

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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a section of the Office of the Secretary of State P.O. Box 12887 Austin, TX 78711 (512) 463-5561 FAX (512) 463-5569

http://www.sos.state.tx.us register@sos.texas.gov Secretary of State – Carlos H. Cascos

Director – Robert Sumners

Staff

Leti Benavides Dana Blanton Deana Lackey Jill S. Ledbetter Michelle Miner Joy L. Morgan Rachel Rigdon Barbara Strickland Tami Washburn

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

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

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: <u>http://www.texas.gov</u>

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

THE ATTORNEY GENERAL

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 <u>http://www.oag.state.tx.us</u>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110. An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The

Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0044-KP

Requestor:

The Honorable Larry Phillips

Chair, Committee on Homeland Security and Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Questions relating to the position of Vice Chairman on the Maverick County Hospital District Board of Directors (RQ-0044-KP)

Briefs requested by September 15, 2015

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

TRD-201503225 Amanda Crawford General Counsel Office of the Attorney General Filed: August 19, 2015

Opinions

Opinion No. KP-0033

The Honorable Angie Chen Button

Chair, Committee on Economic and Small Business Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether chapter 681 of the Transportation Code authorizes a political subdivision to contract with a private business to enforce the privileged parking laws within that chapter (RQ-0013-KP)

SUMMARY

A court would likely conclude that section 681.0101 of the Transportation Code does not authorize a political subdivision to appoint a private business to enforce the privileged parking provisions of chapter 681 because a private business is not a "person" under section 681.0101. A court would likely conclude that a political subdivision is not authorized to contract with a private business to enforce the privileged parking provisions of chapter 681.

Opinion No. KP-0034

Mr. William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Post Office Box 12157

Austin, Texas 78711

Re: Whether municipalities or local law enforcement agencies are authorized to impound a motor vehicle for lack of proof of insurance or financial responsibility (RQ-0014-KP)

SUMMARY

Under constitutionally reasonable circumstances, peace officers of the state, including those working for local law enforcement agencies and municipalities, may impound a vehicle to protect the public safety when the driver fails to provide evidence of financial responsibility. A home-rule municipality, and likely a general-law municipality, has authority to adopt an ordinance regarding the impoundment of vehicles for the offense of lack of financial responsibility provided that such an ordinance is not in conflict with any statute and also conforms to any constitutional constraints.

A court would likely conclude that a municipality may not condition release of a vehicle impounded for lack of evidence of financial responsibility upon presentation of such evidence to a vehicle storage facility.

Opinion No. KP-0035

The Honorable Paige Williams

97th Judicial District Attorney

Archer, Clay, and Montague Counties

Post Office Box 55

Montague, Texas 76251-0055

Re: Disposition of a dissolved municipality's remaining assets (RQ-0015-KP)

SUMMARY

A court is unlikely to disturb the final disposition of the assets of an abolished municipality if former municipal officers, acting under section 62.161 of the Local Government Code, transfer the remaining mu-

nicipal assets to a local nonprofit corporation to serve a local public purpose that was within the municipality's powers prior to its abolition.

Opinion No. KP-0036

The Honorable Charles Schwertner

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether sections 843.306 and 1301.057 of the Insurance Code apply to a pharmacy benefit manager acting on behalf of a health maintenance organization or a preferred provider organization (RQ-0016-KP)

SUMMARY

If a pharmacy benefit manager serves as a delegated entity of a health maintenance organization and thereby terminates contracts with pharmacy providers, the pharmacy benefit manager must comply with the notice and review requirements of section 843.306 of the Insurance Code.

With regard to preferred provider benefit plans, before a contract with a preferred provider is terminated, an insurer must ensure that either itself or the entities with whom it contracts, which could include pharmacy benefit managers, comply with the notice and review process required under section 1301.057 of the Insurance Code.

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

TRD-201503224 Amanda Crawford General Counsel Office of the Attorney General Filed: August 19, 2015



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 <u>underlined text</u>. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Commission Rule §20.1 by amending the definition for the term "principal purpose."

Section 20.1 relates to definitions provided by Title 15 of the Election Code. Under Title 15 of the Election Code, a "political committee" is defined as "a group of persons that has as a principal purpose accepting political contributions or making political expenditures." Section 251.001(12), Election Code. To provide clarity, the proposed amendment clarifies the term "principal purpose."

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

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the meaning of principal purpose under the campaign finance laws. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission. The proposed amendment to §20.1 affects Texas Election Code §251.001(12).

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (19) (No change.)

(20) Principal purpose--A group has as a principal purpose of accepting political contributions or making political expenditures, including direct campaign expenditures, when that activity is an important or a main function of the group.

(A) A group may have more than one principal purpose.

(B) A group has as a principal purpose accepting political contributions if the proportion of the political contributions to the total contributions to the group is more than 25 percent within a calendar year. Whether the contributor intends to make a political contribution is determined by the reasonable expectation of the contributor as to how the contribution will be used and includes an analysis of:

(i) the content of the group's public statements regarding its fundraising efforts, goals, or support of or opposition to candidates, officeholders, or measures;

(ii) the group's government filings and organizational documents, including mission statements; and

(iii) the group's other activities that are unrelated to accepting political contributions or making political expenditures.

(C) A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses [and other resources] to make political expenditures within a calendar year. The following shall be included for purposes of calculating the threshold:

(*i*) the amount of money paid in compensation and benefits to [value of the time spent by] the group's employees for work [or volunteers on activities] related to making political expenditures; [compared to other activities; and]

(ii) the amount of money [and in-kind donations] spent on political expenditures; and [compared to other expenditures.]

(iii) the amount of money attributable to [For the proportion in paragraph (2);] the proportional share of administrative expenses related [attributable] to political expenditures [should be ineluded]. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) with nonpolitical expenditures. (For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue based newsletters and the third is a direct advocacy sample ballot, and there were no other outside expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include [but are not limited to]:

(*I*) <u>fees for services to non-employees [employee</u> compensation and benefits];

(II)

ments];

(III) office expenses [rent];

(IV) information technology [office expenses];

advertising and promotion [contractor pav-

and

(V) <u>occupancy, travel expenses, interest, and in-</u> surance [computer equipment and services].

(D) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion established by clause (C)(iii) but allocated by the actual amount of the expense.

(E) [(D)] In this section, the term "political expenditures" includes direct campaign expenditures.

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 August 14, 2015.

TRD-201503106

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: September 27, 2015

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

1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Commission Rule §20.1, relating to the meaning of "in connection with a campaign."

Section 20.1 relates to definitions provided by Title 15 of the Election Code. Title 15 defines "campaign expenditure" as follows: "An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure." Section 251.001(7), Election Code. To provide clarity, the proposed amendment defines the phrase "in connection with a campaign" for purposes of the definition of "campaign expenditure."

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

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law, by defining "campaign expenditure" for purposes of the Texas campaign finance law (Title 15).

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_com*-

ment@ethics.state.tx.us or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Texas Election Code §251.001(7).

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) In connection with a campaign:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(1) using such words as "vote for," "elect," "support," "vote against," "defeat," "reject," "cast your ballot for," or "Smith for city council;" or

(*II*) using such phrases as "elect the incumbent" or "reject the challenger," or such phrases as "vote pro-life" or "vote pro-choice" accompanied by a listing of candidates described as "prolife" or "pro-choice;"

(*ii*) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 30 days before a contested election for the office sought by the candidate;

ographical area the <u>(*III*)</u> targets a mass audience or group in the gecandidate seeks to represent; and

(*IV*) includes words, whether displayed, written, or spoken; images of the candidate or candidate's opponent; or sounds of the voice of the candidate or candidate's opponent that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

(iii) made by a candidate or political committee to support or oppose a candidate; or

(iv) a campaign contribution to:

(1) a candidate; or

already qualifies as $\frac{(II)}{a}$ a group that, at the time of the contribution, already qualifies as a political committee.

(B) An expenditure is made in connection with a campaign on a measure if it is:

(*i*) made for a communication that expressly advocates the passage or defeat of a clearly identified measure by using such words as "vote for," "support," "vote against," "defeat," "reject," or "cast your ballot for;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(1) refers to a clearly identified measure;

(*II*) is distributed within 30 days before the election in which the measure is to appear on the ballot;

<u>(*III*)</u> targets a mass audience or group in the geographical area in which the measure is to appear on the ballot; and

(*IV*) includes words, whether displayed, written, or spoken, that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the passage or defeat of the measure;

(*iii*) made by a political committee to support or oppose a measure; or

(iv) a campaign contribution to a group that, at the time of the contribution, already qualifies as a political committee.

(C) Any cost incurred for covering or carrying a news story, commentary, or editorial by a broadcasting station or cable television operator, Internet website, or newspaper, magazine, or other periodical publication, including an Internet or other electronic publication, is not a campaign expenditure if the cost for the news story, commentary, or editorial is not paid for by, and the medium is not owned or controlled by, a candidate or political committee.

(D) For purposes of this section:

(i) a candidate is clearly identified by a communication that includes the candidate's name, office sought, office held, likeness, photograph, or other apparent and unambiguous reference; and

(*ii*) a measure is clearly identified by a communication that includes the measure's name or ballot designation (such as "Proposition 1"), purposes, election date, or other apparent and unambiguous reference.

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 August 14, 2015.

TRD-201503107 Natalia Luna Ashley Executive Director Texas Ethics Commission Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-5800

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1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Commission Rule §20.1, by adding a definition for the term "discount."

Section 20.1 relates to definitions provided by Title 15 of the Election Code. Under Title 15 of the Election Code, a contribution is defined as "a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement or other obligation incurred, whether legally enforceable or not, to make a transfer." Section 251.001(2), Election Code. Texas Ethics Commission Rule §20.1(8) clarifies that an in-kind contribution is "a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution." Additionally, Texas Ethics Commission Rule §20.1(3) clarifies that a contribution "does not include a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor." The proposed amendment to Texas Ethics Commission Rule §20.1 would define the term "discount" and clarify when a discount constitutes a political contribution.

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

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the meaning of discount under the campaign finance laws. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. In addition to this proposed amendment, new Texas Ethics Commission Rule §20.66 relating to this subject matter has been proposed. The commission invites comments on both proposals. A written statement should be emailed to *public_comment@ethics.state.tx.us* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item relating to the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Title 15 of the Election Code.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Discount--The provision of any goods or services without charge or at a charge which is less than fair market value. A discount is an in-kind political contribution unless the terms of the transaction reflect the usual and normal practice of the industry and are typical of the terms that are offered to political and non-political persons alike, or unless the discount is given solely in order to comply with \$253.041 of the Election Code. The value of an in-kind contribution in the form of a discount is the difference between the fair market value of the goods or services at the time of the contribution and the amount charged.

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 August 14, 2015.

TRD-201503108

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-5800

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.66

The Texas Ethics Commission (the commission) proposes new Commission Rule §20.66, relating to the term discount for purposes of Title 15 of the Election Code.

Under Title 15 of the Election Code, a contribution is defined as "a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement or other obligation incurred, whether legally enforceable or not, to make a transfer." Section 251.001(2), Election Code. Texas Ethics Commission Rule §20.1(8) clarifies that an in-kind contribution is "a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution." Additionally, Commission Rule §20.1(3) clarifies that a contribution "does not include a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor." The proposed new rule would define the term discount and clarify when a discount constitutes a political contribution.

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

Ms. Ashley has also determined that for each year of the first five years the proposed rule is in effect the public benefit will be clarity in the commission's rules regarding the meaning of discount under the campaign finance laws. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. In addition to this proposed rule, an amendment to Texas Ethics Commission Rule §20.1 to add a definition of the term discount has been proposed. The commission invites comments on both proposals. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item relating to the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

Section 20.66 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Section 20.66 affects Title 15 of the Election Code.

§20.66. Discounts.

(a) A discount to a candidate, officeholder, or political committee is an in-kind political contribution unless the terms of the transaction reflect the usual and normal practice of the industry and are typical of the terms that are offered to political and non-political persons alike, or unless the discount is given solely in order to comply with §253.041 of the Election Code.

(b) The value of an in-kind contribution in the form of a discount is the difference between the fair market value of the goods or services at the time of the contribution and the amount charged.

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 August 13, 2015.

TRD-201503102 Natalia Luna Ashley Executive Director Texas Ethics Commission Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.5

The Texas Ethics Commission (the commission) proposes an amendment to §34.5, relating to excluding certain compensation for purposes of calculating lobby registration requirements.

Section 34.5 currently excludes compensation received for responding to a specific request for information from a member of the legislative or executive branch when the request was not solicited by or on behalf of the person providing the information. The proposed amendment would clarify that exception.

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

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding exclusions from lobby registration for persons providing facts or data only to members of the legislative or executive branch under certain circumstances. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

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

The amendment to §34.5 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to \$34.5 affects Chapter 305 of the Government Code.

§34.5. Certain Compensation Excluded.

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code §305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

(1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;

(2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;

(3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;

(4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;

(5) <u>providing to</u> [responding to a specific request for information from] a member of the legislative or executive branch information consisting of facts or data that the member requested in writing regarding legislation or administrative action, when the request was not solicited by or on behalf of the person providing the information;

(6) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(7) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law; (8) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rulemaking proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or

(9) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member).

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 August 10, 2015.

TRD-201503038

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 25. SPECIAL NUTRITION PROGRAMS

The Texas Department of Agriculture (TDA) proposes new §25.601 in Subchapter B, Division 1, and the repeal of Subchapter C, §§25.871 - 25.873, 25.881, 25.882, 25.901 - 25.903, 25.921 - 25.929, 25.941 - 25.942, 25.951 - 25.955, 25.971 - 25.985, and 25.991; Subchapter D, §§25.1051 - 25.1053, 25.1071, 25.1072, 25.1091 - 25.1094, 25.1101 - 25.1110, 25.1121, 25.1122, 25.1131 - 25.1135, 25.1151 - 25.1165, and 25.1191; and Subchapter E, §§25.1251 - 25.1253, 25.1261 - 25.1264, 25.1281 - 25.1284, 25.1301 - 25.1312, 25.1331, 25.1332, 25.1341 - 25.1345, 25.1361 - 25.1375, and 25.1401. New §25.601 is proposed following TDA's reorganization and renumbering of rules governing the Summer Food Service Program (SFSP). The proposed repeals remove references to the previous administrator of the school nutrition programs, Texas Department of Human Services, and reduce the possibility of references to outdated federal regulations.

TDA administers the school nutrition programs in accordance with the controlling provisions set out in federal rule and TDA guidance. TDA proposes new Chapter 25, Subchapter B, §25.601, concerning schools required to participate in a Summer Nutrition Program, either the SFSP or the Seamless Summer Option. New §25.601 is proposed to replace former §25.612, which was adopted as required by Texas Agriculture Code §12.0029, as enacted by Senate Bill 89, 82nd Legislative Session 2011 (SB 89), in order to lower the threshold for mandatory participation in a Summer Nutrition Program and update related waiver procedures.

Angela Olige, Assistant Commissioner for TDA's Food and Nutrition Division, has determined that for the first five-year period the proposed repeals and new section are in effect, there will be no fiscal implications for state or local governments as a result of the administration or enforcement of the proposed repeals or new section.

Ms. Olige has also determined that for each year of the first five years the proposed repeals and new section are in effect, the public benefit anticipated as a result of these repeals and new section will be the elimination of outdated references and unnecessary state rules, as well as clarification and ease of locating information by relying on the applicable federal regulations, statute and guidance by the United States Department of Agriculture. There will be no adverse fiscal impact on individuals or small or micro businesses as a result of the proposed repeals or new section, as TDA and participating institutions and schools all must currently abide by applicable federal regulations, statute and USDA guidance.

The proposal is made pursuant to the Texas Agriculture Code, \$12.0025(4), which provides that the department shall administer federal and state nutrition programs, and \$12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

Written comments on the proposal may be submitted to Angela Olige, Assistant Commissioner for Food and Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at *FNDPolicy*@*TexasAgriculture.gov*. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM (SFSP) DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §25.601

The proposal is made pursuant to the Texas Agriculture Code, §12.0025, which authorizes that the department shall administer the summer food service program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.601. Waiver of Summer Nutrition Program Requirements for Public School Districts.

(a) Eligibility.

(1) Public school districts in which 50% or more of the enrolled children are eligible to receive free meal benefits in the National School Lunch Program (NSLP) must sponsor a Summer Nutrition Program, either the Seamless Summer Option (SSO) or Summer Food Service Program (SFSP), directly at school and/or non-school sites, arrange for another school food authority (SFA) to sponsor a Summer Nutrition Program in their district at school and/or non-school sites, or arrange with another entity to sponsor the SFSP in its district at school and/or non-school sites, for at least 30 calendar days during the summer recess unless they receive a waiver from TDA, in accordance with this section. A sponsor of a Summer Nutrition Program accepts final financial and administrative responsibility for its sites.

(2) TDA will notify school districts required by this section to sponsor or arrange for the provision of a Summer Nutrition Program of this obligation no later than October 31 of each year preceding the applicable summer season.

(3) A school district notified under paragraph (2) of this subsection must inform TDA in writing, no later than January 31 of each year, whether it intends to:

(A) directly sponsor a Summer Nutrition Program in its district;

(B) arrange for another SFA to sponsor a Summer Nutrition Program in its district or arrange for another entity to sponsor the SFSP in its district; or

(C) request a waiver from TDA.

(b) Documentation required by TDA.

(1) A school district that arranges for the provision of a Summer Nutrition Program must enter into an agreement to partner or collaborate with a local governmental entity, educational institution, or private non-profit organization to ensure meal service for children in the school district's attendance area, as provided in subsection (a)(1) of this section.

(2) School districts required to provide a Summer Nutrition Program under this section that choose to arrange for the provision of a Summer Nutrition Program in its districts must provide TDA with written documentation of the arrangement with another entity to sponsor a Summer Nutrition Program in its district no later than April 1 of each year.

(c) Requesting a waiver. No later than November 30 of each year, the board of trustees of a public school district wishing to obtain a waiver must inform, in writing, the school district's local school health advisory council that it intends to request a waiver from TDA. The school district must then communicate to TDA in writing, no later than January 31, of their intent to sponsor a Summer Nutrition Program, arrange for another SFA to sponsor a Summer Nutrition Program in its districts, arrange for another entity to sponsor the SFSP in its districts, or their its to request a waiver.

(d) Awarding of waivers to public school districts otherwise required to sponsor or arrange for the provision of a Summer Nutrition Program. TDA may grant a waiver of the requirement to sponsor a Summer Nutrition Program or arrange for the provision of a Summer Nutrition Program only if the district provides verifiable documentation that such waiver is warranted. Waivers are valid for one year only. To be eligible for a waiver, a school district must provide either form of documentation detailed in paragraph (1) or (2) of this subsection:

(1) Verifiable documentation showing the district has worked with TDA to identify another possible sponsor for a Summer Nutrition Program in the district, in addition to verifiable information showing that:

(A) there are fewer than 100 children in the district currently eligible to receive free or reduced-price meals under the National School Lunch Program; or

(B) transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers; or

(C) the district is unable to sponsor or arrange for the provision of a Summer Nutrition Program due to renovation or construction of district facilities and the unavailability of an appropriate alternate sponsor or site; or

(D) the district is unable to sponsor a Summer Nutrition Program due to another extenuating circumstance, and that there is not an appropriate alternate site or sponsor available.

(2) Verifiable documentation showing the cost to the district to sponsor or arrange for the provision of a Summer Nutrition Program would be cost-prohibitive, as provided in subsection (e) of this section. (e) Criteria and methodology considered by TDA to determine if sponsoring the program is cost-prohibitive for a district.

(1) A school district's sponsorship of a Summer Nutrition Program will be deemed cost-prohibitive if the projected operational expenses for a Summer Nutrition Program are greater than the sum of the expected federal reimbursements plus one month of the school food services' allowable three months operating expenses on hand.

(2) To demonstrate that sponsorship of a Summer Nutrition Program is cost-prohibitive, a school district must provide:

(A) the projected Summer Nutrition Program budget for the program year:

(*i*) based on number of expected participants; and

(ii) include the specific cost items to support possible determination of cost-prohibitive nature of program operation;

(B) expected reimbursement amount, based on either:

(i) previous year's program participation; or

(*ii*) interest survey data taken since the start of the current school year;

(C) documents supporting the calculation of the food service department's three months operating expense balance, including:

(i) current fund balance;

(ii) current year's total operating expense; and

(iii) available cash on hand;

(D) financial statement which indicates child nutrition net cash resources are below two months net cash reserves; and

(E) written explanation of efforts made to attempt partnership with another SFA to sponsor a Summer Nutrition Program in its district, or efforts made to attempt partnership with another entity to sponsor the SFSP, including:

(i) contacting TDA; and

(ii) contacting two or more other entities to discuss potential partnership.

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 August 14, 2015.

TRD-201503111

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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SUBCHAPTER C. SPECIAL MILK PROGRAM (SMP)

DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.871 - 25.873

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.871. What is the purpose of the Special Milk Program (SMP)?

§25.872. What do certain words and terms in the subchapter mean? *§25.873.* How is the SMP administered in Texas?

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 August 14, 2015.

TRD-201503112 Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

DIVISION 2. CONTRACTOR ELIGIBILITY

4 TAC §25.881, §25.882

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.881. How does a contractor qualify to participate in the SMP? *§25.882.* What information must a contractor submit when applying to participate in the SMP?

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 August 14, 2015.

TRD-201503113

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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DIVISION 3. CONTRACTOR PARTICIPATION REQUIREMENTS AND RESPONSIBILITIES

4 TAC §§25.901 - 25.903

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.901. What are the rights and responsibilities of a contractor that participates in the SMP?

§25.902. Is a contractor that participates in the SMP subject to federal and state procurement guidelines?

§25.903. How does a contractor determine if an individual is eligible to participate and receive benefits in the SMP?

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 August 14, 2015.

TRD-201503114 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

DIVISION 4. REIMBURSEMENT AND

FINANCIAL MANAGEMENT

4 TAC §§25.921 - 25.929

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.921. How does DHS reimburse a contractor for its participation in the SMP?

§25.922. Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?

\$25.923. How does DHS process a claim received later than 60 days after the end of the claim month(s)?

§25.924. What happens if DHS finds that good cause did not exist?

§25.925. What happens if DHS finds that good cause beyond the contractor's control existed?

§25.926. What happens if USDA finds that good cause existed?

§25.927. What happens if USDA finds that good cause did not exist?

§25.928. Does a contractor have the option not to submit a request for payment of a late claim based on good cause?

§25.929. If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?

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 August 14, 2015.

TRD-201503115 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075



DIVISION 5. PROGRAM REVIEWS, MONITORING, AND MANAGEMENT EVALUATIONS

4 TAC §25.941, §25.942

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.941. How does DSHS ensure that a contractor complies with SMP requirements?

§25.942. Does the USDA conduct management evaluations of contractors operating the SMP?

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-201503116

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075



DIVISION 6. AUDITS 4 TAC §§25.951 - 25.955

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.951. Must a contractor that participates in the SMP conduct audits?

§25.952. Must a contractor that participates in the SMP comply with the requirements of the Single Audit Act?

§25.953. Are certain contractors not subject to the requirements of the Single Audit Act?

§25.954. When is an audit considered acceptable?

§25.955. How is a contractor informed of its obligation to comply with the single audit requirements?

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

Filed with the Office of the Secretary of State on August 14, 2015.

TRD-201503117 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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DIVISION 7. SANCTIONS, PENALTIES, AND FISCAL ACTION

4 TAC §§25.971 - 25.985

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

*§*25.971. How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?

§25.972. Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 215 and 245?

§25.973. Does DHS investigate irregularities in or complaints about a contractor's operation of the SMP?

§25.974. What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?

§25.975. What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?

§25.976. Who must pay for this audit?

§25.977. What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?

§25.978. Can DHS extend the deadline by which a contractor must submit an audit?

§25.979. How must a contractor request an extension of its audit deadline?

§25.980. Is DHS required to grant a contractor an extension of its audit deadline?

§25.981. How is a new audit due date determined?

§25.982. How is the contractor informed of the decision regarding the extension of its audit due date?

§25.983. Can a contractor request more than one extension?

§25.984. What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?

§25.985. Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SMP for failing to comply with the single audit requirements?

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

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TRD-201503118 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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DIVISION 8. SUSPENSION AND TERMINATION

4 TAC §25.991

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(7), which provides that the department shall administer the special milk program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.991. How does DHS terminate or suspend a contract?

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 August 14, 2015.

TRD-201503119 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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SUBCHAPTER D. SCHOOL BREAKFAST PROGRAM (SBP) DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.1051 - 25.1053

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1051. What is the purpose of the School Breakfast Program (SBP)?

§25.1052. What do certain words and terms in this subchapter mean?

§25.1053. How is the SBP administered in Texas?

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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DIVISION 2. CONTRACTOR ELIGIBILITY

4 TAC §25.1071, §25.1072

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1071. How does a contractor qualify to participate in the SBP?

§25.1072. What information must a contractor submit when applying to participate in the SBP?

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-201503121 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075



DIVISION 3. CONTRACTOR PARTICIPATION REQUIREMENTS AND RESPONSIBILITIES

4 TAC §§25.1091 - 25.1094

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1091. What are the rights and responsibilities of a contractor that participates in the SBP?

§25.1092. Does DHS impose any special curriculum or education conditions or restrictions as a requirement for participation in the SBP?

§25.1093. Is a contractor that participates in the SBP subject to the federal and state procurement guidelines?

§25.1094. How does a contractor determine if an individual is eligible to participate and receive benefits in the SBP?

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-201503122

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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DIVISION 4. REIMBURSEMENT AND FINANCIAL MANAGEMENT

4 TAC §§25.1101 - 25.1110

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1101. How does DHS reimburse a contractor for its participation in the SBP?

§25.1102. Does DHS make advance payments?

§25.1103. Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?

\$25.1104. How does DHS process a claim received later than 60 days after the end of the claim month(s)?

§25.1105. What happens if DHS finds that good cause did not exist?

§25.1106. What happens if DHS finds that good cause beyond the contractor's control existed?

§25.1107. What happens if USDA finds that good cause existed?

§25.1108. What happens if USDA finds that good cause did not exist?

§25.1109. Does a contractor have the option not to submit a request for payment of a late claim based on good cause?

§25.1110. If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?

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 5. PROGRAM REVIEWS, MONITORING, AND MANAGEMENT EVALUATIONS

4 TAC §25.1121, §25.1122

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1121. How does DHS ensure that a contractor complies with SBP requirements?

§25.1122. Does the USDA conduct management evaluations of contractors operating the SBP?

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-201503124 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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DIVISION 6. AUDITS

4 TAC §§25.1131 - 25.1135

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

The proposal is made pursuant to the Texas Agriculture Code, $\S12.0025(8)$, which provides that the department shall administer the school breakfast program, and $\S12.016$, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1131. Must a contractor that participates in the SBP conduct audits?

§25.1132. Must a contractor that participates in the SBP comply with the requirements of the Single Audit Act?

§25.1133. Are certain contractors not subject to the requirements of the Single Audit Act?

§25.1134. When is an audit considered acceptable?

§25.1135. How is a contractor informed of its obligation to comply with the single audit requirements?

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

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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DIVISION 7. SANCTIONS, PENALTIES, AND FISCAL ACTION

4 TAC §§25.1151 - 25.1165

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1151. How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?

§25.1152. Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 220 and 245?

§25.1153. Does DHS investigate irregularities in or complaints about a contractor's operation of the SBP?

§25.1154. What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?

§25.1155. What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?

§25.1156. Who must pay for this audit?

§25.1157. What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?

§25.1158. Can DHS extend the deadline by which a contractor must submit an audit?

§25.1159. How must a contractor request an extension of its audit deadline?

§25.1160. Is DHS required to grant a contractor an extension of its audit deadline?

§25.1161. How is a new audit due date determined?

§25.1162. How is the contractor informed of the decision regarding the extension of its audit due date?

§25.1163. Can a contractor request more than one extension?

§25.1164. What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?

§25.1165. Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SBP for failing to comply with the single audit requirements?

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

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TRD-201503126 Jessica Escobar Assistant General Counsel Texas Department of Agriculture Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 463-4075

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DIVISION 8. SUSPENSION AND TERMINATION

4 TAC §25.1191

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(8), which provides that the department shall administer the school breakfast program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1191. How does DHS terminate or suspend a contract?

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

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SUBCHAPTER E. NATIONAL SCHOOL LUNCH PROGRAM (NSLP) DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.1251 - 25.1253

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

The proposal is made pursuant to the Texas Agriculture Code, $\S12.0025(4)$, which provides that the department shall administer the NSLP, and $\S12.016$, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1251. What is the purpose of the National School Lunch Program (NSLP)?

§25.1252. What do certain words and terms in this subchapter mean?

§25.1253. How is the NSLP administered in Texas?

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

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DIVISION 2. CONTRACTOR ELIGIBILITY

4 TAC §§25.1261 - 25.1264

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

The proposal is made pursuant to the Texas Agriculture Code, \$12.0025(4), which provides that the department shall administer the NSLP, and \$12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1261. How does a contractor qualify to participate in the NSLP?

§25.1262. What information must a contractor submit when applying to participate in the NSLP?

§25.1263. Must a school food authority (SFA) meet any specific requirements in order to be eligible to administer an Afterschool Care Snack program in the NSLP?

§25.1264. What documentation must a school food authority (SFA) provide to demonstrate that an Afterschool Care Snack program facility has been determined exempt from state licensing requirements?

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

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DIVISION 3. CONTRACTOR PARTICIPATION REQUIREMENTS AND RESPONSIBILITIES

4 TAC §§25.1281 - 25.1284

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(4), which provides that the department shall administer the NSLP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1281. What are the rights and responsibilities of a contractor that participates in the NSLP?

§25.1282. Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the NSLP?

§25.1283. Is a contractor that participates in the NSLP subject to federal and state procurement guidelines?

§25.1284. How does a contractor determine if an individual is eligible to participate and receive benefits in the NSLP?

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

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DIVISION 4. REIMBURSEMENT AND FINANCIAL MANAGEMENT

4 TAC §§25.1301 - 25.1312

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(4), which provides that the department shall administer the NSLP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1301. How does DHS reimburse a contractor for its participation in the NSLP?

§25.1302. Does DHS make advance payments?

§25.1303. Can a school participating in an approved after school program claim reimbursement for snacks?

§25.1304. How does DHS determine the rate of reimbursement for eligible snacks served in an after school program?

§25.1305. Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?

§25.1306. How does DHS process a claim received later than 60 days after the end of the claim month(s)?

§25.1307. What happens if DHS finds that good cause did not exist? *§25.1308.* What happens if DHS finds that good cause beyond the contractor's control existed?

§25.1309. What happens if USDA finds that good cause existed?

§25.1310. What happens if USDA finds that good cause did not exist?

§25.1311. Does a contractor have the option not to submit a request for payment of a late claim based on good cause?

§25.1312. If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?

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 August 14, 2015.

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DIVISION 5. PROGRAM REVIEWS, MONITORING, AND MANAGEMENT EVALUATIONS

4 TAC §25.1331, §25.1332

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

The proposal is made pursuant to the Texas Agriculture Code, \$12.0025(4), which provides that the department shall administer the NSLP, and \$12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1331. How does DHS ensure that a contractor complies with NSLP requirements?

§25.1332. Does USDA conduct management evaluations of contractors operating the NSLP?

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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DIVISION 6. AUDITS

4 TAC §§25.1341 - 25.1345

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

The proposal is made pursuant to the Texas Agriculture Code, $\S12.0025(4)$, which provides that the department shall administer the NSLP, and $\S12.016$, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1341. Must a contractor that participates in the NSLP conduct audits?

§25.1342. Must a contractor that participates in the NSLP comply with the requirements of the Single Audit Act?

§25.1343. Are certain contractors not subject to the requirements of the Single Audit Act?

§25.1344. When is an audit considered acceptable?

§25.1345. How is a contractor informed of its obligation to comply with the single audit requirements?

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

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DIVISION 7. SANCTIONS, PENALTIES, AND FISCAL ACTION

4 TAC §§25.1361 - 25.1375

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

The proposal is made pursuant to the Texas Agriculture Code, \$12.0025(4), which provides that the department shall administer the NSLP, and \$12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

*§*25.1361. How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?

§25.1362. Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 210 and 245?

§25.1363. Does DHS investigate irregularities in or complaints about a contractor's operation of the NSLP?

§25.1364. What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?

§25.1365. What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?

§25.1366. Who must pay for this audit?

§25.1367. What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?

§25.1368. Can DHS extend the deadline by which a contractor must submit an audit?

§25.1369. How must a contractor request an extension of its audit deadline?

§25.1370. Is DHS required to grant a contractor an extension of its audit deadline?

§25.1371. How is a new audit due date determined?

§25.1372. How is the contractor informed of the decision regarding the extension of its audit due date?

§25.1373. Can a contractor request more than one extension?

§25.1374. What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?

§25.1375. Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the NSLP for failing to comply with the single audit requirements?

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

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DIVISION 8. SUSPENSION AND TERMINATION

4 TAC §25.1401

to adopt.

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

The proposal is made pursuant to the Texas Agriculture Code, §12.0025(4), which provides that the department shall administer the NSLP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

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

§25.1401. How does DHS terminate or suspend a contract? The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER K. CREDIT UNION DEVELOPMENT DISTRICTS

7 TAC §§91.2000 - 91.2006

The Credit Union Commission (Commission) proposes new Subchapter K of 7 TAC Chapter 91. The new subchapter, entitled Credit Union Development Districts, contains seven new rules which describe the procedures for establishment of credit union development districts. (A previous version of Subchapter K of 7 TAC Chapter 91, entitled Residential Mortgage Loan Originators Employed by a Credit Union Subsidiary Organization, was repealed in October 2013 as a result of provisions enacted in the 83rd Session of the Legislature.)

The new rules are proposed in response to House Bill 1626 (HB 1626) enacted by the 84th Legislature. HB 1626 added Chapter 279 to the Texas Finance Code. HB 1626 assigned the Department the duty to administer and monitor a credit union development district program where there is a demonstrated need for services provided by a state or federal credit union, and requires the Commission to adopt rules consistent with this duty not later than January 1, 2016. HB 1626 authorizes a local government to apply for the designation of a credit union development district and authorizes a state or federal credit union to apply to open a branch in a proposed development district at the time the local government submits the application. HB 1626 states that rules regarding the criteria for the designation of credit union development districts must be made in consultation with the Texas Economic Development and Tourism Office (within the Office of the Governor).

Section 91.2000, Purpose and Scope, explains the reason for these rules and clarifies that establishing a credit union development district does not affect requirements applicable to reinvestment zones and tax abatement agreements pursuant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively).

Section 91.2001, Definitions, defines the terms "credit union," "district," and "local government."

Section 91.2002, Application Requirements to Establish a District, details the application requirements for local governments seeking to establish a credit union development district in conjunction with a credit union.

Section 91.2003, Submission and Processing of Application, details how an application will be processed and considered complete and acceptable for filing.

Section 91.2004, Criteria for Approval of a District by the Commission, requires the Commission to consider the five statutorily required factors in HB 1626 in determining whether to approve a credit union development district: (1) the location, number, and proximity of sites where services provided by a credit union are available in the proposed credit union development district, (2) consumer needs for services provided by a credit union in the proposed district, (3) the economic viability and local credit needs of the community in the proposed district, (4) the existing commercial development in the proposed district, and (5) the impact additional services provided by a credit union would have on potential economic development in the proposed district.

Section 91.2005, Monitoring, imposes minimal reporting requirements on the local government applicant in order to permit the Commission to monitor the program as required by HB 1626. The only required notice would inform the Department when a credit union opens or closes a branch in an approved credit union development district.

Finally, §91.2006, Rulemaking and Amendment for this Subchapter, states that the Department will develop policies with the Texas Economic Development and Tourism Office of the Governor's Office regarding consultation for the adoption of rules for the designation of credit union development districts.

Harold E. Feeney, Credit Union Commissioner, has determined that for the first five-year period that the proposed new rules are in effect a local government entity could have some costs associated with the proposed new rules if the local government entity chooses to create a credit union development district. However, it is assumed that a local government would establish a credit union development district only if sufficient funds and partnership opportunities were available so that there would not be any negative fiscal impact. Therefore, no significant fiscal impact is anticipated as a result of enforcing or administering the rules.

Commissioner Feeney has also determined that for each year of the first five years the proposed new rules are in effect, the public benefits anticipated as a result of enforcing the rules will be a facilitation of the establishment of branches of a credit union in geographic areas where there is a demonstrated need for credit union services. Additional public benefits are that the commission's rules will be more easily understood by the credit union system and local governments required to comply with the rules and the rules will be more easily enforced. There will be no effect on small or micro businesses as a result of adopting the rules. Any economic cost to the credit union system or to local governments is imposed by HB 1626 not by the rules.

Comments on the proposal may be submitted in writing to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to *CUD-mail@cud.texas.gov.* To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The new rules are proposed under newly added Texas Finance Code §279.102, which permits the Commission to adopt rules to implement the creation of credit union development districts and the depositing of public funds in these district depositories with respect to credit union in credit union development districts.

The specific sections affected by the proposed new rules are Texas Finance Code §279.101 et seq.

§91.2000. Purpose and Scope.

(a) This subchapter implements Tex. Fin. Code §279.001 et seq. regarding the establishment of credit union development districts.

(b) This subchapter does not affect or circumvent requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Tex. Gov. Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement.

§91.2001. Definitions.

Unless the context clearly indicates otherwise, these words and terms, when used in this subchapter, shall have the following meanings:

(1) "Credit union" includes state and federal credit unions.

(2) "District" means a credit union development district approved under this subchapter.

(3) "Local government" means a municipality or county.

§91.2002. Application Requirements to Establish a District.

(a) Basic application. A local government, in conjunction with a credit union, may submit an application to the Commission for the designation of a proposed credit union development district, as provided by §91.2003 of this subchapter (relating to Submission and Processing of Application). The application shall contain the following items to the extent available:

(1) the name of the local government, the county in which it is located and evidence of the approval of the application by its governing body;

(2) identification of the participating credit union and the location of the proposed credit union or branch by street address;

(3) a description of the geographic area comprising the proposed district, including a map indicating the borders of the proposed district;

(4) the location, number and proximity of sites where credit union services are available in the proposed credit union development district, including branches of other financial institutions and deposittaking ATMs other than those located at branches;

(5) a compilation and description of consumer needs for credit union services in the proposed district, including population demographics included within the proposed district;

and local credit needs of the community in the proposed district, including economic indicators pertinent to the proposed district;

(7) a compilation and description of the existing commercial development in the proposed district, including a description of the type and nature of commercial businesses located in the proposed district; and

(8) a compilation and description of the impact additional credit union services would have on potential economic development in the proposed district, including significant business developments within the past three years, corporate restructurings, plant closings, other business closings, and recent or proposed business openings or expansions.

(b) Optional information. An application for designation of a credit union development district may also include:

(1) a description of other local government and community initiatives proposed to be undertaken and coordinated with establishment of the proposed district;

(2) indications of community support or opposition for the application, as evidenced by letters from entities such as local chambers of commerce, local businesses, community-based organizations, non-profit organizations, government officials, or community residents; and

(3) such other information that the applicant believes will demonstrate that the proposed district meets the standards set forth in \$91.2004 of this subchapter (relating to Criteria for Approval).

§91.2003. Submission and Processing of Application.

(a) The application must be submitted to the Commission in care of the Department, 914 East Anderson Lane, Austin, TX 78752-1699. No filing fee is required.

(b) After the initial application is submitted, the Department shall issue a written notice informing the applicant either that the ap-

plication is complete and accepted for filing or that the application is deficient and specific additional information is required. The applicant must supply any additional information requested by the Department not later than the 61st day after the date the applicant received written notice from the Department that the application is deficient. Upon a finding of good and sufficient cause, the Department shall grant an applicant additional time to complete the application. Once the deficient application is complete and accepted for filing, the Department shall issue a written notice informing the applicant that the application is complete and accepted for filing.

(c) After the issuance of written notice informing the applicant that the application is complete and accepted for filing, the Department shall evaluate the application to the extent necessary to make a written recommendation to the Commission under the criteria set forth in §91.2004 of this subchapter. The Department shall submit the completed application and the Department's recommendations to the Commission for decision at the next regularly scheduled meeting of the Commission, which must occur not later than the 120th date after the date the completed application is accepted for filing.

(d) If the Commission approves the application, the Department shall notify the interested parties as required by Tex. Fin. Code $\underline{\$279.105(b)}$.

(e) All approved districts shall be posted on the Department's web site.

§91.2004. Criteria for Approval of a District by the Commission.

In determining whether to approve an application for the designation of a credit union development district, the Commission must consider the criteria listed in Tex. Fin. Code §279.102(b).

§91.2005. Monitoring.

(a) A local government that receives approval for a district under this subchapter shall notify the Department in writing not later than the 21st day after the date:

(1) the credit union establishes a branch in the district and the address of such a branch; and

(2) the credit union closes a branch in the district.

(b) On behalf of the Commission, the Department may request periodic status reports from the local government or the credit union in order to ensure that the needs of the community located in the district are being met in an appropriate manner.

§91.2006. Rulemaking and Amendment for this Subchapter.

Tex. Fin. Code §279.102(b) requires the Credit Union Department to adopt rules in consultation with the Texas Economic Development and Tourism Office within the Office of the Governor. The Department will develop policies with this office within the Governor's office, outlining the procedures for consultation.

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 August 12, 2015.

TRD-201503096 Harold E. Feeney Commissioner Credit Union Department Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 837-9236

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.206

The Credit Union Commission (Commission) proposes new §97.206. The new rule, entitled Posting of Certain Contracts: Enhanced Contract and Performance Monitoring, implements procedures for contracts for the purchase of goods or services from private vendors.

The new rule is proposed in response to Senate Bill 20 (SB 20) enacted by the 84th Legislature. SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements.

Harold E. Feeney, Commissioner, has determined that for the first five-year period that the proposed new rule is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the rule.

Commissioner Feeney has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be enhanced reporting requirements, increased transparency and increased accountability. There will be no effect on small or micro businesses as a result of adopting the rule. Any economic cost to entities or to individuals is imposed by SB 20, not by the rule.

Comments on the proposal may be submitted in writing to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to *CUD-mail@cud.texas.gov.* To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the Commission.

The new rule is proposed under Texas Government Code §2261.253, which requires the Commission to adopt and enforce rules providing for the commissioner to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The specific section affected by the proposed new rule is Texas Government Code §2261.253.

§97.206. Posting of Certain Contracts: Enhanced Contracts and Performance Monitoring.

(a) Pursuant to §2261.253 of the Texas Government Code, the Department will implement the following procedures for contracts for the purchase of goods or services from private vendors:

(1) The Department will list information pertaining to its contract with private vendors on its website. The information will include:

(B) A description of the competitive bidding process for the contract, or, if the contract did not involve competitive bidding, a citation and explanation of the legal authority supporting exemption from the competitive bidding process;

(C) A link to a copy of the request for proposal for the contract, if applicable until the contract expires or is completed; and

(D) A link to a copy of the contract with the vendor until the contract expires or is completed.

(2) Enhanced contract or performance monitoring procedure until the contract expires or is completed.

(A) For each contract whose value is greater than \$25,000, the Commissioner and the Department Procurement Director will evaluate whether enhanced contract or performance monitoring is appropriate. Criteria that may be considered include:

(i) Total cost of the contract.

(ii) Risk of loss to the Department under the con-

tract.

(iii) Department resources available for enhanced contract or performance monitoring.

(B) After evaluation of the contract, the Commissioner will immediately report to the Commission Members:

(i) The basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(*ii*) Include any serious issues or risks identified with the contract, if applicable; and

(iii) If enhanced contract or performance monitoring is appropriate, the Department's plan for carrying out the enhanced contract or performance monitoring.

(C) Commission members may agree to convene a special commission meeting for the purposes of discussion or deciding upon matters related to enhanced contract or performance monitoring of Department contracts. This meeting would be conducted in conformity with the Texas Open Meetings Act.

(b) This rule applies only to contracts for which the request for bids or proposals is made public on or after September 1, 2015; or, if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memorandums of understanding, interagency contracts, interlocal agreements or contracts that do not involve a cost 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.

Filed with the Office of the Secretary of State on August 12, 2015.

