improper or indicated a lack of respect for the deceased
19. 651.460(a)(1) - Failed to provide a customer with a purchase agreement as required by Section 651.406
20. 651.460(a)(2) - Failed to retain and make available to the Commission copies of all price lists, written notices, embalming documents, and memoranda of agreement required for two years after the date of distribution or signing
21. 651.460(a)(5) - Associated with a funeral establishment, whether licensed or not, and failed to comply with Chapter 651 or Commission rule
22. 651.460(a)(6) - Knowingly violates Section 711.002(l), Health and Safety Code
23. 651.460(b)(1) - Failure by a funeral establishment to substantially comply with requirements of Section 651.351 (i.e., have a preparation room at all)

**Class C Offenses:**

**1<sup>st</sup> Violation: \$1,000**

**2<sup>nd</sup> Violation: \$1,500**

**3<sup>rd</sup> Violation: Up to \$4,000 and/or sanction**

**4+ Violation: Up to \$5,000 and/or sanction**

1. 651.306 - FD/Embalmer is not physically present when supervising provisional licensee
2. 651.401(c) - Unlicensed person commits first call violations
3. 651.407 - Use of dead human body by mortuary school without written consent
4. 651.451(7) - Permitted another to use the person's license or registration to perform an activity regulated under 651
5. 651.453 - Advertised in misleading or deceptive way or used the name of person who is falsely represented to be the license holder
6. 651.456(1) - Took custody of body without permission
7. 651.456(2) - Refused to promptly surrender a body to authorized agent (or representative)
8. 651.457(a)(1) - Embalmed a body without receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or making a documented reasonable effort over a period of at least three hours to obtain the permission
9. 651.457(a)(4) - Placed a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license or provisional embalmer's license
10. 651.458 - Made a distinction in providing funeral information to a customer
11. 651.459(a)(1) - Wilfully made a false statement on a death certificate, including forgery of a physician's signature; or a document required by this law/rule
12. 651.459(a)(2) - Engaged in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer
13. 651.459(a)(3) - Engaged in dishonest conduct, wilful conduct, in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
14. 651.459(a)(4) - Caused the execution of a document by the use of fraud, deceit, or misrepresentation
15. 651.459 (a)(6) - Misappropriated funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that created an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund
16. 651.459(c) - FDIC fails to provide a funeral director or an embalmer for direction or personal supervision for a first call
17. 651.460(a)(4) - Allowed the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407
18. 651.460(b)(2) - A funeral establishment or a person acting on behalf of the funeral establishment violated Chapter 193 or 361, Health and Safety Code
19. 651.460(b)(3) - A funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violated Chapter 154, Finance Code, or a rule adopted under that chapter



**Class D:**

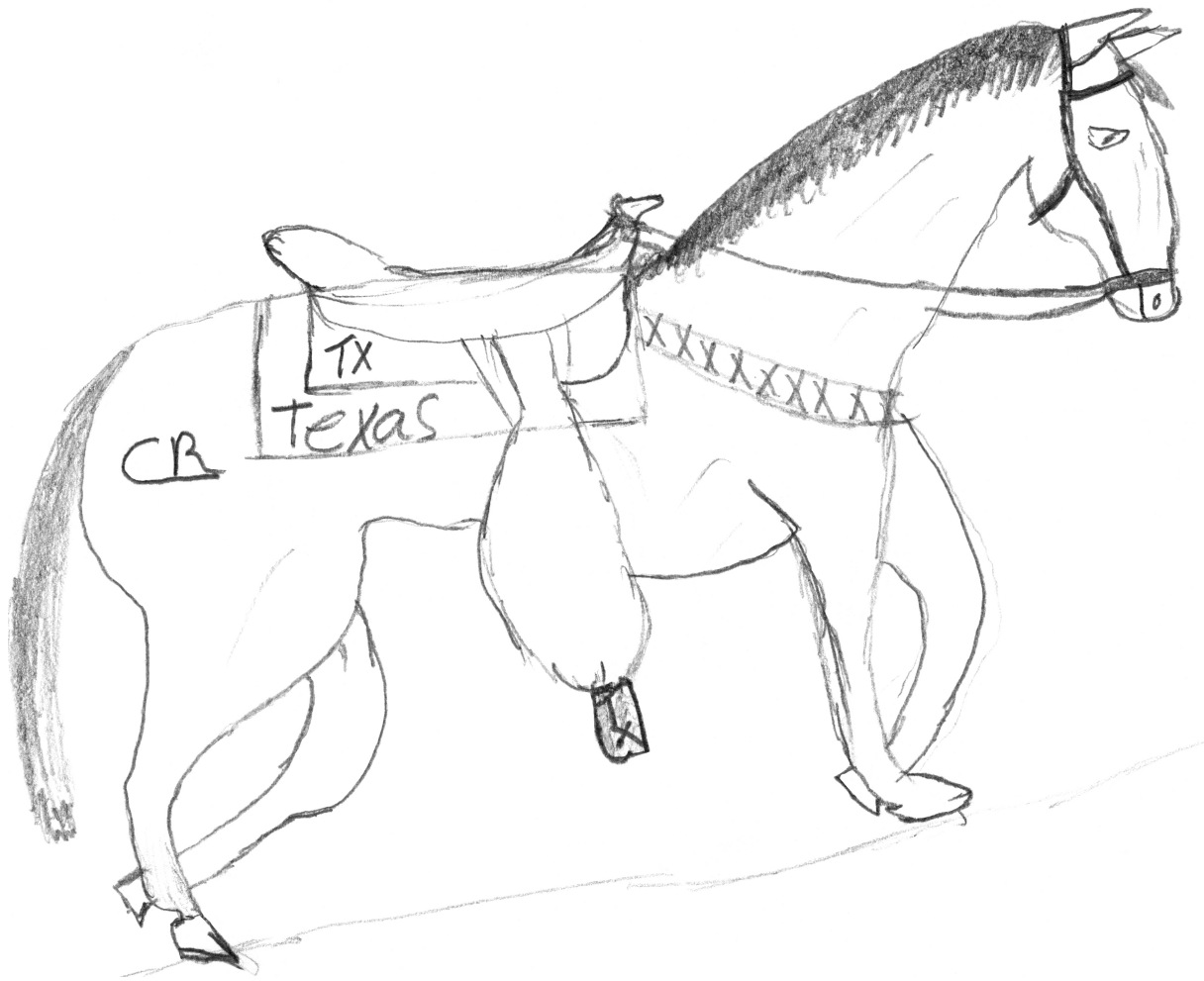
**1<sup>st</sup> Violation: Up to \$5,000 and/or sanction**

**2<sup>nd</sup> Violation: Up to \$5,000 and sanction**

**3<sup>rd</sup> Violation: Up to \$5,000 and sanction**

**4+ Violation: \$5,000 and Revocation**

1. 651.452(1) - Conviction of misdemeanor related to the practice of funeral directing or embalming or of a felony
2. 651.452(2-3) – Ongoing/current substance abuse or determined by court to be of unsound mind
3. 651.460 (a)(3) - Fails to comply with Order of Commission or pay administrative penalty
4. 651.251 - Engaged or professed to be engaged in business of funeral directing/embalming unless licensed by Commission
5. 651.351(a) - Funeral Establishment may not conduct business unless licensed
6. 651.352 - Commercial embalming facility may not conduct business unless licensed
7. 651.353 - Cemetery may not conduct business unless licensed and not exempt under (d)
8. 651.656 - Crematory may not conduct business unless licensed
9. 651.451(1) - Presented to Commission license, certificate, registration, or diploma that was illegally or fraudulently obtained
10. 651.451(2) - Used fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination
11. 651.451(3) - Purchased, sold, bartered, or used, or offered to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the Commission for a license or registration issued under this chapter
12. 651.451(4) - Altered, with fraudulent intent, a license, registration, or certificate issued under Chapter 651 or a transcript of a license, registration, or certificate
13. 651.451(5) - Used a license, registration, certificate, or diploma issued or a transcript of a license, registration, certificate, or diploma that was fraudulently purchased, issued, counterfeited, or materially altered
14. 651.451(6) - Impersonated a funeral director, embalmer, or other person regulated under 651
15. 651.451(8) - Presented false certification of work done as a provisional license holder
16. 651.459 (a)(7) - Performed acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performed acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts



# 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.

## Texas Department of Agriculture

Request for Applications--Surplus Agricultural Serving Students Grant Program

### Statement of Purpose.

Pursuant to the Texas Agriculture Code, Chapter 21, and in accordance with House Bill 1, 84th Regular Legislative Session, 2015, (General Appropriations Act) Article VI, page 8, Rider 27, the Texas Department of Agriculture (TDA) requests applications for projects to be completed during the period from November 1, 2015 through October 31, 2016, that provide surplus agricultural products to low income students and their families and offer corresponding educational activities.

### Eligibility.

Grant applications will be accepted from any organization able to effectively administer a program that provides surplus agricultural products to low income students and their families and offer corresponding educational activities. This may include, but is not limited to non-profit organizations that have been determined by the Internal Revenue Service (IRS) to be exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, Texas independent school districts or charter schools.

For purposes of this application, the term "agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, for human consumption, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; (4) wildlife processed for food or by-products; and (5) fruit, vegetables and grains. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals. TDA will follow Section 2155.444 of the Texas Government Code, relating to preference to Texas and United States products and Texas services, in making awards under this request for applications.

### Funding Parameters.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, Applicants will be informed accordingly.

Cumulative funding is limited to a maximum of \$600,000. Grant award amounts may vary. Funding is limited to the operation of a program that coordinates the distribution of surplus agricultural products to low-income students and their families.

### Application Requirements

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

### Submission Information.

Only materials actually received by TDA by 5:00 p.m. on Thursday, October 22, 2015 will be reviewed as part of the proposal.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695, or by email at [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

TRD-201504076

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: September 30, 2015

## Office of the Attorney General

### Modification of Federal Consent Decree

Notice is hereby given by the State of Texas of the following proposed modification of a Federal Consent Decree which resolved an environmental enforcement lawsuit under the Texas Water Code and Health & Safety Code and the Federal Clean Water Act. Pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed modification of the Consent Decree. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed modification of the Consent Decree if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: *The United States of America and the State of Texas v. Harris County Municipal Utility District No. 50*, Civil Action Number 4:00-cv-01931 in the United States District Court for the Southern District of Texas.

Nature of Defendant's Operations: Harris County Municipal Utility District No. 50 ("Harris County MUD 50") owns and operates a publicly-owned sewage treatment works located at 922 Magnolia Street, Barrett Station, Harris County, Texas.