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT SUBCHAPTER A. ADMINISTRATION

13 TAC §§11.16 - 11.22

The Texas Historical Commission (hereinafter referred to as the "commission") proposes new §§11.16 - 11.22 of Title 13, Part 2, Chapter 11 of the Texas Administrative Code, concerning procedures for various Administrative policies and procedures. The commission has internally adopted the related policies and procedures required by the related Government Code applicable to each of these statutes. The specific sections and their subject matter are as follows: §11.16, related to Dual Office Holding; §11.17, related to Employee Training and Education; §11.18, related to Sick Leave Pool; §11.19, related to Petition for Rulemaking; §11.20, related to Historically Underutilized Business Program; §11.21, related to Bid Submission and Opening; and §11.22, related to Negotiation and Mediation of Claims in Contract Disputes.

The commission has previously established policies for the sick leave pool and employee education and training within the Personnel Manual. The commission's policies and procedures for procurement have been to follow the Comptroller of Public Accounts rules and guidance. The procurement rulemaking is to formally acknowledge the current commission practice as required by Government Code. Section 11.19 includes a provision to implement HB 763, 84th Legislature, requiring that persons petitioning for rulemaking be residents of this state.

Mark Wolfe, Executive Director, has determined that for the first five-year period the new rules are in effect there will be no fiscal implications for state or local government as a result of administering these rules. The related policies and procedures are in place for these rules and there is no anticipated additional cost as a result of the rulemaking. There will be no impact on small or micro businesses.

Mr. Wolfe has also determined that for each year of the first fiveyear period the rules are in effect, the anticipated public benefit will be enhanced transparency on agency policy and procedures.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These new rules are proposed under the authority of Texas Government Code §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of those chapters.

No other statutes, articles, or codes are affected by these new rules.

§11.16. Dual Office Holding.

(a) Pursuant to Texas Government Code Chapter 574 (Dual Office Holding), an employee of the commission who is a non-elective state officer may not accept an offer to serve in another non-elective office unless the officer obtains from the commission a finding that the officer has satisfied Article XVI, Section 40, of the Texas Constitution.

(b) The minutes of the commission meeting shall include any findings made under Texas Government Code Chapter 574.

(c) Adoption of this rule is required of state agencies by Texas Government Code §574.003.

§11.17. Employee Training and Education.

(a) The commission may use state funds to provide education and training for its employees in accordance with the State Employees Training Act.

(b) The education or training shall be related to the employee's current position or prospective job duties within the commission.

(c) The commission's education and training program benefits both the agency and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the commission has difficulty in recruiting and retaining employees; and

(4) increasing the competence of commission employees.

(d) Commission employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(e) Participation in an education or training program requires the appropriate level of approval prior to participation and is subject to the availability of funds within the commission's budget.

(f) The employee education and training program for the agency may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) agency-funded external education; and

(6) other agency-sponsored education and training determined by the agency to fulfill the purposes of the State Employees Training Act.

(g) The commission's Executive Director shall designate an administrator of the agency's education and training program.

(h) The administrator shall develop policies for administering each of the components of the employee education and training program. These policies shall include:

(1) eligibility requirements for participation;

(2) approval procedures for participation; and

(3) obligations of program participants.

(i) Approval to participate in any portion of the commission's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(j) Permission to participate in any education and training program may be withdrawn if the agency determines that participation would negatively impact the employee's job duties or performance. (k) All materials received by an employee through commission-funded training or education are the property of the commission.

(1) Adoption of this rule is required of state agencies by Texas Government Code §656.048.

§11.18. Sick Leave Pool.

A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(1) The commission's Executive Director shall designate a pool administrator.

(2) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section for approval by the Executive Director.

(3) Operation of the pool shall be consistent with Texas Government Code Chapter 661, Subchapter A, State Employee Sick Leave Pool.

(4) Adoption of this rule is required of state agencies by Texas Government Code §661.002.

§11.19. Petition for Rulemaking.

(a) Any interested person may petition for the adoption, amendment, or repeal of a rule to the commission's Executive Director.

(b) A petition under this section must be in writing and contain the following minimum requirements:

(1) It must specify or otherwise make clear that the petition is made pursuant to the provisions of the Administrative Procedure Act.

(2) It must clearly state the body or substance of the rule requested for adoption, and, if appropriate, relate the requested rule to an adopted rule or rules of the commission.

(3) It must contain the petitioner's full name, address, telephone number, and signature.

(4) It must be signed by the petitioner with the date the petition is submitted.

(5) It must include the chapter and subchapter in which, in the petitioner's opinion, the rule belongs, and the proposed rule text of a new rule or the text of the proposed rule change prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(6) It must include a statement of statutory or other authority under which the rule is to be promulgated; and a brief explanation of why the rule action is necessary or desirable.

(7) The person or persons submitting a petition for rulemaking must state whether or not they are the following:

(A) a resident of this state;

(B) a business entity located in this state;

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

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

(c) The Executive Director or the Executive Director's designee shall evaluate the merits of the proposal.

(d) In accordance with Texas Government Code §2001.021(c), the commission shall respond to the petitioner within 60 days of receipt of the petition. The response shall: (1) advise that rulemaking proceedings will be initiated; or

(2) deny the petition, stating the reasons for its denial.

(e) If rulemaking procedures are initiated under this section, the version of the rule which the commission staff proposes may differ from the version proposed by the petitioner.

§11.20. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). These rules were promulgated by the Texas Comptroller of Public Accounts under Texas Government Code §2161.002.

(b) Adoption of this rule is required of state agencies by Texas Government Code §2161.003.

§11.21. Bid Submission and Opening.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts relating to bid opening and tabulation (34 Texas Administrative Code §20.35).

(b) Adoption of this rule is required of state agencies by Texas Government Code §2156.005(d).

§11.22. Negotiation and Mediation of Claims in Contract Disputes.

(a) The commission adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 Negotiation and Mediation of Certain Contract Disputes. The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

(b) Adoption of this rule is required of state agencies by Texas Government Code §2260.052(c).

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

Filed with the Office of the Secretary of State on August 11, 2015.

TRD-201503071

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 936-4323

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13 TAC §11.23

The Texas Historical Commission (hereinafter referred to as the "commission") proposes new §11.23 of Title 13, Part 2, Chapter 11 of the Texas Administrative Code, concerning procedures for contracts requiring enhanced contract or performance monitoring.

Senate Bill 20 (84th Legislature, Regular Session, 2015) created new Government Code §2261.253(c) which requires the commission by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. New §11.23 describes the contracts that will be reported to the Commissioners. Mark Wolfe, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of administering this rule.

Mr. Wolfe has also determined that for each year of the first five-year period the rule is in effect, the anticipated public benefit will be enhanced focus and accountability for monitoring and management of agency's contracts.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new rule is proposed under the authority of Texas Government Code §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters.

No other statutes, articles, or codes are affected by this new rule.

§11.23. Procedure for Contracts Requiring Enhanced Contract or Performance Monitoring.

(a) Contracts for the purchase or goods or services that have a value in excess of \$1 million will be identified for enhanced contract or performance monitoring.

(b) Contracts that are identified for enhanced contract or performance monitoring will be reported to the commission at the first regular quarterly commission meeting after the contract is approved and signed.

(c) Contracts will be monitored in accordance with policies and procedures in the commission's contract management handbook.

(d) The commission will be notified, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this 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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TRD-201503072

Mark Wolfe

Executive Director

Texas Historical Commission

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SUBCHAPTER B. OFFICIAL CORPORATE SPONSORS

The Texas Historical Commission (THC) proposes the repeal of \S 11.21 - 11.26 and the simultaneously proposes new \S 11.41 - 11.46 of Chapter 11, Subchapter B (Title 13, Part 2 of the Texas Administrative Code) relating to the Official Corporate Sponsors.

The purpose of the proposal is to accommodate additional new rules in Subchapter A whose section numbers would coincide with the current section numbers in Subchapter B. The new sections are proposed for adoption without substantive change from the previous sections.

Mark Wolfe, Executive Director, has determined that for the first five-year period the new rules are in effect there will be no fiscal implications for state or local government as a result of repealing and re-designating these rules.

Mr. Wolfe has also determined for each year of the first five-year period the re-designated rules are in effect the public benefit anticipated as a result of the rules will be increased clarification in THC's administrative rules. Additionally, Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of the repeal and re-designation of these rules.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

13 TAC §§11.21 - 11.26

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

The proposal of these repeals implements §442.005(q) of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters.

No other statutes, articles, or codes are affected by these repeals.

- §11.21. Definitions.
- §11.22. Designation of Official Corporate Sponsors.
- §11.23. Sponsorship Agreement.

§11.24. Fundraising by Official Corporate Sponsors.

§11.25. Donations.

§11.26. Advertising.

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-201503093 Mark Wolfe Executive Director Texas Historical Commission Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 936-4323

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13 TAC §§11.41 - 11.46

The proposal of these new sections implements §442.005(q) of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters.

No other statutes, articles, or codes are affected by this re-designation.

§11.41. Definitions.

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

(1) Commission--Texas Historical Commission.

(2) Commission brands--The Commission's trademarks, logos, name, seal, and other intellectual property.

(3) Commission site (or "site")--A state historic site under the jurisdiction of the Commission, or other property or facility owned or operated by the Commission.

(4) For-profit entity--A corporation, organization, sole proprietorship, estate, trust, partnership, association, or any other legal entity, that exists for the purpose of generating profits.

(5) Affiliated non-profit entity--A duly organized and registered non-profit organization whose sole purpose is to support the programs and work of the Commission. This includes the Friends of the Texas Historical Commission and non-profit organizations affiliated with individual historic sites.

(6) Official Corporate Sponsor (OCS)--A for-profit entity that:

 $\underbrace{(A) \quad \text{is designated as an official corporate sponsor by the}}_{Commission;}$

(B) contributes funds or works with the Commission to raise funds for Commission operations and maintenance or other priority projects or programs, either directly with the Commission or through an affiliated non-profit entity;

(C) receives a valuable consideration from the Commission in return for their contribution; and

(D) is selected as provided in this subchapter.

(7) Valuable Consideration--In kind or financial support that benefits the OCS such as recognition in Commission products, affiliation with Commission brands or programs, naming of or formal association with Commission programs, or use of Commission sites for promotional benefit.

§11.42. Designation of Official Corporate Sponsors.

(a) A for-profit entity will not be designated as an OCS:

(1) if there is a reasonable possibility of a conflict of interest between the Commission and the business entity, or if the designation would create the appearance of a conflict of interest. Business entities that have contracts with the Commission, recipients of Commission grants or who have business under review by the Commission are considered to have a conflict of interest with the Commission for OCS purposes;

(2) if the affiliation of the Commission with the business entity would undermine the reputation, credibility or integrity of the Commission in the judgment of the Commission; or

(3) if the business entity's mission or purpose conflicts with the mission and goals of the Commission.

(b) An entity shall not be considered an OCS until it has been designated as an OCS in a sponsorship contract signed by the executive director or his designee.

(c) OCSs may be selected through a competitive process or by direct negotiation. The Friends of the Texas Historical Commission is the recognized fund-raising organization of the Texas Historical Commission. Potential sponsors should contact the Friends to learn the details of how to become an OCS.

(d) The Commission's process for selecting and designating OCSs shall take into consideration:

(1) the availability of other possible OCSs for the agency, program, project or site;

(2) the amount and nature of support being offered, and the needs of the site or program;

(3) the amount of support being offered in proportion to the value of the consideration and other benefits provided by the Commission; and

(4) the level of compatibility of the entity's products, business and mission with the Commission's mission and goals.

(e) The Commission may designate one exclusive OCS for the agency, and exclusive or multiple OCSs within a business category.

(f) The Commission may establish minimum criteria that must be met by an entity to be considered for designation as an OCS. Such criteria may include, but are not limited to the following:

(1) a minimum amount of the contribution in cash, goods, and/or services to be provided by the OCS;

(2) the extent of the entity's geographic presence in the state;

(3) the ability of the entity to engage in joint promotional campaigns and/or cooperative ventures utilizing technology and/or systems belonging to the entity;

(4) authorization to conduct business in the state of Texas and being in good standing with the appropriate regulatory and taxing authorities of the state of Texas; and

(5) specific kinds of businesses that are not appropriate for affiliation with the Commission.

(g) The designation of an OCS shall be for a specified period of time, and no longer than five (5) years.

(h) The designation of an OCS shall not constitute an endorsement by the Commission of the OCS or the OCS's products and/or services.

(i) Notwithstanding the designation of an entity as an OCS and unless otherwise expressly agreed by the Commission in writing:

(1) the Commission and an OCS are independent entities and are not agents, partners, joint venture participants or otherwise responsible for the acts, omissions, or conduct of the other party; and

(2) the legal relationship of the Commission and an OCS shall be defined by contract and shall not be considered a "partnership" and neither the Commission nor an OCS shall be considered a "partner" of the other as those terms are defined and used in the Texas Business Organizations Code.

(j) Donations from OCSs under a sponsorship agreement may be made to an affiliated non-profit entity for the benefit of the Commission.

§11.43. Sponsorship Agreement.

(a) Each OCS shall enter an agreement with the Commission regarding the terms, conditions, restrictions, benefits, roles and responsibilities of the Commission and the OCS and the scope of the OCS designation. Where a donation will be made to an affiliated non-profit entity, that entity may also be a party to the agreement between the Commission and the OCS.

(b) Among the benefits that may be provided by the Commission to an OCS is the right of the OCS to identify itself as an "Official Sponsor of the Texas Historical Commission" or other variations of this designation, including but not limited to the "Official (specific business category) Sponsor of Texas Historical Commission," as defined and limited in the sponsorship agreement.

(c) An OCS's work with the Commission must not conflict with the Commission's mission and goals. Any change in the activities or character of the OCS during the term of the agreement that would create a possible conflict of interest must be brought to the attention of the Commission in a timely manner.

(d) An OCS shall not subcontract or enter an agreement with another person or entity to carry out the OCS's functions as an OCS, except as agreed in writing by the Commission.

§11.44. Fundraising by Official Corporate Sponsors.

(a) An OCS may conduct fundraising activities to generate funds for the Commission or the affiliated non-profit entity only if allowed in the sponsorship agreement.

(b) Where allowed, the OCS shall submit funds generated on behalf of or for the benefit of the Commission as soon as possible and in a manner as determined by the Commission. During the time such funds are being held by the OCS, the OCS shall manage and account for such funds in accordance with applicable accounting standards.

§11.45. Donations.

Nothing in this subchapter shall limit the ability of an OCS or any other business entity to make an unrestricted donation of cash, goods, or services to the Commission or affiliated non-profit entity, so long as the donation is accepted by the Commission or affiliated non-profit entity in accordance with applicable law and Commission policy. Such a donation may be for a general or specific purpose or program.

§11.46. Advertising.

(a) Commission funds shall not be used to advertise a product and/or service of the OCS. Commission funds can be used to support the OCS activities under the sponsorship agreement, including but not limited to:

<u>OCS and encourage public participation in OCS-sponsored activities</u> or events in support of the Commission's mission;

(2) to provide information about the availability of products and/or services of an OCS that have been created and/or are being made available to benefit the Commission pursuant to a sponsorship agreement; and

(3) to offset fulfillment costs or opportunity costs to the Commission as a result of a sponsored project or as called for in the sponsorship agreement.

(b) The OCS shall not use Commission or affiliated non-profit entity brands, except as authorized by a sponsorship agreement with the Commission.

(c) The Commission may provide to an OCS opportunities to place advertising in Commission publications, web sites, other media vehicles and outlets, so long as such advertising:

(1) is in the best interest of the Commission; and

(2) it does not conflict with the Commission's mission and goals.

(d) The designation of an OCS as the exclusive OCS for a specific business category shall not limit the Commission's ability to accept advertising from potential competitors of the OCS in Commission publications, web sites and other media.

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 August 12, 2015.

TRD-201503094 Mark Wolfe Executive Director Texas Historical Commission Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 936-4323

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CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.9

The Texas Historical Commission (hereinafter referred to as the "commission") proposes amendments to §12.9 of Title 13, Part 2, Chapter 12 of the Texas Administrative Code, related to Application Requirements and Considerations.

Section 12.9 describes the application requirements, process, and factors considered by the commission in awarding the grants for the rehabilitation of historic courthouses. Section 12.9(d), concerning other considerations, would be amended to state that the commission may distribute a portion of the funds for previously awarded grant projects. Such grants would only be available when conditions not foreseen at the time of the original grant prevent the owner from completing the intended restoration project or otherwise meeting the intended goals of the program.

The commission is specifically empowered to adopt reasonable rules concerning the Texas Historic Courthouse Preservation Program for the purpose of distributing funds provided by the Texas Legislature. The proposed amendment will allow the THC to address unforeseen conditions and increase the flexibility of the funding program.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Wolfe has also determined that for each year of the first five-year period the amendment of the rule is in effect the public benefit anticipated as a result of administering the rule will be the preservation of additional historic county courthouses.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of implementing this rule.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters.

No other statutes, articles, or codes are affected by these amendments.

§12.9. Application Requirements and Considerations.

(a) A county or municipality that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

(1) the address of the courthouse;

(2) a statement of the historic designations that the courthouse has or is likely to receive;

(3) a statement of the amount of money that the county or municipality commits to contribute to the project;

(4) a statement of previous county or municipal monies spent on planning which the county or municipality may be allowed as credit toward their match;

(5) a statement of whether the courthouse is currently functioning as a courthouse or other public facility;

(6) copies of any plans, including the required master preservation plan or construction plans and specifications, that the county or municipality may have for the project unless the commission already has these plans on file;

(7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;

(8) statements of support from local officials and community leaders; and

(9) the current cost estimate of the proposed project; and

(10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work.

(2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

(1) the status of the building as a functioning courthouse;

- (2) the age of the courthouse;
- (3) the degree of endangerment;

(4) the courthouse is subject to a current conservation easement or covenant held by the commission;

(5) the proposal is in conformance with the approved master plan and addresses the work in proper sequence;

(6) the county or municipality agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

(8) the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR \$101(a)(2)(A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation."

(10) the degree of surviving integrity of original design and materials;

(11) if a county or municipality submits completed and commission-approved construction plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's or municipality's provision of a match greater than 15% of the grant request;

(14) the proposal results in a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county or municipal government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records, if county-owned;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §§442.0081 -442.0083 and the Antiquities Code of Texas, Texas Natural Resources Code Chapter 191);

(20) the effort to protect and enhance surrounding historic resources; and

(21) the evidence of community support and county or municipality commitment to protection.

(d) Other Considerations.

(1) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to prevent damage to or deterioration of the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications.

(C) Grants to the owners of previously awarded projects that require additional funding to resolve unforeseen conditions that may prevent the owners from meeting the intended goals of the program.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county or municipality to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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 August 11, 2015.

TRD-201503075 Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 936-4323

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CHAPTER 13. ADMINISTRATION OF THE STATE FRANCHISE TAX CREDITS FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

13 TAC §13.1, §13.8

The Texas Historical Commission proposes amendments to 13 Texas Administrative Code §13.1, relating to Definitions, and §13.8, relating to Relationship with the Federal Rehabilitation Tax Credit Program. These changes are necessary to clarify the constraints on non-profit entities participating in the program, as well as to clarify the relationship with the federal tax credit program for projects completed in separate phases of work seeking both the federal and state credits.

Section 13.1 defines the words and terms used in the rules. The proposed amendment to that section includes a provision specifying that entities not subject to the franchise tax as per §171.063 of the Texas Tax Code are not subject to certain provisions referenced in the Internal Revenue Code, which would otherwise limit these entities' ability to claim eligible costs and expenses as part of the tax credit program. This provision implements House Bill 3230, 84th Legislative Session. The change, as set out in HB 3230, applies to tax reports due in 2016, and therefore projects affected include those completed in Fiscal Year 2015 and later. This is a necessary amendment to the administrative rules such that they reflect the new legislation described above.

The second proposed amendment addresses and clarifies the requirements for projects that are completed in multiple phases and for which both the federal and state tax credits are sought. This topic was not specifically addressed in the existing rules. This amendment will establish and clarify proper procedures and expectations for administering such projects. Section 13.8 has been modified to address the Commission's review of projects

whose scope is submitted for review and approval in separate phases of work rather than as a single project.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no fiscal impact on small or micro businesses.

Mr. Wolfe has also determined that for each year of the first five year period the amended rules are in effect the public benefit anticipated will be an increased efficiency and effectiveness in the implementation of the Texas Administrative Code. Additionally, Mr. Wolfe has determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Government Code §442.005 and Texas Tax Code §171.909, which provide the Commission with authority to promulgate rules that will reasonably effect the purposes of those chapters.

No other statutes, articles, or codes are affected by these amendments.

§13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:

Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not

considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the Owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. (15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by \$47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. \$1.48-12(c), incurred during the project. The depreciation and tax-exempt use provisions of \$47(c)(2) do not apply to the costs and expenses incurred by an entity exempt from the tax imposed by \$171.063 of the Tax Code.

(16) Federal rehabilitation tax credit--A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, or other entity holding a legal or equitable interest in a Property or Structure, which can include a full or partial ownership interest.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. \$1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. §67.7.

(25) Structure--A building; see also certified historic structure.

§13.8. Relationship with the Federal Rehabilitation Tax Credit Program.

(a) Projects seeking federal and state credits. Projects seeking certification for both the federal rehabilitation tax credit and the Texas Historic Preservation Tax Credit must meet eligibility requirements for each program separately.

(1) Applicants for both programs shall submit the first page of the Part A, B, and C application forms, accompanied by the Part 1, 2, and 3 application forms for the federal rehabilitation tax credit program, respectively.

(2) A project , or any part or phase of a project, also submitted for the federal rehabilitation tax credit will be reviewed and approved or rejected by the National Park Service before the Commission issues its determinations under this chapter. Official written determinations from the National Park Service, including Advisory Determinations on phased work, may meet this qualification. The Commission will consider National Park Service decisions in rendering its determinations. A project that receives certification for the purposes of the federal rehabilitation tax credit will receive a certification of eligibility pursuant to the Texas Historic Preservation Tax Credit, provided that the building is a certified historic structure at the time the credit is taken.

(3) Applicants may subdivide a phased project submitted for the federal rehabilitation tax credit program into a series of smaller projects submitted for the state program. These smaller projects must be described in the application for the federal credit at the outset of the project, and must correlate to individual phases of the federal phased project. Each project corresponding to a phase of the federal tax credit project may be submitted for the state credit when that phase of work is placed in service. Official determinations from the National Park Service must still be received for each phase of work submitted for the federal program before the Commission issues its determination on each corresponding smaller project submitted for the state program.

(4) [(3)] The review fees required per §13.6 of this title, Application Review Process, must be paid before the Commission will issue any determinations or certifications pursuant to the Texas Historic Preservation Tax Credit, even if the project has previously received certification by the National Park Service for the federal rehabilitation tax credit.

(b) Projects seeking state credit exclusively. If the applicant is eligible to claim a state credit exclusively, then the application forms for the Texas Historic Preservation Tax Credit provided by Commission shall be used. Determinations by the Commission that a project includes a certified historic structure and/or a certified rehabilitation apply only to the Texas Historic Preservation Tax Credit Program and are not binding on any other local or federal tax credit program.

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

Filed with the Office of the Secretary of State on August 11, 2015.

TRD-201503074 Mark Wolfe Executive Director Texas Historical Commission

Earliest possible date of adoption: September 27, 2015

For further information, please call: (512) 936-4323

TITLE 22. EXAMINING BOARDS PART 11. TEXAS BOARD OF NURSING CHAPTER 213. PRACTICE AND PROCEDURE 22 TAC §213.27

(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 Board of Nursing or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.) The Texas Board of Nursing (Board) proposes the repeal of §213.27 (relating to Good Professional Character). This repeal is necessary because the Board is simultaneously proposing a new section for adoption that reorganizes the section and clarifies the Board's requirements relating to the evaluation of good professional character in eligibility and disciplinary matters. Proposed new §213.27 is being published elsewhere in this issue of the *Texas Register*.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposed repeal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §301.252 and promote fairness, consistency, efficiency, and predictability in eligibility and disciplinary matters involving the evaluation of good professional character. There are no anticipated economic costs to persons who are required to comply with the proposed repeal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed repeal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposed repeal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposed repeal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The repeal is proposed under the Occupations Code §301.252 and §301.151.

Section 301.252 provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant has good professional character.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by this proposal to $\S213.27$: Occupations Code $\S301.252$ and $\S301.151$.

§213.27. Good Professional Character.

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 August 17, 2015.

TRD-201503141 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015

For further information, please call: (512) 305-6821

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22 TAC §213.27

The Texas Board of Nursing (Board) proposes new §213.27 (relating to Good Professional Character) simultaneously with the proposal repeal of current §213.27. The proposed repeal of current §213.27 is being published elsewhere in this issue of the *Texas Register*. Proposed new §213.27 is proposed under the authority of the Occupations Code §301.252 and §301.151 and reorganizes and clarifies the section's existing requirements.

Background

The Eligibility & Disciplinary Advisory Committee (EDAC) is one of the Board's standing advisory committees and advises the Board on regulatory matters involving eligibility and disciplinary rules, policies, and guidelines. In April 2012, the Board issued a charge to the EDAC to review and make recommendations regarding the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC began working on the Board's charge in September 2012. In an effort to maintain consistency among the Board's eligibility and disciplinary policies, guidelines, and rules, the EDAC also reviewed Board Rules 213.27, 213.28, 213.29, 213.30, and 213.33 in conjunction with the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC met several times over the course of 2012-2015. The EDAC concluded its review of the Board's eligibility and disciplinary policies, criminal guidelines, and Board rules in June 2015. The EDAC's recommendations were presented and considered by the Board at its regularly scheduled July 2015 Board meeting.

After discussion and deliberation, the Board voted to adopt the EDAC's recommended changes to the Board's eligibility and disciplinary sanction policies (specifically, the Board's Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; Disciplinary Sanctions for Fraud, Theft, and Deception; and Disciplinary Sanctions for Lying and Falsification) and its Disciplinary Guidelines for Criminal Conduct. The Board's amended eligibility and disciplinary sanction policies and criminal guidelines, which include the EDAC's recommended changes, are being published elsewhere in this issue of the *Texas Register*.

The Board also voted to propose the repeal of current Board Rules 213.28 and 213.29, along with new §213.28 and §213.29 in their place. These proposals are being published elsewhere in this issue of the *Texas Register*. Further, the Board voted to propose amendments to Board Rules 213.30 and 213.33. These

proposals are also being published elsewhere in this issue of the *Texas Register.*

Proposed new §213.27

Proposed new §213.27 is proposed under the authority of the Occupations Code §301.252 and §301.151. Under §301.252, individuals applying for, or holding licensure, must demonstrate *good professional character*. The proposed new section defines good professional character and sets forth the Board's expectations regarding evaluation of good professional character in eligibility and disciplinary matters.

Although the Board is proposing a repeal of the current rule, the proposed new section contains many of the same provisions as the current rule. For example, the proposed new section contains the same definition of *good professional character* as the existing rule, as well as the same factors specified in the existing rule. However, the proposed new section reorganizes the factors into one listing for greater clarity and readability. Further, the Board's amended eligibility and disciplinary sanction guidelines are referenced in the proposed new section in much the same way as they are incorporated in the current rule.

There are, however, a few substantive changes in the proposed new section. First, the proposed new section reiterates that applicants and licensees must demonstrate good professional character in order to obtain or retain licensure in Texas. This requirement includes individuals practicing in Texas on a nurse licensure privilege from another compact state. Second, the current rule includes requirements related to criminal conduct. These provisions have been removed from proposed new §213.27 and will be proposed for inclusion in proposed new §213.28 (relating to Licensure of Individuals with Criminal History) instead. Proposed new §213.28 is being published elsewhere in this issue of the Texas Register. This proposed change is intended to effectuate better organization among all of the Board's rules by placing all similar issues (e.g., criminal conduct) in one rule addressing that particular topic (e.g, an individual's criminal conduct). Third, the proposed new section changes the manner in which good professional character is evaluated in cases involving disciplinary action from other jurisdictions.

Under the current rule, if an individual has received a disciplinary action from another jurisdiction, the individual is deemed not to have good professional character during the period of discipline and/or until the individual resolves the disciplinary matter with the other jurisdiction. Although this presumption may be rebutted in some cases, the current rule requires the rebuttal to be proven by clear and convincing evidence. The proposed new section eliminates this presumption, and instead requires an individual to provide evidence sufficient to demonstrate that he/she has good professional character, notwithstanding discipline from another jurisdiction. These proposed changes eliminate an unnecessary burden from individuals seeking to obtain or retain licensure in Texas. Lastly, obsolete and outdated provisions have been eliminated from the proposed new section.

Section-by-Section Overview. Proposed new §213.27(a) reiterates that individuals seeking to obtain or retain a license or privilege to practice in Texas must have good professional character.

Proposed new §213.27(b) defines *good professional character* and emphasizes that it is an individual's burden to provide evidence of good professional character in order to obtain or retain licensure.

Proposed new §213.27(c) specifies the factors that will be utilized by the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) when evaluating good professional character in eligibility and disciplinary matters.

Proposed new §213.27(d) identifies the Board's eligibility and disciplinary sanction policies that will be utilized by the Executive Director, the Board, and SOAH when evaluating good professional character in eligibility and disciplinary matters, as those policies apply to a particular case.

Proposed new §213.27(e) contains provisions specifically related to disciplinary actions from other jurisdictions. Under proposed new §213.27(e), a certified copy of a disciplinary order or judgment from another jurisdiction is conclusive evidence that the disciplined individual committed the misconduct set forth in the order or judgment. Further, any individual who has been disciplined by another jurisdiction, regardless if the disciplinary order has been satisfied, must provide sufficient evidence of good professional character before obtaining or retaining licensure in Texas.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. Further, there will be no anticipated effect on local employment or the local economy as a result of the proposed new section.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section will be in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §301.252 and promote fairness, consistency, efficiency, and predictability in eligibility and disciplinary matters involving the evaluation of good professional character.

There are no anticipated costs for individuals required to comply with the proposal. The proposed new section contains the Board's provisions related to the evaluation of an individual's good professional character in eligibility and disciplinary matters. Further, the proposed new section requires the Executive Director, SOAH, and the Board to utilize the factors and applicable eligibility and disciplinary sanction policies specified in the rule when evaluating good professional character in eligibility and disciplinary matters. However, none of the proposal's provisions impose any requirements or conditions upon individuals that would result in a direct cost to the individual. As such the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed new section will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board 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. Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new section is proposed under the Occupations Code §301.252 and §301.151.

Section 301.252 provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant has good professional character.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by this proposal to 213.27: Occupations Code 301.252 and 301.151.

§213.27. Good Professional Character.

(a) Every individual who seeks to practice nursing in Texas must have good professional character. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The Board defines *good professional character* as the integrated pattern of personal, academic, and occupational behaviors which, in the judgment of the Board, indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice. An individual must maintain good professional character to ensure that he/she is able to consistently act in the best interest of patients/clients and the public. In all cases, it is the individual's burden to provide evidence of good professional character in order to obtain or retain licensure.

(c) When evaluating whether an individual has demonstrated good professional character in an eligibility or disciplinary matter, the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall consider the following factors:

(1) the individual's age, education, experience, and behavioral history;

(2) whether the individual is able to distinguish right from wrong;

(3) whether the individual is able to think and act rationally;

(4) whether the individual is able to keep promises and honor obligations;

(5) whether the individual is accountable for his/her own behavior and/or accepts responsibility for his/her actions;

(6) whether the individual is able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable;

(7) whether the individual is able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;

(8) whether the individual is able to make appropriate judgments and decisions that could affect patients/clients and/or the public;

(9) whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice;

(10) whether the individual is able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm; and

(11) any other behaviors bearing on the individual's honesty, accountability, trustworthiness, reliability, or integrity.

(d) The following eligibility and disciplinary sanction policies, as applicable, and §213.28(d) of this chapter (relating to Licensure of Individuals with Criminal History) shall be used by the Executive Director, Board, and SOAH in conjunction with this section when evaluating good professional character in eligibility and disciplinary matters, as applicable:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(e) Actions from Other Jurisdictions.

(1) A certified copy of an order of adverse action or a judgment from another jurisdiction relating to an individual's license or privilege to practice nursing in that jurisdiction is prima facie evidence of the matters contained in such order or judgment and is conclusive evidence that the disciplined individual committed the misconduct set forth in the order or judgment.

(2) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas during the period of discipline imposed by a disciplining jurisdiction, or, in the case of revocation or surrender, prior to licensure reinstatement in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character.

(3) Any individual who seeks to obtain or retain a license or privilege to practice nursing in Texas following the completion of the disciplinary period assessed by a disciplining jurisdiction, or, in the case of revocation or surrender, after the reinstatement of licensure in the disciplining jurisdiction, must provide sufficient evidence that he/she has good professional character. 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 August 17, 2015.

TRD-201503142 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

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22 TAC §213.28

(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 Board of Nursing or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Nursing (Board) proposes the repeal of §213.28 (relating to Licensure of Persons with Criminal Offenses). This repeal is necessary because the Board is simultaneously proposing a new section for adoption that reorganizes the section for clarity and consistency with proposed changes to Board rules (published elsewhere in this issue of the *Texas Register*), the Board's amended and adopted eligibility and disciplinary sanction policies (also published elsewhere in this issue of the *Texas Register*), and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The proposed new section also incorporates the Board's Disciplinary Guidelines for Criminal Conduct, which were amended and adopted by the Board at is July 2015 regularly scheduled meeting, into rule. Proposed new §213.28 is being published elsewhere in this issue of the *Texas Register*.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposed repeal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53 and promote fairness, consistency, efficiency, and predictability in eligibility and disciplinary matters involving an individual's criminal history. There are no anticipated economic costs to persons who are required to comply with the proposed repeal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed repeal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposed repeal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposed repeal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The repeal is proposed under the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

Section 301.1545(b) states that, in its rules under this section, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under this chapter.

Section 301.452(a) provides that "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b). Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing; or stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of murder under §19.02. Penal Code. capital murder under §19.03. Penal Code, or manslaughter under §19.04, Penal Code; kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; sexual assault under §22.011, Penal Code; aggravated sexual assault under §22.021, Penal Code; continuous sexual abuse of young child or children under §21.02, Penal Code, or indecency with a child under §21.11, Penal Code; aggravated assault under §22.02, Penal Code; intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under §22.04, Penal Code; intentionally, knowingly, or recklessly abandoning or endangering a child under §22.041, Penal Code; aiding suicide under §22.08, Penal Code, and the offense was punished as a state jail felony; an offense involving a violation of certain court orders or conditions of bond under §§25.07, 25.071, or 25.072, Penal Code, punished as a felony; an agreement to abduct a child from custody under §25.031, Penal Code; the sale or purchase of a child under §25.08, Penal Code; robbery under §29.02, Penal Code; aggravated robbery under §29.03, Penal Code; an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

or an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) provides that on final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d) states that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if the person was charged with any offense described by Article 62.001(5),Code of Criminal Procedure; or an offense other than an offense described by Paragraph (A) if the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or a conviction for the offense would make the person ineligible for the license by operation of law; and after consideration of the factors described by §53.022 and §53.023(a), the licensing authority determines that the person may pose a continued threat to public safety; or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) provides that Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services; or financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.0211(a) states that this section does not apply to an applicant for a license that would allow the applicant to provide law enforcement services; public health, education, or safety services; or financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring a license to engage in the occupation; 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 the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022 the extent and nature of the person's past criminal activity; the age of the person when the crime was committed; the amount of time that has elapsed since the person's last criminal activity; the conduct and work activity of the person before and after the criminal activity; evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and other evidence of the person's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

Section 53.023(c) provides that, in addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has maintained a record of steady employment; supported the applicant's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) provides that each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) provides that a state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Cross Reference to Statute. The following statutes are affected by this proposal to §213.28: Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53.

§213.28. Licensure of Persons with Criminal Offenses.

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 August 17, 2015.

TRD-201503151 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

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22 TAC §213.28

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 22 TAC §213.28(d) is not included in the print version of the Texas Register. The figure is available in the html version of the August 28, 2015, issue of the Texas Register online.)

The Texas Board of Nursing (Board) proposes new §213.28 (relating to Licensure of Individuals with Criminal History). The new section is proposed under the authority of the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53 and reorganizes the section for clarity and consistency with proposed changes to Board rules (published elsewhere in this issue of the *Texas Register*), the Board's amended and adopted eligibility and disciplinary sanction policies (also published elsewhere in this issue of the *Texas Register*), and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The proposed new section also incorporates the Board's Disciplinary Guidelines for Criminal Conduct, which were amended and adopted by the Board at is July 2015 regularly scheduled meeting, into rule.

Background

The Eligibility & Disciplinary Advisory Committee (EDAC) is one of the Board's standing advisory committees and advises the Board on regulatory matters involving eligibility and disciplinary rules, policies, and guidelines. In April 2012, the Board issued a charge to the EDAC to review and make recommendations regarding the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC began working on the Board's charge in September 2012. In an effort to maintain consistency among the Board's eligibility and disciplinary policies, guidelines, and rules, the EDAC also reviewed Board Rules 213.27, 213.28, 213.29, 213.30, and 213.33 in conjunction with the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC met several times over the course of 2012-2015. The EDAC concluded its review of the Board's eligibility and disciplinary policies, criminal guidelines, and Board rules in June 2015. The EDAC's recommendations were presented and considered by the Board at its regularly scheduled July 2015 Board meeting.

After discussion and deliberation, the Board voted to adopt the EDAC's recommended changes to the Board's eligibility and disciplinary sanction policies (specifically, the Board's Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; Disciplinary Sanctions for Fraud, Theft, and Deception; and Disciplinary Sanctions for Lying and Falsification) and its Disciplinary Guidelines for Criminal Conduct. The Board's amended eligibility and disciplinary sanction policies and criminal guidelines, which include the EDAC's recommended changes, are being published elsewhere in this issue of the *Texas Register*.

The Board also voted to propose the repeal of current Board Rules 213.27 and 213.29, along with new proposed §213.27 and §213.29, in their place. These proposals are being published elsewhere in this issue of the *Texas Register*. Further, the Board voted to propose amendments to Board Rules 213.30 and 213.33. These proposals are also being published elsewhere in this issue of the *Texas Register*.

Proposed new §213.28

Proposed new §213.28 is being proposed under the authority of the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53. These provisions collectively authorize the Board to take disciplinary action against an individual's license or privilege to practice nursing in Texas based upon the individual's criminal history. The new section sets forth the Board's requirements regarding evaluation of an individual's criminal history in eligibility and disciplinary cases.

Although the Board is proposing the repeal of current Board Rule 213.28, the proposed new section contains many of the same provisions as the existing rule. For example, like the existing rule, the proposed new section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure.

Like the existing rule, the new section also identifies the categories of criminal conduct that relate to, and affect, the practice of nursing. Further, the new section contains the Board's rationale explaining how the categories of criminal conduct relate to, and affect, the practice of nursing in much the same way as the current rule does. The proposed new section also enumerates factors that the Board will consider when evaluating an individual's criminal history. The proposed new section also clarifies that these factors should be considered in conjunction with the factors contained in the Board's Disciplinary Matrix, located in Board Rule 213.33(b).

The proposed new section also addresses §301.4535 and §53.021(b). Although these provisions are referenced in the current rule, the proposed new section provides more clarity regarding the effect of §301.4535 and §53.021(b) upon an individual's eligibility to obtain or retain a license or privilege to practice in Texas. Under §301.4535, the Board is required to deny or revoke an individual's licensure for certain criminal offenses specified in the statute. Section 53.012(b) requires

the revocation of an individual's licensure upon imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Like the current rule, the proposed new section also reiterates an individual's obligation to provide the Board with applicable letters of recommendation from law enforcement, correctional authorities, or the prosecution, as may be applicable in a particular case. Individuals must also ensure that legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional are provided to the Board in a timely fashion. The proposed new rule reiterates that failing to provide such information may delay the resolution of an eligibility or disciplinary matter involving an individual's criminal history.

The proposed new section also addresses arrests. Like the current rule, the proposed new section provides that the fact that an individual has been arrested will not be used as grounds for disciplinary action alone. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests violations of the Nursing Practice Act (NPA) or Board rules, the proposed new section makes clear that the Board may consider such evidence as a factor in its consideration of the individual's criminal history. This provision is consistent with the statutory mandates of §301.452(d).

The proposed new section also addresses youthful indiscretions in much the same way as the current rule does. The proposed new section, however, clarifies that a felony offense may not be considered a youthful indiscretion under the rule. The proposed new section also clarifies that, if an individual's behavior is deemed to be a youthful indiscretion under the rule, then the matter may be eligible for resolution through a lower sanction than would otherwise be considered by the Board.

The proposed amendments also update the references to the Board's eligibility and disciplinary sanction policies, which were amended and adopted by the Board at its July 2015 regularly scheduled meeting, and reiterates the authority of the Executive Director to close an eligibility file when the individual seeking licensure has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days of the request or proposed denial.

There are, however, a few changes that are more substantive in nature. First, the proposed new section contains provisions that appear in current Board Rule 213.27, but have been proposed for relocation to §213.28 in order to effectuate better organization among all of the Board's rules. This proposed reorganization relocates the Board's provisions relating to an individual's criminal history in one rule.

Second, the proposed new section contains provisions that are consistent with recent changes to the DSM. The DSM is a standardized classification guide utilized by many mental health professionals to assess and diagnose mental disorders. The DSM's recent amendments change the way chemical dependency and substance abuse issues are assessed and diagnosed. The proposed new section includes terminology that is consistent with the recent amendments to the DSM in this regard. For example, the proposed new section utilizes the term *substance use disorder* in lieu of *chemical dependency*. Further, the proposed new section includes reference to the *abuse or misuse of alcohol or drugs* in an effort to address issues that may not qualify under the DSM's new criteria for a substance use disorder, but may still be of concern to the Board and potentially affect an individual's ability to practice nursing safely in this state.

Third, the proposed new section addresses the Board's Minor Criminal History, which was last amended in April 2014. The provisions of the proposed new section are necessary to eliminate any confusion regarding the application of this policy. Some criminal behavior that would otherwise affect an individual's licensure status may fall within the Board's Minor Criminal History Policy. In those cases, an individual's eligibility or disciplinary matter may be closed without further action, in accordance with the provisions of the Board's policy. However, the mere listing of a criminal offense in the Board's Minor Criminal History Policy does not mean that the offense does not affect, or is not related to, the practice of nursing, or that an individual will not be subject to licensure action due to the criminal behavior. For example, if an individual's criminal history indicates a pattern of criminal conduct or contains several of the criminal offenses listed in the Board's policy, the individual's conduct may not be considered under the Board's policy. In such situations, the totality of the individual's conduct will be evaluated by the Board, and the provisions of this rule may apply. Further, to the extent that a conflict exists, the proposed new section makes clear that the this rule and the Board's Disciplinary Guidelines for Criminal Conduct control.

Finally, the proposed new section incorporates the Board's Disciplinary Guidelines for Criminal Conduct in rule. The Board Disciplinary Guidelines for Criminal Conduct were originally approved by the Board and published in the Texas Register on March 9, 2007. The Guidelines have been utilized by the Board in evaluating individuals' criminal history since that time. The Guidelines have been amended several times since their original adoption date and include all of the criminal offenses listed in the current rule, as well as offenses that are not listed in the current rule. The Guidelines also contain the Board's rationale for how the offenses affect, and are related to, the practice of nursing. The Guidelines also provide recommendations regarding an appropriate licensure sanction for each offense specified. In much the same way as the Board utilizes its Disciplinary Matrix in Board Rule 213.33 when evaluating the appropriate sanction in an eligibility or disciplinary case, the Board utilizes the Guidelines when evaluating an individual's criminal history. Each case is considered on its own merits, and the Board reviews and considers the factors specified in Board Rules 213.28 and 213.33, the Board's Disciplinary Matrix, and those specified in the Guidelines. Incorporating the Guidelines into the rule will eliminate unnecessary redundancy among the rule and the Guidelines and prevent any inadvertent inconsistency among the two documents. Further, because the Board has already utilized the Guidelines in its evaluations of individuals' criminal history over the past several years, there should not be any noticeable differences in Board evaluation of an individual's criminal history resulting from incorporating the Guidelines into the rule.

Section-by-Section Overview.

Proposed new §213.28(a) provides the purpose of the section, which is to establish the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure. Further, the section applies to all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

Proposed new §213.38(b) states that the practice of nursing involves clients, their families, significant others, healthcare pro-

fessionals, and the public in diverse settings. Nurses practice in autonomous roles with individuals who are physically, emotionally, and financially vulnerable. Nurses have access to personal information about all aspects of a patient/client's life, resources, and relationships. Therefore, criminal behavior, whether violent or non-violent, directed against persons, property, or the public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. Proposed new §213.28(b) also identifies the categories of criminal conduct to relate to and affect the practice of nursing, including offenses against the person; offenses against property; offenses involving fraud or deception; offenses involving lying and falsification; and offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance.

Proposed new §213.28(c) requires the Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) to utilize the section in conjunction with the Disciplinary Guidelines for Criminal Conduct (Guidelines) set forth in subsection (d) of the section in all disciplinary and eligibility matters involving an individual's criminal history. Further, the subsection provides that, taken together, the section and the Guidelines identify the categories of criminal offenses, as well as specific criminal offenses, that the Board has determined relate to or affect the practice of nursing. Neither the section nor the Guidelines, however, contain an exhaustive listing of all of the criminal offenses that may affect an individual's ability to obtain or retain a license or privilege to practice nursing in Texas. Further, in matters involving an offense that is not specifically listed in the section or the Guidelines, including a violation of another state law, federal law, the Uniform Code of Military Justice, or other law, the appropriate sanction shall be determined by comparing that offense to the specified categories of crimes in the section and the specific crimes in the Guidelines that contain substantially similar elements.

Proposed new §213.28(d) contains the Disciplinary Guidelines for Criminal Guidelines.

Proposed new §213.28(e) requires the Executive Director, the Board, and SOAH to consider the factors set forth in the subsection in conjunction with the Guidelines when determining the appropriate sanction in disciplinary and eligibility matters involving criminal conduct. Further, to the extent applicable, the section and the Guidelines should also be considered in conjunction with the recommended sanctions in the Board's Disciplinary Matrix, located at §213.33(b). The subsection also clarifies that if multiple criminal offenses are present in a single case, the most severe sanction recommended for any one of the individual offenses should be considered by the Board pursuant to Tex. Occ. Code §301.4531. The subsection sets forth the factors as: (i) the knowing or intentional practice of nursing without a license issued under the Nursing Practice Act (NPA); (ii) any felony or misdemeanor involving moral turpitude; (iii) the nature and seriousness of the crime; (iv) the relationship of the crime to the purposes for requiring a license to engage in nursing practice; (v) 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; (vi) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice; (vii) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision; (viii) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (ix) the extent and nature of the person's past criminal activity; (x) the age of the person when the crime was committed; (xi) the amount of time that has elapsed since the person's last criminal activity; (xii) the conduct and work activity of the person before and after the criminal activity; (xiii) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (xiv) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

Proposed new §213.28(f) states that the Board is required under Tex. Occ. Code §301.4535(b) to deny an individual initial licensure or licensure renewal and/or to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, pursuant to Tex. Occ. Code §53.021(b), the Board is required to revoke an individual's license or privilege to practice nursing in Texas upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Proposed new §213.28(g) states that in matters involving an individual's criminal history, the record of conviction, order, or deferred adjudication is conclusive evidence of guilt. Further, in addition to the remedies available to the Board pursuant to §301.452(b)(3) and (4) and Chapter 53, an individual guilty of a felony is conclusively deemed to have violated §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

Proposed new §213.28(h) provides that it shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas, to the extent possible, to obtain and provide to the Board recommendations of the prosecution, law enforcement, and correctional authorities. Further, the individual shall also furnish proof in such form as may be required by the Board that the individual has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution, as may have been ordered in all criminal cases.

Proposed new §213.28(i) states that if requested, and to the extent possible, it shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas to ensure that legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional is provided in a timely fashion to the Board. Failure to provide complete, legible, and accurate documentation will result in the delay of the resolution of an eligibility or disciplinary matter involving an individual's criminal history.

Proposed new §213.28(j) provides that the mere fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the NPA or rules of the Board, the Board may consider such evidence as a factor in its deliberations regarding any eligibility or disciplinary matter. Proposed new §213.28(k) provides that some criminal behavior that would otherwise affect an individual's licensure status may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior utilizing the factors set out in §213.27 and the following criteria: (i) age of 22 years or less at the time of the behavior; (ii) the offense was not classified as a felony; (iii) absence of criminal plan or premeditation; (iv) presence of peer pressure or other contributing influences; (v) absence of adult supervision or guidance; (vi) evidence of immature thought process/judgment at the time of the activity; (vii) evidence of remorse; (viii) evidence of restitution to both victim and community; (ix) evidence of current maturity and personal accountability; (x) absence of subsequent undesirable conduct; (xi) evidence of having learned from past mistakes; (xii) evidence of current support structures that will prevent future criminal activity; and (xiii) evidence of current ability to practice nursing in accordance with the NPA, Board rules, and generally accepted standards of nursing. Further, if an individual's behavior is deemed to be a youthful indiscretion under this subsection, then the matter may be eligible for resolution through a lower sanction than would otherwise be considered.

Proposed new §213.28(I) reiterates that the Board has adopted a Minor Criminal History Policy. Some criminal behavior that would otherwise affect an individual's licensure status may fall within the Board's Minor Criminal History Policy. The proposed new subsection makes clear that if behavior is deemed to fall within the Board's Minor Criminal History Policy, then the matter may be closed without further action, in accordance with the provisions of that policy. However, the mere listing of a criminal offense in the Board's Minor Criminal History Policy does not mean that the offense does not affect or is not related to the practice of nursing or that an individual will not be subject to licensure action due to the criminal behavior. Further, to the extent that a conflict exists between this section, the Guidelines, and the Board's Minor Criminal History Policy, this section and the Guidelines control.

Proposed new §213.28(m) requires the Executive Director, the Board, and SOAH to utilize the Board's disciplinary sanction policies that were amended and adopted at the July 2015 regularly scheduled meeting.

Proposed new §213.28(n) provides that the Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days of the request or proposed denial, as applicable.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. Further, there will be no anticipated effect on local employment or the local economy as a result of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section will be in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53 and promote fairness, consistency, efficiency, and predictability in Board decisions involving the evaluation of an individual's criminal history.

There are no anticipated costs for individuals required to comply with the proposal. The proposed new section clarifies the Board's existing process for evaluating an individual's criminal history. While the proposed new section clarifies the Board's process for evaluating an individual's criminal history in many areas, the proposal does not impose new requirements or conditions that would result in a direct cost to an individual, nor does the proposal impose any requirement or condition upon an individual that is not already required by rule or statute. As such the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed new section will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to *dusty.johnston@bon.texas.gov*, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new section is proposed under the Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53.

Section 301.1545(a) provides that the Board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

Section 301.1545(b) states that, in its rules under this section, the Board shall list the offenses for which a conviction would constitute grounds for the Board to take action under §53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the Board to take action under this chapter.

Section 301.452(a) provides that "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing; or stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4535(a) provides that the Board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of murder under §19.02, Penal Code, capital murder under §19.03,

Penal Code, or manslaughter under §19.04, Penal Code; kidnapping or unlawful restraint under Chapter 20. Penal Code. and the offense was punished as a felony or state jail felony; sexual assault under §22.011, Penal Code; aggravated sexual assault under §22.021. Penal Code: continuous sexual abuse of young child or children under §21.02, Penal Code, or indecency with a child under §21.11, Penal Code; aggravated assault under §22.02, Penal Code; intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under §22.04, Penal Code; intentionally, knowingly, or recklessly abandoning or endangering a child under §22.041, Penal Code; aiding suicide under §22.08, Penal Code, and the offense was punished as a state jail felony; an offense involving a violation of certain court orders or conditions of bond under §§25.07, 25.071, or 25.072, Penal Code, punished as a felony; an agreement to abduct a child from custody under §25.031, Penal Code; the sale or purchase of a child under §25.08, Penal Code; robbery under §29.02, Penal Code; aggravated robbery under §29.03, Penal Code: an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

Section 301.4535(a-1) states that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license.

Section 301.4535(b) provides that on final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

Section 301.4535(c) states that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (i) an offense that directly relates to the duties and responsibilities of the licensed occupation; (ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (iii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or (iv) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Section 53.021(b) provides that a license holder's license shall be revoked on the license holder's imprisonment following a

felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 53.021(c) states that, except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization: (i) the person entered a plea of guilty or nolo contendere; (ii) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and (iii) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

Section 53.021(d)states that a licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if the person was charged with any offense described by Article 62.001(5),Code of Criminal Procedure; or an offense other than an offense described by Paragraph (A) if the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license: or a conviction for the offense would make the person ineligible for the license by operation of law; and after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that the person may pose a continued threat to public safety; or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

Section 53.021(e) provides that Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services; or financial services in an industry regulated by a person listed in §411.081(i)(19), Government Code.

Section 53.0211(a) states that this section does not apply to an applicant for a license that would allow the applicant to provide law enforcement services; public health, education, or safety services; or financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

Section 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring a license to engage in the occupation; 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 the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Section 53.023(a) states that in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in §53.022 the extent and nature of the person's past criminal activity; the age of the person when the crime was committed; the amount of time that has elapsed since the person's last criminal activity; the conduct and work activity of the person before and after the criminal activity; evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and other evidence of the person's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other person in contact with the convicted person.

Section 53.023(b) states that the applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

Section 53.023(c) provides that, in addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has maintained a record of steady employment; supported the applicant's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Section 53.025(a) provides that each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Section 53.025(b) provides that a state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the *Texas Register*.

Cross Reference to Statute. The following statutes are affected by this proposal to §213.28: Occupations Code §§301.1545, 301.452, 301.453, 301.4535, and 301.151 and Chapter 53.

§213.28. Licensure of Individuals with Criminal History.

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure. This section applies to all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.

(b) The practice of nursing involves patients/clients, their families, significant others, healthcare professionals, and the public in diverse settings. Nurses practice in autonomous roles with individuals who are physically, emotionally, and financially vulnerable. Nurses have access to personal information about all aspects of a patient/client's life, resources, and relationships. Therefore, criminal behavior, whether violent or non-violent, directed against persons, property, or the public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:

(1) Offenses against the person. These types of crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable, including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized and may be subject to harm by similar criminal behavior;

(C) nurses are frequently in situations where they provide intimate care to patients/clients or have contact with partially clothed or fully undressed patient/client who are vulnerable to exploitation, both physically and emotionally;

(D) nurses are in the position to have access to privileged information and opportunity to exploit patient/client vulnerability; and

(E) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and raise concern regarding the individual's ability to provide safe, competent care to patients/clients.

(2) Offenses against property.

(A) These types of crimes relate to the practice of nursing because:

(i) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) nurses have access to persons who are especially vulnerable, including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized, and may provide easy opportunity to be victimized;

(iii) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, a checkbook or credit cards, etc.) with them to a health care facility with no security to prevent theft or exploitation;

(iv) nurses frequently provide care in private homes and home-like settings where all of the patient/client's property and valuables are accessible to the nurse;

(v) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and

(vi) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and, therefore, place patient/clients' property at risk.

(B) Certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concern about the propensity of the nurse to repeat similar conduct in the workplace, placing patients/clients at risk.

(3) Offenses involving fraud or deception. These types of crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses are in the position to have access to privileged information and opportunity to exploit patient/client vulnerability; (D) nurses are frequently in situations where they must report patient/client condition, record objective/subjective information, provide patients/clients with information, and report errors in the nurse's own practice or conduct;

(E) the nurse-patient/client relationship is of a dependent nature; and

(F) nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat similar misconduct in the workplace and, therefore, place patients/clients at risk.

(4) Offenses involving lying and falsification. These crimes are related to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses are frequently in situations where they must report patient/client condition, record objective/subjective information, provide patients/clients with information, and report errors in the nurse's own practice or conduct:

(D) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;

(E) falsification of documents regarding patient/client care, incomplete or inaccurate documentation of patient/client care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient/client care in the future;

(F) falsifying employment applications and/or failing to answer specific questions that would have affected a decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;

(G) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and

(H) a crime of lying or falsification raises concerns about the nurse's propensity to engage in similar conduct while practicing nursing and place patients/clients at risk.

(5) Offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance. These crimes relate to the practice of nursing because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, persons with mental disorders, sedated and anesthetized patients/clients, those whose mental or cognitive ability is compromised, and patients/clients who are disabled or immobilized;

(C) nurses provide care to critical care, geriatric, and pediatric patients/clients who are particularly vulnerable, given the

level of vigilance demanded under the circumstances of their health condition;

(D) nurses are able to provide care in private homes and home-like setting without supervision;

(E) nurses who have a substance use disorder or who abuse or misuse drugs or alcohol may have impaired judgment while caring for patients/clients and are at risk for harming patients/clients;

(F) an offense regarding the delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug, or mood altering drug raises concern about the nurse's propensity to repeat similar misconduct in the workplace; and

(G) Driving While Intoxicated offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety, and repeated violations suggest a willingness to continue in reckless and dangerous conduct or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) The Executive Director, the Board, and the State Office of Administrative Hearings (SOAH) shall utilize this section in conjunction with the Disciplinary Guidelines for Criminal Conduct (Guidelines) set forth in subsection (d) of this section in all disciplinary and eligibility matters involving an individual's criminal history. Taken together, this section and the Guidelines identify the categories of criminal offenses, as well as specific criminal offenses, that the Board has determined relate to or affect the practice of nursing. However, neither this section nor the Guidelines contain an exhaustive listing of all of the criminal offenses that may affect an individual's ability to obtain or retain a license or privilege to practice nursing in Texas. In matters involving an offense that is not specifically listed in this section or the Guidelines, including a violation of another state law, federal law, the Uniform Code of Military Justice, or other law, the appropriate sanction shall be determined by comparing that offense to the specified categories of crimes in this section and the specific crimes in the Guidelines that contain substantially similar elements.

(d) The Guidelines are as follows: Figure: 22 TAC §213.28(d)

(e) The Executive Director, the Board, and SOAH shall consider the following factors in conjunction with the Guidelines when determining the appropriate sanction in disciplinary and eligibility matters involving criminal conduct. To the extent applicable, this section and the Guidelines should also be considered in conjunction with the recommended sanctions in the Board's Disciplinary Matrix, located at §213.33(b) (relating to Factors Considered for Imposition of Penalties/Sanction) of this chapter. If multiple criminal offenses are present in a single case, the most severe sanction recommended for any one of the individual offenses should be considered by the Board pursuant to Tex. Occ. Code §301.4531. The factors include:

(1) the knowing or intentional practice of nursing without a license issued under the Nursing Practice Act (NPA):

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

(4) the relationship of the crime to the purposes for requiring a license to engage in nursing practice;

(5) 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 (6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice:

(7) whether imprisonment followed a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision;

(8) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(9) the extent and nature of the person's past criminal activity;

(10) the age of the person when the crime was committed;

(11) the amount of time that has elapsed since the person's last criminal activity;

(12) the conduct and work activity of the person before and after the criminal activity;

(13) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(14) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) The Board is required under Tex. Occ. Code §301.4535(b) to deny an individual initial licensure or licensure renewal and/or to revoke an individual's nursing license or privilege to practice nursing in Texas upon a final conviction or a plea of guilty or nolo contendere for a criminal offense specified in §301.4535(a). Further, pursuant to Tex. Occ. Code §53.021(b), the Board is required to revoke an individual's license or privilege to practice nursing in Texas upon the individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(g) In matters involving an individual's criminal history, the record of conviction, order, or deferred adjudication is conclusive evidence of guilt. Further, in addition to the remedies available to the Board pursuant to Tex. Occ. Code §301.452(b)(3) and (4) and Tex. Occ. Code Chapter 53, an individual guilty of a felony is conclusively deemed to have violated Tex. Occ. Code §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(h) It shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas, to the extent possible, to obtain and provide to the Board recommendations of the prosecution, law enforcement, and correctional authorities. The individual shall also furnish proof in such form as may be required by the Board that the individual has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution, as may have been ordered in all criminal cases.

(i) If requested, and to the extent possible, it shall be the responsibility of the individual seeking to obtain or retain a license or privilege to practice nursing in Texas to ensure that legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional is provided in a timely fashion to the Board. Failure to provide complete, legible, and accurate documentation will result in the delay of the resolution of an eligibility or disciplinary matter involving an individual's criminal history.

(j) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the NPA or rules of the Board, the Board may consider such evidence as a factor in its deliberations regarding any eligibility or disciplinary matter.

(k) Youthful Indiscretions. Some criminal behavior that would otherwise affect an individual's licensure status may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior utilizing the factors set out in §213.27 of this chapter (relating to Good Professional Character), this section, and the following criteria:

(1) age of 22 years or less at the time of the behavior;

(2) the offense was not classified as a felony;

(3) absence of criminal plan or premeditation;

(4) presence of peer pressure or other contributing influences;

(5) absence of adult supervision or guidance;

(6) evidence of immature thought process/judgment at the time of the activity;

(7) evidence of remorse;

ity;

(8) evidence of restitution to both victim and community;

(9) evidence of current maturity and personal accountabil-

(10) absence of subsequent undesirable conduct;

(11) evidence of having learned from past mistakes;

(12) evidence of current support structures that will prevent future criminal activity; and

(13) evidence of current ability to practice nursing in accordance with the NPA, Board rules, and generally accepted standards of nursing. If an individual's behavior is deemed to be a youthful indiscretion under this subsection, then the matter may be eligible for resolution through a lower sanction than would otherwise be considered.

(1) Minor Criminal History. The Board has adopted a Minor Criminal History Policy. Some criminal behavior that would otherwise affect an individual's licensure status may fall within the Board's Minor Criminal History Policy. If behavior is deemed to fall within the Board's Minor Criminal History Policy, then the matter may be closed without further action, in accordance with the provisions of that policy. However, the mere listing of a criminal offense in the Board's Minor Criminal History Policy does not mean that the offense does not affect or is not related to the practice of nursing or that an individual will not be subject to licensure action due to the criminal behavior. To the extent that a conflict exists between this section, the Guidelines, and the Board's Minor Criminal History Policy, this section and the Guidelines control.

(m) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, the Board, and SOAH in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28,

2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(n) The Executive Director is authorized to close an eligibility file when the individual seeking licensure has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days of the request or proposed denial, as applicable.

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

Filed with the Office of the Secretary of State on August 17, 2015.

TRD-201503152 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

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22 TAC §213.29

(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 Board of Nursing or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Nursing (Board) proposes the repeal of §213.29 (relating to Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters). This repeal is necessary because the Board is simultaneously proposing a new section for adoption that reorganizes the section, clarifies the Board's expectations regarding an individual's fitness to practice, and includes language that is consistent with the recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM). Proposed new §213.29 is being published elsewhere in this issue of the *Texas Register*.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposed repeal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §§301.452, 301.4521, and 301.151 and promote fairness, consistency, efficiency, and predictability in eligibility and disciplinary matters involving an individual's fitness to practice. There are no anticipated economic costs to persons who are required to comply with the proposed repeal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed repeal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposed repeal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposed repeal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to *dusty.johnston@bon.texas.gov*, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The repeal is proposed under the Occupations Code §§301.452, 301.453, and 301.151.

Section 301.452(a) provides that "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term applicant.

Section 301.4521(b) provide that the Board may require a nurse or applicant to submit to an evaluation if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of physical impairment, mental impairment; or chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) states that a demand for an evaluation under §301.4521(b) must be in writing and state the reasons probable cause exists to require the evaluation and that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) provides that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may refuse to issue or renew a license, suspend a license, or issue an order limiting the license.

Section 301.4521(f) states that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) provides that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under \$301.4521 (h).

Section 301.4521(h) states that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) provides that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (i) introduced as evidence in a proceeding before the Board or a hearing conducted by the State Office of Administrative Hearings under Chapter 301; (ii) included in the findings of fact and conclusions of law in a final Board order; and (iii) disclosed to a peer assistance program approved by the Board under Chapter 467, Health and Safety Code, and to which the Board has referred the nurse.

Section 301.4521(k) states that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(I) provides that the Board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by this proposal to §213.29: Occupations Code §§301.452, 301.453, and 301.151.

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

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 August 17, 2015.

TRD-201503148 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

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22 TAC §213.29

The Texas Board of Nursing (Board) proposes new §213.29 (relating to Fitness to Practice) simultaneously with the proposed repeal of current §213.29. The proposed repeal of current §213.29 is being published elsewhere in this issue of the *Texas Register*. Proposed new §213.29 is proposed under the authority of the Occupations Code §§301.452, 301.4521, and 301.151 and reorganizes the section, clarifies the Board's expectations regarding an individual's fitness to practice, and includes language that is consistent with the recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM).

Background

The Eligibility & Disciplinary Advisory Committee (EDAC) is one of the Board's standing advisory committees and advises the Board on regulatory matters involving eligibility and disciplinary rules, policies, and guidelines. In April 2012, the Board issued a charge to the EDAC to review and make recommendations regarding the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC began working on the Board's charge in September 2012. In an effort to maintain consistency among the Board's eligibility and disciplinary policies, guidelines, and rules, the EDAC also reviewed Board Rules 213.27, 213.28, 213.29, 213.30, and 213.33 in conjunction with the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC met several times over the course of 2012-2015. The EDAC concluded its review of the Board's eligibility and disciplinary policies, criminal guidelines, and Board rules in June 2015. The EDAC's recommendations were presented and considered by the Board at its regularly scheduled July 2015 Board meeting.

After discussion and deliberation, the Board voted to adopt the EDAC's recommended changes to the Board's eligibility and disciplinary sanction policies (specifically, the Board's Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; Disciplinary Sanctions for Fraud, Theft, and Deception; and Disciplinary Sanctions for Lying and Falsification) and its Disciplinary Guidelines for Criminal Conduct. The Board's amended eligibility and disciplinary sanction policies and criminal guidelines, which include the EDAC's recommended changes, are being published elsewhere in this issue of the *Texas Register*.

The Board also voted to propose the repeal of current Board Rules 213.27 and 213.28, along with new proposed §213.27 and §213.28 in their place. These proposals are being published elsewhere in this issue of the *Texas Register*. Further, the Board voted to propose amendments to Board Rules 213.30 and 213.33. These proposals are also being published elsewhere in this issue of the *Texas Register*.

Proposed new §213.29

Proposed new §213.29 is proposed under the authority of the Occupations Code §§301.452, 301.4521, and 301.151. Section 301.452 authorizes the Board to impose disciplinary action against an individual's nursing license or privilege to practice in Texas under certain circumstances. The Board is specifically authorized to impose disciplinary action against an individual's nursing license or privilege to practice in Texas for the intemperate use of alcohol or drugs, for an adjudication of mental incompetency, and for lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public. Section 301.4521 further authorizes the Board to require an individual to undergo a physical or psychological

evaluation to ensure that the individual is fit to practice nursing safely. The proposed new section clarifies the Board's expectations regarding an individual's fitness to practice in this regard and specifies the requirements applicable to the evaluation of an individual's fitness to practice.

Introduction

Although the Board is proposing a repeal of the current rule, the proposed new section contains many provisions that are similar to those in the current rule. For example, like the current rule, the proposed new section makes clear that individuals seeking to obtain or retain a license or privilege to practice nursing in Texas must possess current fitness to practice. The new section also reiterates the Board's expectation that an individual has a duty to self-evaluate to ensure that he/she is fit to practice before providing nursing care. This proposed provision is consistent with Board Rules 217.11(1)(T) and 217.11(1)(E), which currently require nurses to self-evaluate to ensure they only accept nursing assignments that are commensurate with the their physical and emotional ability and are safe for patients.

Fitness to Practice Evaluation

The proposed new section also clarifies when an individual's fitness to practice may be evaluated by the Board. Although the current rule identifies reasons why an individual's fitness to practice may be called into question, the proposed new section provides additional explanation regarding the Board's evaluation of an individual's fitness to practice. First, the proposed new section specifies that an individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the Nursing Practice Act (NPA), the Board's rules and regulations, and generally accepted standards of nursing practice (specified in Board Rule 217.11).

Second, the proposed new section clarifies that the Board will review an individual's fitness to practice any time the individual exhibits conduct that may prevent him/her from practicing nursing with reasonable skill and safety. Although an individual's fitness to practice may be subject to Board review due to a substance use disorder; the possession, abuse, or misuse of alcohol or drugs, prescribed or otherwise; or a physical or mental health condition, this is not an exhaustive list, and the proposed new section makes clear that other issues may trigger Board review of an individual's fitness to practice.

Although the current rule references the Board's authority to require an individual to undergo an evaluation under the Occupations Code §301.4521 and Board Rule 213.33, the proposed new section clarifies that the Board may utilize the results of the evaluation, in conjunction with the individualized facts of the case, in determining whether the individual is currently fit to practice. Based upon the results of the evaluation and consideration of the facts of each case, the Board may then deny the individual's licensure (including license renewal, reinstatement or reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state.

Substance Use Disorders and Abuse/Misuse of Alcohol or Drugs

The proposed new section also provides additional clarity regarding the Board's evaluation of an individual's fitness to practice due to a substance use disorder or the abuse or misuse of alcohol or drugs. DSM is a standardized classification guide utilized by many mental health professionals to assess and diagnose mental disorders. The DSM's recent amendments change the way chemical dependency and substance abuse issues are assessed and diagnosed. The proposed new section includes terminology that is consistent with the recent amendments to the DSM in this regard. For example, the proposed new section utilizes the term *substance use disorder* in lieu of *chemical dependency*. Further, the proposed new section includes reference to the *abuse or misuse of alcohol or drugs* in an effort to address issues that may not qualify under the DSM's new criteria for a substance use disorder, but may still be of concern to the Board and potentially affect an individual's ability to practice nursing safely in this state. Second, the proposed new section explains the Board's evaluation process in a more meaningful way. For example, for individuals who have been diagnosed treated or hospitalized for

First, the proposed new section contains provisions that are nec-

essary for consistency with recent changes to the DSM. The

ation process in a more meaningful way. For example, for individuals who have been diagnosed, treated, or hospitalized for a substance use disorder that may impair their ability to practice nursing safely, the Board will generally require the individual to demonstrate his/her sobriety and abstinence from drugs and alcohol for a period of twelve consecutive months. The individual will be required to provide verifiable and reliable evidence of his/her sobriety and abstinence. Under the proposed new section, such verifiable and reliable evidence may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance.

The proposed new section also clarifies the range of potential consequences that an individual may face if he/she is found not to have current fitness to practice. Depending upon the individualized facts of each case, an individual may be required to establish a period of sobriety and abstinence prior to being permitted to practice nursing in this state. However, the Board may also determine, based upon an evaluation of the individualized facts of the case, that an individual is eligible to obtain or retain an encumbered license. In such cases, the individual may be eligible to participate in a Board-approved peer assistance program or may practice under conditions/restrictions determined by the Board. These conditions/restrictions may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The proposed new section also reiterates that the particular outcome of each case will be based upon the Board's evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients, clients, or the public.

The proposed new section also addresses individuals who have not been diagnosed, treated, or hospitalized for a substance use disorder, but have nonetheless exhibited behaviors raising concerns about the individual's ability to practice nursing with reasonable skill and safety due to the possession, misuse, or abuse of alcohol or drugs, prescribed or otherwise. Such conduct may include related criminal conduct. In these cases, the proposed new section clarifies that the an individual may also be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months through verifiable and reliable evidence. If appropriate, after an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients, clients, or the public, the Board may determine that the individual is safe to practice nursing under an encumbered license with conditions/restrictions determined by the Board. These conditions/restrictions may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance.

Like the current rule, the proposed new section also reiterates that an individual's prior substance use disorder diagnosis or history of prior criminal conduct involving drugs or alcohol, prescribed or otherwise; or misuse or abuse of alcohol or drugs, prescribed or otherwise; will only be considered by the Board to the extent that it may be indicative of the individual's current lack of fitness to practice nursing. Although the current rule contains provisions similar to these, the proposed new section reiterates these provisions with greater clarity.

Mental Health Conditions and Diminished Capacity

The proposed new section also provides additional clarity regarding the Board's evaluation of an individual's fitness to practice due to a mental health condition and diminished capacity. For example, for individuals who have been diagnosed, treated, or hospitalized for a mental health condition that may impair their ability to practice nursing safely, the Board will generally require the individual to demonstrate controlled behavior and consistent compliance with recommended treatment, which may include compliance with a prescribed medication regime. The individual will be required to provide verifiable and reliable evidence of his/her controlled behavior and compliance with treatment.

The proposed new section also clarifies the range of potential consequences that an individual may face if he/she is found not to have current fitness to practice. Depending upon the individualized facts of each case, an individual may be required to establish controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, prior to being permitted to practice nursing in this state. However, the Board may also determine, based upon an evaluation of the individualized facts of the case, that an individual is eligible to obtain or retain an encumbered license. In such cases, the individual may be eligible to participate in a Board-approved peer assistance program or may practice under conditions/restrictions determined by the Board. The particular outcome of each case will be based upon the Board's evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients, clients, or the public.

The proposed new section also addresses individuals who have not been diagnosed, treated, or hospitalized for a mental health condition, but have nonetheless exhibited behaviors raising concerns about the individual's fitness to practice due to a mental health condition or diminished capacity. In these cases, the individual may be required to demonstrate controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. If appropriate, after an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients, clients, or the public, the Board may determine that the individual is safe to practice nursing under an encumbered license with conditions/restrictions determined by the Board.

Like the current rule, the proposed new section reiterates that an individual's prior mental health diagnosis or behavioral history will only be considered by the Board to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

Other Medical Conditions

The proposed new section also addresses other medical conditions that may affect an individual's fitness to practice. Individuals may have a variety of medical conditions that require medical treatment or a medication regime that includes prescription drugs. While certain prescription drugs may be necessary and lawfully authorized, the Board recognizes that such drugs may affect an individual's fitness to practice. The proposed new section makes clear that an individual must be able to function safely while under the effect of prescription drugs. Any individual who abuses his/her prescription drugs or who is unable to stabilize the synergistic effect of his/her medications may not possess current fitness to practice. Further, some prescription medications may cause side effects that affect an individual's fitness to practice, even when taken properly. Further, in some cases, an individual's underlying physical condition may prevent the individual from practicing nursing safely.

In these cases, the proposed new section makes clear that the Board will consider the individual's behavior, diagnosis or condition, treatment plan, and medication regime when determining the individual's current fitness to practice. Based upon the individualized facts of the case, including the results of a required evaluation, the Board may deny the individual's licensure (including license renewal, reinstatement or reactivation, or the return to direct patient care from a limited license): suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, including limiting the individual's practice setting to one in which the individual is safe to practice nursing. The proposed new section also makes clear that an individual's prior medical condition and/or diagnosis will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing. Although not specifically addressed in the current rule, the Board is authorized to, and does, review an individual's physical health status, including the individual's treatment plan and prescribed medications, when an individual's fitness to practice becomes an issue of concern.

The remainder of the proposed new section updates the references to the Board's eligibility and disciplinary sanction policies, which were amended and adopted by the Board at its July 2015 regularly scheduled meeting, and reiterates the authority of the Executive Director to review and close cases and extend offers of settlement following the evaluation of an individual's fitness to practice.

Section-by-Section Overview.

Proposed new §213.29(a) provides that each individual who seeks to practice nursing in Texas must possess current fitness to practice. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas and applies in all eligibility and disciplinary matters. Further, each individual has a duty to self-evaluate to ensure that he/she is fit to practice before providing nursing care.

Proposed new §213.29(b) states that an individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the NPA, the Board's rules and regulations, and generally accepted standards of nursing practice. Further, an individual's fitness to practice may be subject to Board review due to an individual's substance use disorder; possession, abuse, or misuse of alcohol or drugs, prescribed or otherwise; or physical or mental health condition. This is not, however, an exhaustive list. If an individual exhibits any conduct that may prevent him/her from practicing nursing with reasonable skill and safety, the Board will review the individual's conduct to determine if he/she possesses current fitness to practice. Proposed new §213.29(c) provides that, if an individual exhibits conduct that raises questions about his/her fitness to practice, the Board may require the individual to undergo a physical and/or psychological evaluation that meets the criteria of the Occupations Code §301.4521 and 22 TAC §213.33. Further, pursuant to §301.4521, an individual subject to this rule is responsible for paying the costs of the evaluation. Utilizing the results of the evaluation and the individualized facts of the case, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state.

Proposed new §213.29(d)(1) states that individuals who have been diagnosed, treated, or hospitalized for a substance use disorder that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. Depending upon the individualized facts of each case, an individual may be required to establish this period of sobriety and abstinence prior to being permitted to practice nursing in this state. Further, and if appropriate, based upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467 or other lawfully authorized peer assistance program. Licensure conditions/restrictions may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

Proposed new §213.29(d)(2) provides that individuals who have not been diagnosed, treated, or hospitalized for a substance use disorder, but have nonetheless exhibited behaviors raising concerns about the individual's ability to practice nursing with reasonable skill and safety due to the possession, misuse, or abuse of alcohol or drugs, prescribed or otherwise, including related criminal conduct, may be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. If appropriate, and depending upon the individualized facts of each case, an individual may be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board, which may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

Proposed new §213.29(d)(3) provides that an individual's prior substance use disorder diagnosis or history of prior criminal conduct involving drugs or alcohol, prescribed or otherwise; or misuse or abuse of alcohol or drugs, prescribed or otherwise; will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

Proposed new §213.29(e)(1) states that individuals who have been diagnosed, treated, or hospitalized for a mental health condition that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. Depending upon the individualized facts of each case, an individual may be reguired to establish controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, prior to being permitted to practice nursing in this state. Further, and if appropriate, and depending upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

Proposed new §213.29(d)(2) states that individuals who have not been diagnosed, treated, or hospitalized for a mental health condition, but have nonetheless exhibited behaviors raising concerns about the individual's fitness to practice due to a mental health condition or diminished capacity may be required to demonstrate controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. If appropriate, and depending upon the individualized facts of each case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

Proposed new §213.29(d)(3) states that an individual's prior mental health diagnosis or behavioral history will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

Proposed new §213.29(f)(1) provides that the Board recognizes that individuals may have a variety of medical conditions that require medical treatment and/or a medication regime that includes prescription drugs. Although authorized by law and medically necessary, prescription drugs may affect an individual's fitness to practice. An individual must be able to function safely while under the effects of prescription drugs. An individual who abuses his/her prescription drugs or who has been unable to stabilize the synergistic effect of his/her medications may not possess current fitness to practice. Further, some prescription medications may cause side effects that affect an individual's fitness to practice. even when taken properly. In some cases, an individual's physical condition may prevent the individual from practicing nursing safely. In addition to an individual's medication regime, the Board will review an individual's behavior, diagnosis/condition, and treatment plan to determine if he/she possesses current fitness to practice. Based upon the individualized facts of the case, including the results of a required evaluation, if any, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, including limiting the practice setting to one in which the individual is safe to practice nursing.

Proposed new §213.29(f)(2) provides that an individual's prior medical condition and/or diagnosis will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

Proposed new §213.29(g)(1) provides that, in eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may review information submitted by the individual and materials and information gathered or prepared by Board Staff; including evidence of the individual's safe practice, compliance with the NPA, Board rules and regulations, and generally accepted standards of nursing practice; verification of compliance with treatment; and evidence of sobriety.

Proposed new §213.29(g)(2) provides that, in eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may identify any deficiencies in the information necessary for a determination regarding the individual's current fitness to practice.

Proposed new §213.29(g)(3) provides that, in eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may close any eligibility file in which the individual seeking licensure has failed to respond to a request for information from the Board or to a proposal for denial of licensure within 60 days of the request or proposed denial, as applicable.

Proposed new §213.29(g)(4) provides that, in eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may approve an individual's eligibility for licensure, enter eligibility orders as authorized in §211.7 (relating to Executive Director) of this title, and approve renewals, without Board ratification, when the evidence is clearly insufficient to support denial of licensure.

Proposed new §213.29(g)(5) provides that, in eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may propose eligibility and disciplinary orders in eligibility, disciplinary, and renewal matters consistent with the Board's rules and regulations and the interests of public safety and enter disciplinary orders as authorized in §211.7.

Proposed new §213.29(h) requires the Executive Director, SOAH, and the Board to utilize the Board's amended disciplinary sanction policies adopted by the Board at its July 2015 regularly scheduled meeting (published elsewhere in this issue of the *Texas Register*), when evaluating an individual's fitness to practice in eligibility and disciplinary cases.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. Further, there will be no anticipated effect on local employment or the local economy as a result of the proposed new section.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section will be in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §§301.452, 301.4521, and 301.151 and promote fairness, consistency, efficiency, and predictability in eligibility and disciplinary matters involving the evaluation of an individual's fitness to practice.

There are no anticipated costs for individuals required to comply with the proposal. The proposed new section contains the Board's requirements related to the evaluation of an individual's fitness to practice in eligibility and disciplinary matters. More specifically, the proposed new section specifies when an individual's fitness to practice may be evaluated by the Board and identifies the potential consequences if an individual is found not to have current fitness to practice. Although the proposed new section is organized differently, many of the provisions of the current rule are incorporated into the proposed new section. Further, none of the proposal's provisions impose any requirements or conditions upon individuals that do not already exist under the current rule or statute or that would result in a direct cost to the individual. As such the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed new section will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new section is proposed under the Occupations Code §§301.452, 301.4521, and 301.151.

Section 301.452(a) provides that "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public: (xi) adjudication of mental incompetency: (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.4521(a) defines the term applicant.

Section 301.4521(b) provide that the Board may require a nurse or applicant to submit to an evaluation if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of physical impairment, mental impairment; or chemical dependency or abuse of drugs or alcohol.

Section 301.4521(c) states that a demand for an evaluation under §301.4521(b) must be in writing and state the reasons probable cause exists to require the evaluation and that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

Section 301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058.

Section 301.4521(e) provides that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may refuse to issue or renew a license, suspend a license, or issue an order limiting the license.

Section 301.4521(f) states that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

Section 301.4521(g) provides that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets Board standards established under §301.4521(h).

Section 301.4521(h) states that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list.

Section 301.4521(i) provides that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521.

Section 301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be introduced as evidence in a proceeding before the Board or a hearing conducted by the State Office of Administrative Hearings under Chapter 301; included in the findings of fact and conclusions of law in a final Board order; and disclosed to a peer assistance program approved by the Board under Chapter 467, Health and Safety Code, and to which the Board has referred the nurse.

Section 301.4521(k) states that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under §301.4521, the evaluation must be expunged from the Board's records.

Section 301.4521(I) provides that the Board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521.

Section 301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under Chapter 301.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the

practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by this proposal to $\S213.29$: Occupations Code $\S\$301.452$, 301.4521, 301.151

§213.29. Fitness to Practice.

(a) Each individual who seeks to practice nursing in Texas must possess current fitness to practice. This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas and applies in all eligibility and disciplinary matters. Each individual has a duty to self-evaluate to ensure that he/she is fit to practice before providing nursing care.

(b) An individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the reguirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice. An individual's fitness to practice may be subject to Board review due to an individual's substance use disorder; possession, abuse, or misuse of alcohol or drugs, prescribed or otherwise; or physical or mental health condition. This is not an exhaustive list. If an individual exhibits any conduct that may prevent him/her from practicing nursing with reasonable skill and safety, the Board will review the individual's conduct to determine if he/she possesses current fitness to practice.

(c) Evaluations. If an individual exhibits conduct that raises questions about his/her fitness to practice, the Board may require the individual to undergo a physical and/or psychological evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penal-ties/Sanctions). Pursuant to §301.4521, an individual subject to this rule is responsible for paying the costs of the evaluation. Utilizing the results of the evaluation and the individualized facts of the case, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state.

(d) Substance Use Disorders and Abuse/Misuse of Alcohol or Drugs.

(1) Individuals who have been diagnosed, treated, or hospitalized for a substance use disorder that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. Depending upon the individualized facts of each case, an individual may be required to establish this period of sobriety and abstinence prior to being permitted to practice nursing in this state. If appropriate, based upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467 or other lawfully authorized peer assistance program. Licensure conditions/restrictions may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(2) Individuals who have not been diagnosed, treated, or hospitalized for a substance use disorder, but have nonetheless exhibited behaviors raising concerns about the individual's ability to practice nursing with reasonable skill and safety due to the possession, misuse, or abuse of alcohol or drugs, prescribed or otherwise, including related criminal conduct, may be required to demonstrate sobriety and abstinence from drugs and alcohol for a minimum of twelve consecutive months, through verifiable and reliable evidence, in order to obtain or retain licensure. Verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. If appropriate, and depending upon the individualized facts of each case, an individual may be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board, which may include the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(3) An individual's prior substance use disorder diagnosis or history of prior criminal conduct involving drugs or alcohol, prescribed or otherwise; or misuse or abuse of alcohol or drugs, prescribed or otherwise; will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

(e) Mental Health Conditions and Diminished Capacity.

(1) Individuals who have been diagnosed, treated, or hospitalized for a mental health condition that may impair their ability to practice nursing safely, will, at a minimum, be required to demonstrate controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. Depending upon the individualized facts of each case, an individual may be required to establish controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, prior to being permitted to practice nursing in this state. If appropriate, and depending upon the individualized facts of the case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board or through participation in a Board-approved peer assistance program created pursuant to the Texas Health and Safety Code Chapter 467. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(2) Individuals who have not been diagnosed, treated, or hospitalized for a mental health condition, but have nonetheless exhibited behaviors raising concerns about the individual's fitness to practice due to a mental health condition or diminished capacity may be required to demonstrate controlled behavior and compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, through verifiable and reliable evidence, in order to obtain or retain licensure. If appropriate, and depending upon the individualized facts of each case, an individual may also be eligible to obtain or retain licensure and practice nursing under an encumbered license with conditions/restrictions determined by the Board. The outcome of any particular case will be based upon an evaluation of the individualized factors of the case and the potential risk of harm the individual's practice may pose to patients/clients and/or the public.

(3) An individual's prior mental health diagnosis or behavioral history will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

(f) Other Medical Conditions.

(1) The Board recognizes that individuals may have a variety of medical conditions that require medical treatment and/or a medication regime that includes prescription drugs. Although authorized by law and medically necessary, prescription drugs may affect an individual's fitness to practice. An individual must be able to function safely while under the effects of prescription drugs. An individual who abuses his/her prescription drugs or who has been unable to stabilize the synergistic effect of his/her medications may not possess current fitness to practice. Further, some prescription medications may cause side effects that affect an individual's fitness to practice, even when taken properly. In some cases, an individual's physical condition may prevent the individual from practicing nursing safely. In addition to an individual's medication regime, the Board will review an individual's behavior, diagnosis/condition, and treatment plan to determine if he/she possesses current fitness to practice. Based upon the individualized facts of the case, including the results of a required evaluation, if any, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license); suspend or revoke the individual's license or privilege to practice nursing in this state; or impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, including limiting the practice setting to one in which the individual is safe to practice nursing.

(2) An individual's prior medical condition and/or diagnosis will be considered by the Board only to the extent that it may be indicative of the individual's current lack of fitness to practice nursing.

(g) Authority of Executive Director. In eligibility and disciplinary matters involving an individual's fitness to practice, the Executive Director may:

(1) review information submitted by the individual and materials and information gathered or prepared by Board Staff; including evidence of the individual's safe practice, compliance with the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice; verification of compliance with treatment; and evidence of sobriety;

(2) identify any deficiencies in the information necessary for a determination regarding the individual's current fitness to practice;

(3) close any eligibility file in which the individual seeking licensure has failed to respond to a request for information from the Board or to a proposal for denial of licensure within 60 days of the request or proposed denial, as applicable;

(4) approve an individual's eligibility for licensure, enter eligibility orders as authorized in §211.7 (relating to Executive Director) of this title, and approve renewals, without Board ratification, when the evidence is clearly insufficient to support denial of licensure; and

(5) propose eligibility and disciplinary orders in eligibility, disciplinary, and renewal matters consistent with the Board's rules and regulations and the interests of public safety and enter disciplinary orders as authorized in §211.7 of this title.

(h) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, SOAH, and the

Board in evaluating the impact of criminal conduct on nurse licensure in eligibility and disciplinary matters:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

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 August 17, 2015.

TRD-201503149 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

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22 TAC §213.30

The Texas Board of Nursing (Board) proposes amendments to §213.30 (relating to Declaratory Order of Eligibility for Licensure). The amendments are proposed under the authority of the Occupations Code §301.257 and §301.151 and reorganize the section for clarity and consistency with proposed changes to Board rules (published elsewhere in this issue of the *Texas Register*), the Board's amended and adopted eligibility and disciplinary sanction policies (also published elsewhere in this issue of the *Texas Register*), and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM).