Proposed Modification of the Consent Decree: The Consent Decree was entered on September 22, 2000, and contains an injunction which requires Harris County MUD 50 to identify and permanently seal or eliminate any cross-connections in its system, to submit and implement a preventive maintenance program, to submit and implement a sewer overflow action plan, to correct all problems with the collection system, and to assess and correct any problems with the treatment system. The proposed modification extends the deadlines for Harris County MUD 50 to complete a new wastewater treatment plant to comply with the Consent Decree's requirement that it cease sewage overflows. The new wastewater treatment plant will allow Harris County MUD 50 to increase its treatment capacity.

For a complete description of the proposed modification, the complete proposed Modification of the Consent Decree should be reviewed. Requests for copies and written comments regarding the modification of the Consent Decree should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201503980  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: September 24, 2015

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/05/15 - 10/ 11/15 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 10/05/15 - 10/11/15 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.

TRD-201504049  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 29, 2015

◆ ◆ ◆  
**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 9, 2015. 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 9, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075

provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: A S GOLDEN INCORPORATED dba Temple Food Mart; DOCKET NUMBER: 2015-0920-PST-E; IDENTIFIER: RN102480217; LOCATION: Temple, Bell 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 §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Austin Presidio Residential, LLC; DOCKET NUMBER: 2015-0798-EAQ-E; IDENTIFIER: RN106873615; LOCATION: Austin, Williamson County; TYPE OF FACILITY: multifamily residential construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing any regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: \$18,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-3087, (512) 339-2929.

(3) COMPANY: Bonnie Crider dba Criders Frio River Resort; DOCKET NUMBER: 2015-1008-PWS-E; IDENTIFIER: RN101259372; LOCATION: Leakey, Uvalde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(B) and §290.122(a)(2) and (f) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) for total coliform and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the acute MCL; 30 TAC §290.122(b)(2)(B), (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 comply with the MCL for total coliform and regarding the failure to conduct raw groundwater source monitoring; PENALTY: \$630; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Haskell; DOCKET NUMBER: 2015-0814-PWS-E; IDENTIFIER: RN101429561; LOCATION: Haskell, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$762; ENFORCEMENT COORDINATOR: Epi Villareal, (817) 991-8546; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Delaware Basin JV Gathering LLC; DOCKET NUMBER: 2015-0966-AIR-E; IDENTIFIER: RN105876437; LOCATION: Pyote, Ward County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(c), Federal Operating Permit Number O3439/Oil and Gas General Operating Permit Number 514 site-wide Requirements (b)(1) and (2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report within 30 days after the end of the reporting period; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 9900 West IH-20, Suite 100 Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: Dupre Logistics LLC; DOCKET NUMBER: 2015-1050-PST-E; IDENTIFIER: RN100648096; LOCATION: Channelview, Harris County and Fort Worth, Tarrant 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 covered by a valid, current TCEQ delivery certificate; PENALTY: \$7,608; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2015-0595-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1961, Special Terms and Conditions Number 15, and New Source Review Permit Number 4351, Special Condition Number 17 (previously Number 16), by failing to conduct monthly volatile organic compounds monitoring in accordance with the requirements of the TCEQ Sampling Procedures Manual, Appendix P; PENALTY: \$63,839; Supplemental Environmental Project offset amount of \$63,839; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2015-0509-AIR-E; IDENTIFIER: RN100219500; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §§106.263(g), 106.433(8), and 122.143(4), Federal Operating Permit (FOP) Number O1710, Special Terms and Conditions Number 4, Permit by Rule Registration Number 108746, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records; 30 TAC §122.145(2)(C) and §122.143(4), FOP Number O1710, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §122.145(2)(A) and §122.143(4), FOP Number O1710, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$15,310; Supplemental Environmental Project offset amount of \$12,248; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: In-N-Out Burgers; DOCKET NUMBER: 2015-1023-EAQ-E; IDENTIFIER: RN108346305; LOCATION: Austin, Travis County; TYPE OF FACILITY: commercial project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-3087, (512) 339-2929.

(10) COMPANY: JJM DEVELOPMENT, INCORPORATED; DOCKET NUMBER: 2015-0734-PWS-E; IDENTIFIER: RN101273753; LOCATION: Canutillo, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(b)(3)(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 comply with the maximum contaminant level for arsenic; 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 submit the Disinfectant Level Quarterly Operating Reports (DLQORs) and failing to provide public notification and submit a copy of notification to the executive director regarding the failure to collect a routine total coliform sample;

30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90710139; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12575; PENALTY: \$926; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(11) COMPANY: Lower Valley Water District; DOCKET NUMBER: 2015-0771-PWS-E; IDENTIFIER: RN101185676; LOCATION: Fabens, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees, and/or any associated late fees, for TCEQ Financial Account Number 90710095 for Fiscal Years 2014 and 2015; PENALTY: \$300; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: MANAKAMANA DHARSHAN INCORPORATED dba Mr. Beegs; DOCKET NUMBER: 2015-0990-PST-E; IDENTIFIER: RN100867977; LOCATION: Houston, Fort Bend 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: \$2,235; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Martin County Fresh Water Supply District 1; DOCKET NUMBER: 2015-0848-PWS-E; IDENTIFIER: RN101398089; LOCATION: Lenora, Martin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number P0337; PENALTY: \$660; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(14) COMPANY: McWane, Incorporated; DOCKET NUMBER: 2015-0895-IWD-E; IDENTIFIER: RN102679867; LOCATION: Swan, Smith 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 WQ0001793000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 004, by failing to comply with permitted effluent limitations; PENALTY: \$28,800; Supplemental Environmental Project offset amount of \$11,520;

ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: MJR TRUCK LINES INCORPORATED; DOCKET NUMBER: 2015-0501-MLM-E; IDENTIFIER: RN108173915; LOCATION: Atascosa, Bexar County; TYPE OF FACILITY: sand and gravel freight transportation business; RULES VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to mark or clearly label used oil storage containers with the words "Used Oil;" 30 TAC §324.6 and 40 CFR §264.173(a) and §279.22(a), by failing to keep the containers containing used oil closed except for when adding or removing used oil; 30 TAC §324.1 and §324.4(1) and 40 CFR §279.22(d), by failing to prevent the disposal of used oil on the ground; 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$3,285; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096

(16) COMPANY: Noltex L.L.C.; DOCKET NUMBER: 2015-0967-AIR-E; IDENTIFIER: RN101049518; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1301, Special Terms and Conditions Number 12, and New Source Review Permit Number 19074, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$4,012; Supplemental Environmental Project offset amount of \$1,605; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: R. R. Donnelley and Sons Company; DOCKET NUMBER: 2015-0780-AIR-E; IDENTIFIER: RN100215011; LOCATION: Houston, Harris County; TYPE OF FACILITY: offset lithographic printing; RULES VIOLATED: 30 TAC §122.241(b) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit renewal application at least six months prior to the expiration of a Federal Operating Permit (FOP); and 30 TAC §122.143(4) and §122.146(2), FOP Number O3348, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$12,563; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: S.S.P. BUSINESS, INCORPORATED dba Country Food Mart; DOCKET NUMBER: 2015-0794-PST-E; IDENTIFIER: RN102716875; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tank (UST); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to provide an amended registration

for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition; PENALTY: \$8,589; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: SAND LAND, INCORPORATED; DOCKET NUMBER: 2015-1247-WQ-E; IDENTIFIER: RN105328736; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Shumard Corporation; DOCKET NUMBER: 2015-1001-AIR-E; IDENTIFIER: RN101340818; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: fiberglass manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2785, Special Terms and Conditions Number 9, by failing to submit the Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: SOUTHWEST LTC - CORPUS, LLC dba Vista Del Mar Health and Rehabilitation; DOCKET NUMBER: 2015-0886-PST-E; IDENTIFIER: RN104072772; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: skilled nursing and rehabilitation facility; 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; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$6,943; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Terry J. Balch; DOCKET NUMBER: 2015-0965-MLM-E; IDENTIFIER: RN107572794; LOCATION: Burlington, Milam County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; PENALTY: \$2,830; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2015-0765-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1930, Special Terms and Conditions Num-

ber 6, and New Source Review Permit Number 71546, Special Conditions Number 1, by failing to comply with a maximum allowable emissions rate; PENALTY: \$30,000; Supplemental Environmental Project offset amount of \$12,000; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: WESTEX CAPITAL, LIMITED; DOCKET NUMBER: 2015-0883-PST-E; IDENTIFIER: RN105270870; LOCATION: Runge, Karnes 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is identical to the UST identification number listed on the UST registration; 30 TAC §334.42(i), by failing to inspect all sumps including dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.75(a), by failing to report a release to the TCEQ within 24 hours of the discovery; PENALTY: \$9,306; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: WTR Real Estate Holdings, Limited Company dba Heartland House; DOCKET NUMBER: 2015-1082-PWS-E; IDENTIFIER: RN107135956; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) of 10 milligrams per liter (mg/L) for nitrate; and 30 TAC §290.106(f)(3) and THSC, §341.0315(c), by failing to comply with the MCL of 0.05 mg/L for selenium based on the running annual average; PENALTY: \$585; ENFORCEMENT COORDINATOR: Michelle Garza, (210) 403-4076; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201504044

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 29, 2015



#### Enforcement Orders

An agreed order was entered regarding ROLLINS HILLS ESTATES WATER SUPPLY CORPORATION, Docket No. 2014-0920-PWS-E on September 21, 2015 assessing \$710 in administrative penalties with \$142 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petroleum Group, LLC dba TPG 242 05, Docket No. 2014-1669-PST-E on September 21, 2015 assessing \$3,831 in administrative penalties with \$766 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Portland, Docket No. 2014-1797-PWS-E on September 21, 2015 assessing \$4,373 in administrative penalties with \$874 deferred.

Information concerning any aspect of this order may be obtained by contacting Epi Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BlackBrush O & G, LLC, Docket No. 2015-0074-AIR-E on September 21, 2015 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exflur Research Corporation, Docket No. 2015-0104-AIR-E on September 21, 2015 assessing \$4,875 in administrative penalties with \$975 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 MD America Energy, LLC, Docket No. 2015-0134-WR-E on September 21, 2015 assessing \$750 in administrative penalties with \$150 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 OUTSIDE NEPAL, LLC dba Oate Food Mart, Docket No. 2015-0198-PST-E on September 21, 2015 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lufkin Industries, LLC, Docket No. 2015-0231-IHW-E on September 21, 2015 assessing \$5,625 in administrative penalties with \$1,125 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 METROPLEX SAND & GRAVEL, LTD., Docket No. 2015-0285-WQ-E on September 21, 2015 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald S. Fletcher dba Cattail Creek Mobile Home Park, Docket No. 2015-0331-WQ-E on September 21, 2015 assessing \$1,650 in administrative penalties with \$330 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817)

588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Services, Inc., Docket No. 2015-0334-IHW-E on September 21, 2015 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR CREST RETAILER'S, INC. dba Blossom Food Mart, Docket No. 2015-0369-PST-E on September 21, 2015 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Merkel, Docket No. 2015-0377-MWD-E on September 21, 2015 assessing \$2,885 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PACIFIC BUSINESS, LLC. dba Pride Food Store, Docket No. 2015-0380-PST-E on September 21, 2015 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Rezakhani dba Omar's Food Mart, Docket No. 2015-0383-PST-E on September 21, 2015 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Miguel Alejandro Gonzalez, Docket No. 2015-0400-MLM-E on September 21, 2015 assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ropesville, Docket No. 2015-0408-PWS-E on September 21, 2015 assessing \$1,051 in administrative penalties with \$210 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 Hondo Independent School District, Docket No. 2015-0464-PST-E on September 21, 2015 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millennium Exploration Company LLC, Docket No. 2015-0489-AIR-E on September 21, 2015 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 168, Docket No. 2015-0520-PST-E on September 21, 2015 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 242 BUSINESS INC. dba Time Mart 16, Docket No. 2015-0521-PST-E on September 21, 2015 assessing \$5,025 in administrative penalties with \$1,005 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CSA Materials, Inc., Docket No. 2015-0524-WQ-E on September 21, 2015 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Elkhart, Docket No. 2015-0568-PWS-E on September 21, 2015 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ongley Trucking, Inc., Docket No. 2015-0613-PST-E on September 21, 2015 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AZA & IZA INC. dba Hobby Food Mart, Docket No. 2015-0614-PST-E on September 21, 2015 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIG CHIEF DISTRIBUTING CO., Docket No. 2015-0648-PST-E on September 21, 2015 assessing \$1,225 in administrative penalties with \$245 deferred.



Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luna Road Recyclers, LLC, Docket No. 2015-0653-AIR-E on September 21, 2015 assessing \$1,125 in administrative penalties with \$225 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 LISANTI REALTY CORPORATION dba Lisanti Food Service, Docket No. 2015-0671-PST-E on September 21, 2015 assessing \$4,875 in administrative penalties with \$975 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patricia Horak dba Needville Gin, Docket No. 2015-0686-AIR-E on September 21, 2015 assessing \$1,188 in administrative penalties with \$237 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 SKB Enterprises, Inc. dba Pat Booker Texaco, Docket No. 2015-0688-PST-E on September 21, 2015 assessing \$2,568 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding All Valley U Pull It, LLC, Docket No. 2015-0703-WQ-E on September 21, 2015 assessing \$938 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILL COUNTRY CAMP, Docket No. 2015-0704-MWD-E on September 21, 2015 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRAWDAD'S INC. dba Crawdad's 2 Lumberton, Docket No. 2015-0714-PST-E on September 21, 2015 assessing \$2,053 in administrative penalties with \$410 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E-H Bar Land and Oil, LLC, Docket No. 2015-0738-OSS-E on September 21, 2015 assessing \$225 in administrative penalties with \$45 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RGI MATERIALS, Inc., Docket No. 2015-0790-WQ-E on September 21, 2015 assessing \$938 in administrative penalties with \$187 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 Trailcrest Office, LLC, Docket No. 2015-0835-EAQ-E on September 21, 2015 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jim M. Powell, Docket No. 2015-1006-WOC-E on September 21, 2015 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding R. C. McBryde Oil Company, Docket No. 2015-1030-PST-E on September 21, 2015 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Roberto Nahum Rivera, Docket No. 2015-1044-WOC-E on September 21, 2015 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tenaha, Docket No. 2014-0195-MLM-E on September 25, 2015 assessing \$36,589 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UltraClean Electropolish, Inc., Docket No. 2014-0579-IHW-E on September 25, 2015 assessing \$21,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2014-0837-AIR-E on September 25, 2015 assessing \$72,905 in administrative penalties with \$14,581 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 Centerville, Docket No. 2014-0864-MWD-E on September 25, 2015 assessing \$41,662 in administrative penalties with \$8,332 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELIZA INTERNATIONAL LLC dba Short Stop, Docket No. 2014-1129-PST-E on September 25, 2015 assessing \$17,273 in administrative penalties with \$3,454 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Natividad Hernandez dba Bayer Road Salvage Yard, Docket No. 2014-1210-WQ-E on September 25, 2015 assessing \$15,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAINT-GOBAIN ABRA-SIVES, INC., Docket No. 2014-1288-IHW-E on September 25, 2015 assessing \$35,733 in administrative penalties with \$7,146 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Alihemati dba Station 66, Docket No. 2014-1312-PST-E on September 25, 2015 assessing \$23,417 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.

An agreed order was entered regarding MARINA QUEST, INC. dba Texoma Marina and Resort, Docket No. 2014-1715-PWS-E on September 25, 2015 assessing \$830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 Pecos County, Docket No. 2014-1730-PWS-E on September 25, 2015 assessing \$157 in administrative penalties with \$157 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.

A default order was entered regarding Conrad D. Liles, Docket No. 2014-1773-LII-E on September 25, 2015 assessing \$578 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 Odell Anderson dba AAA Anderson, Docket No. 2014-1791-MSW-E on September 25, 2015 assessing \$11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jasper County Water Control and Improvement District No. 1, Docket No. 2014-1823-MWD-E on September 25, 2015 assessing \$21,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2014-1881-AIR-E on September 25, 2015 assessing \$15,188 in administrative penalties with \$3,037 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 Lucky Lady Oil Company, Docket No. 2015-0033-PST-E on September 25, 2015 assessing \$41,840 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 Roger Guajardo dba Roger's Tire and Supply, Docket No. 2015-0054-MSW-E on September 25, 2015 assessing \$7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, 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 Tonda Jolane Helms dba Spring Lake Mobile Home Park, Docket No. 2015-0066-MWD-E on September 25, 2015 assessing \$16,500 in administrative penalties with \$3,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PACIFICO TRANSPORTATION, LTD., Docket No. 2015-0117-MLM-E on September 25, 2015 assessing \$31,365 in administrative penalties with \$6,273 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 Monarch Utilities I.L.P., Docket No. 2015-0491-PWS-E on September 25, 2015 assessing \$501 in administrative penalties with \$501 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bryson, Docket No. 2015-0612-PWS-E on September 25, 2015 assessing \$160 in administrative penalties.

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.

TRD-201504071

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2015



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 9, 2015**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 9, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ALMEDA OST MED CENTER, L.L.C. d/b/a Med Center Shell; DOCKET NUMBER: 2015-0412-PST-E; TCEQ ID NUMBER: RN101382745; LOCATION: 2802 Old Spanish Trail, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC

§334.50(b)(1)(A), by failing to monitor a UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$11,712; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Forester Estates, LLC; DOCKET NUMBER: 2013-0450-MLM-E; TCEQ ID NUMBERS: RN103118980 and RN101188753; LOCATION: approximately 800 feet north of County Road 128 and approximately 2,000 feet east of County Road 143 (wastewater treatment plant (WWTP)), the intersection of County Road 128 and County Road 143 off Highway 35 South, Brazoria (public water system (PWS) Facility), Brazoria County; TYPE OF FACILITY: a WWTP and a PWS; RULES VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013865001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0013865001, Sludge Provisions, by failing to timely submit an annual sludge report; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0013865001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121(c), 30 TAC §305.125(1), and TPDES Permit Number WQ0013865001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluents limits; TWC, §26.121(c), 30 TAC §305.125(1), and TPDES Permit Number WQ0013865001, Permit Conditions Number 2.d., by failing to prevent the unauthorized discharge of sludge into the receiving stream; 30 TAC §290.106(c) and (e), and §290.107(c) and (e), by failing to monitor and/or provide the results of triennial metals and synthetic organic contaminants sampling to the executive director; 30 TAC §290.106(c) and (e), by failing to monitor and/or provide the results of annual nitrate monitoring to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Customer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the executive director by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to discharge wastewater; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees, including late fees and cost recovery fees; PENALTY: \$41,035; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Nerro Supply, LLC; DOCKET NUMBER: 2014-1602-MWD-E; TCEQ ID NUMBER: RN102342268; LOCATION: approximately 1.5 miles southeast of the intersection of Farm-to-Market Roads 2354 and 1405, on the south side of Farm-to-Market Road 2354, Baytown, Chambers County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013643001 Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0013643001 Monitoring

Requirements Number 7.c., by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Houston regional office and the Enforcement Division within five working days of becoming aware of the non-compliance; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013643001 Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment and disposal are properly operated and maintained; PENALTY: \$70,625; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: RAS BUSINESS LLC d/b/a Shell Food Mart; DOCKET NUMBER: 2014-1713-PST-E; TCEQ ID NUMBER: RN101901577; LOCATION: 3118 Edgar Brown Drive, Orange, Orange County; TYPE OF FACILITY: underground storage tank (UST) system with a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.248(1), by failing to ensure at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the vapor recovery system; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever comes first; THSC, §382.085(b) and 30 TAC §115.242(d)(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.242(d)(3), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §334.8(c)(5)(A)(iii), by failing to have a current, valid TCEQ delivery certificate posted; 30 TAC §334.45(c)(3)(A), by failing to securely anchor all emergency shutoff valves (also known as shear or impact valves) at the bases of the dispensers; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: \$5,177; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201504046

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 29, 2015



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring

the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 9, 2015**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 9, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: FALFURRIAS ENTERPRISES, INC. d/b/a Kwik Pantry FFP 5149; DOCKET NUMBER: 2014-1298-PST-E; TCEQ ID NUMBER: RN102347689; LOCATION: 101 South State Highway 359, Mathis, San Patricio County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,880; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: INSHALA CHARITIES, INC.; DOCKET NUMBER: 2014-1883-PST-E; TCEQ ID NUMBER: RN102398427; LOCATION: 2525 Southmore Avenue, Pasadena, Harris County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the date of occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$8,750; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: NAS STAR ENTERPRISES, INC. d/b/a 909 Grocery; DOCKET NUMBER: 2015-0346-PST-E; TCEQ ID NUMBER:

RN104710785; LOCATION: 14586 Farm-to-Market Road 1485, Conroe, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: SERENE SCENES, LLC; DOCKET NUMBER: 2015-0200-LII-E; TCEQ ID NUMBER: RN106371180; LOCATION: Travis County; TYPE OF FACILITY landscaping business; RULES VIOLATED: 30 TAC §344.34(a), by using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued; TWC, §37.003, Texas Occupations Code §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and TWC, §37.003 and 30 TAC §30.5(b), by advertising or representing itself to the public as a holder of a license or registration without possessing a current license or registration or employing an individual who holds a current license; PENALTY: \$1,713; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 239-3400.