Background

The Eligibility & Disciplinary Advisory Committee (EDAC) is one of the Board's standing advisory committees and advises the Board on regulatory matters involving eligibility and disciplinary rules, policies, and guidelines. In April 2012, the Board issued a charge to the EDAC to review and make recommendations regarding the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC began working on the Board's charge in September 2012. In an effort to maintain consistency among the Board's eligibility and disciplinary policies, guidelines, and rules, the EDAC also reviewed Board Rules 213.27, 213.28, 213.29, 213.30, and 213.33 in conjunction with the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC met several times over the course of 2012-2015. The EDAC concluded its review of the Board's eligibility and disciplinary policies, criminal guidelines, and Board rules in June 2015. The EDAC's recommendations were presented and considered by the Board at its regularly scheduled July 2015 Board meeting.

After discussion and deliberation, the Board voted to adopt the EDAC's recommended changes to the Board's eligibility and disciplinary sanction policies (specifically, the Board's Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; Disciplinary Sanctions for Fraud, Theft, and Deception; and Disciplinary Sanctions for Lying and Falsification) and its Disciplinary Guidelines for Criminal Conduct. The Board's amended eligibility and disciplinary sanction policies and criminal guidelines, which include the EDAC's recommended changes, are being published elsewhere in this issue of the *Texas Register*.

The Board also voted to propose the repeal of current Board Rules 213.27, 213.28, and 213.29, along with new §§213.27, 213.28, and 213.29 in their place. These proposals are being published elsewhere in this issue of the *Texas Register*. Further, the Board voted to propose amendments to Board Rule 213.33. This proposal is also being published elsewhere in this issue of the *Texas Register*.

Proposed amended §213.30

The amendments to §213.30 are proposed under the authority of the Occupations Code §301.257 and §301.151. Section 301.257 permits individuals to petition the Board for an eligibility determination if the individual has reason to believe he/she may be ineligible for licensure in Texas. Board Rule 213.30 prescribes the general process by which an individual may submit a petition for a declaratory order of eligibility to the Board. The majority of the proposed amendments to this section are intended to clarify the Board's process for evaluating a petition for a declaratory order of eligibility and to provide additional information to individuals who may wish to submit a petition to the Board.

An individual may submit a petition for a declaratory order of eligibility to the Board if he/she has reason to believe he/she may be ineligible for licensure for any reason. However, the proposed amendments address the most common reasons why an individual may be ineligible for licensure, such as the individual's criminal history, mental health condition or diminished capacity, or substance use disorder or abuse or misuse or alcohol or drugs. The proposed amendments also clarify the information that individuals may be required to submit during an eligibility review.

For example, if an individual may be potentially ineligible for licensure due to a mental health disorder or diminished capacity, the proposed amendments clarify that the individual will be required to submit, for Board review, verifiable and reliable evidence of the individual's controlled behavior and consistent compliance with recommended treatment. If applicable, such evidence may also include the individual's compliance with a prescribed medication regime. Likewise, if an individual may be potentially ineligible for licensure due to the individual's substance use disorder or the abuse or misuse of alcohol or drugs, the proposed amendments clarify that the individual will be required to submit verifiable and reliable evidence of the individual's sobriety and abstinence from drugs and alcohol. Such evidence may include information regarding the individual's completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance. The proposed amendments also reiterate that the individual may be required, or requested, as applicable, to undergo a physical or psychological evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions). These evaluations provide the Board with additional information to make an informed decision about an individual's eligibility.

The proposed amendments also clarify the criteria that the Board may utilize when evaluating an individual's eligibility for licensure. The proposed amendments make clear that the Board's investigation will be based upon an evaluation of the individualized factors of the individual's case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the individual's ability to meet the requirements of the Board's rules regarding good professional character (Board Rule 213.27), criminal history (Board Rule 213.28), and fitness to practice (Board Rule 213.29). Based upon the individualized facts of each case, the Board may then decide to approve the individual's licensure without any encumbrances, impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, or deny the individual's licensure.

The proposed amendments are also consistent with recent changes to the DSM. The DSM is a standardized classification guide utilized by many mental health professionals to assess and diagnose mental disorders. The DSM's recent amendments change the way chemical dependency and substance abuse issues are assessed and diagnosed. The proposed amendments include terminology that is consistent with the recent amendments to the DSM in this regard. For example, the proposed amendments utilize the term *substance use disorder* in lieu of *chemical dependency*. Further, the proposed amendments include reference to the *abuse or misuse of alcohol or drugs* in an effort to address issues that may not qualify under the DSM's new criteria for a substance use disorder, but may still be of concern to the Board and potentially affect an individual's ability to practice nursing safely in this state.

The remainder of the proposed amendments eliminate unnecessary redundancy among the Board's rules. Instead of repeating the provisions that are found in Board Rules 213.27 and 213.28, the proposed amendments direct individuals to those specific rules. This prevents inadvertent inconsistencies among the rules and eliminates unnecessary and confusing language from this section. Further, the proposed amendments include a reference to Board Rule 213.29, which refers to an individual's fitness to practice, and is relevant in determining an individual's eligibility for licensure. The proposed amendments also update the references to the Board's eligibility and disciplinary sanction policies, which were amended and adopted by the Board at its July 2015 regularly scheduled meeting. Finally, the proposed amendments re-order the subsections of the section correctly and make editorial and typographical corrections.

Section-by-Section Overview. Proposed amended §213.30(b) provides that an individual with reason to believe that he/she may be ineligible for initial licensure or licensure by endorsement due to issues discussed in §213.30 may petition the Board for a declaratory order as to his or her eligibility.

Proposed amended §213.30(c) provides that an individual must submit a petition on forms provided by the Board that includes: (i) a statement by the individual indicating the reason(s) and basis of his/her potential ineligibility; (ii) if the potential ineligibility is due to the individual's criminal history, all court documents, including, but not limited to: indictments, agreements for pre-trial diversion or deferred prosecution, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as applicable; (iii) if the potential ineligibility is due to the individual's mental health condition or diminished capacity, verifiable and reliable evidence of controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable; (iv) if the potential ineligibility is due to the individual's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance; (v) the required fee, which is not refundable; and (vi) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions), as applicable.

Proposed amended §213.30(d) provides that, once the Board has received all necessary information, an investigation of the petition and the individual's eligibility will be conducted. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the individual's ability to meet the requirements of Board Rules 213.27, 213.28, and 213.29. Further, based upon the individized facts of the case, the Board may then approve the individual's licensure without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, or deny the individual's licensure.

Proposed amended §213.30(f) provides that, if an individual is seeking licensure by endorsement pursuant to §217.5 of this title and has been licensed to practice nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the provisions of Board Rule 213.27(e) will apply to the evaluation of the individual's eligibility.

Proposed amended §213.30(g) provides that, if an individual's potential ineligibility is due to his/her criminal history, the provisions of Board Rule 213.28 will apply to the evaluation of the individual's eligibility.

Proposed amended §213.30(h) provides that, if an individual's potential ineligibility is due to a substance use disorder and/or the abuse/misuse of alcohol or drugs, a mental health condition or diminished capacity, or another issue relating to the individual's fitness to practice, the provisions of Board Rule 213.29 will apply to the evaluation of the individual's eligibility.

The proposed amendments to 213.30(i) and (j) re-order the subsections of the section appropriately.

The proposed amendments to §213.30(k) reference the eligibility and disciplinary sanction policies of the Board that were amended and adopted at the Board's regularly scheduled July 2015 meeting.

Proposed amended §213.30(I) states that, if an individual seeking licensure by endorsement under §217.5 or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue addressed pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order, and the individual will be required to pay the non-refundable fee required by §223.1 of this title (relating to Fees).

The proposed amendment to §213.30(m) re-orders the subsection appropriately.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. Further, there will be no anticipated effect on local employment or the local economy as a result of the proposed amendments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §301.257 and promote fairness, consistency, efficiency, and predictability in Board decisions involving the evaluation of an individual's eligibility for licensure.

There are no anticipated costs for individuals required to comply with the proposal. The proposed amendments clarify the Board's existing process for evaluating a petition for a declaratory order of eligibility. Further, although the proposed amendments clarify the information that an individual may be required to submit during the Board's evaluation of his/her eligibility, the proposed amendments do not impose requirements upon the individual that do not already exist under the current rule or statute. For example, under the current rule, and as applicable, an individual is already required to submit relevant court documents, an evaluation under the Occupations Code §301.4521 and Board Rule 213.33, and evidence of treatment, after care, and support group attendance. While the proposed amendments clarify the information that must be submitted to the Board, they do not impose new requirements or conditions that would result in a direct cost to the individual. As such the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §301.257 and §301.151.

Section 301.257(a) provides that a person may petition the Board for a declaratory order as to the person's eligibility for a license if the person has reason to believe that the person is ineligible for the license and: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or (2) is an applicant for a license. Section 301.257(b) provides that the petition must state the basis for the person's potential ineligibility.

Section 301.257(c) states that the Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

Section 301.257(d) states that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Section 301.257(e) provides that, if the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

Section 301.257(f) provides that the Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

Section 301.257(g) states that the Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order. Instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

Section 301.257(h) states that the information required under §301.257(g) must be submitted in a form approved by the Board.

Section 301.257(i) provides that, if, as a result of information provided under §301.257(g), the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

Section 301.257(j) states that the Board may file a petition based on the results of a criminal history record information check conducted under §301.2511. The Board by rule shall adopt requirements for the petition and determination. The rules must: (1) identify the criminal offenses that constitute grounds for the Board to file the petition; and (ii) describe the documents required by the Board to make a determination of license eligibility.

Section 301.257(k) states that the Board shall make a determination of license eligibility under §301.257(j) not later than the 120th day after the date the person submits the required documents to the Board.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by the proposed amendments to §213.30: Occupations Code §301.257 and §301.151.

§213.30. Declaratory Order of Eligibility for Licensure.

(a) (No change.)

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement <u>due to</u> <u>issues discussed in this rule</u> may petition the Board for a declaratory order as to his or her eligibility.

(c) A petitioner must submit a petition, on forms provided by the Board, and the following information [which includes]:

(1) a statement by the petitioner indicating the reason(s) and basis of his/her potential ineligibility;

(2) if the potential ineligibility is due to <u>the petitioner's</u> <u>criminal history, all</u> [eriminal conduct and/or conviction, any], court documents, including, but not limited to: indictments, <u>agreements for</u> <u>pre-trial diversion or deferred prosecution</u>, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, <u>as</u> [if] applicable;

(3) if the potential ineligibility is due to the petitioner's mental health condition or diminished capacity, verifiable and reliable evidence of controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable [mental illness, an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and evidence of treatment];

(4) if the potential ineligibility is due to the petitioner's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance; [ehemical dependency, including alcohol, evidence of an evaluation that meets the eriteria of §213.33 of this chapter and treatment, after care, and support group attendance; and]

(5) the required fee, which is not refundable; and [-]

(6) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions), as applicable.

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the petitioner's ability to meet the requirements of §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this chapter, as applicable. Based upon the individualized facts of the case, the Board may approve licensure without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice nursing in this state, or deny licensure.

(e) (No change.)

(f) If an individual is seeking licensure by endorsement pursuant to \$217.5 of this title and has been licensed to practice nursing in

any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the provisions of §213.27(e) of this chapter will apply to [following provisions shall govern] the eligibility of the petitioner [with regard to §213.27 of this title (relating to Good Professional Character)].

[(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.]

[(2) An individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title, and is therefore ineligible to seek licensure by endorsement under §217.5 of this title during the period of discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.]

(g) If a petitioner's potential ineligibility is due to <u>his/her</u> criminal <u>history</u> [eonduct and/or conviction, including deferred adjudication], the provisions of [following shall govern the eligibility of the petitioner with regard to] §213.28 of this <u>chapter will apply to the eligibility of the petitioner</u> [title (relating to Licensure of Persons with <u>Criminal Convictions</u>)].

[(1) The record of conviction, guilty plea, or order of deferred adjudication is conclusive evidence of guilt.]

[(2) Upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional character and fitness.]

(h) If a petitioner's potential ineligibility is due to a substance use disorder and/or the abuse/misuse of alcohol or drugs, a mental health condition or diminished capacity, or another issue relating to the individual's fitness to practice, the provisions of §213.29 of this chapter will apply to the eligibility of the petitioner.

(i) [(h)] If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

(j) [(+)] A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

(k) The following eligibility and disciplinary sanction policies, as applicable, shall be used by the Executive Director, SOAH, and the Board in evaluating an eligibility matter under this section:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

[(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters:]

[(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the Texas Register (33 TexReg 1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on May 17, 2013 in the Texas Register (38 TexReg 3152) and available on the Board's website at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html.]

(1) [(k)] If an individual seeking licensure by endorsement under $\S217.5$ of this title or licensure by examination under \$217.2or \$217.4 of this title should have had an eligibility issue <u>addressed</u> [settled] pursuant to the Occupations Code \$301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section and \$223.1 of this title (relating to Fees). (\underline{m}) [($\underline{4}$)] This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code \$301.257.

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 August 17, 2015.

TRD-201503147 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821



22 TAC §213.33

The Texas Board of Nursing (Board) proposes amendments to §213.33 (relating to Factors Considered for Imposition of Penalties/Sanctions). The amendments are proposed under the authority of the Occupations Code §§301.452, 301.453, 301.4531, and 301.151 and clarify portions of the existing rule and include provisions that are consistent with proposed changes to Board rules (published elsewhere in this issue of the *Texas Register*), the Board's amended and adopted eligibility and disciplinary sanction policies (also published elsewhere in this issue of the *Texas Register*), and the recently amended Diagnostic and Statistical Manual of Mental Disorders (DSM).

Background

The Eligibility & Disciplinary Advisory Committee (EDAC) is one of the Board's standing advisory committees and advises the Board on regulatory matters involving eligibility and disciplinary rules, policies, and guidelines. In April 2012, the Board issued a charge to the EDAC to review and make recommendations regarding the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC began working on the Board's charge in September 2012. In an effort to maintain consistency among the Board's eligibility and disciplinary policies, guidelines, and rules, the EDAC also reviewed Board Rules 213.27, 213.28, 213.29, 213.30, and 213.33 in conjunction with the Board's eligibility and disciplinary sanction policies and criminal guidelines. The EDAC met several times over the course of 2012-2015. The EDAC concluded its review of the Board's eligibility and disciplinary policies, criminal guidelines, and Board rules in June 2015. The EDAC's recommendations were presented and considered by the Board at its regularly scheduled July 2015 Board meeting.

After discussion and deliberation, the Board voted to adopt the EDAC's recommended changes to the Board's eligibility and disciplinary sanction policies (specifically, the Board's Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; Disciplinary Sanctions for Fraud, Theft, and Deception; and Disciplinary Sanctions for Lying and Falsification) and its Disciplinary Guidelines for Criminal Conduct. The Board's amended eligibility and disciplinary sanction policies and criminal guidelines, which include the EDAC's recommended changes, are being published elsewhere in this issue of the *Texas Register*.

The Board also voted to propose the repeal of current Board Rules 213.27, 213.28, and 213.29, along with new §§213.27,

213.28, and 213.29 in their place. These proposals are being published elsewhere in this issue of the *Texas Register*. Further, the Board voted to propose amendments to Board Rule 213.30. This proposal is also being published elsewhere in this issue of the *Texas Register*.

Proposed amended §213.33

The amendments to §213.33 are proposed under the authority of the Occupations Code §§301.452, 301.453, 301.4531, and 301.151. Sections 301.452, 301.453, and 301.4531 authorize the Board to impose disciplinary action against an individual's nursing license or privilege to practice in Texas under certain circumstances. Section 301.452 prescribes the circumstances that may result in disciplinary action against an individual's nursing license or privilege to practice, and §301.453 specifies the types of disciplinary actions that may be imposed by the Board against the individual's nursing license or privilege to practice in Texas. Section 301.3531 enumerates factors that must be considered by the Board when determining the severity of a disciplinary action against an individual's nursing license or privilege to practice in Texas.

Pursuant to the statutory mandates of §301.4531, the current rule includes the Board's schedule of disciplinary sanctions, which is primarily set forth in the Disciplinary Matrix, located in subsection (b) of the rule. The rule also includes the factors considered by the Board in evaluating the appropriate sanction in an eligibility or disciplinary case, as well as the types of eligibility and disciplinary actions that may be imposed by the Board. The proposed amendments do not generally alter the substance of the existing rule. Rather, the majority of the proposed amendments clarify the section's existing provisions.

For example, the proposed amendments clarify that the mitigating and aggravating factors specified in the Disciplinary Matrix are in addition to the factors listed in subsection (c) of the rule. This proposed amendment is necessary to eliminate any confusion regarding the factors enumerated in subsection (c) of the rule and the factors specified in the Disciplinary Matrix, in subsection (b) of the rule. The factors in both subsections of the rule are intended to be used in conjunction with one another and should be considered together when evaluating the appropriate sanction/penalty in a particular case. The proposed amendments are necessary to make clear that one set of factors do not supersede the other.

Further, and pursuant to the statutory mandates of the Occupations Code §301.4531, the proposed amendments also clarify that, if multiple violations of the Nursing Practice Act (NPA) or Board rules are present in a single case, the most severe sanction recommended by the Disciplinary Matrix for any one of the individual offenses should be considered by the Board when determining the appropriate sanction in an eligibility or disciplinary case. This proposed amendment is necessary to eliminate any confusion when more than one violation of the NPA or Board rules is present in a single case, which occurs commonly. In such situations, the proposed amendment makes clear that the totality of the individual's conduct must be evaluated and considered based upon the most severe sanction recommended by the Disciplinary Matrix.

The proposed amendments are also consistent with recent changes to the DSM. The DSM is a standardized classification guide utilized by many mental health professionals to assess and diagnose mental disorders. The DSM's recent amendments change the way chemical dependency and substance abuse issues are assessed and diagnosed. The proposed amendments include terminology that is consistent with the recent amendments to the DSM in this regard. For example, the proposed amendments utilize the term *substance use disorder* in lieu of *chemical dependency*. Further, the proposed amendments include reference to the *abuse or misuse of alcohol or drugs* in an effort to address issues that may not qualify under the DSM's new criteria for a substance use disorder, but may still be of concern to the Board and potentially affect an individual's ability to practice nursing safely in this state.

The proposed amendments also update the references to the Board's eligibility and disciplinary sanction policies, which were amended and adopted by the Board at its July 2015 regularly scheduled meeting, and make editorial and typographical corrections.

There are, however, a few proposed changes that may be more substantive in nature. These proposed changes affect the Disciplinary Matrix. located in subsection (b) of the current rule. The first set of proposed changes affect the portion of the Disciplinary Matrix that addresses violations of the Occupations Code §301.452(b)(8). Section 301.452(b)(8) authorizes the Board to take disciplinary action against an individual's nursing license or privilege to practice in Texas based upon the revocation, suspension, or denial of, or any other action relating to, the individual's license or privilege to practice nursing in another jurisdiction. Currently, the Disciplinary Matrix addresses situations in which an individual has received an adverse action from another jurisdiction in a default proceeding (and the underlying violation(s) would not result in the revocation of the individual's license or privilege to practice in Texas). The Disciplinary Matrix also currently addresses situations in which an individual's license or privilege to practice was revoked in another jurisdiction (and the underlying violation(s) could result in the revocation of the individual's license or privilege to practice in Texas). However, the Disciplinary Matrix does not currently address situations in which an individual's license or privilege to practice is encumbered or sanctioned by another jurisdiction for a violation that would also be sanctionable in Texas. In these situations, the Disciplinary Matrix is silent regarding a recommended sanction. The proposed amendments reiterate that the Board may consider imposing a sanction resulting from an adverse action in another jurisdiction, even if that action did not result in the revocation of the individual's license or privilege to practice in that state. In such cases, the proposed amendments clarify that the Board may consider imposing a range of disciplinary actions, (including a Remedial Education order, a Warning with Stipulations, a Reprimand with Stipulations, or licensure suspension, revocation, or denial), depending upon the severity of the individual's conduct and considering the level of discipline imposed by the other jurisdiction.

The second set of proposed changes affect the portion of the Disciplinary Matrix that addresses violations of the Occupations Code §301.452(b)(12). Section 301.452(b)(12) authorizes the Board to take disciplinary action against an individual's nursing license or privilege to practice in Texas based upon the individual's lack of fitness to practice due to a mental or physical health condition that could result in injury to a patient or the public. Instead of focusing on specific condition(s) or diagnoses, as the current rule does, the proposed amendments focus on an individual's conduct that may indicate that the individual is unable to practice nursing safely. Such observed conduct may include slurred speech, an unsteady gait, sleeping on duty, or an inability to focus or answer questions appropriately. Further, the

proposed amendments reiterate that an individualized assessment will be conducted to determine if the individual's practice poses a potential risk of harm to patients or the public. These proposed amendments are necessary for consistency with the requirements of federal law.

The remainder of the proposed amendments to the Disciplinary Matrix make editorial and typographical corrections and includes language that is consistent with recent changes to the DSM, as has been previously discussed in this rule proposal.

Section-by-Section Overview.

Proposed amended §213.33(b) includes proposed changes to the Disciplinary Matrix. Under the proposed amendments, regarding the portion of the Disciplinary Matrix that addresses violations of the Occupations Code §301.452(b)(8), a first tier offense may include an action in another jurisdiction that is based upon practice violations or unprofessional conduct that would not result in the revocation of the individual's license or privilege to practice in Texas. Further, the proposed amendments clarify that a first tier offense may include an action in another jurisdiction that is based upon an individual's mental health condition, diminished capacity, or substance use disorder or alcohol or drug abuse or misuse. The proposed amendments also clarify that a first tier. Sanction level I sanction, may include Remedial Education or a fine or a Warning or Reprimand with Stipulations, which may include remedial education courses; supervised practice; the performance of public service; verified abstinence from the unauthorized use of drugs and alcohol to be verified through urinalysis; limitation of specific nursing activities and practice settings; and periodic Board review.

The proposed amendments to §213.33(b) also address the portion of the Disciplinary Matrix that includes violations of the Occupations Code §301.452(b)(12). Under the proposed amendments, a first tier offense may include a mental health condition, diminished capacity, or physical health condition that may impair an individual's behavior, judgment, or ability to function in school or work. The proposed amendments also clarify that, for a first tier offense, and after an individualized assessment, if is determined that an individual's practice poses a potential risk of harm to patients or the public, the Board may refer the individual to a Board approved peer assistance program or issue a Warning with Stipulations for a minimum of one (1) year, to include therapy, treatment, and monitored practice. Further, the proposed amendments also clarify that evidence of an individual's substance use disorder or drug or alcohol abuse or misuse may also be evaluated under the portion of the Disciplinary Matrix that addresses violations of the Occupations Code §301.452(b)(9).

Proposed amended §213.33(c) clarifies that the mitigating and aggravating factors specified in the Disciplinary Matrix are in addition to the factors listed in subsection (c). Further, the proposed amendments reiterate that if multiple violations of the NPA or Board rules are present in a single case, the most severe sanction recommended by the Disciplinary Matrix for any one of the individual offenses should be considered by the Board when determining the appropriate sanction in an eligibility or disciplinary case.

Proposed amended §213.33(e) sets forth the various types of disciplinary actions the Board may impose against an individual's nursing license or privilege to practice in Texas. Specifically, §213.33(e)(1) clarifies that the Board may deny an individual's temporary permit or license, which includes licensure renewal,

reinstatement or reactivation, or the return to direct patient care from a limited license.

Section 213.33(e)(2) specifies that the Board may approve an individual's temporary permit or license, including a renewal, reinstatement or reactivation, or the return to direct patient care from a limited license, with one or more reasonable probationary stipulations. Further, the Board may determine, in accordance with the Occupations Code §301.468, that an order denying a license application or petition, license renewal, license reinstatement or reactivation, or temporary permit may be probated. The subsection also provides that the Board may impose reasonable probationary stipulations as a condition for the issuance, renewal, or reinstatement or reactivation of a license or temporary permit or the return to direct patient care from a limited license that may include submitting to care, supervision, counseling, or treatment by a health provider designated by the Board.

The proposed amendments to the remainder of §213.33(e) and §213.33(f) contain non-substantive, editorial corrections.

The proposed amendments to §213.33(g) include references to the Board's amended eligibility and disciplinary sanction policies adopted by the Board at its regularly scheduled July 2015 meeting.

Proposed amended §213.33(k) includes language that is consistent with recent changes to the DSM.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal. Further, there will be no anticipated effect on local employment or the local economy as a result of the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be the adoption of requirements that implement the provisions of the Occupations Code §§301.452, 301.453, 301.4531, and 301.151 and promote fairness, consistency, efficiency, and predictability regarding evaluation of the appropriate penalty/sanction in eligibility and disciplinary matters.

There are no anticipated costs for individuals required to comply with the proposal. The proposed amendments clarify the Board's existing schedule of sanctions and method of evaluating the appropriate penalty/sanction in eligibility disciplinary cases. However, the proposed amendments do not impose requirements upon any individual that do not already exist under the current rule or statute. As such the Board does not anticipate there to be any compliance costs associated with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 28, 2015, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.452, 301.453, 301.4531, and 301.151.

Section 301.452(a) provides that "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing; or stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; (iv) perform public service the Board considers appropriate; or (v) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) provides that the Board, by rule, shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states that, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference to Statute. The following statutes are affected by the proposed amendments to §213.33: Occupations Code §§301.452, 301.453, 301.4531, and 301.151.

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) (No change.)

(b) The Disciplinary Matrix is as follows: Figure: 22 TAC §213.33(b)

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

(1) - (17) (No change.)

(18) any other matter that justice may require. <u>The miti-</u> gating and aggravating factors specified in the Matrix are in addition to the factors listed in this subsection. Further, the [The] presence of mitigating factors in a particular case does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules. <u>If multiple</u> violations of the NPA and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.

(d) (No change.)

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1) Denial of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license) [the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit];

(2) Approval of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license) [the person's application for a license; license renewal; reinstatement of a revoked, suspended, or surrendered license; or temporary permit], with one or more reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement/reactivation [of the license or temporary permit]. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application/petition, license renewal, license reinstatement/reactivation, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement/reactivation of the license or temporary permit or the return to direct patient care from a limited license;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section <u>and/or pursuant to the Occupations Code</u> §301.4521;

(C) (No change.)

(D) limit specific nursing activities <u>and/or practice set-</u> tings and/or require periodic Board review;

(E) - (G) (No change.)

(3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) (No change.)

(B) submit to an evaluation as outlined in subsections
 (k) and (l) of this section <u>and/or pursuant to the Occupations Code</u> §301.4521;

(C) (No change.)

(D) limit specific nursing activities and/or <u>practice set</u>tings and/or require periodic Board review;

(E) - (G) (No change.)

(4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) (No change.)

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section \underline{and}/or pursuant to the Occupations Code \$301.4521;

(C) (No change.)

(D) limit specific nursing activities and/or <u>practice set</u>tings and/or require periodic Board review;

(E) - (G) (No change.)

(5) Limitation or restriction of the person's license or permit, including limits on specific nursing activities and/or practice settings and/or periodic Board review;

(6) Suspension of the person's license or permit. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(A) (No change.)

(B) submit to an evaluation as outlined in subsections
 (k) and (l) of this section <u>and/or pursuant to the Occupations Code</u> §301.4521;

(C) (No change.)

(D) limit specific nursing activities and/or <u>practice set</u>tings and/or require periodic Board review;

(E) - (G) (No change.)

(7) Remit payment of <u>an</u> [the] administrative penalty <u>or</u> fine[; or assessment of hearing costs];

(8) Acceptance of a Voluntary Surrender of a nurse's license(s) or permit;

(9) Revocation of the person's license or permit;

(10) - (11) (No change.)

(12) Assessment of costs as authorized by the Occupations Code §301.461 and the Government Code §2001.177; and/or

(13) (No change.)

(f) Every [disciplinary] order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.

(g) The following disciplinary and eligibility sanction policies₂ as applicable, [and guidelines] shall be used by the Executive Director, Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters: (1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

[(1) Disciplinary Sanctions for Fraud, Theft, and Deception approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1646) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1647) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the Texas Register (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the Texas Register (33 TexReg1651) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.]

[(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published in the May17, 2013, issue of the Texas Register and available on the Board's website at http://www.bon.texas.gov/ disciplinaryaction/discp-guide.html.]

(h) - (j) (No change.)

(k) If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol, the Board may require an evaluation that meets the following standards:

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

(l) - (m) (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 August 17, 2015.

TRD-201503150 James W. Johnston General Counsel Texas Board of Nursing Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 305-6821

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Texas Department of Insurance proposes new 28 TAC Chapter 5, Subchapter M, Division 5, §5.9323 and new Subchapter Q, Division 1, §5.9700. The new sections are necessary to implement Insurance Code §2301.056, added by Senate Bill 112, 83rd Legislature, Regular Session (2013).

For residential property insurance policy forms, Insurance Code §2301.056 requires that

1. the declarations page state the exact dollar amount of each deductible under the policy, and

2. the declarations page or a page separate from the declarations page

a. list and identify each type of deductible under the residential property policy, and

b. identify or disclose any policy provision or endorsement that may cause the exact dollar amount of a deductible to change.

The proposed new sections are necessary to clarify that for residential property policy insurance forms

1. insurers must file declarations pages with TDI for review and approval under Insurance Code §2301.006,

2. insurers must file renewal and amended declarations pages, and renewal certificates used as declarations pages,

3. no deductibles are exempt, including subdeductibles and endorsement deductibles,

4. insurers must issue updated declarations pages at renewal if a deductible changes,

5. if using a separate disclosure page under §2301.056(c), that page must follow immediately after the declarations page, and

6. insurers must include the separate disclosure page each time they provide a declarations page to a policyholder.

EXPLANATION. Before SB 112, no statute specifically required insurers to file declarations pages, although some insurers did so. Declarations pages are typically blank forms, which insurers complete with information specific to each policy. Filed declarations pages contained little information, and TDI had nothing substantive to review. With the enactment of SB 112, Insurance Code §2301.056 provides specific requirements for declarations pages, and TDI must now review them for compliance.

TDI is implementing Insurance Code §2301.056 in two separate rule sections. Section 5.9323 contains the filing requirements and will be part of the Filings Made Easy rules. Section 5.9700 contains the substantive requirements related to disclosing deductibles.

To ensure all declarations pages comply, §5.9323 specifies that insurers must file residential property insurance policy declarations pages, including renewal and amended declarations pages and renewal certificates. Section 5.9323(b) specifies that insurers must file forms completed with sample information, so TDI can verify that the required deductible information will be listed.

For ease of use, §5.9700 includes the statutory requirements for disclosing deductibles. Insurance Code §2301.056 does not exempt any deductibles, so §5.9700(a) specifies that deductibles include subdeductibles and endorsement deductibles. To ensure that policyholders have the most current information, if a deductible changes §5.9700(d) requires insurers at renewal to issue an updated declarations page or renewal certificate.

Insurance Code §2301.056 also allows insurers to provide the required disclosures on a page separate from the declarations page. To ensure that policyholders can easily find the disclosures, §5.9700(c) requires that the separate disclosure page follow immediately after the declarations page. Section 5.9700(e) requires that insurers and agents must include the separate disclosure page each time they provide a declarations page or renewal certificate to a policyholder, to further ensure that the policyholder has access to the most current deductible information.

FISCAL NOTE. Marilyn Hamilton, director of the Personal and Commercial Lines Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed 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. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of the proposal is that policyholders will easily find all deductibles under their residential property policies and be aware of out-of-pocket expenses.

The costs of the rules are largely statutory and will not increase the cost of compliance with Insurance Code §2301.056 because the rules do not impose costs beyond those required by the statute. The only potential cost the rules could impose is the cost of including the separate disclosure page with the declarations page when sent to a policyholder. Insurers can avoid this cost by including the required disclosures on the declarations page, rather than a separate disclosure page. If an insurer chooses a separate disclosure page and including it with the disclosure sent to the policyholder. This cost should be less than \$1.00 each time the insurer provides the disclosure page.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEX-IBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined the proposal will not have an adverse economic effect or a disproportionate impact on small or micro businesses. Insurance Code §2301.056 mandates the disclosures, and the rules do not specify any additional requirements. Section 2301.056 applies equally to all insurance companies writing residential property policies. Filing declarations pages and providing separate disclosure pages to policyholders are necessary to comply with the statute, and are no more onerous for small and micro businesses than for larger insurers. As a result, under Government Code §2006.002(c), TDI has determined that a regulatory flexibility analysis is not required.

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

REQUEST FOR PUBLIC COMMENT. Submit written comments on the proposal no later than 5 p.m., Central time on September 28, 2015. TDI requires two copies of your comments. Send one copy to the chief clerk by email at chiefclerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Mark Worman by email at mark.worman@tdi.texas.gov or by mail to the Texas Department of Insurance, Personal and Commercial Lines Office, MC 104-PC, P.O. Box 149104, Austin, Texas 78714-9104. If you wish to request a public hearing, submit a request separately to the chief clerk by email at chiefclerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

SUBCHAPTER M. FILING REQUIREMENTS DIVISION 5. FILINGS MADE EASY -REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM, ENDORSEMENT, AND MANUAL RULE FILINGS

28 TAC §5.9323

STATUTORY AUTHORITY. The new section is proposed under Insurance Code §§2301.056, 2301.055, and 36.001. Section 2301.056 requires that declarations pages for residential property insurance policy forms fully disclose all deductibles. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B. 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 this state.

CROSS REFERENCE TO STATUTE. Section 5.9323 implements Insurance Code §2301.056, enacted by Senate Bill 112, 83rd Legislature, 2013 Regular Session 2013.

§5.9323. Residential Property Deductible Disclosures.

(a) Insurers must file residential property insurance policy declarations pages for approval under §5.9320 of this title (relating to Required Information for the Preparation and Submission of Policy Form, Endorsement, and Manual Rule (Other than Rating Manual) Filings). Declarations pages include renewal declaration pages, renewal certificates, amended declaration pages, and separate disclosure pages allowed under §5.9700 of this title (relating to Residential Property Deductible Disclosures).

(b) Filed declarations pages must be completed with sample policyholder information sufficient to demonstrate how the insurer will comply with this rule and Insurance Code §2301.056.

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 August 11, 2015. TRD-201503052

Sara Waitt General Counsel Texas Department of Insurance Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 676-6584

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SUBCHAPTER Q. GENERAL PROPERTY AND CASUALTY RULES DIVISION 1. RESIDENTIAL PROPERTY

28 TAC §5.9700

STATUTORY AUTHORITY. The new section is proposed under Insurance Code §§2301.056, 2301.055, and 36.001. Section 2301.056 requires that declarations pages for residential property insurance policy forms fully disclose all deductibles. Section 2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Chapter 2301, Subchapter B. 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 this state.

CROSS REFERENCE TO STATUTE. Section 5.9700 implements Insurance Code §2301.056, enacted by Senate Bill 112, 83rd Legislature, 2013 Regular Session 2013.

§5.9700. Residential Property Deductible Disclosures.

(a) All residential property insurance policy declarations pages must list and identify each type of deductible and state the exact dollar amount of each deductible, including subdeductibles and endorsement deductibles.

(b) If a residential property insurance policy or endorsement contains a provision that may cause the exact dollar amount of a deductible under the policy to change, the declarations page or a separate disclosure page must identify or include a written disclosure that clearly identifies the applicable policy provision or endorsement. The policy provision or endorsement must explain how any change in the applicable deductible amount is determined.

(c) Insurers may provide disclosures under this section on a separate disclosure page. The separate disclosure page must follow immediately after the declarations page.

(d) Insurers must issue an updated declarations page at renewal if the dollar amount of a deductible changes. Alternatively, insurers may issue a renewal certificate that meets the requirements of this rule and Insurance Code §2301.056.

(e) Insurers and agents must include the separate disclosure page with the declarations page each time they provide a declarations page or renewal certificate to a policyholder.

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 August 11, 2015.

TRD-201503053 Sara Waitt General Counsel Texas Department of Insurance Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 676-6584

TITLE 37. PUBLIC SAFETY AND CORREC-TIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes amendments to §4.1, concerning Transportation of Hazardous Materials. The proposed amendment is necessary to harmonize updates in Title 49, Code of Federal Regulations with those laws adopted by Texas.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment

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 will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, September 8, 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 Administrative Rule §4.1 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

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.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 -173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through July 1, 2015 [April 1, 2014]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through July 1, 2015 [April 1, 2014].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, Section 643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-service Criteria as a guideline.

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 August 12, 2015.

TRD-201503079 D. Phillip Adkins General Counsel Texas Department of Public Safety Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.13

The Texas Department of Public Safety (the department) proposes amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. The proposed amendments are necessary to ensure this section is consistent with the Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

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 no fiscal implications for state or local government, or local economies.

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 of the Motor Carrier Safety Assistance Program.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, September 8, 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 §4.13 regarding Authority to Enforce, Training and Certificate Requirements, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

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.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials; the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the [following] Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 50,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;

[(C) a municipality any part of which is located in a eounty bordering the United Mexican States;]

(C) [(\oplus)] a municipality with a population of less than 25,000, any part of which is located in a county with a population of <u>3.3</u> [2.4] million and that contains or is adjacent to an international port;

[(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a eounty adjacent to a county with a population greater than 3.3 million;]

[(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or]

(D) [(G)] a municipality with a population of at least 34,000 that is located in a county that borders two or more states;[-]

(E) a municipality any part of which is located in a county bordering the United Mexican States;

(F) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

(G) a municipality that is located within 25 miles of an international port and in a county that does not contain a highway that is part of the national system of interstate and defense highways and is adjacent to a county with a population greater than 3.3 million;

(H) a municipality with a population of less than 8,500 that is the county seat and contains a highway that is part of the national system of interstate and defense highways;

(I) a municipality located in a county with a population between 60,000 and 66,000 adjacent to a bay connected to the Gulf of Mexico; or

(J) a municipality with a population of more than 40,000 and less than 50,000 that is located in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico.

(5) A sheriff, or deputy sheriff from any of the [following] Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States; or

(B) a county with a population of $\underline{700,000}$ [4 million] or more.

(6) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the [following] standards detailed in this paragraph:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion. (3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

 $(\ensuremath{\mathsf{C}})$ successfully complete the Cargo Tank Inspection Course; and

(D) successfully complete the Other Bulk Packaging Course.

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

course:

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, the officer can use Level I inspections performed on vehicles transporting hazardous materials in other bulk packaging to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph. Level I, II or V inspections on vehicles transporting hazardous materials in other bulk packaging may also be used to satisfy the eight inspections required by subparagraph (D) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer. (4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on August 13, 2015.

TRD-201503103 D. Phillip Adkins General Counsel Texas Department of Public Safety Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 424-5848

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CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS SUBCHAPTER D. SILVER ALERT NETWORK

37 TAC §9.32

The Texas Department of Public Safety (the department) proposes amendments to §9.32, concerning Local Law Enforcement Responsibility. The department has updated the Silver Alert Request Form. The amendment to the rule text reflects the change in form names from the MP-25 to the TDEM-26 and replaces the old form with the new form.

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 no fiscal implications for state or local government, or local economies.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the publication of the new form for the Silver Alert Network.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal. Comments on this proposal may be submitted to Sam Allen, Texas Department of Public Safety, Texas Division of Emergency Management, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.383(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

Texas Government Code, §411.383, is affected by this proposal.

§9.32. Local Law Enforcement Responsibility.

A local law enforcement agency with jurisdiction over the investigation of a missing senior citizen may submit a request for activation of the Silver Alert Network. The request must be submitted on the Silver Alert Request Form <u>TDEM-26</u> [MP-25]. A local law enforcement agency may submit the form after it has verified that all statutory criteria for activation are clearly established by the specific facts of the case. Local law enforcement shall provide documentation of a diagnosed impaired mental condition with the request for activation. Figure: 37 TAC §9.32

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 August 13, 2015.

TRD-201503104

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY SUBCHAPTER B. REGISTRATION AND LICENSING

37 TAC §35.25

The Texas Department of Public Safety (the department) proposes amendments to §35.25, concerning Assumed Names; Corporations. The amendments are non-substantive and are necessary to more accurately track the requirements of the relevant provisions of the Texas Business & Commerce Code.

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 no fiscal implications for state or local government, or local economies.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be greater efficiency in the administration of the Private Security Act, Texas

Occupations Code, Chapter 1702, through improved accuracy in company record submissions.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Private Security," then "Rules and Regulations." 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 Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter.

Texas Occupations Code, §1702.061(b), is affected by this proposal.

§35.25. Assumed Names; Corporations.

(a) All <u>individual</u> applicants doing business under an assumed name <u>or names</u> shall submit a certificate <u>of assumed name</u> from the county clerk of the county of the applicant's residence showing <u>the</u> registration of each assumed name used [compliance with the assumed name statute].

(b) Corporations and other entities permitted and governed by the Texas Business Organizations Code using an assumed name or names shall submit a certificate of assumed name from the Texas Secretary of State and the county clerk of the county of the applicant's residence showing the registration of the assumed name for each assumed name used [compliance with the assumed name statute].

(c) Corporate applicants shall submit a current certificate of existence or a certificate of authority from the Texas Secretary of State.

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

Filed with the Office of the Secretary of State on August 13, 2015.

TRD-201503101

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: September 27, 2015 For further information, please call: (512) 424-5848

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WITHDRAWN_

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

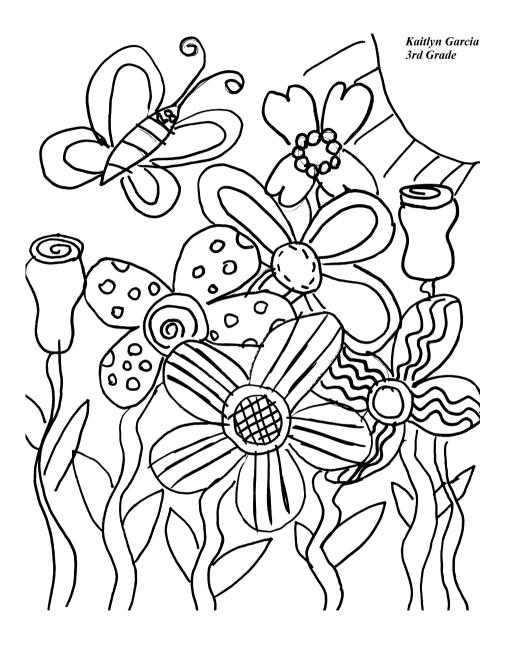
CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission withdraws proposed amendments to §20.1 which appeared in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4271). Filed with the Office of the Secretary of State on August 12, 2015.

TRD-201503083 Natalia Luna Ashley Executive Director Texas Ethics Commission Effective date: August 12, 2015 For further information, please call: (512) 463-5800

WITHDRAWN RULES August 28, 2015 40 TexReg 5453



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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS SUBCHAPTER A. VOTER REGISTRATION

1 TAC §81.10

The Office of the Secretary of State, Elections Division, adopts new §81.10, concerning the printing of a voter's name on the voter registration certificate. The rule is adopted without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4433).

The Secretary of State did not receive any comments on the proposed rule.

Statutory Authority: The new rule is adopted pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The new rule is also adopted under the Texas Election Code, §15.001, which provides rulemaking authority to the Secretary of State regarding the appearance of a voter's name on a voter registration certificate.

Cross-Reference to Statute: No other codes or sections are affected by the new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 14, 2015.

TRD-201503136 Lindsey Wolf General Counsel Office of the Secretary of State Effective date: September 3, 2015 Proposal publication date: July 10, 2015 For further information, please call: (512) 463-5650

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TITLE 4. AGRICULTURE PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION SUBCHAPTER C. GO TEXAN CERTIFICA-TION MARK

4 TAC §17.55

The Texas Department of Agriculture (department) adopts amendments to Subchapter C, §17.55, relating to the use of the department's GO TEXAN mark, with nonsubstantive changes to the proposed text as published in the July 10, 2015, issue of *Texas Register* (40 TexReg 4433). The amendments to §17.55 clarify the registration process for the GO TEXAN program.

The adopted amendments to §17.55 make the registration and renewal processes for the GO TEXAN program more concise. The amendments also clarify the proper use of the GO TEXAN certification mark, including termination provisions.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175; and §12.031, which provides the department with the authority to assess and collect fees or royalties on department's registered certification marks for marketing and promotional activities authorized by §12.0175.