(5) COMPANY: Thomas E. Rutherford, William R. Rutherford, and Edina Bendure; DOCKET NUMBER: 2014-0053-MLM-E; TCEQ ID NUMBER: RN106643950; LOCATION: on the east side of Cowan Road about one mile past the intersection with Buckhorn Cemetery Road, Moody, Bell County; TYPE OF FACILITY: property; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to prohibit the burning of municipal solid waste (MSW) for the purpose of disposal; 30 TAC §330.15(c), by failing to prevent unauthorized disposal of MSW; and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tire in lockable containers; PENALTY: \$16,129; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201504047

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 29, 2015



#### Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed SIP revision would satisfy the anti-backsliding obligations for the revoked one-hour and 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS) and ensure that the substance of the redesignation requirements is met for the Dallas-Fort

Worth (DFW) area. This redesignation substitute would take the place of a redesignation request and maintenance plan, which the EPA normally requires under a standard that has not been revoked.

The commission will hold a public hearing on this proposal in Arlington on October 29, 2015 at 2:00 p.m. in the Council Chambers at the Arlington City Hall Building, 101 W. Abram Street. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer-Nelson, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Written comments may be submitted to Melanie Rousseau, MC 206, Air Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6188. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/index.cfm>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments pertaining to the proposed DFW Area Redesignation Substitute for the One-Hour and 1997 Eight-Hour Ozone NAAQS SIP revision should reference Project Number 2015-002-SIP-NR. The comment period closes October 30, 2015. Copies of the proposed SIP revision can be obtained from the commission's website at: <http://www.tceq.texas.gov/airquality/sip/dfw/dfw-lat-est-ozone>. For further information, please contact Melanie Rousseau, Air Quality Division, (512) 239-0707.

TRD-201504052

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 29, 2015



#### Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed SIP revision would satisfy the anti-backsliding obligations for the revoked 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) and ensure that the substance of the redesignation requirements is met for the Houston-Galveston-Brazoria (HGB) area. This redesignation substitute would take the place of a redesignation request and maintenance plan, which the EPA normally requires under a standard that has not been revoked.

The commission will hold a public hearing on this proposal in Houston on October 26, 2015, at 2:00 p.m. in Conference Room B of the Houston-Galveston Area Council, 3555 Timmons Lane. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer-Nelson, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Written comments may be submitted to Lola Brown, MC 206, Air Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6188. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/index.cfm>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments pertaining to the proposed HGB Area Redesignation Substitute for the 1997 Eight-Hour Ozone NAAQS SIP revision should reference Project Number 2015-001-SIP-NR. The comment period closes October 30, 2015. Copies of the proposed SIP revision can be obtained from the commission's website at: <http://www.tceq.texas.gov/airquality/sip/hgb/hgb-latest-ozone>. For further information, please contact Lola Brown, Air Quality Division, (512) 239-0348.

TRD-201504053

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 29, 2015



#### Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit Number WQ0015381001

APPLICATION AND PRELIMINARY DECISION. Nantucket Housing, LLC, 9219 Katy Freeway, Suite 264, Houston, Texas 77024, a land developer, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015381001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. TCEQ received this application on May 7, 2015.

The facility will be located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429. The treated effluent will be discharged to an enclosed stormwater pipe; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The designated uses for Segment No. 1009 are high aquatic life use, public water supply, and primary contact recreation. In accordance with Title 30 Texas Administrative Code Section 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected Cypress Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cy-

press, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.952777&lng=-95.634444&zoom=13&type=r>

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments about this application. The TCEQ will hold a public meeting on this application because a local legislator requested the meeting and the Executive Director of the TCEQ has determined that there is a significant degree of public interest in the application. The purpose of the public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing.

The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application and the Executive Director's preliminary decision, but these informal comments made during the informal period will not be considered by the Commissioners before reaching a decision on the permit and no formal response will be made. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all timely, relevant and material, or significant formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and provides a mailing address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted.

The Public Meeting is to be held:

Thursday, November 12, 2015 at 7:00 p.m.

Spillane Middle School

13403 Woods-Spillane Boulevard

Cypress, Texas 77429

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name; address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's

location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the meeting to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1 (800) 687-4040. Si desea información en español, puede llamar al 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). All written public comments must be received by the Office of the Chief Clerk at the noted address within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

Further information may also be obtained from Nantucket Housing, LLC at the address stated above or by calling Ms. Katherine Hallaway, P.E., Brown & Gay Engineers, Inc., at (713) 488-8251.

Persons with disabilities who need special accommodations at the meeting should call the Office of Public Assistance at the number above or 1 (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201504055  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 29, 2015



Notice of Public Meeting for TPDES Permit for Municipal Wastewater TPDES Permit Number WQ0015095001

APPLICATION. 633-4S Ranch, Ltd. and Stahl Lane, Ltd., 8023 Vantage Dr., Suite 1200, San Antonio, Texas 78230, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to convert TCEQ Texas Land Application Permit No. WQ0015095001 to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00015095001 and to change the method of disposal from land application to surface water discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The current permit authorizes the disposal 180,000 gallons per day of treated domestic wastewater via public access subsurface drip irrigation of 41.32 acres.

The facility will be located approximately 6,500 feet north-northeast of the intersection of Smithson Valley Road and Farm-to-Market Road 1863, approximately 1,200 feet north of the confluence of Lewis Creek and Dripping Springs Creek in Comal County, Texas 78163. The treated effluent will be discharged to an unnamed tributary to Lewis Creek; thence to Lewis Creek; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary to Lewis Creek and limited aquatic life use for Lewis Creek.

Nutrients are listed as a screening concern in Segment No. 1908 in the 2012 Texas Water Quality Inventory. Based on Segment No. 1908 screening concerns for nutrients and nutrient screening results, a permit limit of 0.5 mg/L total phosphorous is recommended to help preclude degradation to Lewis Creek and Upper Cibolo Creek.

The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The use of aquifer protection applies to the contributing, recharge, and transition zones of the Edwards Aquifer for Segment No. 1908. In accordance with Title 30 Texas Administrative Code Section 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Upper Cibolo Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.765555&lng=-98.391944&zoom=13&type=r>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**PUBLIC COMMENT/PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. Dur-

ing the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, November 19, 2015 at 7:00 p.m.

Bulverde Spring Branch Emergency Services

353 Rodeo Drive

Spring Branch, Texas 78070

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1 (800) 687-4040. Si desea información en español, puede llamar 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).

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bulverde/Spring Branch Library, 131 Bulverde Crossing, Bulverde, Texas. Further information may also be obtained from 633-4S Ranch, Ltd. and Stahl Lane, Ltd. at the address stated above or by calling Mr. Oscar D. Graham, South Texas Wastewater Treatment, at (830) 249-8098.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1 (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201504058

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2015



### Notice of Water Quality Application

The following notice was issued on September 24, 2015.

The following does not require publication in a newspaper. Written comments or requests for a public meeting 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 ISSUED DATE OF THE NOTICE.

### INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0004872000 issued to Colorado River Municipal Water District, P.O. Box 869, Big Spring, Texas 79721, which operates Big Spring Water Reclamation Plant, to change the five-day biochemical oxygen demand daily average effluent limits back to CBOD<sub>5</sub> limits. The existing permit authorizes the discharge of reverse osmosis con-

centrate at a daily average flow not to exceed 525,000 gallons per day via Outfall 001. The facility is located at 3500 East Farm-to-Market Road 700, west of the Big Spring Wastewater Treatment Plant on the north side of Eleventh Place, approximately 800 feet east of the intersection of Farm-to-Market Road 700 and Eleventh Place, and approximately 0.6 mile south of the intersection of Farm-to-Market Road 700 and Interstate Highway 20, in the City of Big Spring, Howard County, Texas 79720.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (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 (800) 687-4040.

Issued in Austin, Texas on September 29, 2015.

TRD-201504070

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2015



### Public Notice - Shutdown/Default Order

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 9, 2015**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 9,**



2015. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: MAREDIA, INC. d/b/a Convenient Food Mart4; DOCKET NUMBER: 2014-1161-PST-E; TCEQ ID NUMBER: RN102345550; LOCATION: 1411 South La Salle Street, Navasota, Grimes County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b)(1)(B) and §334.49(e)(1) and (2), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: \$13,926; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201504045

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 29, 2015

## Department of Family and Protective Services

### Notice of Consultant Contract Amendment

In accordance with Texas Government Code, Chapter 2254, the Health and Human Services Commission (HHSC), on behalf of the Department of Family and Protective Services (DFPS), announces this notice of intent to extend a consultant contract to help continue implementation of Child Protective Services (CPS) Transformation initiative activities.

The notice of request for proposals (DFPS RFP No. 530-14-84910) was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6059), which provided that DFPS could exercise an option for the awarded consultant to assist the agency with implementing approved recommendations. The notice of award was published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1761). The notice to extend was published in the July 31, 2015, issue of the *Texas Register* (40 TexReg 4946).

#### *CPS Operational Review Consultant Contract Amendment*

Contract #: 530-14-7777-00085

Contractor Name: The Stephen Group, LLC; 814 Elm Street, Suite 309; Manchester, NH, 03102

In accordance with Texas Government Code §2254.031 and §2254.030, DFPS is posting this notice in the *Texas Register* no later than 20 days after extending the above referenced contract with the following information:

Amendment #: 3

Amendment Effective Date: September 1, 2015

Contract End Date: February 29, 2016

Deliverables Due: February 29, 2016

Total Contract Value: \$432,120.00

Activities Performed: CPS Transformation Project management, continuous quality improvement, regional support, and monitoring work activities to verify the schedule is met and the benefits achieved for the Child Protective Services (CPS) Division. More information is available at: [https://www.dfps.state.tx.us/child\\_protection/About\\_Child\\_Protective\\_Services/transformation/default.asp](https://www.dfps.state.tx.us/child_protection/About_Child_Protective_Services/transformation/default.asp)

For the submission of offers or information concerning this proposed amendment, please contact: Claire Hall, Project Manager at (512) 438-5257 or email [Claire.Hall@dfps.state.tx.us](mailto:Claire.Hall@dfps.state.tx.us).