The statutory code affected by the adoption is Texas Agriculture Code Chapter 12.

§17.55. Registration and Use of the GO TEXAN Certification Mark.

(a) Membership. An annual fee for registration in the GO TEXAN program shall be paid to the department. Member registration fees are based on the applicant's tier selection at time of application. Applicants may select from four different levels of membership, defined in paragraphs (1) - (4) below. Members in good standing with a current registration shall be granted licensed use of the GO TEXAN certification mark in accordance with guidelines prescribed in this subchapter. Members shall also be entitled to benefits to be determined by the department and described in detail at gotexan.org. All benefits are subject to continued authorization and appropriation of the GO TEXAN program by the Texas Legislature.

- (1) Tier 1 \$100.
- (2) Tier 2 \$500.
- (3) Tier 3 \$1,000.

(4) Sponsor Membership - Sponsorship levels begin at \$5,000.

(b) Annual Registration Renewal.

(1) Thirty days before the expiration date of the registration, the department shall send the registered member a renewal notification.

(2) After receipt of the renewal and annual fee, the department will send an approved registrant a certificate of registration.

(3) Registrant's account shall be suspended immediately for failure to renew membership upon expiration.

(4) Failure to renew member registration within one calendar year of expiration shall deem membership terminated. A new application for membership will be required for reinstatement to the GO TEXAN program.

(c) Limited use restrictions.

(1) Registrant shall be granted a limited, non-exclusive license to use the mark solely in conjunction with the reproduction, display, advertisement and promotion for which registrant has been approved, within the United States, for the registration period.

(2) Registrant will immediately cease use of the certification mark upon the suspension, expiration or termination of the registration.

(3) Registrant's proposed use shall be subject to review and approval by the Department. It is the responsibility of the registrant to ensure proper compliance with current departmental guidance regarding use of the mark which may be issued from time to time. Failure to do so shall result in the suspension and/or termination of the GO TEXAN registration. The department may take legal action as necessary to ensure compliance with this subchapter at any time.

(4) Upon request, registrant shall promptly furnish the department a sample of any material bearing the mark, including but not limited to all advertising, promotional, and display materials, at no charge, for the department's written approval prior to any use thereof.

(5) Registrant's authorized use shall be of high standard that promotes the goodwill and reputation of the GO TEXAN program and the department. Failure to promote the GO TEXAN program or compromising the image and integrity of the program will result in the termination of the membership.

(6) As required by the department, registrant shall affix on all items utilized in the authorized use, appropriate legal notices, as follows: "GO TEXAN is a certification mark of, and is used with permission from the Texas Department of Agriculture" in addition to use of the registration symbol in conjunction with the certification mark.

(7) Registrant's authorization to use the GO TEXAN certification mark, shall not be construed to grant or assign any right, title or interest in or to the GO TEXAN certification mark or the goodwill attached thereto.

(8) Any and all use of the mark by registrant as allowed under program rules shall inure solely to the benefit of 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.

Filed with the Office of the Secretary of State on August 11, 2015. TRD-201503050

Jessica Escobar Assistant General Counsel Texas Department of Agriculture Effective date: August 31, 2015 Proposal publication date: July 10, 2015 For further information, please call: (512) 463-4075

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. REQUIREMENTS FOR CERTIFICATION BY THE BOARD

4 TAC §226.3

The Board of Directors (Board) of the Prescribed Burning Board of the Texas Department of Agriculture adopts amendments to §226.3, concerning experience of certified and insured prescribed burn managers, without changes to the proposed text as published in the July 10, 2015, issue of the *Texas Register* (40 TexReg 4435).

The amendment to §226.3 is adopted in order to clarify certification requirements for certified and insured prescribed burn managers by removing the requirement that training be specific to a particular eco-region. Certified and insured prescribed burn managers may be qualified for certification within a specific eco-region by demonstrating experience under §226.4 of this chapter, relating to experience.

No comments were received on the proposal.

The amendments are adopted under Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by the proposal.

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 August 11, 2015.

TRD-201503051 Jessica Escobar Assistant General Counsel, Texas Department of Agriculture Prescribed Burning Board Effective date: August 31, 2015 Proposal publication date: July 10, 2015 For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51

The Texas State Library and Archives Commission adopts amendments to 13 TAC §2.51, regarding Public Record Fees, without changes to the proposed text as published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3739).

The amendment updates and clarifies existing language, removes the requirements that copies of materials be provided at no charge to identified entities, and establishes the structure for charges associated with the reproduction of large format archival materials.

No comments were received.

The rule amendments are adopted under the Texas Government Code §552.262, and in accordance with 1 TAC §70.1 - 70.12, which address the established cost of copies of public information, as well as the assessment of fees at actual cost.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 2015.

TRD-201503060 Edward Seidenberg Deputy Director Texas State Library and Archives Commission Effective date: August 31, 2015 Proposal publication date: June 19, 2015 For further information, please call: (512) 463-5449

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PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.10, §16.11

The Texas Historical Commission adopts new §16.10 and §16.11, relating to the commemorative and philanthropic naming of certain areas without historical value at State Historic Sites, without changes to the proposed text as published in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2633). The text of the rules will not be republished.

The purpose of the new sections is to allow the Commission to implement legislation regarding naming non-historic areas within State Historic Sites. The new rules establish a procedure and criteria to allow the commission to determine whether and when it will allow non-historic portions of historic sites to be named for individuals or civic or charitable groups.

No comments were received on the proposed rules.

This rule adoption is authorized under Texas Government Code §442.005(q), which provides that the commission may adopt rules it considers proper for the administration of the chapter.

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 August 11, 2015.

TRD-201503063 Mark Wolfe Executive Director Texas Historical Commission Effective date: August 31, 2015 Proposal publication date: May 15, 2015 For further information, please call: (512) 936-4323

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CHAPTER 21. HISTORY PROGRAMS SUBCHAPTER E. TEXAS HISTORIC ROADS AND HIGHWAYS PROGRAM

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13 TAC §21.31, §21.32

The Texas Historical Commission (THC) adopts new §21.31 and §21.32, relating to the Texas Historic Roads and Highways Program, without changes to the proposed text as published in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2634). The text of the rules will not be republished.

In 2009, the Texas Legislature established the Texas Historic Roads and Highways Program under House Bill 2642, which amended Texas Government Code Chapter 442 to add §442.025.

The purpose of the Texas Historic Roads and Highways Program is to establish a program for the identification, designation, interpretation, and marketing of Texas historic roads and highways. Under Texas Government Code §442.025, the Texas Historic Roads and Highways Program is the responsibility of the THC in partnership with the Texas Department of Transportation (TxDOT).

New §21.31 of Chapter 21 establishes definitions specific to the Texas Historic Roads and Highways Program.

New §21.32 of Chapter 21 provides consistent implementation of the Texas Historic Roads and Highways Program. Section 21.32(a) establishes the authority of THC and TxDOT to enter into a memorandum of understanding to implement the Texas Historic Roads and Highways Program. Section 21.32(b) clarifies that the designation of a road or highway under this program is not, and may not be considered to be, a designation under the National Historic Preservation Act (54 U.S.C. §300101 et seq.). Section 21.32(c) establishes that the THC and TxDOT may pursue federal funds dedicated to highway enhancement for the program. Section 21.32(d) states that TxDOT is not required to construct or erect a marker under this section unless a grant or donation of funds is made to cover the cost of the design, construction, and erection of the marker. Money received to cover the cost of a marker under this subsection shall be deposited to the credit of the state highway fund.

No comments were received on the proposed rules.

New §21.31 and §21.32, relating to the Texas Historic Roads and Highways Program, are adopted under §442.005(q), Texas Government Code, which provides the THC with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. The adoption of these rules implements 442.005 and 442.025 of the Texas Government Code.

No other statutes, articles, or codes are affected by these new 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.

Filed with the Office of the Secretary of State on August 11, 2015.

TRD-201503064 Mark Wolfe Executive Director Texas Historical Commission Effective date: August 31, 2015 Proposal publication date: May 15, 2015 For further information, please call: (512) 936-4323

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CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §29.3

The Texas Historical Commission (THC) adopts an amendment to §29.3, concerning scope, without changes to the proposed text as published in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2636).

The amendment corrects an incorrect citation in §29.3(a). The rule currently cites §442.007(d)(7) of the Texas Administrative Code, a typographical error. There is no (d)(7) in §442.007 of the Texas Administrative Code. The correct citation is "Texas Government Code 442.007(e)(7)," which states that the state archeologist has the duty of "preserving the archeological and historical heritage of the state."

No comments were received regarding adoption of the amendment.

The adoption of these rules implements §442.007 of the Texas Government Code.

No other statutes, articles, or codes are affected by this amendment.

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 August 12, 2015.

TRD-201503087 Mark Wolfe Executive Director Texas Historical Commission Effective date: September 1, 2015 Proposal publication date: May 15, 2015 For further information, please call: (512) 463-1858

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TITLE 19. EDUCATIONPART 2.TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

19 TAC §101.3022

The Texas Education Agency (TEA) adopts an amendment to §101.3022, concerning assessment. The amendment is adopted with changes to the proposed text as published in the May 29, 2015 issue of the *Texas Register* (40 TexReg 2911). The section addresses assessment requirements for graduation. The adopted amendment reflects changes made to the state's assessment graduation requirements by Senate Bill (SB) 149, 84th Texas Legislature, Regular Session, 2015.

REASONED JUSTIFICATION. SB 149, 84th Texas Legislature, Regular Session, 2015, revised the state's assessment graduation requirements. The adopted amendment to 19 TAC Chapter 101, Subchapter CC, Division 2, §101.3022, reflects the changes to the assessment graduation requirements. As a result of SB 149, a student who has failed to achieve the end-of-course (EOC) assessment graduation requirements for no more than two courses may receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee (IGC) under the TEC, §28.0258.

At proposal, the rule action included language in proposed subsection (e) relating to the use of the Texas Success Initiative (TSI) assessments. The language relating to the TSI was also included in the emergency adoption of the amendment that was filed simultaneously with the proposal for the permanent adoption. However, the adopted amendment to 19 TAC §101.3022 does not include the proposed language about the TSI. Provisions relating to the TSI will be included in a subsequent proposed amendment to the rule relating to the use of substitute assessments in 19 TAC §101.4002, State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.

The provisions of SB 149 contained in the adopted amendment to 19 TAC §101.3022 apply only to students in the 11th or 12th grade in the 2014-2015, 2015-2016, or 2016-2017 school years who are administered the State of Texas Assessments of Academic Readiness (STAAR®) EOC assessments as their assessment graduation requirement. A student qualifies to use the STAAR® EOC for graduation purposes if the student was enrolled for the first time in 9th grade or below in the 2011-2012 school year or thereafter. Students who must meet the TAKS exit-level graduation requirements in order to receive a Texas diploma are not eligible to graduate by an IGC and must, therefore, pass all four TAKS subject-area tests to be eligible to receive a Texas diploma.

The adopted amendment to 19 TAC §101.3022, Assessment Requirements for Graduation, adds new subsection (e), re-lettered from subsection (f) at proposal, in response to SB 149 to provide exceptions to the state's assessment graduation requirements that a student must take and pass each EOC assessment in a course for which the student was enrolled in order to receive a Texas high school diploma.

In accordance with the TEC, §39.025(a-2), adopted subsection (e) specifies that a student who has taken but failed to achieve the EOC assessment graduation requirements for no more than two courses may receive a Texas high school diploma if the student has qualified to graduate by means of an IGC under the TEC, §28.0258. Adopted subsection (e) also stipulates that a student may not graduate under an IGC if the student did not take each required EOC assessment listed under the TEC, §39.023(c), or an approved substitute assessment in 19 TAC Chapter 101, Subchapter DD, for each subject for which there is an EOC assessment.

Regardless of any IGC action, a district must provide a student an opportunity to retake an EOC assessment if the student has not previously achieved satisfactory performance on an EOC assessment or substitute assessment for that subject. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

The agency notes that as a result of House Bill (HB) 2349, 84th Texas Legislature, a student who earned high school credit for a course for which there is an EOC assessment prior to enrollment in a Texas public school and the credit has been accepted by a Texas public school, or completed a course for high school credit in a course for which there is an EOC assessment prior to the 2011-2012 spring administration, is not required to take that EOC assessment in order to receive a Texas diploma. The agency will amend related rules in §101.3021(e) of this title (relating to Required Participation in Academic Content Area Assessments) to reflect HB 2349.

The following changes to 19 TAC §101.3022 were made at adoption in response to public comment and to clarify determination of whether a student qualifies for an IGC. Changes were also made to comply with additional legislation passed by the 84th Texas Legislature subsequent to publication of the proposed rule action.

Proposed subsection (e) relating to qualification for graduation using the TSI assessment was removed. The subsequent subsection was re-lettered accordingly.

Adopted subsection (e)(1), re-lettered from subsection (f)(1) at proposal, was modified to clarify eligibility criteria for a student to graduate by means of an IGC.

Adopted new subsection (e)(2) was added to address provisions for a student who is an English language learner (ELL). An ELL who qualifies for the English I special provision in 19 TAC §101.1007 may still graduate without an IGC if the student achieves satisfactory performance on the remaining EOC assessments that the student must take. The qualifying ELL becomes eligible for IGC review by failing to achieve satisfactory performance on the English I EOC assessment and one other EOC assessment (Algebra I, biology, English II, or U.S. history) or by failing to achieve satisfactory performance on no more than two of the remaining EOC assessments if the student achieved satisfactory performance on the English I EOC assessment.

Adopted new subsection (e)(5), re-lettered from subsection (f)(4) at proposal, was modified to clarify that the IGC provisions of SB 149 expire September 1, 2017. Accordingly, the provisions of 19 TAC 101.3022(e) were effective with the 2014-2015 school year and expire September 1, 2017. For a student to gradu-

ate by means of an IGC, a student must have qualified for an IGC under the TEC, §28.0258, prior to September 1, 2017, and that IGC must have convened prior to September 1, 2017. The agency clarifies that an IGC is established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate.

Adopted new subsection (f) was added to address provisions for a student who is receiving special education services or has been dismissed from a special education program under the TEC, Chapter 29, Subchapter A. In new subsection (f)(1), a student receiving special education services is not subject to the requirements in the TEC, §28.0258. As provided in 19 TAC §89.1070 and §101.3023, a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

In new subsection (f)(2), a student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment while enrolled in a special education program is not required to retake and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any remaining EOC assessments that the student is required to take. If the student fails to achieve satisfactory performance on no more than two of the remaining EOC assessments, the student is eligible for IGC review under the TEC, §28.0258, and is subject to the provisions of subsection (e).

A student must still successfully complete the course requirements required by the SBOE for his or her specific graduation plan.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began May 29, 2015, and ended June 29, 2015. Following is a summary of the public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 2, Participation and Assessment Requirements for Graduation, §101.3022, Assessment Requirements for Graduation.

Comment: Senator Van Taylor and an educator from Brownsville Independent School District (ISD) commented that the agency's implementation of SB 149 may adversely, and unfairly, affect a limited number of ELLs who are exempt from passing the English I EOC assessment in order to receive a Texas diploma. According to the Senator, "being exempt from a requirement is fundamentally different from failing that requirement."

The educator from Brownsville ISD specified that the ELLs were not required to retest so they did not participate in the English I EOC retest opportunities, have not participated in any English I intervention opportunities in preparation for an English I retest, were not required to pass the English I EOC assessment to graduate, and are not held accountable for the English I EOC assessment because of the population's unique language barriers. As such, according to the educator, the graduation expectations for these students have changed and the student group is being denied the same opportunities as other students.

Agency Response: The agency agrees that clarification would be helpful and has added language in 19 TAC §101.3022(e) at adoption to clarify provisions related to ELLs. Section 101.1007, Assessment Provisions for Graduation, makes allowances for eligible ELLs related to the use of the English I EOC assessment score in meeting high school graduation requirements. The allowance was made with the understanding that these students would be required to meet the score requirement on the English II EOC assessment instrument in order to graduate. These students were not permitted exemptions from being administered the English I EOC assessment as participation in this assessment gives them experience and provides information to educators that can be used to guide their instruction, including whether a student should be given targeted intervention opportunities. Additionally, the administration of the English I EOC assessment ultimately prepares the students for the English II EOC assessment.

As added by SB 149, TEC, §28.0258(a), specifies that the provisions of the IGC apply to those students who failed an EOC assessment for not more than two courses. SB 149 made no other exceptions to that limit. Also, if the qualifying ELL does graduate by an IGC, the student would need to complete any IGC requirements for English I.

Under SB 149, ELLs who meet the eligibility criteria for the special provisions of §101.1007 can now qualify to graduate by IGC without passing either the English I assessment and one other EOC assessment (Algebra I, biology, English II, or U.S. history). Prior to SB 149's passage, the allowance to receive a Texas diploma after failing to pass two EOC assessments did not exist. As such, this student population is not being punished.

The agency has contacted the bill's author to clarify intent and is confident that the bill has been implemented correctly.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §28.0258(k), as added by Senate Bill (SB) 149, Section 3, 84th Texas Legislature, Regular Session, 2015, which authorizes the commissioner to adopt rules as necessary to implement the awarding of a high school diploma on the basis of review by an individual graduation committee; the TEC, §39.025(a), which authorizes the commissioner to adopt rules requiring a student in the foundation high school program under the TEC, §28.025, to be administered each endof-course assessment instrument listed in the TEC, §39.023(c), and which specifies that a student may not receive a high school diploma until the student has performed satisfactorily on endof-course assessment instruments; and the TEC, §39.025(a-2), as added by SB 149, Section 4, 84th Texas Legislature, Regular Session, 2015, which provides for a student who has taken but failed to perform satisfactorily on end-of-course assessment instruments to receive a high school diploma if the student gualifies for graduation under the TEC, §28.0258.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §28.0258(k) and §39.025(a) and (a-2).

§101.3022. Assessment Requirements for Graduation.

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student must meet satisfactory performance on each end-of-course (EOC) assessment listed in the Texas Education Code (TEC), §39.023(c), except in cases as provided by subsections (b), (e), and (f) of this section and §101.3021(e) of this title (relating

to Required Participation in Academic Content Area Assessments), in order to be eligible to receive a Texas diploma. The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career.

(b) A student who was administered separate reading and writing EOC assessments under the TEC, §39.023(c), for the English I or English II course has met that course's assessment graduation requirement if the student has met the following criteria:

(1) achieved satisfactory performance on either the reading or writing EOC assessment for that course;

(2) met at least the minimum score on the other EOC assessment for that course; and

(3) achieved an overall scale score of 3750 or greater when the scale scores for reading and writing are combined for that course.

(c) Exceptions to subsection (a) of this section related to English I shall apply to English language learners who meet the criteria specified in §101.1007 of this title (relating to Assessment Provisions for Graduation).

(d) If a student failed a course but achieved satisfactory performance on the applicable EOC assessment, that student is not required to retake the assessment if the student is required to retake the course.

(e) Effective beginning with the 2014-2015 school year, a student who has taken, but failed to achieve the EOC assessment graduation requirements for no more than two courses may receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee (IGC) under the TEC, §28.0258.

(1) A student may not graduate under an IGC if the student did not take each EOC assessment required by this subchapter or an approved substitute assessment in Subchapter DD of this chapter for each course in which the student was enrolled in a Texas public school for which there is an EOC assessment. A school district or charter school shall determine whether the student took each required EOC assessment or an approved substitute assessment required by Subchapter DD of this chapter. For purposes of this section only, a student who does not make an attempt to take all required EOC assessments may not qualify to graduate by means of an IGC.

(2) A student who is an English language learner (ELL) and qualifies for the English I special provision in §101.1007 of this title may graduate without an IGC if the student achieves satisfactory performance on the remaining EOC assessments that the student is required to take.

(A) The qualifying ELL becomes eligible for IGC review by failing to achieve satisfactory performance on the English I EOC assessment and one other EOC assessment or by failing to achieve satisfactory performance on no more than two of the remaining EOC assessments if the student achieved satisfactory performance on the English I EOC assessment.

(B) If a qualifying ELL does graduate by means of an IGC, the student is required to complete IGC requirements for each course in which the student did not achieve satisfactory performance on the EOC assessment for that course.

(3) Notwithstanding any action taken by a student's IGC, a school district or charter school must provide a student an opportunity to retake an EOC assessment under the TEC, §39.023(c), if the student has not previously achieved satisfactory performance on an assessment for that course. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

(4) This subsection only applies to a student classified by the school district or charter school as an 11th or 12th grade student in the 2014-2015, 2015-2016, or 2016-2017 school year.

(5) Provisions of this subsection expire September 1, 2017. A student may graduate by means of an IGC if the student has qualified for an IGC under the TEC, §28.0258, and that IGC convened prior to September 1, 2017.

(f) A student who is receiving special education services or has been dismissed from a special education program under the TEC, Chapter 29, Subchapter A, is subject to the provisions of this subsection.

(1) A student receiving special education services is not subject to the requirements in the TEC, §28.0258. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

(2) A student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment while enrolled in a special education program is not required to retake and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any remaining EOC assessments that the student is required to take. If the student fails to achieve satisfactory performance on no more than two of the remaining EOC assessments, the student is eligible for IGC review under the TEC, §28.0258, and is subject to the provisions of subsection (e) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2015.

TRD-201503155 Cristina De La Fuente-Valadez Director, Rulemaking Texas Education Agency Effective date: September 6, 2015 Proposal publication date: May 29, 2015 For further information, please call: (512) 475-1497

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TITLE 40. SOCIAL SERVICES AND ASSIS-TANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §19.101, concerning definitions; §19.801, concerning resident assessment; §19.803, concerning discharge summary (discharge plan of care); §19.1010, concerning nursing practices; and §19.1911, concerning contents of the clinical record, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The amendments to §19.801 and §19.803 are adopted with changes to the proposed text published in the April 24, 2015, issue of the *Texas Register* (40 TexReg 2243). The amendments to §§19.101, 19.1010, and 19.1911 are adopted without changes to the proposed text.

The amendments are adopted to ensure consistency with current Minimum Data Set (MDS) 3.0 requirements. Specifically, the amendments replace the requirements for comprehensive assessments listed in §19.801(2)(B) with references in §19.801(2)(A) to the MDS and the Resident Assessment Instrument process to assist a nursing facility to comply with requirements when changes are made by the Centers for Medicare and Medicaid. Other amendments require a nursing facility to provide a statement to a resident that the resident loses permanent medical necessity status 30 consecutive days after being discharged to home and add an assisted living facility as a type of residential facility to which a resident may be discharged. The amendments also delete nursing documentation requirements related to the Texas Index for Level of Effort reimbursement methodology, which is no longer in use.

The amendments update terminology and make minor editorial and organizational changes for clarity and consistency.

DADS received written comments from Senior Care Centers and Disability Rights Texas. A summary of the comments and the responses follows.

Comment: Concerning §19.801, relating to resident assessment, one commenter stated that the rule requires a facility to complete a Long Term Care Medicaid Information (LTCMI) form on all Omnibus Budget Reconciliation Act of 1987 (OBRA) assessments and is too burdensome on the facility. The commenter stated that many OBRA assessments are automatically submitted to the state Medicaid claims system that do not require a LTCMI form to be attached and are not needed for payment. The commenter believes the LTCMI form should be required only when needed for payment. The commenter did not suggest a revision to the rule.

Response: The agency revised the rule to specify that the LTCMI form on an OBRA assessment must only be completed for a Medicaid recipient or Medicaid applicant. This is consistent with the instructions on the Texas Medicaid Healthcare Partnership Long Term Care Portal at http://www.tmhp.com and is not a new requirement.

Comment: Concerning §19.801, relating to resident assessment, one commenter also suggested that the agency is requiring the LTCMI form for a payment issue but stated the form is frequently not needed or used. The commenter did not suggest a revision to the rule.

Response: The agency revised the rule to specify that the LTCMI form on an OBRA assessment must only be completed for a Medicaid recipient or Medicaid applicant. This is consistent with the instructions on the Texas Medicaid Healthcare Partnership Long Term Care Portal at http://www.tmhp.com and is not a new requirement.

Comment: Concerning §19.803, relating to discharge summary (discharge plan of care), one commenter requested that the rules clarify that, if a resident has established permanent medical necessity, being discharged for more than 30 days to a private residence will not prevent the resident's re-admission into a nursing facility if the resident meets nursing facility medical necessity in the future. The commenter stated that a private residence is a more integrated setting than another group residential setting and expressed concern that the rule might discourage an individual from choosing a private residence. The commenter also expressed concern that a nursing facility might use the loss of permanent medical necessity to coerce a resident to stay in the facility.

Response: The agency responds that §19.2403, relating to medical necessity determination, states that permanent medical necessity moves with the recipient unless the recipient is discharged to home for more than 30 days. The agency believes it is important the individual be informed about the potential loss of permanent medical necessity. The agency revised §19.803 to use the term "home" rather than "private residence" to be consistent with §19.2403. In addition, the commenter's concern regarding re-admission is addressed because §19.803(a)(2)(C) requires a resident to be informed that a new medical necessity determination is required if the resident applies to be admitted to a nursing facility under the Medicaid program more than 30 consecutive days after moving home from a nursing facility. If a person believes a nursing facility is using this information to coerce a resident, the person should report the situation to the DADS Complaint Hotline at 1-800-458-9858.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503045 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: August 31, 2015 Proposal publication date: April 24, 2015 For further information, please call: (512) 438-2264

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SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §19.801, §19.803

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§19.801. Resident Assessment.

A facility must conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment of a resident's functional capacity. The facility must electronically transmit to CMS resident-entry-and-death-in-facility tracking records required by the RAI; and OBRA assessments, including admission, annual, quarterly, significant change, significant correction, and discharge assessments.

(1) Admission orders. At the time a resident is admitted, the facility must have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(A) A facility must make a comprehensive assessment of a resident's needs, using the current RAI process, including the MDS, Care Area Assessment process, and the Utilization Guidelines specified by DADS and approved by CMS. The current RAI process is found in the MDS 3.0 manual posted by CMS on http://www.cms.gov.

(B) A facility must conduct an additional assessment and document the summary information if the MDS indicates an additional assessment on a care area is required.

(C) A facility must conduct a comprehensive assessment of a resident as follows:

(*i*) within 14 calendar days after admission, excluding readmissions in which there is no significant change in the resident's physical or mental condition. For purposes of this section, "readmission" means a return to the facility following a temporary absence for hospitalization or for therapeutic leave.

(ii) within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. For purposes of this section, a "significant change" means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both.

(iii) not less often than once every 12 months.

(3) Quarterly review assessment. A facility must assess a resident using the quarterly review instrument specified by DADS and approved by CMS not less frequently than once every three months.

(4) Use. A facility must maintain all resident assessments completed within the previous 15 months in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care as specified in §19.802 of this subchapter (relating to Comprehensive Care Plans).

(5) PASRR. A Medicaid-certified facility must coordinate assessments with the PASSR process in 42 CFR, Part 483, Subpart C to the maximum extent practicable to avoid duplicative testing and effort.

(6) Automated data processing requirement.

(A) A facility must complete an MDS for a resident. The facility must enter MDS data into the facility's assessment software within 7 days after completing the MDS and electronically transmit the MDS data to CMS within 14 days after completing the MDS.

(B) A facility must complete the Long Term Care Medicaid Information form on an OBRA assessment that is submitted to the state Medicaid claims system for a Medicaid recipient or Medicaid applicant according to DADS instructions located on the Texas Medicaid Healthcare Partnership Long Term Care Portal at http://www.tmhp.com.

(C) Data format. The facility must transmit MDS data to CMS in the format specified by CMS and DADS.

(D) Information concerning a resident is confidential and a facility must not release information concerning a resident except as allowed by this chapter, including §19.407 of this chapter (relating to Privacy and Confidentiality) and §19.1910(d) of this chapter (relating to Clinical Records).

(7) Accuracy of assessments. The assessment must accurately reflect the resident's status.

(8) Coordination. A registered nurse must conduct or coordinate each assessment with the appropriate participation of health professionals.

(9) Certification.

(A) A registered nurse must sign and certify that the assessment is completed.

(B) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(10) Penalty for falsification under Medicare and Medicaid.

(A) An individual who willfully and knowingly:

(i) certifies a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$1,000 for each assessment; or

(ii) causes another individual to certify a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$5,000 for each assessment.

(B) Clinical disagreement does not constitute a material and false statement.

(11) Use of independent assessors in Medicaid-certified facilities and dually certified facilities. If DADS determines, under a certification survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (10) of this section, DADS may require (for a period specified by DADS) individuals who are independent of the facility and who are approved by DADS to conduct and certify the resident assessments under this section.

(12) Pediatric resident assessment.

(A) A facility must ensure that a pediatric assessment:

(i) is performed by a licensed health professional experienced in the care and assessment of children;

(ii) includes parents or guardians in the assessment process; and

(iii) includes a discussion with a parent or guardian about the potential for community transition.

(B) The clinical record of a child must include a record of immunizations, blood screening for lead, and developmental assessment. The local school district's developmental assessment may be used if available. See §19.1934 of this chapter (relating to Educational Requirements for Persons Under Age 22).

(C) A licensed health professional must assess a child's functional status in relation to pediatric developmental levels, rather than adult developmental levels.

(D) A facility must ensure pediatric residents receive services in accordance with the guidelines established by the Department of State Health Services' Texas Health Steps (THSteps). For Medicaid-eligible pediatric residents between the ages of six months and six years, blood screening for lead must be done in accordance with THSteps guidelines.

§19.803. Discharge Summary (Discharge Plan of Care).

(a) Before or at the time of a resident's discharge, the facility must give the resident a discharge summary that includes:

(1) a recapitulation of the overall course of the resident's stay;

(2) a statement notifying a resident granted permanent medical necessity (PMN) under the Medicaid program that:

(A) PMN status continues after discharge, unless the resident is discharged to home;

(B) PMN status expires 30 consecutive days after the resident is discharged to home; and

(C) a new medical necessity determination is required if the resident applies to be admitted to a nursing facility under the Medicaid program more than 30 consecutive days after the resident moves home from a nursing facility; and

(3) a post-discharge plan of care, developed with the participation of the resident, and a family representative, responsible party or legal guardian, that will, after discharge, assist the resident to adjust to his new living environment.

(b) The facility discharge summary must be available as required by subsection (a) of this section when a resident is being discharged home; to another nursing facility; a Medicare skilled nursing facility; or another residential facility, such as a board and care home, an intermediate care facility for individuals with an intellectual disability or related conditions, or an assisted living facility.

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 August 11, 2015.

TRD-201503046 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: August 31, 2015 Proposal publication date: April 24, 2015 For further information, please call: (512) 438-2264

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SUBCHAPTER K. NURSING SERVICES

40 TAC §19.1010

The amendment is adopted under Texas Government Code. §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503047 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: August 31, 2015 Proposal publication date: April 24, 2015 For further information, please call: (512) 438-2264

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1911

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503048 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: August 31, 2015 Proposal publication date: April 24, 2015 For further information, please call: (512) 438-2264



SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2322

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.2322, concerning Medicaid bed allocation requirements, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2510).

BACKGROUND AND PURPOSE

The amendment to 40 TAC §19.2322 is adopted to implement Texas Human Resources Code, §32.0213(d), which authorizes a rule to require an applicant for Medicaid beds in a nursing facility to provide a performance bond of \$500,000 or other financial security as determined by DADS. The purpose of the performance bond or other security is to ensure that an applicant provides the Medicaid beds granted under the waiver within the time limit required by DADS. The rule requires an applicant that is granted Medicaid beds to provide the performance bond, surety bond, or irrevocable letter of credit.

The rule also moves the provision in subsection (f)(4)(D), which allows a facility that has been allocated beds under an Alzheimer's waiver to apply for general Medicaid beds, to subsection (h)(5)(E), which is specific to an Alzheimer's waiver. The rule describes how DADS determines compliance of a multiple-facility owner with level of acceptable care requirements, states that Medicaid beds granted through the small house waiver are not considered in determining an allowable Medicaid bed increase for a facility, clarifies when evidence of compliance with building benchmarks is due to DADS and when an architect or engineer must be under contract for final construction documents, and allows a construction progress report to serve as evidence of active and ongoing construction.

The rule clarifies when DADS decertifies and de-allocates Medicaid beds allocated through a criminal justice waiver, Alzheimer's waiver, a teaching nursing facility waiver, state veterans home waiver, and a small house waiver.

The rule updates terminology and makes editorial and organizational changes for clarity and consistency.

The requirement to obtain a performance bond, surety bond, or irrevocable letter of credit added by this amendment applies to a

Medicaid bed waiver application that DADS receives on or after the effective date of this amendment.

DADS received written comments from CL Healthcare, LLC; Pittman LTC, Inc; and M.N. Osbourne & Associates. A summary of the comments and the responses follows.

Comment: Three commenters stated that the rule is a penalty or fine because there is no harm resulting from failure to meet the requirements. Examples given include that DADS would receive \$500,000 if a waiver applicant entered into a contract with an architect 16 months after the waiver was granted or if the waiver applicant changed bond companies and did not inform DADS.

Response: The agency responds that Texas Human Resources Code §32.0213(d) gives the executive commissioner authority to require an applicant for Medicaid beds under a waiver application to provide a performance bond in the amount of \$500,000 or other financial security as determined by DADS to ensure the Medicaid beds are provided within the time frame required by DADS. The rule implements this authority to ensure that Medicaid beds needed by the residents of Texas are provided in a timely manner. The agency notes that the architect contract requirement is at subsection (i)(4)(B) of §19.2322. The financial security is forfeited for failure to meet the requirement at subsection (i)(4)(G) to have the facility constructed, licensed. and certified within 18 months after land purchase or 42 months after DADS approval of the waiver, whichever is later, unless DADS grants an extension. The forfeiture does not apply to the deadlines in subsection (i)(4)(A) through (F) of §19.2322 unless DADS revokes a waiver for failure to meet these deadlines. DADS will be judicious when determining whether to revoke a waiver. The agency also believes the public is harmed when a waiver grantee does not timely provide the Medicaid beds that are needed by Texas residents. For example, under the community needs waiver, the grantee has asserted that there is an immediate need for Medicaid beds. Therefore, failure to timely meet this need does not serve the residents of the area where the waiver is granted. The agency did not revise the rule in response to this comment.

Comment: A commenter stated that the rule conflicts with Texas Human Resources Code §32.021(b), which requires that the most serious financial penalties apply to threats to health and safety of residents.

Response: The agency assumes the commenter is referring to Texas Human Resources Code §32.021(d) and (e), which requires DADS to include in nursing facility contracts provisions for a monetary penalty as required by 42 United States Code §1396r, and requires that the penalties be appropriate to the violation. The agency responds that the rule is not a penalty based on Texas Human Resources Code §32.021(d) and (e); it is a requirement authorized by Texas Human Resources Code §32.0213(d). The agency did not revise the rule in response to this comment.

Comment: Two commenters stated the rule conflicts with the purpose of the Medicaid bed allocation rules to promote competition.

Response: The agency believes the requirement to provide financial security promotes competition among entities that have the resources to provide the Medicaid beds within the time frames required by the rule. The agency did not revise the rule in response to this comment. Comment: Three commenters expressed concern that both waiver applicants and exemption applicants are required to meet timelines for construction but only waiver applicants must obtain a performance bond. The commenter asserts that only a new provider must apply for a waiver to construct a new facility.

Response: The agency acknowledges that an existing nursing facility may be granted a limited number of additional Medicaid beds under certain circumstances other than a waiver. However, the authority in Texas Human Resources Code §32.0213(d) to require financial security is limited to a waiver applicant. The agency did not revise the rule in response to this comment.

Comment: A commenter states the rule is unfair because waiver applicants have no ability to dispute the penalty.

Response: The agency responds that only a waiver applicant who is granted a waiver is required to provide financial security. Before DADS collects on a bond or letter of credit, DADS will allow the waiver grantee the opportunity to show compliance through the informal review process described in §19.2322(k). The agency also notes that this requirement to provide financial security is not a penalty. The agency did not revise the rule in response to this comment.

Comment: Three commenters stated that the applicant must pay part of the penalty in the form of the cost of the bond before a violation occurs.

Response: The agency acknowledges there is a cost associated with obtaining financial security, but also notes that the requirement is not a penalty and is authorized by Texas Human Resources Code §32.0213. The agency did not revise the rule in response to this comment.

Comment: Two commenters stated the bond or letter of credit does not ensure completion of the project.

Response: The agency responds that Texas Human Resources Code §32.0213 states the financial security is to ensure that a waiver applicant provides Medicaid beds granted to the applicant within the time frame required by the department. The agency acknowledges that the financial security cannot ensure completion of a project, but it provides a financial incentive for the grantee to provide the beds needed by Texas residents in a timely manner. The agency did not revise the rule in response to this comment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503055 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: August 31, 2015 Proposal publication date: May 8, 2015 For further information, please call: (210) 619-8292

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CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION SUBCHAPTER E. BUDGETS

40 TAC §41.505

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §41.505, concerning payroll budgeting, in Chapter 41, Consumer Directed Services Option, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4200).

The amendment implements the 2016-17 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which requires certain community services contractors and financial management service agencies to pay a minimum base wage to employees, contract staff, or subcontractors providing certain attendant services. Specifically, the amendment changes, from \$7.86/hour to \$8.00/hour, the minimum amount an employer or designated representative (DR) must budget for the base wage of an employee providing, through the consumer directed service option, primary home care, family care, or community attendant services; flexible family support and respite services in the Medically Dependent Children Program; habilitation in the Community Living Assistance and Support Services Program; residential habilitation in the Deaf Blind Multiple Disabilities Program; personal attendant services in the Consumer Managed Personal Attendant Services Program; supported home living in the Home and Community-based Services Program; and community support in the Texas Home Living Program.

The amendment also removes the requirement for an employer or DR to budget to pay a minimum base wage to an employee providing personal assistance services in the Community Based Alternatives (CBA) Program because, effective September 1, 2014, the CBA Program was terminated.

This rule governs payment to personal attendants on or after the effective date of the amendment. The previous rule governs payment made to personal attendants before the effective date of the amendment and remains in effect for that purpose.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503041 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-5175

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.312

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §49.312, concerning Personal Attendants, in Chapter 49, Contracting for Community Services, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4202).

The amendment implements the 2016-17 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which requires certain community services contractors and financial management service agencies to pay a minimum base wage to an employee or subcontractor of a contractor or an employee of a consumer directed services employer providing certain attendant services. Specifically, the amendment changes from \$7.86/hour to \$8.00/hour the minimum base wage a contractor or financial management service agency must pay a personal attendant. A "personal attendant" is defined in §49.102, Definitions, as an employee or subcontractor of a contractor or an employee of a consumer directed services employer who provides primary home care, familv care, community attendant services; day activity and health services; residential care; flexible family support and respite services in the Medically Dependent Children Program; personal attendant services in the Consumer Managed Personal Attendant Services Program; habilitation in the Community Living Assistance and Support Services Program; residential habilitation, day habilitation, and chore services in the Deaf Blind Multiple Disabilities Program; supported home living in the Home and Community-based Services Program; and community support in the Texas Home Living Program.

The amendment also requires an FMSA to ensure that an employer or designated representative (DR) pays a personal attendant in accordance with a budget that meets the requirement in Texas Administrative Code, Title 40, §41.505(a)(1), Payroll Budgeting, which is also being amended to change, from \$7.86/hour to \$8.00/hour, the minimum amount an employer or DR must budget to pay a personal attendant.

This rule governs payment to personal attendants on or after the effective date of the amendment. The previous rule governs payment made to personal attendants before the effective date of the amendment and remains in effect for that purpose.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program: and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The 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 August 11, 2015.

TRD-201503042 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-5175

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES SUBCHAPTER E. LICENSURE SURVEYS

DIVISION 1. GENERAL

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.501, concerning Survey Frequency, and the repeal of §97.502, concerning State Agency Investigations of Complaints and Self-Reported Incidents, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4203).

The amendment and repeal are in response to Senate Bill (SB) 760 and SB 1880, 84th Legislature, Regular Session, 2015, which amend Texas Health and Safety Code, §142.009(c) to

transfer, from DADS to the Department of Family and Protective Services (DFPS), the authority to investigate an allegation of abuse, neglect, or exploitation (ANE) of a child under the age of 18 who is receiving services from a home and community support services agency (HCSSA) licensed under Chapter 142. SB 760 and SB 1880 also amend Texas Family Code, §261.404, to give DFPS the authority to investigate an allegation of ANE of a child receiving services from an HCSSA if the person who is alleged to have committed the ANE is an officer, employee, agent, contractor, or subcontractor of the HCSSA.

DADS received no comments regarding adoption of the amendment and repeal.

40 TAC §97.501

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

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 August 11, 2015.

TRD-201503043 Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-3791

40 TAC §97.502

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

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 August 11, 2015. TRD-201503044

Lawrence Hornsby General Counsel Department of Aging and Disability Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-3791

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES SUBCHAPTER O. PILOT PROGRAM

40 TAC §705.9001

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §705.9001 without changes to the proposed text published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4205). The justification for the new Subchapter O, "Pilot Program", is to allow Adult Protective Services (APS) to provide protective services to individuals determined to be at risk of future harm but who are not currently in a state of abuse, neglect or financial exploitation (ANE). This is a proactive and preventive approach to meeting client needs that may reduce recidivism and save costs. APS will conduct the pilot within current resources and submit a report to the legislature on outcomes and cost implications resulting from the pilot program. The pilot program is required by §48.212 of the Human Resources Code, as added by House Bill 3092 of the 84th Texas Legislature.

Human Resources Code Chapter 48 requires that APS validate ANE before providing protective services. In September 2014, APS implemented a new casework practice model based on structured decision making tools. This model assumes that decisions regarding whether to provide services can be based on risk of future harm instead of validation of ANE.

One of the assessment tools--the Risk of Recidivism Assessment--uses research-based criteria to determine the likelihood of future harm. APS staff will use the Risk of Recidivism Assessment to help determine if a client needs protective services.

New §705.9001 implements this pilot program to provide protective services to an alleged victim who has been determined to be at risk of future harm, but who is not currently in a state of ANE.

The new section will function by allowing APS staff to provide services to individuals determined to be at risk of future harm but who are not currently in a state of ANE. In addition, the rule adds clarity to the public, by updating APS rules prior to the start of the pilot program in order to reconcile any differences between the approach taken in the pilot program and the requirement of APS' current rules.

No comments were received regarding adoption of the new section.

The new rule is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new rule implements HRC §48.212.

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 August 11, 2015.

TRD-201503054 Trevor Woodruff General Counsel Department of Family and Protective Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-3803

CHAPTER 711. INVESTIGATIONS IN DADS AND DSHS FACILITIES AND RELATED PROGRAMS SUBCHAPTER A. INTRODUCTION

40 TAC §711.25

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS). new §711.25 without changes to the proposed text published in the June 26, 2015, issue of the Texas Register (40 TexReg 4206). The justification for the new rule is to implement Senate Bills (SB) 760 and 1880 (84th Legislature), define APS's expanded jurisdiction, and apply the current DFPS rules, as applicable, to the expanded jurisdiction. This transitional rule will function until further rules can be proposed and adopted, no later than September 1, 2016. SB 760 and SB 1880 ensure continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bill expands the authority for Adult Protective Services (APS) to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care delivery model. SB 760 and SB 1880 also clarify and address the gaps and inconsistencies that have resulted from the evolving service delivery changes and changes in contracting arrangements. These bills also update statutory language and requirements related to provider and agency responsibilities.

New §711.25 implements statutory changes as required by SB 760 and SB 1880.

The new section will function by expanding the authority of DFPS to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers.

No comments were received regarding adoption of the new section.

The new section is 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.

The new section implements HRC §§48.002, 48.003, 48.051, 48.103, 48.151, 48.201, 48.251 - 48.258, 48.301, 48.401 and Texas Family Code §261.404.