TRD-201504057

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: September 29, 2015

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 3, 2015 through September 28, 2015. 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 2, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, November 5, 2015.

#### *FEDERAL AGENCY ACTIONS:*

**Applicant:** Port Bolivar Marine Service

**Location:** The project site is located in the Gulf Intracoastal Waterway (GIWW), approximately 1.3 miles east of Port Bolivar, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: FLAKE, Texas.

#### **LATITUDE & LONGITUDE (NAD 83):**

Latitude: 29.40532° North; Longitude: 94.74294° West

**Project Description:** The applicant proposes to expand and construct a commercial barge fleeting area on the GIWW. The applicant proposes to dredge approximately 11.07 acres to a depth of -13 feet below mean low tide. Approximately 8.75 acres of submerged aquatic bottom and

2.32 acres of estuarine emergent wetlands would be displaced. Approximately 167,000 cubic yards of material will be mechanically excavated and placed on an on-site placement area. The applicant also proposes to place eleven 36-inch steel pilings approximately 150 feet apart along the length of the fleeting area. The proposed project would extend along approximately 1,581 feet of the southern shore of the GIWW.

The applicant withdrew a previous application in 2014, after meeting with the U.S. Army Corps of Engineers and U.S. Coast Guard on-site. The previous plan had the potential to be a navigational safety issue. The revised plan, including cutting into the proposed property, including adjacent wetlands, was deemed to be necessary to maintain an adequate buffer from the GIWW channel. The applicant proposes to mitigate on-site by preserving an existing, 2.3-acre tidal wetland.

**CMP Project No:** 16-1020-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2001-00874. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).**

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201504056

Anne L. Idsal

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: September 29, 2015

## Texas Health and Human Services Commission

### Public Notice

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. CMS has approved this waiver through September 30, 2016. The proposed effective date for the amendment is March 29, 2016, with no changes to budget neutrality.

*HHSC is proposing four changes in this amendment request:*

- 1) add Home and Community Based Services STAR+PLUS Waiver slots appropriated by the 84th Texas Legislature;
- 2) clarify the new electronic process for reviewing the Home and Community Based Services STAR+PLUS Waiver individual service plans;

- 3) allow a dentist to bill for services provided by a substitute dentist, as established under House Bill 1661, 84th Texas Legislature, Regular Session (2015); and

- 4) delay the quarterly report due dates for quarters 1 through 3 by 45 days and submit the information for quarter 4 report with the Demonstration Annual Report.

### *Home and Community Based Services STAR+PLUS Waiver Slots*

The 84th Legislature (Regular Session) of Texas appropriated additional funds to increase the number of unduplicated participants for the STAR+PLUS 217-like group served by the Home and Community Based Services STAR+PLUS Waiver. The appropriations include 618 waiver slots added at the beginning of State Fiscal Year 2016 (September 1, 2015) and 617 waiver slots to be added at the beginning of State Fiscal Year 2017 (September 1, 2016). HHSC requests to revise Table 4a in the 1115 waiver Special Terms and Conditions, Unduplicated Number of Participants for the STAR+PLUS 217-Like HCBS Group, to reflect the additional slots.

### *Electronic Process for Reviewing Home and Community Based Services STAR+PLUS Waiver Individual Service Plans*

HHSC intends to clarify the new electronic process for reviewing the Home and Community Based Services (HCBS) STAR+PLUS Waiver individual service plans. HHSC worked with a technology contractor to develop a new capability which allows managed care organizations to submit individual service plans in an electronic portal. Service plans are reviewed in the electronic portal with the same logic used by HHSC staff to manually approve or reject service plans. The process is in compliance with 42 CFR 441.301(b)(1)(i). Service plans are rejected from the electronic process and must be manually reviewed by HHSC staff if they:

- are over the established cost limit;
- require Medicaid eligibility staff review;
- are not associated with a valid medical necessity level of care, or;
- have missing or incomplete information.

Individual service plans rejected by the electronic portal are resubmitted directly to HHSC staff through a File Transfer Protocol (FTP) process and manually reviewed and approved based on existing policies.

HHSC has a unit dedicated to HCBS STAR+PLUS Waiver utilization management and review. This unit, in conjunction with the unit manually reviewing and approving individual service plans, will conduct a focused desk review during and immediately following implementation of the electronic process to ensure the portal is processing electronic service plans correctly. As part of the utilization management and review unit's ongoing work, the unit will review a representative sample of service plans approved electronically to ensure the process is functioning as expected. This unit also annually reviews a representative sample of service plans to ensure that services authorized on the plan are appropriate and delivered in a manner consistent with state and federal policy.

### *Substitute Dentists*

Under House Bill 1661, 84th Texas Legislature, Regular Session (2015), to the extent allowed by federal law, HHSC must adopt rules ensuring the same standards applying to a physician who bills the Texas Medicaid Program for services provided by a substitute physician apply also to a dentist who bills the Texas Medicaid Program for services provided by a substitute dentist. Currently, HHSC permits a physician to 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-as permitted by Social Security Act §1902(a)(32)(C). Dentists, like physicians, may be absent from work for reasons such as illness, pregnancy, vacation, continuing education, or active duty in the armed forces. In addition, there may be time-sensitive instances when a patient enrolled with a MCO may require immediate attention by his or her Main Dental Home. HHSC believes a dentist should be given the option to bill for services provided by a substitute dentist. HHSC acknowledges that Social Security Act §1902(a)(32)(C) only applies to physicians, but requests to allow a dentist to bill for the Children's Dental Program and STAR+PLUS HCBS Waiver dental services provided by a substitute dentist.

#### *Quarterly Report*

HHSC Managed Care health plans finalize and submit performance data to HHSC about 30-45 days after the close of the state fiscal quarter, which leaves only about 30-45 days for HHSC to review a myriad of health plan data, evaluate contract compliance, analyze trends, document resolution of identified issues and summarize findings before the quarterly report gets routed for internal approval. HHSC's health plan data review and analysis are essential for ascertaining an accurate picture of health plan performance, and at times this process uncovers data errors that then require updated data analysis, leaving less time for writing the report. HHSC is requesting additional time from CMS to submit the quarterly 1115 report to improve the HHSC data review process, which will result in a more thorough description of the managed care programs and health plan performance. HHSC requests delaying the quarterly report due date for quarters 1 through 3 by 45 days and to submit the information for the quarter 4 report with the Demonstration Annual Report.

To obtain copies of the proposed waiver amendment, interested parties may contact Micah Erwin by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 424-6549, fax (512) 730-7472, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us).

TRD-201504069

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 30, 2015



#### Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Deaf Blind with Multiple Disabilities (DBMD) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2018. The proposed effective date for the amendment is February 28, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Appendix B-3: Effective November 2015, rule amendments will be made updating the process for individuals on the DBMD interest list. The primary changes to the waiver application and the rules are in relation to policies for individuals interested in being on the interest list who are military family members temporarily living out of state. Military family members will not be removed from the DBMD interest list for temporarily moving outside of the state of Texas due to the military member's assignment. If an applicant who is a military family member is offered enrollment while temporarily living outside of Texas they shall retain their position on the interest list for up to one year after their family's military service ends. The waiver application also adds

clarifying language that the reserved capacity group, "Money Follows the Person," bypasses the interest list.

2. Appendix B-6: The waiver is being amended to remove the requirements for the direct services agency to submit a separate level of care instrument to prevent a gap in services. In addition, the waiver is being amended to add that if reinstatement is granted, reinstatement will only be effective for up to 180 calendar days before the date DADS receives the current Form 8578, or the first day of the new individual plan of care period, whichever is more recent.

3. Appendix C-1: Residential Habilitation (Statutory Service). The majority of activities included as part of the waiver Residential Habilitation (HAB) services are now available through the non-waiver resource state plan Community First Choice (CFC) Personal Assistance Services (PAS)/HAB service. Thus, the service definition for residential habilitation in the DBMD waiver is being amended to reflect this change. The definition of habilitation from the Texas Administrative Code that addresses the DBMD waiver is being added to the waiver application for clarification of what habilitation means in general. The list of services has been altered to bulleted format rather than listed in a paragraph format for ease of reference and consistency with the Texas Administrative Code language. And the limits section has been updated to reflect the language in the Texas Administrative Code as follows: (1) the new language in the limits section reflects that payment will not be made for the routine care and supervision that a family member "is legally obligated to provide." The previous language used in the application was "would be expected to be provided" rather than "is legally obligated to provide"; and (2) the new language in the limits section states that the service may not be provided at the same time that "licensed" assisted living "or licensed home health assisted living" is provided. The quoted language has been added for consistency with the Texas Administrative Code language.

4. Appendix C-1: Prescribed Drugs (Extended State Plan Service) and Appendix J. The waiver is being changed to clarify eligibility for prescription drugs through the DBMD waiver program. As a result of the transition from the fee-for-service delivery method to the managed care delivery method, effective September 1, 2014, individuals in the waiver who are enrolled in managed care for their acute care services receive unlimited prescription medications through their managed care and therefore do not qualify for prescriptions through the waiver. Dual eligible individuals are excluded from enrollment into managed care and, thus, are still eligible for prescription medications through the waiver if they exhaust non-DBMD waiver resources first (such as the Medicare Prescription Drug Plan and the Texas Medicaid State Plan resources). The acute versus waiver dollars for prescriptions will be revised to better reflect the source of funding for prescription costs.

The Deaf Blind with Multiple Disabilities program serves individuals with legal blindness, deafness, or a condition that leads to deaf-blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility/facilities for individuals with an intellectual disability or related conditions intellectual and developmental disabilities (ICF/IID).

To obtain free copies of the proposed waiver amendment, including the DBMD settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the DBMD settings transition plan, interested parties may contact Jacqueline Pernel by mail at Texas Health and Human Services Commission, PO Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7472, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us). The complete waiver application can be found online on the DADS website at <http://www.dads.state.tx.us/providers/dbmdl/>.