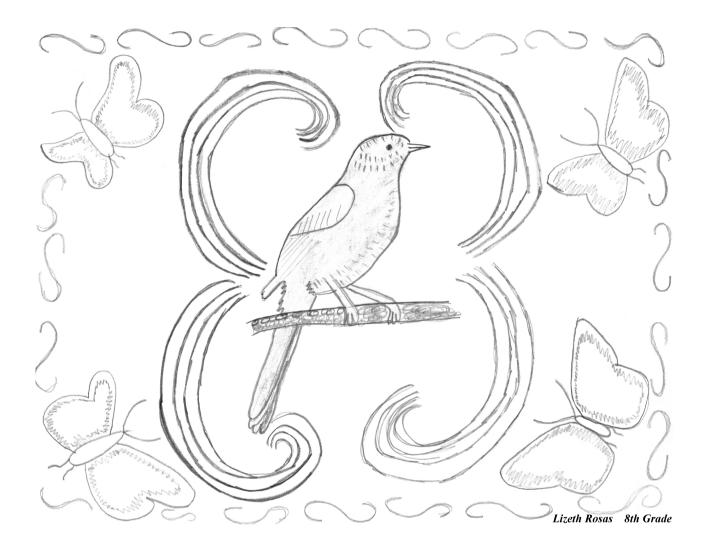
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 2015.

TRD-201503057 Trevor Woodruff General Counsel Department of Family and Protective Services Effective date: September 1, 2015 Proposal publication date: June 26, 2015 For further information, please call: (512) 438-3803

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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 Education Agency

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed House Bill (HB) 1786, relating to the transfer of driver training and safety education responsibilities from the Texas Education Agency to the Texas Department of Licensing and Regulation.

In order to comply with HB 1786, the Texas Register administratively transfers the Texas Administrative Code, Title 19, Part 2, Chapter 176, §§176.1001 - 176.1020, 176.1101 - 176.1118, 176.1201 - 176.1211, and 176.1301 to Title 16, Part 4, §§84.100 - 84.119, 84.200 - 84.217, 84.300 - 84.310, and 84.400.

The transfer takes effect on September 1, 2015.

Please refer to Figure: 19 TAC Chapter 176 to see the complete conversion chart.

TRD-201503158

Texas Department of Licensing and Regulation

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed House Bill (HB) 1786, relating to the transfer of driver training and safety education responsibilities from the Texas Education Agency to the Texas Department of Licensing and Regulation.

In order to comply with HB 1786, the Texas Register administratively transfers the Texas Administrative Code, Title 19, Part 2, Chapter 176, §§176.1001 - 176.1020, 176.1101 - 176.1118, 176.1201 - 176.1211, and 176.1301 to Title 16, Part 4, §§84.100 - 84.119, 84.200 - 84.217, 84.300 - 84.310, and 84.400.

The transfer takes effect on September 1, 2015.

Please refer to Figure: 19 TAC Chapter 176 to see the complete conversion chart.

TRD-201503156

Current Rules From:	Transferred To:
Title 19, Part 2. Texas Education Agency	Title 16, Part 4. Texas Department of Licensing
Chapter 176. Driver Training Schools	and Regulation
	Chapter 84. Driver Education and Safety
Subchapter AA. Commissioner's Rules on	Subchapter A. Commissioner's Rules on Minimum
Minimum Standards for Operation of Licensed	Standards for Operation of Licensed Texas Drive
Texas Drive Education Schools	Education Schools
§176.1001. Definitions	§84.100. Definitions
§176.1002. Exemptions	§84.101. Exemptions
§176.1003. Driver Education School Licensure	§84.102. Driver Education School Licensure
§176.1004. Driver Education School Responsibility	§84.103. Driver Education School Responsibility for
for Employees	Employees
§176.1005. School Directors, Assistant Directors,	§84.104. School Directors, Assistant Directors, and
and Administrative Staff Members	Administrative Staff Members
§176.1006. Driver Education Instructor License	§84.105. Driver Education Instructor License
§176.1007. Courses of Instruction	§84.106. Courses of Instruction
§176.1008. Student Enrollment Contracts	§84.107. Student Enrollment Contracts
§176.1009. Progress	§84.108. Progress
§176.1010. Attendance and Makeup	§84.109. Attendance and Makeup
§176.1011. Conduct Policy	§84.110. Conduct Policy
§176.1012. Cancellation and Refund Policy	§84.111. Cancellation and Refund Policy
§176.1013. Facilities and Equipment	§84.112. Facilities and Equipment
§176.1014. Motor Vehicles	§84.113. Motor Vehicles
§176.1015. Student Complaints	§84.114. Student Complaints
§176.1016. Records	§84.115. Records
§176.1017. Names and Advertising	§84.116. Names and Advertising
§176.1018. Driver Education Certificates (DE-964	§84.117. Driver Education Certificates (DE-964 and
and ADE-1317)	ADE-1317)
§176.1019. Alternative Method of Instruction for	§84.118. Alternative Method of Instruction for
Driver Education Course	Driver Education Course
§176.1020. Application Fees and Other Charges	§84.119. Application Fees and Other Charges
Subchapter BB. Commissioner's Rules on Minimum	Subchapter B. Commissioner's Rules on Minimum
Standards for Operation of Licensed Texas Driving	Standards for Operation of Licensed Texas Driving
Safety Schools and Course Providers	Safety Schools and Course Providers
§176.1101. Definitions	§84.200. Definitions
§176.1102. Exemptions	§84.201. Exemptions
§176.1103. Driving Safety School Licensure	§84.202. Driving Safety School Licensure
§176.1104. Course Provider Literature	§84.203. Course Provider Literature
§176.1106. Driving Safety School and Course	§84.204. Driving Safety School and Course
Provider Responsibilities	Provider Responsibilities
§176.1106. Administrative Staff Members	§84.205. Administrative Staff Members
§176.1107. Driving Safety Instructor License	§84.206. Driving Safety Instructor License
§176.1108. Driving Safety Courses of Instruction	§84.207. Driving Safety Courses of Instruction
§176.1109. Specialized Driving Safety Courses of	§84.208. Specialized Driving Safety Courses of
Instruction	Instruction

§176.1110. Alternative Delivery Methods of	§84.209. Alternative Delivery Methods of Driving
Driving Safety Instruction	Safety Instruction
§176.1111. Student Enrollment Contracts	§84.210. Student Enrollment Contracts
§176.1112. Cancellation and Refund Policy	§84.211. Cancellation and Refund Policy
§176.1113. Facilities and Equipment	§84.212. Facilities and Equipment
§176.1114. Student Complaints	§84.213. Student Complaints
§176.1115. Records	§84.214. Records
§176.1116. Names and Advertising	§84.215. Names and Advertising
§176.1117. Uniform Certificate of Course	§84.216. Uniform Certificate of Course Completion
Completion for Driving Safety or Specialized	for Driving Safety or Specialized Driving Safety
Driving Safety Course	Course
§176.1118. Application Fees and Other Charges	§84.217. Application Fees and Other Charges
Subchapter CC. Commissioner's Rules on Minimum	Subchapter C. Commissioner's Rules on Minimum
Standards for Operation of Texas Drug and Alcohol	Standards for Operation of Texas Drug and Alcohol
Driving Awareness Programs	Driving Awareness Programs
§176.1201 General Provision	§84.300. General Provision
§176.1202. Definitions	§84.301. Definitions
§176.1203. Drug and Alcohol Driving Awareness	§84.302. Drug and Alcohol Driving Awareness
School Licensure	School Licensure
§176.1204. Drug and Alcohol Driving Awareness	§84.303. Drug and Alcohol Driving Awareness
School and Course Provider Responsibilities	School and Course Provider Responsibilities
§176.1205. Drug and Alcohol Driving Awareness	§84.304. Drug and Alcohol Driving Awareness
Program Instructor License	Program Instructor License
§176.1206. Drug and Alcohol Driving Awareness	§84.305. Drug and Alcohol Driving Awareness
Programs of Instruction	Programs of Instruction
§176.1207. Student Enrollment Forms	§84.306. Student Enrollment Forms
§176.1208. Facilities and Equipment	§84.307. Facilities and Equipment
§176.1209. Records	§84.308. Records
§176.1210. Application Fees and Other Charges	§84.309. Application Fees and Other Charges
§176.1211. Alternative Delivery Methods of Drug	§84.310. Alternative Delivery Methods of Drug and
and Alcohol Driving Awareness Program	Alcohol Awareness Program Instruction
Instruction	C
Subchapter DD. Commissioner's Rules on Hearings	Subchapter D. Commissioner's Rules on Hearings
Held Under the Texas Education Code, Chapter	Held Under the Texas Education Code, Chapter
1001	1001
§176.1301. Rules of Procedure	§84.400. Rules of Procedure

Texas Department of Public Safety

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed House Bill (HB) 1786, relating to the transfer of driver training and safety education responsibilities from the Texas Department of Public Safety to the Texas Department of Licensing and Regulation.

In order to comply with HB 1786, the Texas Register administratively transfers the Texas Administrative Code, Title 37, Part 1, Chapter 18, §§18.11, 18.21, and 18.22 to Title 16, Part 4, §§84.500, 84.600, and 84.601.

The transfer takes effect on September 1, 2015.

Please refer to Figure: 37 TAC Chapter 18 to see the complete conversion chart.

TRD-201503159

Texas Department of Licensing and Regulation

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed House Bill (HB) 1786, relating to the transfer of driver training and safety education responsibilities from the Texas Department of Public Safety to the Texas Department of Licensing and Regulation. In order to comply with HB 1786, the Texas Register administratively transfers the Texas Administrative Code, Title 37, Part 1, Chapter 18, §§18.11, 18.21, and 18.22 to Title 16, Part 4, §§84.500, 84.600, and 84.601.

Please refer to Figure: 37 TAC Chapter 18 to see the complete conversion chart. TRD-201503157

The transfer takes effect on September 1, 2015.

Figure: 37 TAC Chapter 18

Current Rules From: Title 37, Part 1. Texas Department of Public Safety Chapter 18. Driver Education	Transferred To: Title 16, Part 4. Texas Department of Licensing and Regulation
	Chapter 84. Driver Education and Safety
Subchapter B. Parent Taught Driver Education	Subchapter E. Parent Taught Driver Education
§18.11. Parent Taught Driver Education	§84.500. Parent Taught Driver Education
Subchapter C. Department Approved Driver	Subchapter F. Department Approved Driver
Education Course	Education Course
§18.21. Submission of Course for Department	§84.600. Submission of Course for Department
Approval	Approval
§18.22. Cancellation of Department Approval	§84.601. Cancellation of Department Approval

Review Of Added to a series of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 15 (Corporate Activities), comprised of Subchapter A (\S §15.1 - 15.7 and \S §15.9 - 15.12); Subchapter B (\S 15.23 and \S 15.24); Subchapter C (\S §15.41 - 15.44); Subchapter E (\S 15.81); Subchapter F (\S §15.101 - 15.111 and \S §15.113 - 15.117); and Subchapter G (\S 15.121 and \S 15.122)

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or emailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201503185 Catherine Reyer General Counsel Texas Department of Banking Filed: August 18, 2015

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On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.4) and Subchapter B (§§17.21 - 17.23)

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or emailed to *legal@dob.texas.gov*.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201503186 Catherine Reyer General Counsel Texas Department of Banking Filed: August 18, 2015

On behalf of the Finance Commission of Texas, the Texas Department

of Banking files this notice of intention to review and consider for readoption, revision, or repeal the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter A (§19.1); Subchapter B (§19.21 and §19.22); and Subchapter C (§19.51).

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or emailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201503188 Catherine Reyer General Counsel Texas Department of Banking Filed: August 18, 2015

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On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 21 (Trust Company Corporate Activities), comprised of Subchapter A (\S 21.1 - 21.7 and \S 21.9 - 21.12); Subchapter B (\S 21.23 and \S 21.24); Subchapter C (\S 21.31 and \S 21.32); Subchapter D (\S 21.41 and \S 21.42); Subchapter E (\S 21.51); Subchapter F (\S \$ 21.61 - 21.64; \$ 21.67 - 21.70 and \$ 21.72 - 21.76); and Subchapter G (\$ 21.91 and \$ 21.92).

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or emailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201503189 Catherine Reyer General Counsel Texas Department of Banking Filed: August 18, 2015

Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation has completed its review of all sections within the following chapters of Title 28, Part 2 of the Texas Administrative Code (TAC), in accordance with Government Code §2001.039:

Chapter 43 - Insurance Coverage

Chapter 45 - Employer's Report of Injury or Disease

Chapter 61 - Prehearing Conferences

Chapter 64 - Representing Claimants Before the Board

Chapter 67 - Allegations of Fraud

Chapter 124 - Carriers: Required Notices and Mode of Payment

Chapter 129 - Income Benefits--Temporary Income Benefits

Chapter 130 - Impairment and Supplemental Income Benefits

Chapter 131 - Benefits - Lifetime Income Benefits

Chapter 132 - Death Benefits - Death and Burial Benefits

Chapter 133 - General Medical Provisions

Chapter 137 - Disability Management

Chapter 140 - Dispute Resolution - General Provisions

Chapter 141 - Dispute Resolution - Benefit Review Conference

Chapter 143 - Dispute Resolution Review by the Appeals Panel

The division considered whether the reasons for initially adopting these sections continued to exist and whether these rules should be repealed, readopted, or readopted with amendments. The division determined the reasons for adopting the sections continue to exist, and the sections are readopted in their present form. Any revisions in the future will be in accordance with the Administrative Procedure Act.

The notice of proposed rule review was published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3669). The division received one comment.

COMMENT: A commenter recommends amendment of the pharmacy paper billing requirements under 28 TAC §133.10 to replace the DWC066 Statement of Pharmacy Services with the National Council for Prescription Drug Programs' Workers' Compensation/Property Casualty Universal Claim Form.

DIVISION RESPONSE: The division declines to make the suggested amendment at this time. The division determined that the reason for adopting 28 TAC §133.10 continues to exist, and the section is readopted in its present form. The commenter's recommendation may be considered for future rulemaking amendments to 28 TAC §133.10.

This completes the division's review of Chapters 43, 45, 61, 64, 67, 124, 129, 130, 131, 132, 133, 137, 140, 141, and 143. The chapters will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201503140

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation Filed: August 14, 2015

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 77, relating to the Service Contract Providers and Administrators program. The Notice of Intent to Review was published in the March 20, 2015, issue of the *Texas Register* (40 TexReg 1717). The public comment period closed on April 20, 2015.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Service Contract Providers and Administrators program under Texas Occupations Code, Chapter 1304, were scheduled for this four-year review.

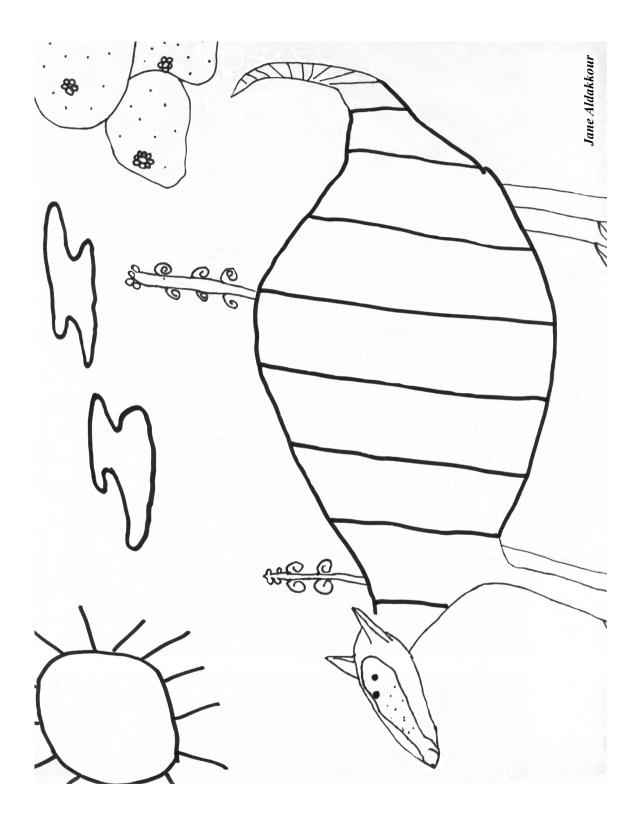
The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1304. The rules provide details that are not found in the program statute, but are necessary for implementation and operation of this program. For example, the rules define terms used in this program; establish registration and renewal requirements for providers and administrators; detail the financial security requirements for providers; specify the responsibilities of providers and administrators; and establish the fees that are specific to this program. The Department received public comments in response to the Notice of Intent to Review from two interested parties. The first commenter suggested licensing and regulating two types of residential contractors, specifically those who install and repair roofs and those who perform foundation repairs. The second commenter stated that the rules and statute, specifically the provisions related to financial security requirements, have caused the company to cease doing business in Texas. Both of these comments involve statutory changes, which cannot be made as part of the rulemaking process.

At its meeting on July 29, 2015, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 77, Service Contract Providers and Administrators, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas* *Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 77, Service Contract Providers and Administrators.

TRD-201503105 William H. Kuntz, Jr. Executive Director Texas Department of Licensing and Regulation Filed: August 14, 2015

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 TABLES &

 GRAPHICS
 Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

 Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure"

followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §213.33(b)	Texas Board of Nursing Disciplinary Matrix	In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33(c), published at 22 Tex. Admin. Code §213.33. The Matrix <u>lists</u> [may list] additional aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board pursuant to the Occupations Code Chapters 53 and 301. <u>If multiple violations of the Nursing Practice Act (NPA) and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531.</u>	Additionally, the Board shall consider whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301. Further, the Board will consider the seriousness of the violation, the threat to public safety, and any aggravating or mitigating factors.	If the person is being disciplined for multiple violations of either Chapter 301, or a rule or order adopted under Chapter 301, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation.[; and]	If the person has previously been the subject of disciplinary action by the Board, the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.	The Board may assess administrative penalties as outlined in 22 Tex. Admin. Code §213.32.	Although not addressed by this Matrix, the Board may also seek to assess costs of a contested case proceeding authorized by the Occupations Code §301.461.	<u>Further, although also</u> [Although] not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency/ <u>substance use disorder</u> , or abuse/ <u>misuse</u> of drugs <u>or</u> [of]alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code [§213.29, §213.30, and] §213.33.
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This Matrix [is] also <u>applies</u> [applicable] to the determination of an individual's eligibility for licensure [under the Occupations Code §301.257].

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;	a rule or regulation not inconsistent with C	Chapter 301, or an order issued under
First Tier Offense:	Sanction Level I:	Sanction Level II:
Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*. Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.	Remedial Education, with or without a fine of \$250.00 or more for each additional violation. If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of \$250 or more for each additional violation.	Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/ <u>practice settings</u> , periodic board review; and/or a fine of \$500 or more for each additional violation.
Second Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.	Requirement to complete conditions of original Board order and a fine of \$500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to <u>a substance use disorder</u> <u>and/or</u> alcohol or drug <u>abusc/</u> misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).	Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.

Third Tier Offense:	Sanction Level I:	Sanction Level II:
Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.	Revocation or Voluntary Surrender.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or 301.4551, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(1): provide information required by order; patient vul	Aggravating Circumstances for §301.452(b)(1): Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.	available remedial classes; recurring failure to o cooperate with compliance investigator.
Mitigating Circumstances for §301.452(b)(1): U	Mitigating Circumstances for §301.452(b)(1): Unforeseen financial or health issues; not practicing nursing during stipulation period.	nursing during stipulation period.
*Denotes a violation that is subject to disciplinary sanctions contained in this Matrix are disciplinary Admin. Code §213.32 and are not applicable to th	*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.	agreement (non-disciplinary action). The (non-disciplinary actions) are located at 22 Tex. ble as a sanction in a disciplinary action.
§301.452(b)(2) fraud or deceit in procurin nursing;	§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;	ice professional nursing or vocational
First Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license.*	Remedial Education and/or a fine of \$250 or more for each additional violation.	Denial of Licensure or Revocation of nursing license.

Second Tier Offense:	Sanction Level I:	Sanction Level II:
Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.	Denial of Licensure or Revocation of nursing license.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(2): Multi information, if known, would have prevented licensure.	b)(2): Multiple offenses, the relevance or seriousness of the hidden information, whether the hidden ed licensure.	the hidden information, whether the hidden
Mitigating Circumstances for §301.452(b)(2): Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.	riousness of the hidden violation; age of applicant counsel.	at time applicant committed violation; and
*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.	action, but may be eligible for a corrective action actions. Board rules regarding corrective actions to this Matrix. Further, a corrective action is not	agreement (non-disciplinary action). The (non-disciplinary actions) are located at 22 wailable as a sanction in a disciplinary action.
§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;	nent on deferred adjudication, community s al turpitude;	apervision, or deferred disposition for, a
Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.	Board's Disciplinary Guidelines for Criminal Con- D-guide.html. The Board will also utilize 22 Tex. including §53.021(b), which provides that a licer including felony community supervision revocat	luct published at Admin. Code 213.28, the Occupations Code se holder's license shall be revoked on the on, revocation of parole, or revocation of
§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;	evocation of probation imposed because of	conviction for a felony or for a

gout. 4000, and the Occupations Code Chapter 00, including goo. 021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.	§301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.	http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's license more following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.
§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;	ploma, or permit, or the transcript of such a lly altered;	a document, that has been fraudulently
Sanction:		
Issuance of Cease and Desist Order with referral of all information to local law enforcement.	f all information to local law enforcement.	
301.452(b)(6) impersonating or acting as a 301.253 or 301.255;	g as a proxy for another person in the licensing examination required under Section	xamination required under Section
Sanction:		
Revocation of license for this offense.		
§301.452(b)(7) directly or indirectly aiding nursing;	aiding or abetting an unlicensed person in connection with the unauthorized practice of	ction with the unauthorized practice of
First Tier Offense:	Sanction Level I:	Sanction Level II:
Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse [*] or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.	Remedial Education and/or a fine of \$250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities/ <u>practice</u> <u>settings</u> ; periodic board review; and/or a fine of \$250 or more for each additional violation.	Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.

Second Tier Offense	Sanction Level I.	Sanction Level II.
an unlicensed person in	Denial of Licensure, Revocation or Voluntary	Emergency Suspension of nursing practice in
connection with unauthorized practice of nursing.	Surrender.	light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances of §301.452(b)(7): Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.	Multiple offenses, intentional violation of institutio	aal and BON rules, patient harm or risk of
<i>Mitigating Circumstances</i> of §301.452(b)(7): The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.	e existence of institutional policies that allow certa	in practices by unlicensed persons with
*Denotes a violation that is subject to disciplinary	*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The	agreement (non-disciplinary action). The
sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.	actions. Board rules regarding corrective actions to this Matrix. Further, a corrective action is not a	non-disciplinary actions) are located at 22 vailable as a sanction in a disciplinary action.
§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to	denial of, or any other action relating to, th	e person's license or privilege to
practice nursing in another jurisdiction;		

First Tier Offense:	Sanction Level I:	Sanction Level II:
Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond.	Remedial Education and/or a fine. Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities/practice settings; and/or	Revocation, Suspension, or Denial of Licensure [when the individual doesn't respond or is not eligible for stipulated license.] Action should be at least consistent with action from other jurisdiction.
Action in another jurisdiction based on practice violations or unprofessional conduct and the violations are not those that would result in license revocation in Texas.	periodic board review. Action should be at least consistent with action from other jurisdiction.	
Action in another jurisdiction is based on <u>mental</u> <u>health condition. diminished capacity, and/or a</u> <u>substance use disorder and/or</u> alcohol or <u>drug</u> [substance] <u>abuse/</u> misuse and the nurse is otherwise eligible for <u>licensure, subject to</u> <u>probationary conditions or participation in a Board</u> <u>approved peer assistance program</u> [a stipulation of the license based on Board's rules and alcohol or substance misuse policy].	Order to participate in Board approved peer assistance program.	
[http://www.bon.state.tx.us/disciplinaryaction/ dsp.html]		

Second Tier Offense:	Sanction Level I:	Sanction Level II:
Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.	Revocation, denial of licensure, or voluntary surrender.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(8): Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.	Multiple offenses, patient vulnerability, impairme n, and patient harm or risk of harm associated wit	nt during the incident, the nature and the violation, criminal conduct.
<i>Mitigating Circumstances</i> for §301.452(b)(8): Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.	urse's failure to defend against the notice of violat meritorious defense against the unanswered violati	ions and the resulting default order was not ons outlined in the default order.
§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;	or drugs that the Board determines endang	ers or could endanger a patient;
First Tier Offense:	Sanction Level I:	Sanction Level II:
<u>A substance use disorder and/ or abuse/misuse</u> [Misuse] of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of <u>substance</u> <u>use disorder and/ or abuse/</u> misuse <u>of drugs or</u> <u>alcohol</u> and no other aggravating circumstances.	Referral to a Board approved peer assistance program for nurses pursuant to Board <u>rules and</u> policy on <u>substance use disorders and other</u> <u>alcohol and drug related conduct</u> [alcohol or substance abuse or misuse]. http://www.bon.state.tx.us/disciplinaryaction/d sp.html	For individuals receiving a diagnosis of no chemical dependency/ <u>substance use disorder</u> and/or no <u>alcohol or</u> substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/ <u>practice settings</u> and/or periodic board review. Appropriate when individual declines participation in peer assistance program or <u>is</u> [are] otherwise ineligible for the program.

Second Tier Offense:	Sanction Level I:	Sanction Level II:
A substance use disorder and/or abuse/misuse [Misuse] of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.	rticipation in a Board approved rogram for nurses pursuant to d policy on <u>substance use</u> her alcohol and drug related or substance abuse or misuse]. uals with non disciplinary sistance participation. state.tx.us/disciplinaryaction/d state.tx.us/disciplinaryaction	Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation. For individuals receiving a diagnosis of no chemical dependency/substance use disorder and/or no <u>alcohol or</u> substance abuse/misuse, Suspension of License, which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings, and/or periodic board review.
		Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Third Tier Offense: A substance use disorder and/or abuse/misuse [Misuse] of drugs or alcohol with a risk of		Sanction Level II: Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a
patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	history of drug or alcohol misuse, and no outer aggravating circumstances. Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances.	perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/tractice settings; and/or periodic board
		review. For individuals receiving a diagnosis of no chemical dependency/ <u>substance use disorder</u> and/or no <u>alcohol or substance use disorder</u> Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/ <u>practice settings</u> , and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and
	practice; abstention from drugs/alcohol; and random drug testing through urinalysis.	imminent threat to public nearly and satety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Fourth Tier Offense:	Sanction Level I:	Sanction Level II:
<u>A substance use disorder and/or abuse/misuse</u> [Misuse] of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.	Denial of Licensure, Revocation or Voluntary Surrender.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(9): conduct or criminal action involved, criminal justi concurrent diversion violations. Ineligible to part	Aggravating Circumstances for §301.452(b)(9): Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.	illegal substance; criminal action; criminal ug; unsuccessful / repeated treatment; se of program policy or Board policy.
Mittigating Circumstances for §301.452(b)(9): Self-remediation, including participation i after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.	Mitigating Circumstances for §301.452(b)(9): Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.	t treatment, intensive outpatient treatment, and
§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;	orable conduct that, in the board's opinion,	is likely to deceive, defraud, or injure a
First Tier Offense:	Sanction Level I:	Sanction Level II:
Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*	Remedial Education and/or a fine of \$250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.	Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities/ <u>practice settings</u> ; and/or periodic Board review; and/or a fine of \$500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.

Second Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.	Warning or Reprimand with Stipulations, which may include remedial education, supervised practice, and/or perform public service. Fine of \$250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or ciminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to <u>substance use</u> <u>disorders</u> and other alcohol and drug related <u>conduct</u> [drug or alcohol misuse] in analyzing facts. http://www.bon.state.tx.us/disciplinaryaction/d sp.html	Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/practice settings and/or periodic Board review. <u>Board will use its rules and disciplinary</u> sanction polices related to substance use <u>disorders and other alcohol and drug related</u> <u>conduct in analyzing facts.</u> Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.

Third Tier Offense:	Sanction Level I:	Sanction Level II:
Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of \$4,999.99.	Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for §301.452(b)(10) or discipline for similar conduct, patient vulnerab medications, criminal conduct. Mitigating Circumstances for §301.452(b)(10) demonstrated competency, full restitution paid.	<i>Aggravating Circumstances</i> for §301.452(b)(10): Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct. <i>Mitigating Circumstances</i> for §301.452(b)(10): Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.	in, actual harm, severity of harm, prior complaints gal drugs, or controlled substances or prescription oved remediation or rehabilitation program and
*Denotes a violation that is subject to disciplinar sanctions contained in this Matrix are disciplinar Tex. Admin. Code §213.32 and are not applicabl	*Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.	ı agreement (non-disciplinary action). The (non-disciplinary actions) are located at 22 available as a sanction in a disciplinary action.
8301.452(b)(11) adjudication of mental incompetency;	ncompetency;	
	Sanction Level I:	Sanction Level II:
	Denial of licensure or revocation of nursing license.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.

§301.452(b)(12) lack of fitness to practice patient or the public; or	§301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or	dition that could result in injury to a
First Tier Violation:	Sanction Level I:	Sanction Level II:
Any mental health condition, diminished capacity, or physical health condition that may impair an individual's behavior, judgment, or ability to function in school or work. [A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.]	If after an individualized assessment, it is determined that the individual's practice poses a potential risk of harm to patients/public, referral [Referral] to <u>a</u> [the] Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic Board review.	Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/ <u>practice settings</u> and/or periodic Board review. If <u>evidence of substance use disorder and/or</u> <u>drug or alcohol abuse/misuse also present, refer</u> to <u>Sanctions in 301.452(b)(9)</u> .
	<u>If</u> [With] <u>evidence of substance use disorder</u> <u>and/or drug or alcohol abuse/misuse also</u> <u>present.[.] refer</u> [Refer] to Sanctions in 301.452(b)(9).	

Second Tier Violation:	Sanction Level I:	Sanction Level II:
Lack of fitness based on any mental health condition. <u>diminished capacity.</u> or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	Referral to a Board approved Peer Assistance Program or Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/ <u>practice settings</u> and/or periodic Board review. <u>If</u> [With] <u>evidence of substance use disorder</u> and/or drug or alcohol abuse/misuse also present.[] refer [Refer] to Sanctions in 301.452(b)(9).	Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities/ <u>practice settings</u> and/or periodic Board review. <u>If</u> [With] <u>evidence of substance use disorder</u> <u>and/or drug or alcohol abuse/misuse also</u> <u>present.[.] refer</u> [Refer] to Sanctions in 301.452(b)(9).
Third Tier Violation:	Sanction Level 1:	Sanction Level II:
Lack of fitness based on any mental health <u>condition, diminished capacity</u> , or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations. <u>"Lack of fitness" includes observed behavior</u> <u>that includes, but is not limited to: slurred</u> <u>speech, unsteady gait, sleeping on duty,</u> <u>inability to focus or answer questions</u> <u>appropriately.</u>	Denial of licensure or revocation of nursing license.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances of §301.452(b)(12): successful treatment or remediation, number of ev conduct.	Aggravating Circumstances of §301.452(b)(12): Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.	e diagnosis, recent psychotic episodes, lack of harm, prior complaints or discipline for similar
Mitigating Circumstances of §301.452(b)(12): [psychological/chemical dependancy] evaluation	<i>Mitigating Circumstances</i> of §301.452(b)(12): Self report, length of time since condition was relevant, successful response to treatment, positive [psychological/chemical dependancy] evaluation from a board approved evaluator who has opportunity to review the Board's file.	evant, successful response to treatment, positive hity to review the Board's file.

§301.452(b)(13) failure to care adequately practice in a manner that, in the Board's op	§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.	standards of acceptable nursing ecessarily to risk of harm.
First Tier Offense:	Sanction Level I:	Sanction Level II:
Practice below standard with a low risk of patient harm.	Remedial Education and/or fine of \$250 when there is isolated incident or a fine of more than \$250 for each additional violation.	Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities/practice settings and/or periodic board review and/or fine of \$500 or more for each additional violation.
Second Tier Offense:	Sanction Level I:	Sanction Level II:
Practice below standard with patient harm or risk of patient harm.	Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities/ <u>practice settings</u> and/or periodic board review and/or a fine of \$500 or more for each additional violation.	Denial, suspension of license, revocation of license, or request for voluntary surrender.
Third Tier Offense:	Sanction Level I:	Sanction Level II:
Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.	Denial, suspension of license; revocation of license or request for voluntary surrender.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
In addition, any intentional act or omission that risks or results in serious harm.		

complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing Aggravating Circumstances for §301.452(b)(13): Number of events, actual harm, impairment at time of incident, severity of harm, prior career. Mitigating Circumstances for §301.452(b)(13): Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.

Figure:	37 TAC	C §9.32
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TEXAS DEPARTMENT OF PUBLIC SAFETY <u>SILVER ALERT REQUEST FORM</u> Fax (512) 424-2281 or (512) 451-2291; and Call (512) 424-2277 or 2208 MAXIMUM ACTIVATION 24 HOURS		
Reporting Agency Information *Required Fields in red with an asterisk * Date of Request * Name of Reporting Agency	 Activation Criteria: 1. Is the missing person 65 years of age or older? YES NO 2. Does the senior citizen have a diagnosed impaired mental condition, and does the senior citizen's disappearance pose a credible threat to the senior citizen's health and safety? (Law enforcement shall require the family or legal guardian of the missing senior citizen to provide documentation from a medical or mental health professional of the 	
*Contact number for Reporting Agency *Fax number for Reporting Agency	 senior citizen's condition.) YES NO 3. Is it confirmed that an investigation has taken place verifying that the senior citizen's disappearance is due to his/her impaired mental condition, and alternative reasons for the senior citizen's disappearance have been ruled out? 	
*Name/Title of Investigating Officer	 YES NO 4. Is the Silver Alert request within 72 hours of the senior citizen's disappearance? YES NO 	
Cell phone number for Investigating Officer * Phone number for media inquiries	 5. Is there sufficient information available to disseminate to the public that could assist in locating the senior citizen? (Highway signs will be activated only if accurate vehicle information is available AND it is confirmed that the senior citizen was driving the vehicle at the time of the disappearance.) YES NO 	

IMPORTANT: Agencies are responsible for accurately answering the above questions. The Department of Public Safety will verify circumstances of each request to ensure criteria have been met. Do <u>NOT</u> send SILVER ALERT request if the answer is NO to ANY of these questions. If activated, your request is only valid for a period of 24 hours. You will be contacted after 12 hours, 18 hours, and 23 hours in which you may decide to request an extension. Any extension must be requested prior to or during the 23 hour reminder from the State Operations Center. Contact (512) 424-2277 or 2208 for all extension requests.

Date of last con	tact:				Time:			
Last known loca	ation:				Lastan	A DESTRUCTION		
SENIOR CITIZE	EN DATA					NIC #:		
Name:			Diagnosed Mental Condition:				•	
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Any other descr	iptors:							
TDEM-26 (Rev.	06/2015)					s		d Request to perations Center

Directions for Sending Alert PDF Form Electronically

After pressing "Send Request to State Operations Center" your computer's default email will launch. If you use this program for emails, simply send the Alert. The address for State Operations Center (<u>soc@dps.texas.gov</u>) should be filled in automatically in "To:" and the PDF attached as well. Press "Send" on your email.

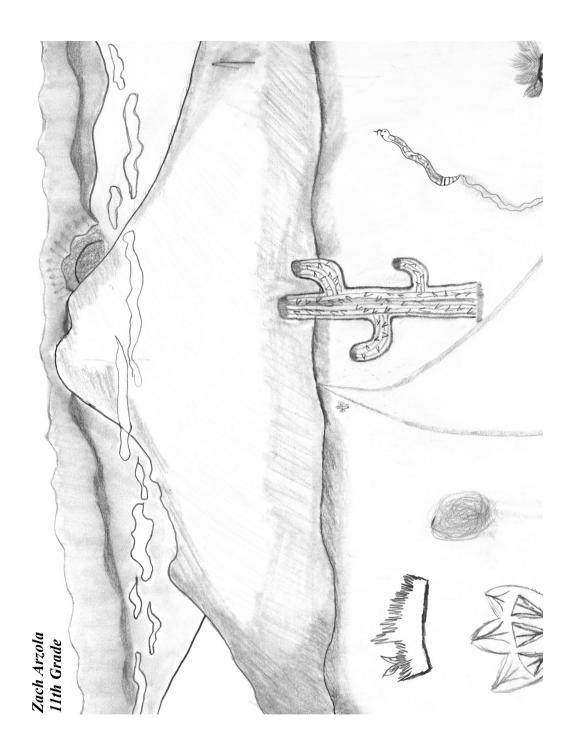
OR

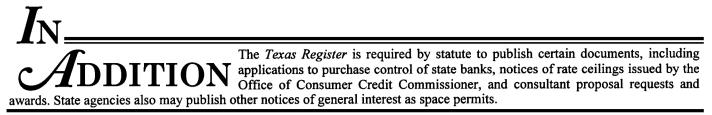
If you *do not* use this email, close it. Then in the PDF form viewer (Adobe Reader, Acrobat, etc.) save the completed PDF file to your desktop. Click "File>Save As> PDF." Then pick Desktop as location and press "OK." Now launch the email program or service that you *do use* and create a new email. Type the address <u>soc@dps.texas.gov</u> in the "To" field of your email. Select the tab "Attach File". Choose the completed PDF Alert file on the desktop and press "OK" to attach it to your email. Press "Send" on your email.

OR

Fax Method

Complete, Print, and then fax form to (512) 424-2281 or (512) 451-2291.





Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas, and the State of Texas v. Triple B Services, L.L.P.,* Cause No. 2014-39586; in the 157TH Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant Triple B Services, L.L.P. is a Texas Limited Liability Partnership that operates air curtain incinerators (ACIs) while combusting land clearing debris as part of its site preparation service. Defendant has allegedly violated the Texas Clean Air Act and rules promulgated by the Texas Commission on Environmental Quality (TCEQ) in the course of its operations in at least six locations in Spring, Tomball, Atascocita, and Huffman in Harris County, from 2008 to 2013. Specifically, Defendant was cited for: failing to ensure that embers were not smoking or flaming at the end of the day, completely extinguish material removed from the ACI pit, keep the ACI blower turned on, notify Harris County prior to locating a site, obtain an outdoor burning permit, and use best management practices; and stacking material above the air curtain, creating a nuisance by discharging ash, and exceeding maximum trench length.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment orders Defendant to comply with TCEQ rules governing the use of ACIs in its operations, and to adopt best management practices to prevent fire and environmental hazards. The proposed judgment also assesses against Defendant civil penalties in the amount of \$61,338 to be equally divided between Harris County and the State; and attorney's fees in the amount of \$662.50 to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Amy Davis, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201503110 Amanda Crawford General Counsel Office of the Attorney General Filed: August 14, 2015

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by 303.003, and 303.009 for the period of 08/24/15 - 08/30/15 is 18% for Consumer¹/Agricultural/Commercial² credit through 250,000.

The weekly ceiling as prescribed by 303.003 and 303.009 for the period of 08/24/15 - 08/30/15 is 18% for Commercial over 250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/15 - 09/30/15 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed \$304.003 for the period of 09/01/15 - 09/30/15 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201503169 Leslie Pettijohn Commissioner Office of Consumer Credit Commissioner Filed: August 18, 2015

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Firstmark Credit Union (San Antonio) seeking approval to merge with St. Joseph's Credit Union (San Antonio), with Firstmark Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201503218 Harold E. Feeney Commissioner Credit Union Department Filed: August 19, 2015

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Rio Grande Valley Credit Union, Harlingen, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in, and businesses located in Willacy County, Texas, to be eligible for membership in the credit union.

An application was received from Southwest Heritage Credit Union, Odessa, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities in Ward, Andrews, Upton, Crane, Loving, Martin, Howard, or Winkler Counties, Texas, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union, Plano, Texas, to expand its field of membership. The proposal would permit person who live, work, worship, or attend school within a ten mile radius of the following credit union location: 3245 Poplar Ave, Memphis, TN 38111, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201503217 Harold E. Feeney Commissioner Credit Union Department Filed: August 19, 2015

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Community Resource Credit Union (#2), Houston, Texas - See *Texas Register* issue dated May 29, 2015.

Mobility Credit Union, Irving, Texas - See *Texas Register* issue dated May 29, 2015.

FivePoint Credit Union, Nederland, Texas - See *Texas Register* issue dated December 27, 2013.

Application for a Merger or Consolidation - Approved

Dallas Santa Fe Credit Union (Garland) and Texas Telcom Credit Union (Dallas) - See *Texas Register* issue dated January 30, 2015.

Articles of Incorporation - 50 Years to Perpetuity - Approved

Trinity Valley Teachers Credit Union, Palestine, Texas.

NCE Credit Union, Corpus Christi, Texas.

American Baptist Association Credit Union, Pearland, Texas.

Texas Workforce Credit Union, San Antonio, Texas.

Southwest Heritage Credit Union, Odessa, Texas.

Associated Credit Union of Texas, League City, Texas.

SPCO Credit Union, Houston, Texas.

Members Credit Union, Cleburne, Texas.

Pasadena Postal Credit Union, Pasadena, Texas.

Reeves County Credit Union, Pecos, Texas.

Shared Resources Credit Union, Pasadena, Texas.

Mesquite Credit Union, Mesquite, Texas.

Texas Health Resources Credit Union, Dallas, Texas.

DATCU, Denton, Texas.

Ward County Teachers Credit Union, Monahans, Texas.

Edinburg Teachers Credit Union, Edinburg, Texas.

Brazos Community Credit Union, Alvin, Texas.

TRD-201503219 Harold E. Feeney Commissioner Credit Union Department Filed: August 19, 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 September 28, 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 September 28, 2015. Written comments may also be sent by facsimile machine to the 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: Bastrop Energy Partners, L.P.; DOCKET NUMBER: 2015-0728-AIR-E; IDENTIFIER: RN101056851; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: power plant; RULES

VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2109, General Terms and Conditions (GTC) and Special Terms and Conditions Number 11, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O2109, GTC, by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O2109, GTC, by failing to report all instances of deviations; PENALTY: \$7,314; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: City of Baird; DOCKET NUMBER: 2015-0177-MWD-E; IDENTIFIER: RN101720969; LOCATION: Baird, Callahan County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §§305.125(1) and (11)(A), 319.1, 319.4, and 319.5(b), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WO0010037001. Monitoring and Reporting Requirements Numbers 1 and 3.a, by failing to collect and analyze effluent samples for Escherichia coli; 30 TAC §305.125(1) and TPDES Permit Number WO0010037001, Monitoring and Reporting Requirements Number 7(c), by failing to report any effluent violation which deviates from the permitted effluent limitation by more than 40 percent in writing to the TCEO Abilene Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010037001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014, to the TCEQ Abilene Regional Office by September 30, 2014; PENALTY: \$28,621; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: City of Kemp; DOCKET NUMBER: 2015-0800-MWD-E; IDENTIFIER: RN102218435; LOCATION: Kemp, Kaufman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010695001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0010695001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; and 30 TAC §305.125(1) and (17); and TPDES Permit Number WQ0010695001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014; PENALTY: \$8,625; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Schertz and Cibolo Creek Municipal Authority; DOCKET NUMBER: 2015-0747-MWD-E; IDENTIFIER: RN104800289; LOCATION: Schertz, Bexar County; TYPE OF FA-CILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §§305.42(a), 305.65, and 305.125(2), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$4,725; ENFORCE-MENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096. (5) COMPANY: CONTINENTAL QUARRIES, INCORPO-RATED; DOCKET NUMBER: 2015-0969-WQ-E; IDENTIFIER: RN105533020; LOCATION: Lueders, Shackelford County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIO-LATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continue; PENALTY: \$5,000; EN-FORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Edward A. Marquez; DOCKET NUMBER: 2015-1079-WOC-E; IDENTIFIER: RN105522924; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: cross connections in water systems; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT CO-ORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OF-FICE: 622 South Oakes, Suite K, San Angelo, Texas, 76903, (325) 655-9479.

(7) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2015-0600-AIR-E; IDENTIFIER: RN106271232; LOCA-TION: Wheeler, Wheeler County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§111.111(a)(4)(A), 116.615(2), and 122.143(4), Standard Permit Registration Number 120532, Conditions (c)(2)(C), Federal Operating Permit Number 0-3550/Oil and Gas General Operating Permit Number 514 Site-wide Requirements (b)(8)(B) and (E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to prevent visible emissions for more than five consecutive minutes during a two-hour period; PENALTY: \$9,225; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: GRAVES LONG MOUNTAIN PROPERTIES, LLC dba Graves Long Mountain RV Park; DOCKET NUMBER: 2015-0802-PWS-E; IDENTIFIER: RN101238137; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(c)(1)(B)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps which have a total capacity of 1.0 gallon per minute per unit; 30 TAC §290.45(c)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 10 gallons per unit; and 30 TAC §290.39(j)(1)(A) and THSC, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; PENALTY: \$520; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(9) COMPANY: GREEN CREEK WATER SUPPLY CORPORA-TION; DOCKET NUMBER: 2015-0754-PWS-E; IDENTIFIER: RN101268688; LOCATION: Stephenville, Erath 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: \$165; ENFORCEMENT COOR-DINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: HOUSTON COMMUNITY COLLEGE SYS-TEM; DOCKET NUMBER: 2015-0808-PST-E; IDENTIFIER: RN103030516; LOCATION: Houston, Harris County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Houston Refining LP; DOCKET NUMBER: 2015-0454-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulations (CFR) §60.104(a)(2)(i), Federal Operating Permit (FOP) Number O1372, Special Terms and Conditions (STC) Numbers 1.A. and 26, and Flexible Permit Numbers 2167 and PSDTX985, Special Conditions (SC) Number 36, by failing to comply with the concentration limits; 30 TAC §101.20(1) and §122.143(4), THSC, §382.085(b), 40 CFR §60.103(a), and FOP Number O1372, STC Number 1.A., by failing to comply with the concentration limits; 30 TAC §117.310(c)(1)(A) and §122.143(4), THSC, §382.085(b), and FOP Number 01372, STC Number 1.A., by failing to comply with the concentration limits; 30 TAC §§101.20(1) and (3), 116.715(a), and 122.143(4), THSC, §382.085(b), 40 CFR §60.104(a)(1), FOP Number O1372, STC Numbers 1.A. and 26, and Flexible Permit Numbers 2167 and PSDTX985, SC Number 25, by failing to comply with the concentration limits; PENALTY: \$118,127; Supplemental Environmental Project offset amount of \$59,063; ENFORCEMENT COORDINA-TOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Juan J. Guerrero; DOCKET NUMBER: 2015-1078-WOC-E; IDENTIFIER: RN103707378; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: cross connections in water systems; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license for customer service inspections; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas, 76903, (325) 655-9479.

(13) COMPANY: Kundan Greenwood, LP dba Greenwood Business Park; DOCKET NUMBER: 2015-0570-PWS-E; IDENTIFIER: RN106059066; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1, 2012 - December 31, 2012, January 1, 2013 - December 31, 2013, and January 1, 2014 -December 31, 2014, monitoring periods and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper samples for the January 1, 2014 - June 30, 2014 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of October 2011; PENALTY: \$2,406; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Lubbock Cooper Storage, LLC; DOCKET NUM-BER: 2015-0567-PWS-E; IDENTIFIER: RN107845349; LOCA-TION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC \$290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the well; 30 TAC §290.42(1), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; PENALTY: \$399; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(15) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2015-0630-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1386, Special Terms and Conditions Numbers 1A and 16, and New Source Review Permit Numbers 8404 and PSDTX1062M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$6,563; Supplemental Environmental Project offset amount of \$2,625; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: NEW K AND T QUICK STOP, INCORPO-RATED dba K and H FOOD STORE; DOCKET NUMBER: 2015-0627-PST-E; IDENTIFIER: RN101570570; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(d)(3)(A) and THSC, §382.085(b), 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; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,886; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Pasadena Refining System, Incorporated; DOCKET NUMBER: 2015-0740-AIR-E; IDENTIFIER: RN100716661; LOCA-TION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 20246, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$6,900; ENFORCEMENT COORDINA-TOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500. (18) COMPANY: RED'S INDOOR RANGE NORTH, INCORPO-RATED; DOCKET NUMBER: 2014-1509-IHW-E; IDENTIFIER: RN107212557; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: indoor firing range; RULES VIOLATED: 30 TAC §§335.62, 335.504, and 335.513 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; and 30 TAC §335.2, by failing to not cause, suffer, allow, or permit the unauthorized storage and disposal of municipal hazardous waste; PENALTY: \$18,001; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OF-FICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(19) COMPANY: Rudy Reyna; DOCKET NUMBER: 2015-1145-WOC-E; IDENTIFIER: RN103607651; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDI-NATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Salim Hussain dba Kirby Food 2; DOCKET NUM-BER: 2015-0715-PST-E; IDENTIFIER: RN102380029; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: San Pedro Real Estate, LLC dba B & B Food Mart; DOCKET NUMBER: 2015-0650-PST-E; IDENTIFIER: RN102355831; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, Class B, and Class C - at the facility; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(22) COMPANY: Todd Martin Fontenot; DOCKET NUMBER: 2015-1154-WOC-E; IDENTIFIER: RN103540654; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDI-NATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023, (713) 767-3500.

(23) COMPANY: Town of Miller's Cove; DOCKET NUMBER: 2015-0111-MWD-E; IDENTIFIER: RN102180718; LOCATION: Winfield, Titus 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 WQ0011750001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: William Emmett Hartzog, Jr.; DOCKET NUMBER: 2015-0856-MWD-E; IDENTIFIER: RN102517372; LOCATION:

Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015001001 Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: WRIGHT CITY WATER SUPPLY CORPORA-TION; DOCKET NUMBER: 2015-0772-PWS-E; IDENTIFIER: RN101238459; LOCATION: Troup, Smith 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: \$411; ENFORCEMENT COOR-DINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201503168

Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015

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Enforcement Orders

An agreed order was entered regarding K C UTILITIES, INC., Docket No. 2013-0654-MWD-E on August 5, 2015 assessing \$36,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Renda Environmental, Inc., Docket No. 2013-1048-MLM-E on August 5, 2015 assessing \$36,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Rucker Environmental Services, LLC, Docket No. 2013-1279-IHW-E on August 5, 2015 assessing \$29,662 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 DOWNSTREAM ENVIRON-MENTAL, L.L.C., Docket No. 2014-0009-MSW-E on August 5, 2015 assessing \$22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parkside at Mayfield Ranch, Ltd., Docket No. 2014-0469-EAQ-E on August 5, 2015 assessing \$15,276 in administrative penalties with \$3,055 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 TEXAS AIRSTREAM HAR-BOR, INC., Docket No. 2014-0484-MWD-E on August 5, 2015 assessing \$10,656 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 City of Bishop, Docket No. 2014-0547-MWD-E on August 5, 2015 assessing \$10,188 in administrative penalties with \$2,037 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 Michael Rodriguez dba Oak Acres Mobile Home Park, Docket No. 2014-0915-PWS-E on August 5, 2015 assessing \$1,242 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 SureGrow Agricultural Transportation, Inc., Docket No. 2014-1095-WQ-E on August 5, 2015 assessing \$16,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 CHRISTIAN TABERNACLE OF HOUSTON, INC., Docket No. 2014-1165-MWD-E on August 5, 2015 assessing \$12,375 in administrative penalties with \$2,475 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.

A default order was entered regarding Edgar Gerald Alford and United Oilfield Construction LLC, Docket No. 2014-1205-AIR-E on August 5, 2015 assessing \$18,000 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 Pilgrim's Pride Corporation, Docket No. 2014-1217-PST-E on August 5, 2015 assessing \$13,538 in administrative penalties with \$2,707 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 City of Port Arthur, Docket No. 2014-1264-MWD-E on August 5, 2015 assessing \$42,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Transam Petroleum, Inc. dba Tetco 665, Docket No. 2014-1285-PST-E on August 5, 2015 assessing \$19,473 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 TPC Group LLC, Docket No. 2014-1301-AIR-E on August 5, 2015 assessing \$45,750 in administrative penalties with \$9,150 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 DCP Midstream, LP, Docket No. 2014-1410-AIR-E on August 5, 2015 assessing \$89,817 in administrative penalties.

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 Texas Department of Criminal Justice, Docket No. 2014-1452-MWD-E on August 5, 2015 assessing \$14,950 in administrative penalties with \$2,990 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 TEXAS TRANSEASTERN, INC., Docket No. 2014-1463-PST-E on August 5, 2015 assessing \$8,203 in administrative penalties with \$1,640 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.

A default order was entered regarding Tristar Convenience Stores, Inc. dba Handi Stop 80, Docket No. 2014-1505-PST-E on August 5, 2015 assessing \$35,100 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 Shell Oil Company, Docket No. 2014-1522-AIR-E on August 5, 2015 assessing \$32,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cabot Norit Americas, Inc., Docket No. 2014-1579-AIR-E on August 5, 2015 assessing \$80,797 in administrative penalties with \$16,159 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.

A default order was entered regarding CATALPA WATER SUPPLY CORPORATION, Docket No. 2014-1612-PWS-E on August 5, 2015 assessing \$690 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, 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 Janie Hibdon and Steven A. Hibdon dba Hill Country Mobile Home Park, Docket No. 2014-1630-PWS-E on August 5, 2015 assessing \$635 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.

An agreed order was entered regarding City of Huntington, Docket No. 2014-1648-MWD-E on August 5, 2015 assessing \$10,312 in administrative penalties with \$2,062 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 SBBQ Operations LLC dba Sadler's Bar B Que Sales, Docket No. 2014-1656-AIR-E on August 5, 2015 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James L. Oxford, Trustee of Country Villa Trust dba Country Villa Mobile Home Park, Docket No. 2014-1684-PWS-E on August 5, 2015 assessing \$844 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 Tsigereda Mengesha dba Fina Food Mart 1, Docket No. 2014-1732-PST-E on August 5, 2015 assessing \$10,579 in administrative penalties with \$2,115 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 ZAK BUSINESS INC. dba Kountry Mart, Docket No. 2014-1733-PST-E on August 5, 2015 assessing \$8,750 in administrative penalties with \$1,750 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 DESI GROUP, INC. dba Fina Mart, Docket No. 2014-1734-PST-E on August 5, 2015 assessing \$15,015 in administrative penalties with \$3,003 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIMS FARMS, LTD., Docket No. 2014-1736-MSW-E on August 5, 2015 assessing \$7,940 in administrative penalties with \$1,588 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.

A default order was entered regarding Charles M. Watts dba Island View Landing, Docket No. 2014-1754-PWS-E on August 5, 2015 assessing \$1,737 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 Fielder Burnett dba Ponderosa Mobile Home Complex, Docket No. 2014-1761-PWS-E on August 5, 2015 assessing \$900 in administrative penalties.

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 Ector County, Docket No. 2014-1779-PST-E on August 5, 2015 assessing \$13,688 in administrative penalties with \$2,737 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ha Van Nguyen dba Austin Aqua System, Docket No. 2014-1798-PWS-E on August 5, 2015 assessing \$2,214 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio 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 Baytown Energy Center, LLC, Docket No. 2014-1802-AIR-E on August 5, 2015 assessing \$66,188 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 Sung Hee Kang dba Times Market No. 11, Docket No. 2014-1814-PST-E on August 5, 2015 assessing \$12,214 in administrative penalties with \$2,442 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 WESTERN PETROLEUM, LLC dba Western Petroleum 8638, Docket No. 2014-1829-PST-E on August 5, 2015 assessing \$56,065 in administrative penalties with \$11,213 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 William Lloyd Black dba Myra Water System and Wendell R. Black dba Myra Water System, Docket No. 2014-1862-PWS-E on August 5, 2015 assessing \$899 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Silverton, Docket No. 2015-0009-PWS-E on August 5, 2015 assessing \$178 in administrative penalties with \$178 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 City of Knox City, Docket No. 2015-0010-PWS-E on August 5, 2015 assessing \$345 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.

An agreed order was entered regarding LEO BUSINESS, INC. dba US Express 2, Docket No. 2015-0018-PST-E on August 5, 2015 assessing \$8,754 in administrative penalties with \$1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary C. Aardal dba Pigeon Road Estates, Docket No. 2015-0023-PWS-E on August 5, 2015 assessing \$277 in administrative penalties with \$277 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio 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 Presidio County Water Improvement District 1 dba Redford Water Supply, Docket No. 2015-0038-PWS-E on August 5, 2015 assessing \$210 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio 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 Gardner Glass Products, Inc., Docket No. 2015-0055-AIR-E on August 5, 2015 assessing \$46,875 in administrative penalties with \$9,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-

6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose G. Nieto dba Nietos Service Station 1, Docket No. 2015-0226-PST-E on August 5, 2015 assessing \$9,105 in administrative penalties with \$1,821 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Van Nguyen dba Speedy Sack N Pack, Docket No. 2015-0246-PST-E on August 5, 2015 assessing \$43,975 in administrative penalties with \$8,795 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 RACETRAC PETROLEUM, INC. dba RaceTrac 219, Docket No. 2015-0355-PST-E on August 5, 2015 assessing \$9,484 in administrative penalties with \$1,896 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 TR's Market, Inc. dba In & Out Texaco, Docket No. 2012-2614-PST-E on August 4, 2015 assessing \$3,750 in administrative penalties with \$750 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 BAILEY BARK MATERI-ALS, INC., Docket No. 2014-1537-WQ-E on August 4, 2015 assessing \$1,500 in administrative penalties with \$300 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 Mayer Construction, LLC, Docket No. 2014-1657-WQ-E on August 4, 2015 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duran Apartment Management Inc, Docket No. 2014-1667-PWS-E on August 4, 2015 assessing \$1,509 in administrative penalties with \$301 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 Thomas W. Davis, Docket No. 2015-0088-WOC-E on August 4, 2015 assessing \$713 in administrative penalties with \$142 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 RIVERSIDE WATER SUPPLY CORPORATION, Docket No. 2015-0152-PWS-E on August 4, 2015 assessing \$1,035 in administrative penalties with \$207 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 EOLA WATER SUPPLY COR-PORATION, Docket No. 2015-0157-PWS-E on August 4, 2015 assessing \$101 in administrative penalties with \$20 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOE VAUGHN SPRAYING, INC., Docket No. 2015-0158-PST-E on August 4, 2015 assessing \$2,438 in administrative penalties with \$487 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 Golden SA Properties, LLC, Docket No. 2015-0192-WQ-E on August 4, 2015 assessing \$1,562 in administrative penalties with \$312 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cleveland, Docket No. 2015-0209-MWD-E on August 4, 2015 assessing \$5,250 in administrative penalties with \$1,050 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 HARRISON PROFESSIONAL PROPERTIES, LLC, Docket No. 2015-0256-EAQ-E on August 4, 2015 assessing \$2,000 in administrative penalties with \$400 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 Federal Bureau of Prisons, Docket No. 2015-0278-PST-E on August 4, 2015 assessing \$3,750 in administrative penalties with \$750 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 SAMIRA INC. dba Rajs Mart, Docket No. 2015-0290-PST-E on August 4, 2015 assessing \$4,500 in administrative penalties with \$900 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 NAVASOTA OIL CO., INC., Docket No. 2015-0319-PST-E on August 4, 2015 assessing \$4,606 in administrative penalties with \$921 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pilot Point, Docket No. 2015-0332-PWS-E on August 4, 2015 assessing \$1,590 in administrative penalties with \$318 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McMullen County Water Control and Improvement District 2, Docket No. 2015-0333-PWS-E on August 4, 2015 assessing \$1,396 in administrative penalties with \$278 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 MURPHY OIL USA, INC. dba Murphy USA 6895, Docket No. 2015-0349-PST-E on August 4, 2015 assessing \$3,562 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADICO ENTERPRISES INC. dba Anas Shell, Docket No. 2015-0350-PST-E on August 4, 2015 assessing \$5,500 in administrative penalties with \$1,100 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 Break It Down, L.L.C., Docket No. 2015-0360-MSW-E on August 4, 2015 assessing \$2,188 in administrative penalties with \$437 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UTLX Manufacturing LLC, Docket No. 2015-0366-AIR-E on August 4, 2015 assessing \$4,200 in administrative penalties with \$840 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 Vishwanath Enterprise, Inc. dba The Beverage Store, Docket No. 2015-0375-PST-E on August 4, 2015 assessing \$3,504 in administrative penalties with \$700 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 PALO DURO SERVICE COM-PANY, INC. dba Gilder Base Estates PWS, Docket No. 2015-0393-PWS-E on August 4, 2015 assessing \$72 in administrative penalties with \$14 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILSON BUSINESS, INC. dba All Season Food Store, Docket No. 2015-0404-PST-E on August 4, 2015 assessing \$5,701 in administrative penalties with \$1,140 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 Howard T. Nelius dba Coushatte Campground, Docket No. 2015-0411-PWS-E on August 4, 2015 assessing \$510 in administrative penalties with \$510 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 Therm-O-Link of Texas, Inc., Docket No. 2015-0415-WQ-E on August 4, 2015 assessing \$938 in administrative penalties with \$187 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 Aqua Utilities, Inc., Docket No. 2015-0427-PWS-E on August 4, 2015 assessing \$71 in administrative penalties with \$14 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 ARC DGLBKTX004, LLC dba Dollar General Store 14227, Docket No. 2015-0431-PWS-E on August 4, 2015 assessing \$2,467 in administrative penalties with \$493 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio 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 Adam C. Benefield, Docket No. 2015-0433-LII-E on August 4, 2015 assessing \$312 in administrative penalties with \$62 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. An agreed order was entered regarding San Felipe Stone, Inc., Docket No. 2015-0446-WQ-E on August 4, 2015 assessing \$5,000 in administrative penalties with \$1,000 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 California Rock Crushers, Docket No. 2015-0470-AIR-E on August 4, 2015 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irion County, Docket No. 2015-0502-MSW-E on August 4, 2015 assessing \$788 in administrative penalties with \$157 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 Gilbert W. Herrera, Docket No. 2015-0510-LII-E on August 4, 2015 assessing \$959 in administrative penalties with \$191 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2015-0534-PWS-E on August 4, 2015 assessing \$980 in administrative penalties with \$196 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 GOLDEN TRIANGLE PROP-ERTIES, LLC, Docket No. 2015-0561-AIR-E on August 4, 2015 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Terri Williams, Docket No. 2015-0718-WOC-E on August 4, 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 Taylor Morrison of Texas, Inc., Docket No. 2015-0755-WQ-E on August 4, 2015 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Devon Street Homes, L.P., Docket No. 2015-0788-WQ-E on August 4, 2015 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201503222 Bridget C. Bohac Chief Clerk Texas Commission on Environmental Quality Filed: August 19, 2015

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Notice of Correction to Agreed Order Number 5

In the May 22, 2015, issue of the *Texas Register* (40 TexReg 2831), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically item Number 5, Natividad Hernandez d/b/a Bayer Road Salvage Yard. The penalty amount increased by \$1,000, making it \$15,500 instead of \$14,500.

For questions concerning this error, please contact Jake Marx at (512) 239-5111.

TRD-201503170 Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015

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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 September 28, 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 September 28, 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.**

COMPANY: Billy Ray Burrow d/b/a Tinkers Tires: (1)DOCKET NUMBER: 2014-0524-MSW-E; TCEQ ID NUMBER: RN106834450; LOCATION: 908 North Twin Creek Drive, Suite C, Killeen, Bell County; TYPE OF FACILITY: unauthorized scrap tire storage, transportation, and processing facility; RULES VIOLATED: 30 TAC §328.57(c)(1), by failing to obtain a scrap tire transporter registration; 30 TAC §328.57(c)(2), by failing to maintain records of scrap tire transportation using a manifest system; 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; and Texas Health and Safety Code, §361.112(a) 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 tires in enclosed and lockable containers; PENALTY: \$28,875; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: CROSS-COUNTRY COMMERCIALS, INC. d/b/a Cross Country Drive-In; DOCKET NUMBER: 2014-1118-PST-E; TCEQ ID NUMBER: RN106186844; LOCATION: 16449 Highway 124, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(6), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office within 10 working days of the completion of the tests; 30 TAC \$334.45(c)(3)(A), by failing to have the emergency shutoff valves securely anchored at the base of the dispenser; and TWC, §26.3475(c)(1) and 30 TAC §334.45(d)(1)(E)(iii) and §334.50(d)(7), by failing to monitor the interstice of the secondarily contained USTs; PENALTY: \$12,188; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Marisa Daugherty, Trustee of Frank A. Daugherty Family Trust d/b/a Indian Springs Water; DOCKET NUMBER: 2015-0036-PWS-E; TCEQ ID NUMBER: RN101652386; LO-CATION: south of Farm-to-Market Road 900, 0.25 mile west of Farm-to-Market Road 115, south of Mount Vernon, Franklin County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.118(e) and §290.122(c)(2)(A) and §290.122(f), by failing to timely provide the results of triennial secondary constituent sampling to the executive director and by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to provide the results of secondary constituent sampling for the January 1, 2010 - December 31, 2012, monitoring period; 30 TAC §290.106(e) and §290.122(c)(2)(A) and §290.122(f), by failing to timely provide the results of annual nitrate sampling to the executive director and by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to provide the results of the nitrate sampling for the 2012 monitoring period; and 30 TAC §290.106(c)(6) and §290.106(e), by failing to collect annual nitrate samples and provide the results to the executive director for the 2013 monitoring period; PENALTY: \$279; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Sheetdeep LLC d/b/a Tony's Express Mart; DOCKET NUMBER: 2015-0176-PST-E; TCEQ ID NUMBER: RN101769404; LOCATION: 4010 Synott Road, 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(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$6,900; STAFF ATTOR-NEY: 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.

(5) COMPANY: Vishnu Priya, LLC d/b/a Bruton Road Mobil; DOCKET NUMBER: 2015-0217-PST-E; TCEQ ID NUMBER: RN100533066; LOCATION: 1028 West Cartwright Road, Mesquite, Dallas 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); PENALTY: \$4,575; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201503172 Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015

Opportunity to Commont on Default

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 September 28, 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 September 28, 2015.** Com-

ments 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: Cecilia Comeaux; DOCKET NUMBER: 2014-1133-MSW-E; TCEQ ID NUMBER: RN107025496; LOCATION: 1320 Cherry Road, Vidor, Orange County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,312; STAFF ATTOR-NEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: E & A MATERIALS, INC.; DOCKET NUMBER: 2014-0987-WQ-E; TCEQ ID NUMBER: RN107403172; LOCA-TION: 5448 Farm-to-Market Road 2072, Vernon, Wilbarger County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25, by failing to register the site as an APO; PENALTY: \$5,000; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Gulf Coast Recycling, LLC; DOCKET NUMBER: 2014-1564-MSW-E; TCEO ID NUMBER: RN103077277; LOCA-TION: 1950 East Corral Avenue, Kingsville, Kleberg County; TYPE OF FACILITY: metal recycling collection center; RULES VIO-LATED: 30 TAC §328.58(d) and §328.58(e), by failing to obtain the completed manifests within 60 days after the scrap tires or tire pieces were transported off-site by the transporter and by failing to notify the TCEO of the transporter's failure to return completed manifests within three months after the off-site transportation of the used or scrap tires or tire pieces; and 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers or in enclosed and lockable containers; PENALTY: \$37,768; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Roger Alan Biggs; DOCKET NUMBER: 2014-1879-LII-E; TCEQ ID NUMBER: RN103232138; LOCATION: 1200 Farm-to-Market Road 720, Frisco, Denton County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.24(a), by failing to comply with local regulations and obtain a permit prior to installing a landscape irrigation system; 30 TAC §344.43(g) and §344.61(c), by failing to provide a complete irrigation plan prior to construction; 30 TAC §344.43(g) and §344.71(a), by failing to include all required information in a contract; and 30 TAC §344.71(b), by failing to include all required information in an invoice; PENALTY: \$502; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201503173 Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015 ♦ ♦

Notice of Rate Change to the Petroleum Storage Tank Delivery Fee

The Texas Commission on Environmental Quality (TCEQ) is amending the Petroleum Storage Tank (PST) delivery fee, described in Texas Water Code (TWC), §26.3574. Revenue from this fee is deposited to the Petroleum Storage Tank Remediation (PSTR) Account 655, described in Texas Water Code (TWC), §26.3573. Under TWC, §26.3574, a fee is imposed on the delivery of a petroleum product that has been removed from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location for distribution or sale in the state.

The statute requires the TCEQ to set the fees in an amount not to exceed the amount necessary to cover costs of administering the program, not including any amount appropriated by the legislature for the purpose of the monitoring or remediation of releases occurring on or before December 22, 1998. The TCEQ must adjust the fee on an ongoing basis, as appropriate, to comply with this statutory requirement. Therefore, the TCEQ is setting the fee at an amount to secure sufficient revenue to support the current appropriations for monitoring or remediation of releases occurring after December 22, 1998, and other fund obligations.

Effective September 1, 2015, the fees are \$1.70 for each delivery into a cargo tank or a barge having a capacity of less than 2,500 gallons; \$3.45 for 2,500 to 5,000 gallons; \$5.45 for 5,000 to 8,000 gallons; \$6.95 for 8,000 to 10,000 gallons; and \$3.45 for each increment of 5,000 gallons delivered into a cargo tank or barge having a capacity of more than 10,000 gallons.

AGENCY CONTACTS AND INFORMATION. If you need more information about this volume adjustment request or the rate change process, please call the TCEQ Public Education Program, Toll Free at 1-(800) 687-4040. General information about the TCEQ can be found at our website at *www.tceq.texas.gov.* Si desea información en español, puede llamar al 1-(800) 687-4040. Further information may also be obtained from the TCEQ Financial Administration Division, MC 184, P.O. Box 13087, Austin, Texas 78711-3087 or by calling Mr. Greg Yturralde, Revenue Operations Section Manager, at (512) 239-1951.

TRD-201503165 Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015

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Notice of Water Quality Application

The following notice was issued on August 13, 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 the Texas Pollutant Discharge Elimination System Permit No. WQ0010458001 issued to City of Goliad, P.O. Box 939, Goliad, Texas 77963, to change the 2-hour peak flow from 407 gallons per minute (gpm) to 729 gpm. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located at 510 South Mt. Auburn Street, Goliad, in Goliad County, Texas 77963.

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.state.tx.us. Si desea información en Español, puede llamar al (800) 687-4040.

TRD-201503220 Bridget C. Bohac Chief Clerk Texas Commission on Environmental Quality Filed: August 19, 2015

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 13, 2015, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Hill Top Café, Inc., Respondent; SOAH Docket No. 582-15-1629; TCEQ Docket No. 2013-1005-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Hill Top Café, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201503221 Bridget C. Bohac Chief Clerk Texas Commission on Environmental Quality Filed: August 19, 2015

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Public Notice - Shutdown/Default Orders

The Texas Commission on Environmental Quality (TCEO 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 overfill 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 overfill 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 **September 28, 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.

A copy 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 September 28, 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: 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: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the 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.

TRD-201503171 Kathleen C. Decker Director, Litigation Division Texas Commission on Environmental Quality Filed: August 18, 2015

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2015, for Candidates

Mark H. Benavides, 5656 IH 35 S., Ste. E, San Antonio, Texas 78211-2260

Deadline: 30-day Pre-election Report due April 9, 2015, for Committees

Dirk A. Hedges, McKinney Fire Fighter's Assn. for Responsible Government, 2508 Big Horn Ln., Richardson, Texas 75080

Deadline: 8-day Pre-election Report due May 1, 2015, for Committees

Dirk A. Hedges, McKinney Fire Fighter's Assn. for Responsible Government, 2508 Big Horn Ln., Richardson, Texas 75080

James P. Lea, Richardson Firefighter's Political Action Committee, 9924 Summer Sweet Dr., McKinney, Texas 75070

TRD-201503095 Natalia Luna Ashley Executive Director Texas Ethics Commission Filed: August 12, 2015

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Texas Facilities Commission

Request for Proposals #303-6-20503-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-6-20503-A. TFC seeks a five (5) or ten (10) year lease of approximately 4,600 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is September 8, 2015 and the deadline for proposals is September 17, 2015 at 3:00 p.m. The award date is October 21, 2015. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid show.cfm?bidid=119542*.

TRD-201503109 Kay Molina General Counsel Texas Facilities Commission Filed: August 14, 2015

General Land Office

Notice of Invitation for Offer for Renewal of Major Consulting Services

The Texas General Land Office (GLO) is seeking a consultant to provide services related to the Texas Coastal Ocean Observation Network (TCOON). The consultant will review tide and water level data generated by the TCOON tide gauges and submitted to the National Oceanic and Atmospheric Administrative (NOAA) to prove that the data was collected in accordance with NOAA's standards and procedures. Data from the TCOON stations is used to identify the boundary between state and private ownership of submerged land, for approving coastal erosion and beach nourishment projects, for calculating acreage of submerged land tracts for mineral leasing, for identifying and defining the public beach, and for modeling oil spill projections.

Pursuant to §2254.031 of the Texas Government Code, the GLO is seeking to renew its contract for consulting services relating to the review and verification of tide and water level data from TCOON stations for the period beginning October 1, 2015, and ending on August 31, 2017. Pursuant to §2254.029 of the Texas Government Code, the GLO is posting this notice in the *Texas Register* as an invitation for consul-

tants to provide offers for these consulting services. Unless a better offer for the provision of such services is received within thirty (30) days from the date of this publication, the GLO intends to award this contract to Mr. Douglas Martin, subject to the approval of the Governor's Office of Budget and Planning as required by Texas Government Code §2254.028. Mr. Martin has previously provided these consulting services to the GLO with respect to the TCOON program.

Further information may be obtained by contacting Craig Davis, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 483-8126.

TRD-201503207 Anne L. Idsal Chief Clerk, Deputy Land Commissioner General Land Office Filed: August 18, 2015

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit two amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The first amendment will adjust payment rates and reimbursement methodologies for inpatient hospital services as a result of Article II, §32 and §59 of the 2016-17 General Appropriations Act (H.B. 1, 84th Legislature, Regular Session, 2015, art. II, §32 at II-122, and §59 at II-133).

The second amendment will adjust payment rates and reimbursement methodologies for outpatient rural hospital services as a result of Article II, §58 of the 2016-17 General Appropriations Act (H.B. 1, 84th Legislature, Regular Session, 2015, art. II, §58 at II-133).

Sections 32 and 59 of the 2016-17 General Appropriations Act direct HHSC to increase the amount of the standard dollar amount (SDA) add-on for trauma-designated hospitals and to create a new add-on for certain safety-net hospitals. Section 58 directs HHSC to expend certain funds to provide increases in, or add-ons to, Medicaid outpatient provider rates for rural hospitals to ensure access to critical services. Both amendments are proposed to be effective September 1, 2015.

The first amendment will modify the reimbursement methodology for services in the Texas Medicaid State Plan for:

Inpatient Hospital Rates

Trauma add-on-Certain urban hospitals are currently eligible for an increase to their SDA through a trauma add-on. To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services. For inpatient claims with dates of discharge beginning September 1, 2015, the State plan amendment will increase the trauma add-on percentages to the following:

- 28.3% for hospitals with a Level 1 trauma designation
- 18.1% for hospitals with a Level 2 trauma designation
- 3.1% for hospitals with a Level 3 trauma designation
- 2.0% for hospitals with a Level 4 trauma designation

Safety-Net add-on--Certain urban and children's hospitals are currently eligible for an increase to their SDA through add-ons. Currently, urban hospitals may be eligible for an increase through a Geographic Wage add-on, a Medical Education add-on, and a Trauma add-on, and chil-

dren's hospitals may be eligible for an increase through a Geographic Wage add-on and a Teaching Medical Education add-on.

The proposed amendment will create a new "safety-net add-on" for eligible hospitals. The safety-net add-on increases the SDA to reflect the higher costs of providing inpatient care in a hospital that provides a significant percentage of its services to Medicaid or uninsured patients. To be eligible for the safety-net add-on, a hospital must be an urban or children's hospital that meets the eligibility and qualification requirements described in the State plan pages relating to Disproportionate Share Hospital program for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

The second amendment will modify the reimbursement methodology for services in the Texas Medicaid State Plan in the following ways:

Outpatient Rural Hospital Rates

- increase general outpatient reimbursement for rural hospitals such that final payments do not exceed 100 percent of cost;

- increase reimbursement to rural hospitals for outpatient emergency department services that do not qualify as emergency visits such that final payments do not exceed 65 percent of cost;

- remove references to Rockwall county hospitals due to the expiration of the Rockwall county hospitals transition from rural to urban classification; and

- create rural hospital add-ons to the outpatient hospital imaging services fee schedule as follows:

(1) for procedure codes with an outpatient hospital imaging services fee that is less than or equal to \$80.00, the proposed add-on amount is \$3.00;

(2) for procedure codes with an outpatient hospital imaging services fee that is greater than \$80.00 and less than or equal to \$150.00, the proposed add-on amount is \$8.00;

(3) for procedure codes with an outpatient hospital imaging services fee that is greater than \$150.00 and less than or equal to \$300.00, the proposed add-on amount is \$15.00; and

(4) for procedure codes with an outpatient hospital imaging services fee that is greater than \$300.00, the proposed add-on amount is \$32.00.

The first amendment (Inpatient Hospital Rates) is estimated to result in an annual expenditure of \$314,120,828 for federal fiscal year (FFY) 2016, consisting of \$179,708,528 in federal funds and \$134,412,300 in state general revenue, and an annual expenditure of \$310,492,721 for FFY 2017, consisting of \$176,080,422 in federal funds and \$134,412,29 in state general revenue. The second amendment (Outpatient Rural Hospital Rates) is estimated to result in an annual expenditure of \$28,043,936 for FFY 2016, consisting of \$16,043,936 in federal funds and \$12,000,000 in state general revenue, and an annual expenditure of \$30,030,030 for FFY 2017, consisting of \$17,030,030 in federal funds and \$13,000,000 in state general revenue.

Interested parties may obtain copies of the proposed amendment by contacting Laura Skaggs, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6239; by facsimile at (512) 730-7475; or by email at *laura.skaggs@hhsc.state.tx.us.* Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201503234

Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 19, 2015

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Public Notice of Hearing on Proposed Medicaid Medical Benefit Policies

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments on proposed Medicaid medical benefit policies for Physical Therapy, Occupational Therapy, and Speech Therapy. The policies are being proposed as directed by the 2016-17 General Appropriations Act (Article II, Health and Human Services Commission, Rider 50, H.B. 1, 84th Legislature, Regular Session, 2015). The proposed policies are published on the HHSC website under the Medicaid Medical and Dental Policy page, which can be found at http://www.hhsc.state.tx.us/medicaid/MPR/index.shtml.

The public hearing will take place on August 31, 2015, from 8:30 a.m. - 1:00 p.m. in the Brown-Heatly Building Public Hearing Room at 4900 North Lamar Boulevard, Austin, Texas 78751.

Written Comments. Written comments on the proposed policies may be submitted by e-mail to *MCDMedicalBenefitsPolicy-Comment@hhsc.state.tx.us.* Comments will be received through September 11, 2015.

People requiring Americans with Disabilities Act accommodation, auxiliary aids, or services should call Patricia Prince at (512) 428-1924 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201503237 Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 19, 2015

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Public Notice of Intent to Submit State Plan Amendment for Community First Choice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2015.

The proposed amendment will adjust payment rates for the Community First Choice (CFC) program as a result of the 2016-2017 General Appropriations Act, Article II, House Bill 1, 84th Legislature, Regular Session, 2015 (Article II, Special Provisions for all Health and Human Services Agencies, Section 47) which appropriated general revenue funds for provider rate increases for the CFC program. The proposed amendment will modify the reimbursement methodology and update the payment rates in the current state plan. This notice addresses additional reimbursements within the CFC program and supplements the Public Notice of Intent published on August 14, 2015, in the *Texas Register* (40 TexReg 5169).

The proposed amendment is estimated to result in an additional annual aggregate expenditures of \$1,079,653 for the remainder of federal fiscal year (FFY) 2015, consisting of \$683,420 in federal funds and \$396,233 in state general revenue. For FFY 2016, the estimated additional annual expenditure is \$13,022,915 consisting of \$8,242,703 in federal funds and \$4,780,212 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us.* Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201503182 Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 18, 2015

Public Notice of Intent to Submit State Plan Amendment for Day Activity and Health Services

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2015.

The proposed amendment will adjust the payment rates for the Day Activity and Health Services (DAHS) program as a result of the 2016-2017 General Appropriations Act, (Article II, House Bill 1, 84th Legislature, Regular Session, 2015, Special Provisions Applicable to all Health and Human Services Agencies, Section 47), which appropriated general revenue funds for provider rate increases for the DAHS program. The reimbursement methodology will be modified to indicate that effective September 1, 2015, payment rates will be equal to the rates in effect on August 31, 2015, plus \$0.06 per unit of service.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$2,249 for the remainder of federal fiscal year (FFY) 2015, consisting of \$1,287 in federal funds and \$962 in state general revenue. For FFY 2016, the estimated additional annual expenditure is \$27,040, consisting of \$15,458 in federal funds and \$11,582 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us.* Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201503197 Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 18, 2015

Public Notice of Intent to Submit State Plan Amendment for Non-State Operated Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs)

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2015.

The proposed amendment will modify the reimbursement methodology in the State Plan to add an overall spending requirement and adjust payment rates for non-state operated ICF/IIDs as a result of the 2016-2017 General Appropriations Act (Article II, H.B. 1, 84th Legislature, Regular Session, 2015, Department of Aging and Disability Services, Rider 40), which appropriated general revenue funds for provider rate increases for the ICF/IID program and required HHSC to establish a system of spending accountability that ensures each provider expends at least 90 percent of all funds received through the ICF/IID Medicaid payment rates on ICF/IID Medicaid services. The reimbursement methodology for the ICF/IIDs will be amended to indicate that for the period beginning on September 1, 2015, payment rates for ICF/IIDs will be equal to the rate in effect on August 31, 2105, plus 2.02% and to add the required spending requirement and recoupment.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$502,961 for the remainder of federal fiscal year (FFY) 2015, consisting of \$287,744 in federal funds and \$215,217 in state general revenue. For FFY 2016, the estimated additional annual expenditure is \$6,034,129, consisting of \$3,449,617 in federal funds and \$2,584,512 in state general revenue.

To obtain free copies of the proposed amendment or to submit comments, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by email at *jr.top@hhsc.state.tx.us.* Free copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201503236 Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 19, 2015

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Public Notice of Intent to Submit State Plan Amendment for Primary Home Care

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2015.

The proposed amendment will adjust payment rates for the Primary Home Care (PHC) program Nonpriority services as a result of Article II, Section 47 of the 2016-2017 General Appropriations Act (H.B. 1, 84th Legislature, Regular Session, 2015, art. II, at II-131). Article II, Section 47 appropriated general revenue funds for an increase in the base wage of personal attendants to \$8.00 per hour in fiscal years 2016 and 2017. This allows HHSC to increase provider rates for the PHC program. The proposed amendment will modify the reimbursement methodology to indicate that for the period beginning on September 1, 2015, PHC payment rates for Nonpriority services and Nonpriority Consumer Directed services will be equal to the payment rates in effect August 31, 2015, plus \$0.15 per unit of service.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$700,354 for the remainder of federal fiscal year (FFY) 2015, consisting of \$400,673 in federal funds and \$299,681 in state general revenue. For FFY 2016, the estimated additional annual expenditure is \$8,435,832, consisting of \$4,822,480 in federal funds and \$3,613,352 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512)

730-7472; or by e-mail at *jr:top@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201503233 Karen Ray Chief Counsel Texas Health and Human Services Commission Filed: August 19, 2015

Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Tuition Revenue Bond Debt Service Allocation

House Bill 1 passed by the 84th Texas Legislature, Regular Session, specifically Article III Special Provisions Section 64, requires the Texas Higher Education Coordinating Board ("THECB" or "Board") to present an allocation plan for the appropriations made for debt service on the authorized tuition revenue bonds (TRB) to the Legislative Budget Board by January 1, 2016. The THECB intends to engage in negotiated rulemaking to develop the allocation plan. This is in accordance with the provisions of Texas Education Code 61.0331.

In identifying persons likely affected by the allocation plan, the Convener of Negotiated Rulemaking sent a memo via email to the chancellors at Texas A&M University System, Texas State Technical College System, Texas State University System, Texas Tech University System, University of Houston System, University of North Texas System and The University of Texas System, and the presidents at Midwestern State University, Stephen F. Austin State University, Texas Southern University, and Texas Woman's University soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus.

From this effort 11 individuals responded (out of 12 affected entities) and expressed an interest to participate or nominated someone from their system/campus to participate on the negotiated rulemaking committee for TRB debt service allocation. The positions held by the volunteers and nominees include a Chancellor, Chief Financial Officers, Vice Chancellors/Presidents of Finance, and a Director of Finance and Resource Planning. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed plan.

The following is a list of the stakeholders who are significantly affected and will be represented on the negotiated rulemaking committee for TRB debt service allocation:

- 1) Texas A&M University System;
- 2) Texas State Technical College System;
- 3) Texas State University System;
- 4) Texas Tech University System;
- 5) University of Houston System;
- 6) University of North Texas System;
- 7) The University of Texas System;
- 8) Midwestern State University;
- 9) Stephen F. Austin State University;
- 10) Texas Southern University; and

11) Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 11 individuals to the negotiating rulemaking committee for TRB debt service allocation to represent affected parties and the agency:

University

Marilyn Fowle, Vice President for Business Affairs, Midwestern State University

Danny Gallant, Vice President for Finance and Administration, Stephen F. Austin State University

Craig Ness, Vice President for Administration and Finance/CFO, Texas Southern University

System

Billy Hamilton, Executive Vice Chancellor/CFO, Texas A&M University System

Mike Reeser, Chancellor, Texas State Technical College System

Daniel Harper, Deputy Vice Chancellor for Finance, Texas State University System

Jim Brunjes, Vice Chancellor/CFO, Texas Tech University System

Terry Hull, Associate Vice Chancellor for Finance, The University of Texas System

Raymond Bartlett, Vice Chancellor of Finance, University of Houston System

Susan Sherman, Assistant Vice Chancellor for Financial Planning and Reporting, University of North Texas System

Texas Higher Education Coordinating Board

Thomas Keaton, Director, Finance and Resource Planning

Meetings will be open to the public. If there are persons who are significantly affected by the TRB debt service allocation plan and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

• Name and contact information of the person submitting the application;

• Description of how the persons are significantly affected by the allocation plan and how their interests are different than those represented by the persons named above;

• Name and contact information of the person being nominated for membership; and

• Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for TRB debt service allocation. Comments and applications for membership on the committee must be submitted by September 8, 2015 to:

Mary E. Smith, Ph.D.

Alternative Dispute Resolution Coordinator

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711

Fax: (512) 427-6127

Email: *mary.smith@thecb.state.tx.us* TRD-201503240 William Franz General Counsel Texas Higher Education Coordinating Board Filed: August 19, 2015

Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by B.WELL HEALTH INSURANCE COMPANY OF TEXAS, a domestic life, accident, and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201503229 Sara Waitt General Counsel Texas Department of Insurance Filed: August 19, 2015



Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation adopted amendments to 16 TAC §88.78, concerning polygraph examiners, in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5149). The amended rule was adopted without changes from the proposal and was not republished; however, the email address in §88.78(a) and (b) was incorrect. The correct email address is cs.polygraph.examiners@tdlr.texas.gov. The corrected rule text reads as follows:

§88.78. Responsibility of Licensee--Contract for Services and Waiver of Liability.

(a) A written contract for a polygraph examiner's services must include the following information: "To file a complaint against a polygraph examiner, contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, (512) 463-6599, www.tdlr.texas.gov or cs.polygraph.examiners@tdlr.texas.gov."

(b) A waiver of liability signed by the subject of a polygraph examination must include the following information: "To file a complaint against a polygraph examiner, contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, (512) 463-6599, www.tdlr.texas.gov or cs.polygraph.examiners@tdlr.texas.gov."

TRD-201503238



Texas Lottery Commission

Instant Game Number 1720 "AMC® The Walking Dead®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1720 is "AMC® THE WALKING DEAD®". The play style is "other".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1720 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1720.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BARN DOOR SYMBOL, FINGERPRINT SYMBOL, SPIDER WEB SYMBOL, LOCK SYMBOL, FIRE SYMBOL, LANTERN SYMBOL, SPIDER SYMBOL, SKULL SYMBOL, HANDCUFFS SYMBOL, HAT SYMBOL, CAR SYMBOL, CAMERA SYMBOL, SNAKE SYMBOL, STACK OF BILLS SYMBOL, BADGE SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$1000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

PLAY SYMBOL	CAPTION
BARN DOOR SYMBOL	BRNDR
FINGERPRINT SYMBOL	PRINT
SPIDER WEB SYMBOL	WEB
LOCK SYMBOL	LOCK
FIRE SYMBOL	FIRE
LANTERN SYMBOL	LNTRN
SPIDER SYMBOL	SPIDR
SKULL SYMBOL	SKULL
HANDCUFFS SYMBOL	CUFFS
HAT SYMBOL	HAT
CAR SYMBOL	CAR
CAMERA SYMBOL	CMERA
SNAKE SYMBOL	SNAKE
STACK OF BILLS SYMBOL	WIN
BADGE SYMBOL	WINX5
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$30,000	30 THOU

Figure 1: GAME NO. 1720 - 1.2D

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven

(7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1720), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1720-0000001-001.