TRD-201504080  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 30, 2015

◆ ◆ ◆  
**Department of State Health Services**  
Licensing Actions for Radioactive Materials

During the first half of September 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	Sentinel Integrity Solutions Inc.	L06735	Houston	00	09/15/15
Throughout TX	Total NDT L.L.C.	L06736	Longview	00	09/15/15
Throughout TX	GR Wireline L.P.	L06734	Sugar Land	00	09/01/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	122	09/14/15
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	99	09/03/15
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L06335	Austin	18	09/09/15
Cleburne	Texas Health Harris Methodist Hospital Cleburne	L02039	Cleburne	45	09/08/15
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	126	09/09/15
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	40	09/08/15
Dallas	Crown Imaging L.L.C.	L06223	Dallas	11	09/10/15
Denton	University of North Texas	L00101	Denton	104	09/11/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	67	09/09/15
Galveston	The University of Texas Medical Branch	L01299	Galveston	100	09/03/15
Grapevine	Baylor Regional Medical Center at Grapevine dba Baylor Scott & White Medical Center Grapevine	L03320	Grapevine	37	09/08/15
Houston	Ben Taub General Hospital	L01303	Houston	90	09/08/15
Houston	Texas Childrens Hospital	L04612	Houston	68	09/04/15
Houston	Institute of Biosciences and Technology	L04681	Houston	44	09/01/15
La Porte	E. I. Dupont De Nemours & Company	L00314	La Porte	92	09/02/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	75	09/09/15
Lubbock	University Medical Center	L04719	Lubbock	140	09/01/15
Mesquite	Prime Healthcare Services – Mesquite L.L.C. dba Dallas Regional Medical Center	L06726	Mesquite	01	09/14/15
Mount Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mount Pleasant	47	09/10/15
Odessa	Cemex Inc. dba Cemex Construction Materials South L.L.C.	L00118	Odessa	31	09/08/15
Orange	Baptist Hospitals of Southeast Texas dba Baptist Beaumont Hospital	L01597	Orange	38	09/10/15
Paris	Essent PRMC L.P. dba Paris Regional Medical Center	L03199	Paris	59	09/03/15
Port Neches	TPC Group L.L.C.	L06106	Port Neches	04	09/09/15
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06475	Richardson	04	09/08/15
San Antonio	University of Texas at San Antonio	L01962	San Antonio	68	09/03/15
Temple	Texas A&M University System Health Science Center	L05494	Temple	21	09/02/15
The Woodlands	Lamco & Associates	L05152	The Woodlands	14	09/08/15
The Woodlands	Greater Houston Physicians Medical Association P.L.L.C.	L06415	The Woodlands	06	09/10/15
Throughout TX	Ascend Performance Materials Texas L.L.C.	L06630	Alvin	03	09/09/15
Throughout TX	The University of Texas at El Paso	L00159	El Paso	74	09/08/15
Throughout TX	Techcorr USA L.L.C. dba AUT Specialists L.L.C.	L05972	Flint	113	09/04/15
Throughout TX	FTS International Services L.L.C.	L06188	Fort Worth	18	09/09/15
Throughout TX	DMS Health Technologies, Inc.	L05594	Garland	26	09/02/15
Throughout TX	Varco L.P. FKA Tuboscope Vetco	L00287	Houston	140	09/03/15
Throughout TX	Proportional Technologies Inc.	L04747	Houston	31	09/10/15
Throughout TX	Texas Gamma Ray L.L.C.	L05561	Houston	112	09/02/15
Throughout TX	USA Environment L.P.	L05616	Houston	08	09/10/15
Throughout TX	Furmanite America Inc.	L06554	Houston	16	09/02/15
Throughout TX	C&J Spec Rent Services Inc. dba Casedhole Solutions	L06662	Houston	02	09/03/15
Throughout TX	Integrity Solutions NDE L.L.C.	L06713	Houston	02	09/02/15
Throughout TX	Kleinfelder Central Inc.	L01351	Irving	84	09/14/15
Throughout TX	La Porte	L01774	La Porte	289	09/10/15
Throughout TX	Hi-Tech Testing Service Inc.	L05021	Longview	110	09/09/15
Throughout TX	Sonic Surveys Ltd.	L02622	Mont Belvieu	28	09/10/15
Throughout TX	Turner Specialty Services L.L.C.	L05417	Nederland	47	09/02/15
Throughout TX	Ace NDT	L06595	Perryton	11	09/11/15
Throughout TX	Southwest Research Institute	L00775	San Antonio	84	09/10/15
Throughout TX	Southwest Research Institute	L04958	San Antonio	18	09/03/15
Throughout TX	Arias & Associates Inc.	L04964	San Antonio	44	09/02/15
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	148	09/02/15
Throughout TX	Ecoserv Environmental Services L.L.C.	L04999	Winnie	17	09/08/15
Tyler	Cardiac Imaging Inc.	L06565	Tyler	07	09/09/15
Waco	Texas Oncology P.A.	L05940	Waco	08	09/09/15
Jourdanton	Tan Heart Clinic L.L.C.	L06571	Jourdanton	02	09/15/15
Edinburg	McAllen Hospitals L.P. dba Edinburg Regional Medical Center	L04262	Edinburg	24	09/15/15
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	25	09/10/15
Webster	CHCA Clear Lake L.P. dba Clear Lake Regional Medical Center	L01680	Webster	95	09/15/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	100	09/15/15
Killeen	Metroplex Health System dba Metroplex Hospital	L03185	Killeen	31	09/15/15
Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06358	Houston	07	09/15/15
Throughout TX	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	27	09/14/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Laredo	South Texas Testing Laboratories	L05190	Laredo	06	09/11/15
Port Arthur	BASF Total Petrochemicals L.L.C.	L05914	Port Arthur	09	09/02/15
Throughout TX	John E. Hearne dba Hearne Wireline Service	L05174	Asherton	07	09/10/15
Throughout TX	Rock Engineering and Testing Laboratory Inc.	L05168	San Antonio	16	09/09/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Fort Worth	Recon Petrotechnologies Inc.	L06026	Fort Worth	21	09/14/15

TRD-201504048  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: September 29, 2015

Sara Waitt  
 General Counsel  
 Texas Department of Insurance  
 Filed: September 30, 2015

**Texas Department of Insurance**

Company Licensing

Application to change the name of CONSECO LIFE INSURANCE COMPANY to WILCO LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Wilton, Connecticut.

Application for admission to the State of Texas by ATLANTIC COAST LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Charleston, South Carolina.

Application for incorporation in the State of Texas by HARKEN HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Minnetonka, Minnesota.

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-201504074

**Texas Lottery Commission**

Scratch Ticket Game Number 1728 "Veterans Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1728 is "VETERANS CASH". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1728 shall be \$2.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1728.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000, \$25,000, 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 and BELL 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. 1728 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$25,000	25 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	FFN
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
BELL SYMBOL	WINALL



E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch 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, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1728), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1728-0000001-001.

K. Pack - A Pack of "VETERANS CASH" Scratch Ticket Game contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of two (2). One Scratch Ticket will be folded over to expose a front and back of one Scratch Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Scratch Tickets in a Pack.

L. Non-Winning Scratch Ticket - A Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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. Scratch Ticket Game, or Scratch Ticket, or Ticket - A Texas Lottery "VETERANS CASH" Scratch Ticket Game No. 1728.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "BELL" Play Symbol, the player WINS ALL 10 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket Game.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch 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 Scratch 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 Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch 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 Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch 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 Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive Non-Winning Tickets within a Pack will not have matching 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 ten (10) times.
- D. On winning and Non-Winning Tickets, the top cash prizes of \$25,000 and \$1,000 will each appear at least once, except on Tickets winning ten (10) times.
- E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.
- F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.
- G. On all Tickets, a prize symbol will not appear more than two (2) times except as required by the prize structure to create multiple wins.
- H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.
- I. The "BELL" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- J. The "BELL" (WINALL) Play Symbol will instantly win all 10 prizes on a Ticket and will win as per the prize structure.
- K. The "BELL" (WINALL) Play Symbol will never appear more than once on a Ticket.
- L. The "BELL" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.
- M. On Tickets winning with the "BELL" (WINALL) Play Symbol, no YOUR NUMBERS Play Symbols will match either of the WINNING NUMBERS Play Symbols.
- N. 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).

## 2.3 Procedure for Claiming Prizes.

- A. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$2.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch 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 Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Scratch 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 "VETERANS CASH" Scratch Ticket Game prize of \$1,000 or \$25,000, the claimant must sign the winning Scratch 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 Scratch 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 val-

idated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch 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 Scratch 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 "VETERANS CASH" Scratch Ticket 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 "VETERANS CASH" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket 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 Scratch Tickets ordered. The number of actual prizes

available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 1728. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1728 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	564,480	8.93
\$5	456,960	11.03
\$10	161,280	31.25
\$20	26,880	187.50
\$30	6,573	766.77
\$50	4,179	1,206.03
\$100	4,158	1,212.12
\$1,000	16	315,000.00
\$25,000	6	840,000.00

\*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 4.12. 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 Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1728 without advance notice, at which point no further Scratch 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 a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Game No. 1728, 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-201504064  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 29, 2015



Scratch Ticket Game Number 1729 "Wild 10's"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1729 is "WILD 10'S". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1729 shall be \$5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1729.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: 01, 02, 03, 04, 05, 06, 07, 08, 09, 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, 10X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$1,000, \$100,000, CROWN SYMBOL, POT OF GOLD SYMBOL, MONEY CLIP SYMBOL,

DIAMOND SYMBOL, TREASURE CHEST SYMBOL, GOLD COIN SYMBOL, STACK OF CASH SYMBOL, PIGGY BANK SYMBOL, SAFE SYMBOL and WALLET 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. 1729 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	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	FRTO
43	FRTH
44	FRFR
45	FRV
46	FRSX
47	FRSV

48	FRET
49	FRNI
50	FFTY
10X SYMBOL	WINX10
\$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
CROWN SYMBOL	CROWN
POT OF GOLD SYMBOL	POTGLD
MONEY CLIP SYMBOL	CLIP
DIAMOND SYMBOL	DMND
TREASURE CHEST SYMBOL	CHEST
GOLD COIN SYMBOL	COIN
STACK OF CASH SYMBOL	CASH
PIGGY BANK SYMBOL	PGYBNK
SAFE SYMBOL	SAFE
WALLET SYMBOL	WALLET

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch 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 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1729), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1729-0000001-001.

K. Pack - A Pack of "WILD 10'S" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Scratch Ticket 001 will be shown on the front of the Pack; the back of Scratch 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 Scratch Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Scratch Ticket 001 will be shown on the front of the Pack and the front of Scratch Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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. Scratch Ticket Game or Scratch Ticket, or Ticket - A Texas Lottery "WILD 10'S" Scratch Ticket Game No. 1729.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "WILD 10'S" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 48 (forty-eight) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "10X" Play Symbol, the player WINS 10 TIMES THE PRIZE for that symbol. BONUS: If a player matches 2 of 3 Play Symbols, the player wins \$10 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Instant Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch 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 Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack- Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 48 (forty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack- Scratch Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 48 (forty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability

of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching 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-one (21) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$100,000 and \$1,000 will each appear at least once in the main play area, except on Tickets winning twenty (20) or more times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear 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 WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING 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 WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "10X" (WINX10) Play Symbol will WIN 10 TIMES THE PRIZE for that Play Symbol and will win as per the prize structure.

N. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

O. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

P. On Tickets that win with the "10X" (WINX10) Play Symbol, no YOUR NUMBERS Play Symbols will match a WINNING NUMBERS Play Symbol.

Q. BONUS PLAY AREA: There will never be more than two (2) matching Play Symbols in the BONUS play area.

R. BONUS PLAY AREA: A Ticket can win up to one (1) time in this play area.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 10'S" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$250, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch 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 Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200, \$250,

\$300 or \$500 Scratch 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 "WILD 10'S" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch 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 Scratch 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 "WILD 10'S" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch 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 Scratch 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 "WILD 10'S" Scratch Ticket 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 "WILD 10'S" Scratch Ticket 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 Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket 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 Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game 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 a Scratch Ticket Game in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,280,000 Scratch Tickets in the Scratch Ticket Game No. 1729. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1729 - 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	80,500	102.86
\$100	35,489	233.31
\$200	1,978	4,186.05
\$250	1,817	4,556.96
\$300	851	9,729.73
\$500	1,610	5,142.86
\$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 Scratch 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 Scratch Ticket Game No. 1729 without advance notice, at which point no further Scratch 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 a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1729, 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-201504067  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 29, 2015



**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transaction

**Land Acquisition - Cochran County, Texas**

**Yoakum Dunes Wildlife Management Area**

In a meeting on November 5, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of 5-10 acres of land in Cochran County as an addition to Yoakum

Dunes Wildlife Management Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201504072  
 Ann Bright  
 General Counsel  
 Texas Parks and Wildlife Department  
 Filed: September 29, 2015



Notice of Proposed Real Estate Transactions

**Acquisition of Land - Matagorda County**

**Approximately 6,554 Acres for Habitat Conservation**

In a meeting on November 5, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of approximately 6,554 acres in Matagorda County for the conservation of coastal fish and wildlife habitat. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email

at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

#### **Grant of an Easement - Brazoria County**

##### **Approximately 0.4 Acre at Justin Hurst Wildlife Management Area**

In a meeting on November 5, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement of approximately 0.4 acre for the installation of an overhead line to provide electrical service to an existing pipeline valve station on the Justin Hurst Wildlife Management Area in Brazoria County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

#### **Grant of an Easement - Brazoria County**

##### **Approximately 37 Acres at Justin Hurst Wildlife Management Area**

In a meeting on November 5, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement of approximately 37 acres to cover an overhead transmission line installed in 1994 on the Justin Hurst Wildlife Management Area in Brazoria County for which an easement was never executed. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201503965

Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: September 23, 2015

#### **Plateau Water Planning Group**

##### **Request for Statements of Interest and Qualifications**

To Provide Professional Services for the Plateau Water Planning Group (Region J) of the SB 1 Regional Water Planning Program

The Upper Guadalupe River Authority, on behalf of the Plateau Water Planning Group (PWPG), is requesting Statements of Interest and Qualifications from engineering/planning firms qualified to provide professional services related to regional water management planning for the 5th round of planning.

Submittals must be mailed or delivered to:

Mr. Ray Buck  
General Manager, UGRA  
125 Lehmann Drive, Suite 100  
Kerrville, Texas 78028

(830) 896-5445

Submittals must be received no later than 5:00 p.m. on Friday, October 16, 2015.

TRD-201504060  
Jonathan Letz  
PWPG Chair  
Plateau Water Planning Group  
Filed: September 29, 2015

#### **Public Utility Commission of Texas**

##### **Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on September 24, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebriidge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45190.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Shallowater, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45190.

TRD-201504034  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2015

##### **Notice of Application for a Name Change Amendment to a Certificate of Convenience and Necessity**

Notice is given to the public of an application filed on September 25, 2015 with the Public Utility Commission of Texas for a name change amendment to a certificate of convenience and necessity.

Docket Style and Number: Application of Brazos Telephone Cooperative, Inc. for a Name Change Amendment to its Certificate of Convenience and Necessity, Docket Number 45193.

The Application: Brazos Telephone Cooperative, Inc. is planning a branding and marketing campaign and seeks to change the name on its Certificate of Convenience and Necessity (CCN) No. 40007 to include its assumed name Brazos Communications.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45193.

TRD-201504043  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 29, 2015



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 25, 2015, to amend a certificate of convenience and necessity for a proposed transmission line in Deaf Smith County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 115-kV Transmission Line in Deaf Smith County (NE Hereford to La Plata Substation), Docket Number 45158.

The Application: The proposed project is designated as the NE Hereford to La Plata Transmission Line Project. The facilities include construction of a new single circuit 115-kV transmission line, which will originate at the existing NE Hereford Substation, located 3.5 miles northeast of Hereford, Texas, and terminate at the new La Plata Substation, located a half mile west of the existing Centre Street Substation, south of County Road 7, near the western portion of the City of Hereford.

The total estimated cost for the project ranges from approximately \$11.8 to \$15.1 million depending on the route chosen. The proposed project is presented with nine (9) alternate routes and is estimated to be approximately 7.5 to 11.3 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is November 9, 2015. 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 45158.

TRD-201504038  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2015



#### Notice of Petition for Amendment to Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on September 22, 2015, of a petition to amend a certificate of convenience and necessity in Collin County by expedited release.

Docket Style and Number: Petition of The Parks at Wilson Creek, LP to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 45184.

The Application: The Parks at Wilson Creek, LP filed with the commission an application for expedited release from the Marilee Special

Utility District's water certificate of convenience and necessity (CCN) No. 10150 pursuant to Tex. Water Code §13.254(a-5) and 16 Texas Administrative Code (TAC) §24.113(r).

Persons wishing to intervene or comment on the action sought should contact the commission no later than November 6, 2015, by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline to intervene in this proceeding is November 6, 2015. 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 45184.

TRD-201504039  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2015



#### Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 22, 2015 for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and 16 TAC §26.406, Docket Number 45182.

The Application: Valley Telephone Cooperative, Inc. (VTCI) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to VTCI. The petition requests that the commission allow VTCI recovery of funds from the TUSF in the amount of \$226,025 to replace projected 2015 FUSF revenue reductions. VTCI is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 45182.

TRD-201504036  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2015



#### 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 September 22, 2015, a request for a cease and desist order against the Town of Providence Village.

Docket Style and Number: Application of Mustang Special Utility District for a Cease and Desist Order against the Town of Providence Village, Docket No. 45183.

The Application: Mustang Special Utility District (Mustang) Mustang seeks an order directing the Town of Providence Village (Town) to immediately cease and desist from providing water or sewer utility service within the certificated service area of Mustang. Mustang alleges that the Town has knowingly provided service and continues to provide retail water and sewer utility service within Mustang's certificated service area without prior authorization from Mustang or the Public Utility Commission of Texas. There are approximately 2,200 customers located within the service territory at issue. Mustang states that it remains ready, willing, and able to service the subject customers and would ensure that the customers are not left unserved.

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 (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 45183.

TRD-201504037  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 28, 2015



### Public Notice of Workshop

The Public Utility Commission of Texas (commission) will hold a workshop on Wednesday, October 28, 2015, regarding Project No. 45131, *Rulemaking Proceeding to Implement House Bill No. 1535, Relating to Cost Recovery and Rate Adjustment Standards and Procedures for Certain Non-ERCOT Utilities*. The workshop will be held from 9:30 a.m. to 12:30 p.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

By Wednesday, October 21, 2015, the commission staff will make available in Central Records under Project No. 45131 a meeting agenda that will include proposed rule language for discussion at the workshop. The agenda will also be available for download by visiting the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us) and clicking on the Filings/Interchange and Filings Retrieval links.

Questions concerning the workshop or this notice should be referred to Mark Filarowicz, Regulatory Accountant, at (512) 936-7248 or [mark.filarowicz@puc.state.tx.us](mailto:mark.filarowicz@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201504073  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 30, 2015



## Texas Department of Transportation

### Aviation Division - Request for Qualifications for Professional Engineering Services

The Texas Department of Transportation Aviation Division (TxDOT) intends to engage Professional Engineering Firms for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT will solicit and receive qualifications for professional services as described below.

TxDOT CSJ No.16AVNSERV

### Project Description and Work to be Performed:

TxDOT intends to select one or two prime providers to perform on demand geotechnical investigation, quality assurance testing, and Resident Project Representation (RPR) services for various general aviation airport construction projects across the state. The construction general contractor performing services on these projects must provide their own independent quality control testing and is not a part of this solicitation. Providers must propose a team capable of providing testing and RPR services. The specific locations of the airports and funding sources are not known at this time. Work will require frequent contact with a designated representative at each airport and the TxDOT Project Manager.

Testing services may include but are not limited to: asphaltic concrete, portland cement concrete, plant inspection and testing, soil exploration, and geotechnical testing.

RPR services include but are not limited to: attending conferences, reviewing schedules, reviewing submittals, reviewing and inspecting work, rejecting defective work, scheduling and reviewing testing, maintaining records, submitting weekly progress reports, approving payments, conducting wage rate interviews, and completing commercially useful function (CUF) site reviews.

The contracted firm will be required to provide on-demand testing and/or RPR services with 24 hours advance notification throughout the state.

### Procedure for Each Airport Location:

For each airport location assigned, TxDOT will request a fee schedule for testing and/or RPR services from the provider. The TxDOT Project Manager may add or delete specific testing requirements or RPR hours based on the complexity and/or budget constraints of each individual project. Once negotiations are complete, a contract or purchase order will be issued to the provider depending on the scope of services.

Compensation for individual projects shall be based on costs for required tests that are commensurate with industry standards, plus travel expenses, and per diem when appropriate. On occasion, if mutually beneficial, a lump sum fee for testing may be allowed. Compensation for RPR will be based on an hourly rate. Such payment shall include all direct salary costs, indirect salary costs, fringe benefits, overhead, travel and subsistence, telephone and postage, field office expenses, printing and reproduction costs, any other payroll costs and profit.

While it is TxDOT's intent to award contracts and purchase orders under this solicitation, the selected providers shall have no cause of action based on the number of contracts and purchase orders issued, if any. Contracts and purchase orders are expected to be awarded to the selected providers for a period of five years from the date the providers are notified of their selection under this solicitation. A DBE goal will be set for each contract awarded under this solicitation.

### Selection Requirements:

The proposing firm must demonstrate that a professional engineer, registered in Texas will sign and seal the geotechnical and materials testing work to be performed under the contract. The proposing firm must demonstrate a familiarity with TxDOT and Federal Aviation Administration (FAA) materials and testing procedures.