K. Pack - A Pack of "AMC® THE WALKING DEAD®" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "AMC® THE WALKING DEAD®" Instant Game No. 1720 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "AMC® THE WALKING DEAD®" Instant Game is determined once the latex on the Ticket is scratched off to expose 20 (twenty) Play Symbols. The player scratches the entire play area to reveal 10 Play Symbols and 10 Prize Symbols. If a player reveals a "STACK OF BILLS" Play Symbol, the player wins the PRIZE for that symbol. If a player reveals a "BADGE" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 20 (twenty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. The "STACK OF BILLS" (WIN) and "BADGE" (WINX5) Play Symbols will only appear as dictated by the prize structure.

D. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

E. No matching non-winning Play Symbols on a Ticket.

F. No more than 2 matching non-winning Prize Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim an "AMC® THE WALKING DEAD®" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "AMC® THE WALKING DEAD®" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "AMC® THE WALK-ING DEAD®" Instant Game prize, the claimant must sign the winning 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 Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "AMC® THE WALKING DEAD®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "AMC® THE WALKING DEAD®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1720. The approximate number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	679,680	10.42
\$4	509,760	13.89
\$5	169,920	41.67
\$10	113,280	62.50
\$20	113,280	62.50
\$50	19,529	362.54
\$100	3,540	2,000.00
\$1,000	47	150,638.30
\$30,000	6	1,180,000.00

*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 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1720 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1720, 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-201503214 Bob Biard General Counsel Texas Lottery Commission Filed: August 18, 2015



Instant Game Number 1721 "777 Sevens"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1721 is "777 SEVENS". The play style is "slots - straight line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1721 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1721.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: HAT SYMBOL, BAR SYMBOL, BELL SYMBOL, CHERRY SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, GRAPE SYMBOL, LEMON SYMBOL, MELON SYMBOL, POT OF GOLD SYMBOL, HORSESHOE SYMBOL, RING SYMBOL, POP SYMBOL, BANANA SYMBOL, MILK SYMBOL, CACTUS SYMBOL, STAR SYMBOL, CLOVER SYMBOL, MUSIC SYMBOL, STACK OF COINS SYMBOL, 7 SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

PLAY SYMBOL	CAPTION
HAT SYMBOL	HAT
BAR SYMBOL	BAR
BELL SYMBOL	BELL
CHERRY SYMBOL	CHRY
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
GRAPE SYMBOL	GRPE
LEMON SYMBOL	LEMN
MELON SYMBOL	MELN
POT OF GOLD SYMBOL	PTGD
HORSESHOE SYMBOL	SHOE
PEPPERS SYMBOL	PPRS
APPLE SYMBOL	APPLE
COOKIE SYMBOL	COOKIE
RING SYMBOL	RING
POP SYMBOL	POP
BANANA SYMBOL	BANANA
MILK SYMBOL	MILK
CACTUS SYMBOL	CACTUS
STAR SYMBOL	STAR
CLOVER SYMBOL	CLO
MUSIC SYMBOL	MUSIC
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STBRY
GEM SYMBOL	GEM
STACK OF COINS SYMBOL	DOUBLE
7 SYMBOL	TRIPLE
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 000000000000.

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 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1721), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1721-0000001-001.

K. Pack - A Pack of "777 SEVENS" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "777 SEVENS" Instant Game No. 1721 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "777 SEVENS" Instant Game is determined once the latex on the Ticket is scratched off to expose 80 (eighty) Play Symbols. If a player reveals 3 matching Play Symbols in the same ROW, the player wins the PRIZE for that ROW. If a player reveals 3 "STACK OF COINS" Play Symbols in the same ROW, the player wins DOUBLE the PRIZE for that ROW. If a player reveals 3 "7" Play Symbols in the same ROW, the player wins TRIPLE the PRIZE for that ROW. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 80 (eighty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 80 (eighty) Play Symbols under the Latex Overprint on the front portion of

the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 80 (eighty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 (eighty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning ROWS on a Ticket (in any order).

D. A Ticket may have up to three matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

E. The "STACK OF COINS" (double) and "7" (triple) Play Symbols will only appear as dictated by the prize structure.

F. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "777 SEVENS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct

the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "777 SEVENS" Instant Game prize of \$1,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "777 SEVENS" Instant Game prize, the claimant must sign the winning 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 Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "777 SEVENS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "777 SEVENS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1721. The approximate number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	857,600	9.38
\$10	562,800	14.29
\$15	268,000	30.00
\$20	134,000	60.00
\$50	82,477	97.48
\$100	34,505	233.01
\$500	4,690	1,714.29
\$1,000	201	40,000.00
\$100,000	6	340,000.00

*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 4.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1721 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1721, 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-201503215 Bob Biard General Counsel Texas Lottery Commission Filed: August 18, 2015

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Instant Game Number 1722 "Season's Greetings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1722 is "SEASON'S GREETINGS". The play style is "match 3 of X".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1722 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1722.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: GIFT SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$20.00, \$50.00, \$100, \$200 and \$3,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1722 - 1.2D

PLAY SYMBOL	CAPTION
GIFT SYMBOL	WIN\$10
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$3,000	THR THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1722), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1722-0000001-001.

K. Pack - A Pack of "SEASON'S GREETINGS" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SEASON'S GREETINGS" Instant Game No. 1722 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "SEASON'S GREETINGS" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 9 (nine) Play Symbols. If a player reveals 3 matching prize amounts,

the player wins that amount. If a player reveals a "Gift" Play Symbol, 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 Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 9 (nine) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win once on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same locations.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. There will never be more than three (3) matching Prize Symbols.

E. There will never be more than one (1) set of three (3) matching Prize Symbols. (i.e., three \$5 symbols and three \$20 symbols).

F. The "GIFT" (WIN\$10) Play Symbol will only appear as dictated by the prize structure.

G. When the "GIFT" (WIN\$10) Play Symbol appears, all Prize Symbols will be different.

2.3 Procedure for Claiming Prizes.

A. To claim a "SEASON'S GREETINGS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SEASON'S GREETINGS" Instant Game prize of \$3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SEASON'S GREETINGS" Instant Game prize, the claimant must sign the winning 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 Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SEASON'S

GREETINGS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SEASON'S GREETINGS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed. 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,720,000 Tickets in the Instant Game No. 1722. The approximate number and value of prizes in the game are as follows:

Figure 2	2:	GAME	NO.	1722	- 4.0
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Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,441,600	8.82
\$2	932,800	13.64
\$4	169,600	75.00
\$5	84,800	150.00
\$10	169,600	75.00
\$20	42,400	300.00
\$50	10,600	1,200.00
\$100	742	17,142.86
\$200	70	181,714.29
\$3,000	20	636,000.00

*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 4.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1722 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1722, 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-201503216 Bob Biard General Counsel Texas Lottery Commission Filed: August 18, 2015

Texas Board of Nursing

Behavior Involving Fraud, Theft, and Deception

The Texas Board of Nursing adopted amendments to the Disciplinary Sanctions Involving Fraud, Theft, and Deception at its July 2015 meeting:



Behavior Involving Fraud, Theft, and Deception

Purpose

The Texas Board of Nursing (Board) is committed to its mission to protect the public health, safety, and welfare. In keeping with this mission, the Board is concerned about the fraudulent or dishonest conduct of an individual, whether occurring in the workplace or outside the workplace, that may place patients/clients or the public at risk.

All individuals wishing to practice nursing in Texas must possess good professional character. Nurses hold the highest position of trust to the most vulnerable of our society. Conduct involving the misappropriation of property, money, or other possessions; fraudulent behavior towards patients, governmental programs or funds, (e.g., Medicare and/or Medicaid), or other private reimbursement programs; and criminal behavior involving fraud, theft, or deception raises questions about an individual's fitness to practice and professional character.

This policy is intended to explain the Board's position regarding fraudulent and deceptive behaviors and inform licensees, petitioners, applicants and the public about the Board's process for reviewing such conduct. This policy is also consistent with, and supports, the Governor's Executive Order RP36, July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse. The Governor's Executive Order RP36 may be found at: http://governor.state.tx.us/news/executive-order/10997/.

Effect on Practice

Nurses, by virtue of the license issued to them by the Board, have a duty to their patients to provide safe, effective nursing care and to demonstrate honesty, integrity, and good professional character at all times. The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized. Patient care settings are intimate ones and patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbooks, credit cards) with them to health care facilities. Further, nurses frequently provide care in private homes and home-like settings where all of a patient's property and valuables are

accessible to the nurse. In autonomous settings, like home health, other healthcare providers are not present, and there is no direct supervision of the nurse. Patients in these types of healthcare settings may be particularly vulnerable to the unethical, deceitful, or illegal conduct of the nurse. Further, although some nurses may not work in these settings, an individual with an unencumbered license is not restricted from them. When a nurse has exhibited fraudulent or deceitful conduct in the past, the Board is mindful that similar misconduct may be repeated in the workplace, thereby placing patients at a heightened risk.

Theft is an intentional act. Theft from a patient or fraudulent or deceitful behavior involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is extremely serious and constitutes grounds for disciplinary action, including the suspension or revocation of licensure or licensure denial. Fraud, theft, or deception toward an employer in a healthcare setting is also concerning to the Board, as such behavior may be repeated or involve patients.

Crimes involving fraudulent and/or deceitful behavior are concerning to the Board, as they may indicate a lack of good professional character. The Board may rely solely on the disposition of a crime (with or without an adjudication of guilt) to initiate disciplinary action against a nurse's license, which may include licensure denial, suspension, revocation, or other limitation.

The Board is also concerned with fraudulent behaviors involving government funds or programs, such as Medicare or Medicaid, or other private reimbursement programs. This type of fraud increases the price employers pay for worker's compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services.

Disciplinary Action

In all situations involving an individual's fraudulent or deceitful conduct, the Board's primary objective is to ensure the protection of the public. However, not all matters involving a nurse's fraudulent or deceptive behavior will require the same amount of Board intervention or will necessarily result in disciplinary action. The Board will consider each case on its own merit. Factors that may be particularly relevant to fraudulent or deceitful conduct include: the nature and seriousness of the conduct, the actual harm resulting from the conduct, the individual's history, premeditation, lack of remorse, and/or restitution, and the risk the individual's practice poses to patients and the public. Depending on the particular circumstances, an individual may be able to obtain or retain licensure under an encumbered license, with conditions/restrictions determined by the Board, for a specified period of time. Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time. Further, if the individual circumstances do not necessarily warrant removal of an individual from practice or from an independent practice setting, supervision and/or additional restrictions applicable to the setting will likely be required to ensure adequate protection of patients and the public. A fine and/or restitution as authorized by the Nursing Practice Act and Board rules may also be required.

For additional information, please review the Nursing Practice Act (NPA), <u>Tex. Occ. Code</u> <u>Chapter 301</u>; the Board's rules, located at <u>22 Texas Administrative Code</u> Chapters 211 -227, including §§213.27 - 213.33; and the Board's <u>adopted policies</u> located on the Board's web site, at <u>www.bon.texas.gov</u>. <u>Tex. Occ. Code Chapter 53, 22 Tex. Admin. Code</u> <u>§213.28</u>, and the <u>Board's Guidelines for Criminal Conduct</u> contain additional provisions that specifically apply to criminal behavior. The Board will also consider its adopted <u>Disciplinary</u> <u>Matrix</u>, which contains recommended sanctions for violations of the Nursing Practice Act and/or Board rules and an individual's good professional character under <u>22 Tex. Admin.</u> <u>Code §213.27</u>.

Adopted July 23, 2015

TRD-201503145 James W. Johnston General Counsel Texas Board of Nursing Filed: August 17, 2015



Behavior Involving Lying and Falsification

The Texas Board of Nursing adopted amendments to the Disciplinary Sanctions Involving Lying and Falsification at its July 2015 meeting:



Behavior Involving Lying and Falsification

Purpose

The Texas Board of Nursing (Board) is committed to its mission to protect the public health, safety, and welfare. In keeping with this mission, the Board is concerned about the deceptive or dishonest conduct of an individual as it relates to the provision of health care. Such conduct includes falsifying documents related to patient care, employment, and licensure.

This policy is intended to explain the Board's position regarding deceptive and dishonest behaviors and inform licensees, petitioners, applicants and the public about the Board's process for reviewing such conduct.

Effect on Practice

Nurses, by virtue of the license issued to them by the Board, have a duty to their patients to provide safe, effective nursing care and to demonstrate good professional character at all times. The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized.

Nurses are frequently in situations where they must report patient conditions, their interventions, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct. Patients have the right to expect nurses to conduct themselves with professionalism and in an honest manner. Honesty, accuracy, and integrity are imperative for the provision of safe and effective nursing care.

Nurses are expected to exhibit honesty, accuracy, and integrity in the provision of nursing care, including: performing nursing assessments; applying the nursing process; reporting changes in patients' condition; acknowledging errors in practice and reporting them promptly; accurately charting and reporting, whether verbal or written; implementing care as ordered; complying with all laws and rules affecting the practice of nursing; and complying with the minimum standards of nursing.

Falsification of documents regarding patient care, incomplete or inaccurate documentation

of patient care, failure to provide the care documented, or other acts of deception or omission raise serious concerns about an individual's ability to provide safe nursing care and prevents subsequent caregivers from having a complete and accurate picture of the patient's care and condition. When a nurse has exhibited dishonest or fraudulent behavior, the Board is mindful that similar misconduct may be repeated, thereby jeopardizing the effectiveness of patient care in the future.

Employers, Nursing Education Programs, and Nursing Training Programs

Generally, the falsification of an application to an employer, school of nursing, or other nursing training program is the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of the individual's credentials, competencies, or work experience. The misrepresentation of an individual's credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within nursing practice is viewed. Further, a student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that the individual may continue similar dishonest acts after licensure. If the Board is made aware of such acts committed as a student, the Board will initiate an investigation of the individual's conduct once the student submits an application for licensure to the Board. Depending on the particular circumstances, disciplinary action may be warranted.

Licensure Forms

Each licensure form or document, whether an initial application for licensure, an application by endorsement, or a renewal application, contains questions that require a "yes" or "no" answer. These forms contain several questions that may affect the ability of an individual to function safely as a nurse. In addition, these forms require individuals to provide information to determine if the individual meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the individual's fitness for licensure.

The Board recognizes that, sometimes, an individual may mark a "yes" or "no" answer in error or misunderstand the question being asked. The Board believes, however, that intentionally supplying false information is a serious matter, not only because of the lying or falsification itself, but because the false answers may allow an otherwise disqualified individual to obtain or retain licensure. Falsification raises concerns about the individual's propensity to lie and the likelihood that such conduct may continue in the practice of nursing. Depending on the particular circumstances, disciplinary action may be warranted.

Criminal Behavior

Crimes which involve fraudulent, dishonest, and deceitful behavior are concerning to the Board, as they may indicate a lack of good professional character. The Board may rely solely on the disposition of a crime, with or without an adjudication of guilt, to initiate disciplinary action against a nurse's license, which may include licensure denial, suspension, revocation, or other limitation.

Nurse Imposter

The Board has no jurisdiction over a person who holds him or herself out to be a nurse, but does not actually hold a license or privilege to practice nursing in the State of Texas. If alerted to such conduct, the Board may issue a cease and desist order prohibiting the individual from engaging in any nursing activities and may report the conduct to a local law enforcement agency or the attorney general for prosecution.

The Board does has jurisdiction, however, over an individual who holds a nursing license or privilege to practice nursing in Texas (or has held one in the past) and represents him/herself as licensed for a broader scope of practice than authorized by the individual's actual nursing license, e.g., LVN to RN, RN to APRN. The Board has no tolerance for this type of behavior. An individual who engages in this type of conduct may face disciplinary action by the Board, including the maximum dollar amount of a fine allowed under the Nursing Practice Act and Board rules.

Disciplinary Action

In all situations involving an individual's fraudulent or deceitful conduct, the Board's primary objective is to ensure the protection of the public. However, not all matters involving a nurse's fraudulent or deceptive behavior will require the same amount of Board intervention or will necessarily result in disciplinary action. The Board will consider each case on its own merit. Factors that may be particularly relevant to fraudulent or deceitful conduct include: the nature and seriousness of the conduct, the actual harm resulting from the conduct, the individual's history, premeditation, lack of remorse, and/or restitution, and the risk the individual's practice poses to patients and the public. Depending on the particular circumstances, an individual may be able to obtain or retain licensure under an encumbered license, with conditions/restrictions determined by the Board, for a specified period of time. Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time. Further, if the individual circumstances do not necessarily warrant removal of an individual from practice or an independent practice setting, supervision and/or additional restrictions applicable to the setting will likely be required to ensure adequate protection of patients and the public. A fine and/or restitution as authorized by the Nursing Practice Act and Board rules may also be required.

Licensure revocation, however, may be appropriate and will likely be considered by the Board in situations where an individual has knowingly falsified information upon which the individual's licensure was based. In such cases, it shall be the individual's burden to establish good professional character sufficient to justify retention of licensure. In these cases, the individual may be required to start the application process over anew, under non-deceptive means, without benefit of consideration of the individual's intervening practice as a nurse. Likewise, if an individual has knowingly falsified information on a licensure application, but has yet to be granted licensure, the Board may deny licensure based upon the individual's falsification. Upon re-application, it shall be the individual's burden to

establish good professional character sufficient to justify licensure.

For additional information, please review the Nursing Practice Act (NPA), <u>Tex. Occ. Code</u> <u>Chapter 301</u>; the Board's rules, located at <u>22 Texas Administrative Code</u> Chapters 211 -227, including §§213.27 - 213.33; and the Board's <u>adopted policies</u> located on the Board's web site, at <u>www.bon.texas.gov</u>. <u>Tex. Occ. Code Chapter 53, 22 Tex. Admin. Code</u> <u>§213.28</u>, and the <u>Board's Guidelines for Criminal Conduct</u> contain additional provisions that specifically apply to criminal behavior. The Board will also consider its adopted <u>Disciplinary</u> <u>Matrix</u>, which contains recommended sanctions for violations of the Nursing Practice Act and/or Board rules and an individual's good professional character under <u>22 Tex. Admin.</u> <u>Code §213.27</u>.

Amended July 23, 2015

TRD-201503144

James W. Johnston General Counsel Texas Board of Nursing Filed: August 17, 2015



Disciplinary Guidelines for Criminal Conduct

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the guidelines are not included in the print version of the Texas Register. The guidelines are available in the html version of the August 28, 2015, issue of the Texas Register on-line.)

The Texas Board of Nursing adopted amendments to the Disciplinary Guidelines for Criminal Conduct at its July 2015 meeting:

TRD-201503143 James W. Johnston General Counsel Texas Board of Nursing Filed: August 17, 2015

Substance Use Disorders and Other Alcohol and Drug Related Conduct

The Texas Board of Nursing adopted amendments to the Disciplinary Sanctions Regarding Substance Use Disorders and Other Alcohol and Drug Related Conduct at its July 2015 meeting:



Substance Use Disorders and Other Alcohol and Drug Related Conduct

Purpose

The Texas Board of Nursing (Board) is committed to its mission to protect the public health, safety, and welfare. In keeping with this mission, the Board is concerned about conduct that may prevent an individual from practicing nursing with reasonable skill and safety due to a substance use disorder or other alcohol and drug related conduct, such as the possession, intemperate use, misuse, or abuse of alcohol or drugs, prescribed or otherwise.

This policy is intended to explain the Board's position regarding substance use disorders¹ and alcohol and drug related conduct and inform licensees, petitioners, applicants and the public about the Board's process for reviewing such conduct.

Effect on Practice

Nurses, by virtue of the license issued to them by the Board, have a duty to their patients to provide safe, effective nursing care and to be fit to practice at all times. The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is particularly true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized. It is incumbent upon the nurse to ensure that he/she is able to provide safe and effective nursing care to these vulnerable populations at all times.

Nurses who have a substance use disorder may exhibit impairment in both cognitive and motor functioning. A nurse affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner. This danger may be heightened when a nurse works in an

¹ The Diagnostic and Statistical Manual of Mental Disorders (DSM) was amended May 2013. The amended version, the DSM-V, utilizes the term *substance use disorder*. The use of the term *substance use disorder* in this policy reflects the terminology utilized in the amended version of the manual. Under the DSM-V, a *substance use disorder* may be mild, moderate, or severe. Further, the term may include matters that were formerly categorized as drug or alcohol abuse or misuse or chemical dependency.

autonomous setting, like home health, where other healthcare providers are not present to provide interventions for the patient.

However, a nurse need not have a diagnosed substance use disorder in order for patient care to be affected. Other alcohol and drug related conduct, such as the intemperate use, misuse, or abuse of alcohol or drugs, prescribed or otherwise, may affect a nurse's ability to provide safe and effective nursing care. This may include behavior that occurs while a nurse is not on duty or subject to call. For example, a nurse's criminal history may raise questions about his/her ability to practice nursing safely. Arrests or convictions for drug or alcohol related crimes, such as *Driving While Intoxicated* or *Possession of a Controlled Substance*, are relevant when determining if a nurse possess current fitness to practice. Theft of drugs or other substances by a nurse may also cause concerns about the potential for impaired nursing care.

A nurse may also exhibit impaired behavior while on duty, with or without a confirming employer drug screen. In some instances, a nurse may produce a pre-employment drug screen that results positive for a prohibited substance. A nurse may also demonstrate a pattern of mishandling controlled substances, such as excessive withdrawals of drugs from a computerized dispensing machine (such as a pyxis), failing to properly waste drugs, or failing to properly document the administration of drugs in medical records. A nurse may also have a physical condition that requires the use of prescription drugs. Although the use of prescription drugs is authorized by law and may be necessary, the nurse's ability to function safely while under the effects of the drugs will be carefully considered by the Board if it affects the practice of nursing. This is particularly true in situations where a nurse may be abusing his/her prescription drugs or has been unable to stabilize the synergistic effect of his/her medications. In any of these situations, the Board's primary goal is to ensure the delivery of safe and effective nursing care.

Although any of these situations may affect the ability of a nurse to safely perform his/her duties, these examples are not exhaustive. The Board is authorized to, and does, investigate any situation that may affect a nurse's ability to provide safe and effective nursing care.

Disciplinary Action

Not all complaints involving a nurse's ability to practice safely will require the same amount of Board intervention or will result in a disciplinary action. The particular facts of each case must be carefully considered. The Board believes that substance use disorders are treatable conditions, and nurses who achieve stable recovery may be able to safely provide care to patients under certain conditions. Likewise, the Board also believes that nurses who have engaged in behaviors involving the intemperate use, misuse, or abuse of alcohol or drugs may also be able to safely provide care to patients under certain conditions. In all situations involving an individual's fitness to practice, the Board's primary objective is to ensure the protection of the public. However, the Board will consider the unique facts and circumstances of each situation and may utilize various options in resolving the matter, including returning nurses to practice under structured requirements. A nurse whose fitness to practice is in question due to a substance use disorder or drug or alcohol related behavior may be required to undergo an evaluation that meets the requirements of <u>Tex. Occ. Code §301.4521</u> and <u>Board Rule 213.33</u>. Under the authority of <u>Tex. Occ. Code §301.4521</u>, the Board may require an individual to submit to a physical and/or psychological evaluation to determine if the individual is able to safely provide nursing care. <u>Board Rule 213.33</u> and the Board's adopted Guidelines for Physical and Psychological Evaluations contain additional information regarding the types of evaluations that may be required in a particular situation and the applicable requirements that evaluators must meet. The Board will consider the individualized results of the evaluation, along with the facts of the case in determining the most appropriate resolution for the particular situation.

In more serious cases, it may be necessary for the Board to deny licensure or remove a nurse from nursing practice until the nurse is deemed safe to return to those duties. In these situations, the nurse will be given the opportunity to seek treatment and may return to nursing care when he/she is able to provide evidence of sustained sobriety and stable recovery. Verifiable evidence of sobriety may include random drug screens, letters of recommendation, evaluations from present and past employers, and signed logs of support group attendance. If an individual meets these requirements and returns to nursing practice, the individual may be subject to Board monitoring and random drug screening for a period of time.

In other cases, it may be determined that an individual's participation in a Board-approved peer assistance program² will sufficiently minimize the risk to patients/clients and the public. Under certain conditions, this may even be accomplished through a confidential, non-public Board order. <u>See Tex. Occ. Code §301.466(d)³</u>. There may also be situations where an individual's behavior warrants an eligibility or disciplinary order that includes random drug screening and monitored practice for a minimal period of time. These types of orders may be appropriate when an individual does not have a substance use disorder diagnosis, but has engaged in behaviors involving alcohol or drugs that raises questions about the individuals' ability to safely practice nursing. If an individual's conduct involves a criminal offense, the Board will utilize its adopted <u>Disciplinary Guidelines for Criminal Conduct</u> and <u>Tex. Occ. Code Chapter 53</u>, in addition to the principles outlined in tthis policy, when evaluating the individual's behavior.

Matters involving an individual's fitness to practice are varied, and each case must be evaluated on its own merits and in light of the risk the individual's practice may pose to

² An individual must meet eligibility criteria for participation in a peer assistance program. For example, an individual may not be eligible to participate if he/she is on criminal probation or community supervision; has prior Board discipline; or has previously participated in the program. Further, an individual must be willing to participate in a peer assistance program and such participation is available through an agreed order only.

³ In September 2013, the Board was granted the authority to issue confidential, non-public orders for participation in a Board-approved peer assistance program. Such orders may remain confidential so long as the individual complies with, and successfully completes, the terms of the order.

patients/clients and the public. For additional information, please review the Nursing Practice Act (NPA), <u>Tex. Occ. Code Chapter 301</u>, the Board's rules, located at <u>22 Texas</u> Administrative Code Chapters <u>211 - 227</u>, including §§213.27 - 213.33, and the Board's <u>adopted policies</u> located on the Board's web site, at <u>www.bon.texas.gov</u>. The Board's adopted <u>Disciplinary Matrix</u> may also contain additional information that may be applicable in certain situations involving a nurse's substance use disorder or alcohol or drug related conduct.

Amended July 23, 2015

TRD-201503146

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Public Utility Commission of Texas

Amended Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 12, 2015, pursuant to the Public Utility Regulatory Act, Texas Utility Code Ann. §39.154 and §38.158 (West 2008 & Supp. 2014) (PURA).

Docket Style and Number: Application of Goodwell Wind Project, LLC for Approval Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 45040.

The Application: On August 12, 2015, Goodwell Wind Project, LLC (Goodwell) filed an application with the Public Utility Commission of Texas for approval of the issuance of passive equity interest to three entities, JPM Capital Corporation, MetLife Capital Credit, L.P., and BNY Partnership Funding, LLC Goodwell Wind Project, LLC. Goodwell is developing and constructing a 200 MW wind powered electric generation project located in Texas County, Oklahoma, with a portion of the interconnecting transmission line to be located in Hansford County, Texas.

EGPNA REP Holdings, LLC (Enel) and EFS Green Power Holding, LLC (EFS) each respectively own 51% and 49% of EGPNA Renewable Energy Partners, LLC (the Venture), which, in turn, indirectly owns 100% of the equity interests in Goodwell. Enel and EFS and their respective affiliates, including the Venture, also wholly or partially own equity interests in existing and planned generation facilities located in the Southwest Power Pool, the Electric Reliability Council of Texas, and MidContinent Independent System Operator. Enel will cause 100% of the Class B passive equity interests in Goodwell to be issued to the Investors and will cause the existing equity interests in Goodwell held by the Venture to be converted to Class A managing equity interests (the Transaction).

Subsequent to this transaction, the combined direct and indirect generation ownership in or capable of tie in to Southwest Power Pool (SPP) owned by Goodwell, Enel, EFS, and Investors, will exceed one percent of the generation ownership in SPP.

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 45040.

TRD-201503175 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 18, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 12, 2015, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.154 and §38.158 (West 2008 & Supp. 2014) (PURA).

Docket Style and Number: Application of Goodwell Wind Project, LLC for Approval Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 45040.

The Application: On August 12, 2015, Goodwell Wind Project, LLC (Goodwell) filed an application with the Public Utility Commission of Texas for approval of the issuance of passive equity interest to three entities, JPM Capital Corporation, MetLife Capital Credit, L.P., and BNY Partnership Funding, LLC Goodwell Wind Project, LLC. Goodwell is developing and constructing a 200 MW wind powered electric generation project located in Texas County, Oklahoma, with a portion of the interconnecting transmission line to be located in Hansford County, Texas.

EGPNA REP Holdings, LLC (Enel) and EFS Green Power Holding, LLC (EFS) each respectively own 51% and 49% of EGPNA Renewable Energy Partners, LLC (the Venture), which, in turn, indirectly owns 100% of the equity interests in Goodwell. Enel and EFS and their respective affiliates, including the Venture, also wholly or partially own equity interests in existing and planned generation facilities located in the Southwest Power Pool, the Electric Reliability Council of Texas, and MidContinent Independent System Operator. Enel will cause 100% of the Class B passive equity interests in Goodwell to be issued to the Investors and will cause the existing equity interests in Goodwell held by the Venture to be converted to Class A managing equity interests (the Transaction).

Subsequent to this transaction, the combined direct and indirect generation ownership in or capable of tie in to ERCOT owned by Goodwell, Enel, EFS, and Investors, will exceed one percent of the generation ownership in ERCOT.

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 45040.

TRD-201503139 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 14, 2015

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on August 11, 2015, with the Public Utility Commission of Texas (commission) for waiver from the requirements in 16 Texas Administrative Code §24.89.

Docket Style and Number: Request of Jeremy and Marie Raines for Exemption/Variance from Sutherland Springs Water Supply Corporation's Requirement to Install a Second Meter, Docket Number 45034.

The Application: Jeremy and Marie Raines filed an application requesting that the Public Utility Commission of Texas grant them an exemption from a requirement to install a second water meter on their property. Sutherland Springs Water Supply Corporation (Sutherland Springs WSC) notified the Raines that the company had been informed that more than one residence on their property may be receiving water service through a single water meter. The Raines' residential property consists of a mobile home and separate garage/guest room structure. Mr. and Mrs. Raines' elderly and disabled parents are now utilizing the garage/guest room as temporary living quarters. No improvements or changes have been made to the water service connection for the home or garage/guest room since the Raines purchased the property. The Raines have received an estimate of \$4,700 for the cost of installation of a new service line and new water meter for water service to the garage/guest room structure.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45034.

TRD-201503137 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 14, 2015

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Bell County.

Docket Style and Number: Application of City of Morgan's Point Resort to Amend a Certificate of Convenience and Necessity in Bell County, Docket Number 45030.

The Application: City of Morgan's Point Resort (Morgan's Point) filed an application to amend its water certificate of convenience (CCN) No. 11309 in Bell County.

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 45030.

TRD-201503097 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 12, 2015

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Notice of Petition for Amendment to Water 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 August 11, 2015, of a petition to amend a certificate of convenience and necessity by expedited release in Johnson and Tarrant Counties. Docket Style and Number: Petition of HMP Ranch, Ltd. to Amend Johnson County Special Utility District's Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release, Docket No. 45037.

The Application: HMP Ranch, Ltd. filed a petition for expedited release from Johnson County Special Utility District's water certificate of convenience and necessity No. 10081, in Johnson and Tarrant Counties pursuant to Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to intervene or comment on the action sought should contact the commission no later than September 8, 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 September 8, 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 45037.

TRD-201503138 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 14, 2015

Notice of Petition to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition for partial decertification in relation to a portion of a water Certificate of Convenience and Necessity (CCN) No. 13203 located in Harris and Montgomery Counties.

Docket Style and Number: Petition of Aqua Texas, Inc. d/b/a Aqua Texas to Amend a Certificate of Convenience and Necessity in Harris and Montgomery Counties, Texas Docket Number 45039.

The Petition: Aqua Texas, Inc. d/b/a Aqua Texas filed a petition to amend its CCN in Harris and Montgomery Counties. Aqua Texas seeks to decertify a portion of its CCN that is located inside the boundaries of Harris County Municipal Utility District No. 480.

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 45039.

TRD-201503154 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 17, 2015

Public Notice of Workshop and Request for Comments

Public Utility Commission of Texas (commission) staff will hold a workshop regarding Project No. 42600, *Rulemaking Proceeding to Amend PUC Subst. R. §§26.403, 26.404, and 26.405 to Address Certain Provisions of the Texas Universal Service Fund (TUSF) Including Eligibility of Certain Lines and Number of Business Lines Receiving Support* on Monday, October 5, 2015, at 10:00 a.m. The workshop will be conducted in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas.

In preparation for the workshop, commission staff requests comments from interested parties to the questions listed below. Parties are invited to submit written comments in response to staff's questions by filing sixteen copies of such comments with Central Records no later than 3:00 p.m. on Friday, September 11, 2015. Parties are invited to file reply comments by filing sixteen copies of such responses with Central Records no later than 3:00 p.m. on Thursday, September 24, 2015. All comments should reference Project No. 42600 and should be limited to 20 pages.

Questions concerning the workshop or this notice should be referred to Jay Stone, Budget and Fiscal Oversight, at (512) 936-7245 or at jay.stone@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

QUESTIONS

The commission staff seeks comments in response to the following questions:

1. Should the definition of "eligible line" be revised to read:

Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Texas High Cost Universal Service Plan (THCUSP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs to a premises that has permanent facilities for water, wastewater, and electricity, and for which basic local telecommunications service is acquired by and for the benefit of the customer.

2. In the alternative, should a different definition be used? If so, please provide the proposed alternate definition and explain why it should be adopted.

3. Should high-cost support be available for ETP lines providing service to temporary premises that do not have permanent facilities for water, wastewater and electricity? If so, explain why.

4. Should high-cost support be available for ETP lines providing service to premises without a physical service address? If so, explain why high cost support should be available in this situation and how could it be audited?

5. What address should be reported as associated with an eligible line for the purposes of receiving TUSF support (i.e., street address, 911 address, billing address)?

6. How should the classification of an access line as a "business line" or a "residential line" under 16 TAC \$26.403(b), 26.404(b), and 26.405(c) be determined (i.e., the party who contracts for the service, party who pays for the service)?

7. What customer documentation should be required to substantiate the classification described in Question No. 6?

8. What methodology should be employed to count the number of business lines at one location?

9. If companies with different names are located at the same physical address (no differentiating suite or room number), should the access lines be considered a separate business line or does the applicable cap for business lines apply?

TRD-201503153

Adriana Gonzales Rules Coordinator Public Utility Commission of Texas Filed: August 17, 2015

Texas Department of Transportation

Notice of Intent - State Highway (SH) 68, Hidalgo County, Texas

Pursuant to 43 TAC §2.102(b), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed transportation project to construct State Highway (SH) 68 from Interstate (I) 2/ United States Highway (US) 83 to I69C/ US 281 in Hidalgo County, Texas. Areas within the study area include the cities of Alamo, Pharr, Donna, Edinburg, San Juan, and San Carlos. The proposed SH 68 from I2/US83 to I69C/US 281 is listed in the 2015- 2040 Hidalgo County Metropolitan Transportation Plan as a 4-lane divided rural highway facility with the potential for main lanes and overpass. There is no existing facility; therefore, the project is proposed on new location.

The purpose of the project is to improve north/south mobility, increase travel capacity for local and regional traffic, and provide an alternate north-south evacuation route during emergency events. The project need is a lack of sufficient north/south mobility for local and regional traffic and for additional emergency evacuation routes, which are the result of historical and continuing growth in the region's population as well as continued growth of traffic in the region.

The significance of impacts for the proposed SH 68 project was initially uncertain, so the process began by preparing an environmental assessment (EA). Based on preliminary analysis and feedback from the public, it was determined that an EIS should be prepared. The EIS will incorporate information collected during the EA process; in addition, public input gathered during the development of the EA will be considered in the EIS process. The EIS will develop and evaluate a range of alternatives including "No-action" (the no-build alternative), Transportation System Management (TSM)/Transportation Demand Management (TDM), rapid transit and roadway build alternatives. The EIS will analyze potential direct, indirect and cumulative impacts from construction and operation of proposed corridor improvements including, but not limited to, the following: transportation impacts; air quality and noise impacts; water quality impacts including storm water runoff; impacts to waters of the United States including wetlands; impacts to floodplains; impacts to historic and archeological resources; impacts to threatened and endangered species; socioeconomic impacts including environmental justice communities; impacts to and/or potential displacements of land use, vegetation, residents and businesses; and impacts to aesthetic and visual resources.

The project may require the following approvals by the federal government: United States Army Corps of Engineers (USACE) Section 404; Section 401 Water Quality Certification; National Pollutant Discharge Elimination System (NPDES); and Section 4(f) determination. The actual approvals required may change after TxDOT completes field surveys and selects the alignment for the project.

Public involvement is a critical component of the project development process and will occur throughout the planning and study phases. Letters describing the proposed action including a request for comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Agency and public scoping meetings are planned for late 2015. The purpose of the public scoping meetings is to identify significant and other relevant issues related to SH 68 mobility improvements as part of the National Environmental Policy Act process. The scoping meetings will provide opportunities for participating agencies, cooperating agencies, and the public to be involved in review and comment on the draft coordination plan, defining the need and purpose for the proposed project, and the range of alternatives to be considered in the EIS. In addition to the agency and public scoping meetings, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments or questions concerning this proposed action should be directed to TxDOT at the address provided below.

TxDOT Contact: Homer Bazan, Jr., P.E., Director of Transportation Planning and Development - TxDOT Pharr District, Texas Department of Transportation, 600 W. Interstate 2, Pharr, Texas 78577; telephone: (956) 702-6100; email: Homer.Bazan@txdot.gov.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by the department pursuant to 23 U.S.C. §327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and the department.

TRD-201503223 Angie Parker Associate General Counsel Texas Department of Transportation Filed: August 19, 2015

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Texas Water Development Board

Applications for August 2015

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62648, a request from the Greater Texoma Utility Authority on behalf of the City of Sherman, 5100 Airport Drive, Denison, Texas 75020-8448, received July 7, 2015, for a \$27,310,000 loan from the Drinking Water State Revolving Fund to finance the planning, design, and construction of a water treatment plant expansion and new elevated storage tank and a waiver of the requirement to mitigate water loss.

Project ID #21756, a request from the City of Alba, P.O. Box 197, Alba, Texas 75410-0197, received June 3, 2015, for an \$840,000 loan from the Texas Water Development Fund to finance the planning, design, and construction related to the rehabilitation of the wastewater treatment plant.

Project ID #21750, a request from the Port O'Connor Improvement District, c/o Brown & Gay Engineers, Inc., 10777 Westheimer, Ste. 400, Houston, Texas 77042, received September 2, 2014, for a \$2,815,000 loan from the Texas Water Development Fund for the planning, design, and construction of water system improvements.

Project ID #62667, a request from the City of Fayetteville, 202 W. Main, Fayetteville, Texas 78940, received November 24, 2014, for \$400,000 in financial assistance consisting of a \$200,000 loan and \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund for the design and construction of a new water well.

TRD-201503180

Les Trobman General Counsel Texas Water Development Board Filed: August 18, 2015

Workforce Solutions Borderplex

Request for Proposal

PY15-RFP-200-134

The Workforce Solutions Borderplex Board is soliciting proposals from qualified and experienced entities for four (4) distinct components of and related to the workforce system: (1) Business Service Unit, (2) Workforce Center Operation/Management of Program Services, (3) WIOA Youth Services, (4) Resource Center Services. This RFP allows for respondents to apply for one, any, or all four (4) components.

The Request for Proposal (RFP) # PY15-RFP-200-134 may be requested in writing or picked up in person on Tuesday, August 25, 2015, at the Board offices located at 300 E. Main, Suite 800, El Paso, Texas 79901. The RFP will also be available on the Board's website (*www.borderplexjobs.com*) on and after the above date. A respondents' conference is scheduled for August 31, 2015 at 10:30 a.m. MST. Join WebEx Meeting by phone: 1-650-479-3208, access code: 806 768 521.

Questions may be submitted via email to *procurement@border-plexjobs.com* on or before 5:00 p.m. MST, September 15, 2015. Proposals to this RFP must be physically received by the Purchasing Department at the Board offices no later than 5:00 p.m. MST, November 5, 2015.

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711 (Voice/Voz) or 1-800-735-2989 (TTY) Igualdad de oportunidades de Empleo/Programas. Equipo auxiliary y servicios de apoyo están disponibles para personas con discapacidad al ser requeridos. Relay Texas: 711.

TRD-201503230 Alondra McDuffie Purchasing Assistant Workforce Solutions Borderplex Filed: August 19, 2015

Request for Proposal

PY15-RFP-300-100

The Workforce Solutions Borderplex is soliciting proposals from qualified vendor(s) for janitorial and light maintenance services for three (3) Workforce Board Career Centers: North Loop Center, Northeast Center, and Fabens Center. The centers will be open for respondents to view on September 1, 2015.

The Request for Proposal (RFP) # PY15-RFP-300-100 may be requested in writing or picked up in person on Tuesday, August 25, 2015, at the Board offices located at 300 E. Main, Suite 800, El Paso, TX 79901. The RFP will also be available on the Board's website (www.borderplexjobs.com) on and after the above date. A respondents' conference will take place at 9:00 a.m. MST on September 3, 2015. Join WebEx Meeting by Phone: 1-650-479-3208, access code: 804 521 709.

Questions may be submitted via email to *procurement@border-plexjobs.com* on or before 5:00 p.m. MST, September 8, 2015.

Proposals to this RFP must be physically received by the Purchasing Department at the Board offices no later than 5:00 p.m. MST, September 14, 2015.

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711 (Voice/Voz) or 1-800-735-2989 (TTY) Igualdad de oportunidades de Empleo/Programas. Equipo auxiliar y servicios de apoyo están disponibles para personas con discapacidad al ser requeridos. Relay Texas: 711.

TRD-201503232 Alondra McDuffie Purchasing Assistant Workforce Solutions Borderplex Filed: August 19, 2015



Request for Qualifications

PY15-RFQ-300-102

Workforce Solutions Borderplex, Inc. is soliciting Qualifications from qualified organizations/individuals to provide and deliver Architectural Services. Request for Qualifications (RFQ) # PY15-RFQ-300-102 may be requested in writing or picked up in person on and after 12:00 p.m. MST, Monday, August 24, 2015, at the Board offices located at 300 E Main., Suite 800, El Paso, Texas 79901. The RFQ will also be available on the Board's Web Site (www.borderplexjobs.com) on and after the above date and time. Proposals to this RFQ must be physically received by the Purchasing Department at the Board offices no later than 5:00 p.m. MST, September 17, 2015. Questions pertaining to this RFQ may be directed to Purchasing Department, via email at *procurement@borderplexjobs.com*.

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711 (Voice) or (800) 735-2989 (TTY). Igualdad de oportunidades de Empleo/Programas. Equipo auxiliary y servicios de apoyo están disponibles para personas con discapacidad al ser requeridos. Relay Texas: 711 (Voz) o (800) 735-2989 (TTY).

TRD-201503239 Alondra McDuffie Purchasing Assistant Workforce Solutions Borderplex Filed: August 19, 2015

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Request for Quotations

PY15-RFQ-100-301

Workforce Solutions Borderplex, Inc. is soliciting Quotations from qualified organizations/individuals to provide and deliver Independent Reviewer/Evaluator of Proposals Services. Request for Quotation (RFQ) # PY15-RFQ-100-301 may be requested in writing or picked up in person on and after 12:00 p.m. MST, Monday, August 24, 2015, at the Board offices located at 300 E. Main, Suite 800, El Paso, Texas 79901. The RFQ will also be available on the Board's Web Site (www.borderplexjobs.com) on and after the above date and time.

Quotations to this RFQ must be physically received by the Purchasing Department at the Board offices no later than 5:00 p.m. MST, September 17, 2015.

Questions pertaining to this RFQ may be directed to Purchasing Department, via email at *procurement@borderplexjobs.com*.

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711 (Voice) or 1-800-735-2989 (TTY) Igualdad de oportunidades de Empleo/Programas. Equipo auxiliary y servicios de apoyo están disponibles para personas con discapacidad al ser requeridos. Relay Texas: 711 (Voz) o 1-800-735-2989 (TTY)

TRD-201503231 Alondra McDuffie Purchasing Assistant Workforce Solutions Borderplex Filed: August 19, 2015



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)

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