### Selection Criteria:

TxDOT will evaluate proposals using the following criteria, worth 25 points each.

- 1) Project understanding and approach, including utilization of professional engineer services.
- 2) Recent experience of the firm's project team with similar projects within the last five years.
- 3) Ability to provide on-demand testing and RPR services in a timely manner.
- 4) Ability to understand and meet FAA requirements for specified material testing and to provide competent RPR oversight.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Professional Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications may not exceed the number of pages in the format. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. **FIRMS SHOULD NOT COMPLETE PAGE 5 "PROJECT DESIGN SCHEDULE" OF THE AVN-550. THE WORK SCHEDULE WILL BE NEGOTIATED WITH THE SELECTED PROVIDERS PER PROJECT AS ASSIGNED. FIRMS SHOULD SIMPLY OMIT THIS PAGE.** A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**FIVE** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division no later than November 3, 2015, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of **Beverly Longfellow** using one of the delivery methods below:

**Overnight Delivery**

TxDOT - Aviation  
200 East Riverside Drive  
Austin, Texas 78704

**Hand Delivery or Courier**

TxDOT - Aviation  
150 East Riverside Drive  
5th Floor, South Tower  
Austin, Texas 78704

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of a review of AVN-550s. The committee will review all AVN-550s and rate and rank each. After the rating of qualifications, all firms will be notified of the results. The selection committee does, however, reserve the right to conduct inter-

views for the top rated firms if the committee deems it necessary. If interviews are conducted, the selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions please contact Beverly Longfellow or Amy Slaughter. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201504040  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: September 28, 2015



**Request for Information**

The Texas Department of Transportation (department) is seeking information that may assist in the development and operation of retail options for third parties to offer basic account maintenance services to toll road customers by adding a web service interface. For this Request for Information (RFI), third parties must be able to provide account maintenance services including, but not limited to, accepting payments, updating license plate information, selling TxTags and registering TxTags. This RFI is issued solely to obtain information to assist the department in its planning process and to identify third parties that may be interested in responding to any future solicitation documents.

This RFI does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit the department to contract for any supply or service whatsoever, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. The department will not pay for any information or administrative cost incurred in response to this RFI.

RFI Issuance Date: October 9, 2015

RFI Response Deadline: 3:00 p.m. on November 9, 2015

Questions: Questions regarding this RFI should be submitted in writing to the Point of Contact at the email address listed below. The department will post responses to questions on the RFI website without identifying the party(ies) submitting the questions. Respondents are encouraged to submit questions prior to October 23, 2015.

RFI Website and Addenda: The department will post any addenda to the RFI on the RFI website. It is the respondent's responsibility to monitor the RFI website on a regular basis for updates, questions and responses, addenda, and additional RFI documents and information. The RFI website is <http://txdot.gov/business.html>. The department reserves the right to modify the above anticipated schedule milestones at any time and for any reason. At its option, the department may also elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

**Contracting Office Address:**

Texas Department of Transportation - Toll Operations Division  
12719 Burnet Road  
Austin, Texas 78727

**Point of Contact:**

Erica Ramirez  
Toll Operations Division

Texas Department of Transportation  
12719 Burnet Road  
Austin, Texas 78727  
(Phone): (512) 874-9713  
(E-mail): Erica.Ramirez@txdot.gov

TRD-201504042  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: September 29, 2015

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## Texas Water Development Board

### Request for Applications for Demonstration Projects for Alternative Water Supplies

The Texas Water Development Board (TWDB or Board) solicits Request for Applications from groundwater conservation districts for demonstration projects or feasibility studies that will prove up aquifer storage and recovery, or any demonstration projects or feasibility studies that will create new water supplies or otherwise increase the availability of water through use of innovative storage approaches that improve operational efficiencies. Such projects should be targeted to provide cost-effective and regional water supplies that can be made available within a region to help meet the various competing demands for water, including those of agricultural, industrial, municipal, and others.

#### Grant Amount

The total grant amount for all projects shall not exceed \$1,000,000. The applicants and/or their partner organizations will be required to provide matching funds. Consistent with similar funding programs administered by TWDB, applicants will be expected to provide at least a dollar-for-dollar matching contribution for each project selected. Because of the nature of funding (General Revenue Fund), funds that are committed and encumbered in Biennium 2016 - 2017 will need to be expended by August 31, 2019.

#### Application Review

All applications received will be assessed, scored, and ranked by a review panel. Applications will be evaluated in accordance with 31 TAC §355.5 and may include the following factors:

Overall approach and organization;

Methodology;

Qualifications and resources;

Organization and management;

Reports and deliverables; and

Assessment of proposer's ability to perform this research and complete the project.

In addition to the general information required as part of a TWDB Request for Applications, proposals must include evidence of financial commitment from the applicant and/or their partner organization for at least a dollar-for-dollar cost sharing in the project.

The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants or the desired projects for funding. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a

rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that an application does not adequately meet the required criteria or if the funding available is less than that requested.

#### Deadline for Submission of Applications

Six double-sided, double-spaced copies on recycled paper and one digital copy (CD) of a completed application must be filed with the TWDB on or before 12:00 p.m. on November 3, 2015. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

#### Guidelines for Request for Applications

##### I. GENERAL INFORMATION

1. Legal name of applicant(s).
2. Legal name of each participant.
3. Applicant's Official Representative, Name, Title, Mailing Address, Phone Number, Fax Number, if available, e-mail Address, and Vendor ID Number.
4. Is the application in response to a Request for Applications in the *Texas Register*? Yes/No
5. If yes to number 4 above, list document's number and date of publication of the *Texas Register*.
6. A brief description of the research proposal (not to exceed 1 page).
7. A list of potential users and their possible involvement with the research.
8. Are you an individual member of the Texas Water Development Board, a Board staff member, or a member of their immediate families? Yes/No
9. Please include a completed Historically Underutilized Business Subcontracting Plan. The forms are available at: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

##### II. RESEARCH PROJECT INFORMATION

Explanation of why this project is needed (not to exceed 1 page).

A detailed scope of work describing each task, a percent of effort per each task, a time schedule for each task, and the amount of time each team member will spend on the project (not to exceed 10 pages using Times Roman 12 font).

A description of project-monitoring procedures.

Qualifications and experience of project staff that are directly related to this project only and that are no more than two pages in length per person.

A list of products (reports, plans, or other products) that the Board will receive as a result of this project.

##### III. WRITTEN ASSURANCE

Written assurance of the following item:

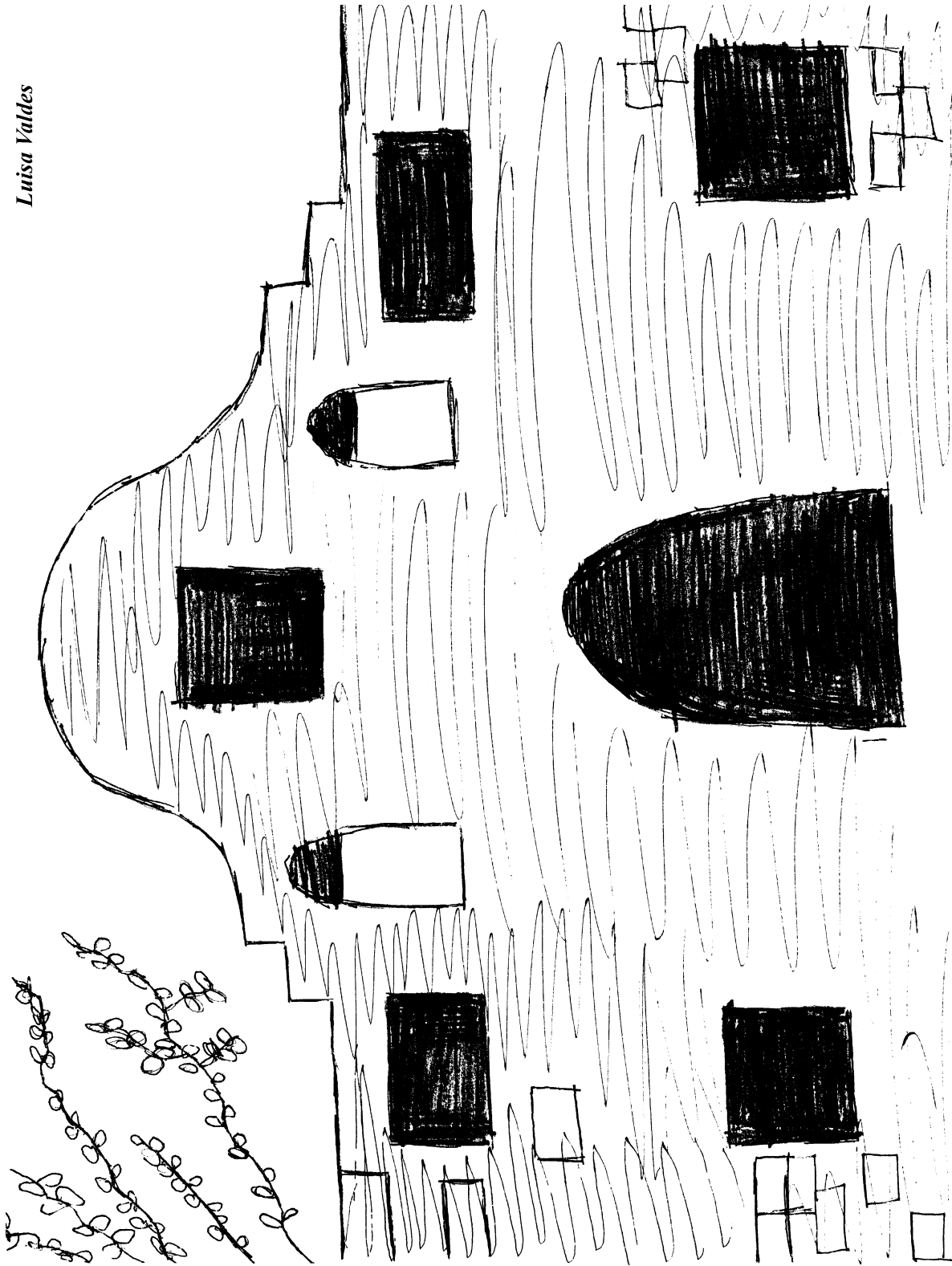
Proposed water research does not duplicate previously completed or ongoing research.

TRD-201504075

Les Trobman  
General Counsel  
Texas Water Development Board  
Filed: September 30, 2015



Luisa Valdes





## 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.

**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.

**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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

##### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is \$382 annually for first-class mail delivery and \$259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



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